



Work Behind Bars

ANALYSIS OF PRISON LABOR IN THE UNITED STATES BASED ON INTERNATIONAL LABOR STANDARDS

Introduction

The U.S. prison system has been under increasing scrutiny in recent years for issues such as systemic racism, inhumane conditions, overcrowding, and sexual violence. While these issues are extremely pressing, another important issue, forced prison labor, is often overlooked. Therefore, as a labor rights organization, Verité determined that we could most effectively contribute to the critique of the U.S. prison system by lending an international human rights lens to the conversation on prison labor. For this briefing document, Verité carried out desk-based research to analyze the risk of forced labor in U.S. prisons based on the International Labor Organization's (ILO) standards, guidance, and indicators of forced labor. Under each of these frameworks, Verité found a high risk of forced labor in the U.S. prison system.

Recently, prison labor has made international headlines in other parts of the world, including prison-made goods in China linked to international supply chains and proposals by the governments of Malaysia and Thailand to use prison labor to address labor shortages in certain sectors during the COVID-19 pandemic.¹ While the media, civil society organizations, and governments rightfully critique the prison labor situations in other countries, we urge all stakeholders to apply the same level of scrutiny to the U.S. prison labor system, while also paying careful attention to the role that race plays in incarceration in the United States.

Background

Approximately 750,000 incarcerated individuals have jobs within prisons in the United States. The majority work in roles that keep prisons running (e.g., food preparation or laundry), while approximately 63,000 incarcerated individuals work to produce goods for external parties – often government agencies – via state and federally run prison enterprises or private sector companies.² One program run by Federal Prison Enterprises (UNICOR), a U.S. government-owned corporation, employs approximately 5,400 workers alone.³ Workers employed in U.S. prisons work in services (e.g., call centers), agriculture, and manufacturing, producing everything from office furniture to road signs.⁴

In the United States, prison labor should be viewed within the context of the historical legacy of slavery and the Constitution. The Thirteenth Amendment, passed by Congress on January 31, 1865, abolished slavery, “except as a punishment for crime whereof the party shall have been duly convicted.”⁵ Advocates for incarcerated people’s rights often argue that the Thirteenth Amendment effectively legalized forced labor as a form of punishment, making prison labor the exception by which slavery has been allowed to continue, disproportionately affecting Black people.

Black Americans “are incarcerated in state prisons across the country at more than five times the rate of whites, and at least ten times the rate of whites in five states [Iowa, Minnesota, New Jersey, Vermont, and Wisconsin].”⁶ Nationwide, Black Americans comprise 38 percent of individuals inside U.S. prisons despite comprising only 12 percent of the overall population.⁷

Numerous international organizations and domestic advocacy organizations, such as the ILO, the [Abolish Slavery National Network](#), and [Worth Rises](#) have identified the links between race, imprisonment, and prison labor. Additionally, the [#EndTheException campaign](#), a nationwide campaign backed by over 80 organizations, is a movement that seeks to amend the U.S. Constitution to remove the Thirteenth Amendment’s exception clause, which permits forced prison labor.

Charity Ryerson, the Executive Director of the [Corporate Accountability Lab](#), who served time in prison and is a vocal opponent of forced labor in domestic prisons, emphasizes that workers in U.S. prisons lack a variety of legal protections, increasing the risk of forced labor. For example, federal courts have ruled that incarcerated workers should not be categorized as “employees” [under the Fair Labor Standards Act](#), excluding them from basic labor rights protections, such as minimum wage and overtime pay regulations.⁸ Workers in prison also lack the right to unionize or demand better working conditions or pay through collective bargaining, as they are similarly excluded from the [National Labor Relations Act](#).⁹ In fact, the categorization of workers in prison as non-employees means that, by law, workers in prison do not have to be paid at all.

In practice, several states, including Alabama, Florida, Georgia, and South Carolina, do not pay incarcerated workers. In other states, incarcerated individuals are paid extremely low wages, earning less than a dollar to under USD 3.50 per workday. This is far below the minimum wage and in violation of ILO guidance stating that incarcerated people’s conditions of work should approximate those of free individuals. These egregiously low wages can be subject to further deductions to cover the cost of room and board, victim restitution,¹⁰ hygiene products, scheduling an appointment with a prison doctor, and phone calls. Due to the inflated cost of phone calls in prisons, sometimes one phone call can cost as much as an incarcerated person may earn from a full day of work.¹¹

The lack of legal protections and the low wages paid to workers in prison are detrimental to their successful reintegration into society, preventing incarcerated individuals from saving and preparing for life after their sentences. While some assume that prison labor can help incarcerated people secure jobs after their sentences are completed, there are relatively few examples of promising programs that prepare people in prisons for careers that pay living wages, such as a coding program at San Quentin prison in San Francisco.¹² These programs tend to be the exception, and most jobs in prisons are low-skilled and fail to

provide workers in prison with the knowledge and skills needed to obtain jobs that allow them to earn a living wage, especially given that previously incarcerated people face a number of challenges in acquiring jobs. As the Prison Policy Initiative (PPI) stated in 2022, “poverty is not only a predictor of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison destroys wealth, creates debt, and decimates job opportunities.”¹³

The fact that incarcerated individuals earn little to nothing during their incarceration, and

subsequently find it extremely difficult to find jobs due to their criminal records, greatly increases their risk of falling into extreme poverty and the related risk of recidivism. A Harvard study conducted on racial inequality in employment and earnings following incarceration found that formerly incarcerated Black and Latino Americans earn USD 1,300 and USD 1,500 per month, respectively, significantly less than their White counterparts, who took home an average of USD 2,500.¹⁴ This demonstrates further linkages between class, race, and incarceration.

ILO Convention No. 29 on Forced Labor

From an international labor rights perspective, the U.S. prison labor system meets many of the criteria for forced labor. In making determinations on the existence of forced labor, Verité analyzes compliance with ILO Convention No. 29 on Forced Labor, which defines forced or compulsory labor as “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 prohibits forced or compulsory labor, except in very specific circumstances, one of which is work or services exacted **as the result of a court conviction**, so long as prison laborers are **supervised by a public authority** and are **not hired out to private individuals or companies**.¹⁵ As described below, the U.S. prison labor system fails to comply with this criteria.

Another way in which the U.S. is at risk of violating Forced Labor Convention No. 29 relates to labor taking place among those incarcerated in jail prior to conviction, as well as among detained immigrants. Numerous [reports](#) and [lawsuits](#) have highlighted violations of the Thirteenth Amendment and the Trafficking Victims Protection Act of 2000 (TVPA), particularly at for-profit detention centers, where an estimated [80 percent](#) of detained immigrants are held. The risk of forced labor among this population is a topic that deserves more in-depth scrutiny.

Prison Labor for Private Companies or Not Under Supervision of Public Authorities

The United States is one of only eight countries that have failed to ratify ILO Convention No. 29, which obligates countries to suppress the use of forced or compulsory labor “in all its forms,” in part because the Convention conflicts with U.S. law and practice governing the use of prison labor.¹⁶ The use of prison labor in private, for-profit prisons, which house approximately eight percent

of the U.S. prison population,¹⁷ precludes the U.S. from meeting the terms of Convention No. 29 in and of itself. Even if the work in private prisons is not income generating in nature (e.g., cleaning or laundry services within the prisons), those workers employed in private prisons are supervised by private sector employees rather than by public authorities.

Programs that utilize labor from prisons for private enterprises, such as the Prison Industry Enhancement Certification Program (PIECP), also operate in contravention with ILO guidance. Even though the PIECP requires that private employers pay incarcerated people the prevailing local wage (which other forms of prison labor do not require),¹⁸ wages obtained through this program are often subject to deductions, which can constitute up to 80 percent of incarcerated individuals' gross wages.¹⁹ People working in state or federal prisons generally either perform work

that keeps prisons running or produce goods or deliver services as part of federal programs (e.g., UNICOR) or a host of state-run prison industries. It is also important to note that labor performed by incarcerated individuals also makes its way into private supply chains through the PIECP or other channels. Second-tier suppliers often participate in the PIECP and then distribute the goods they produce to [larger and more well-known brands](#).²⁰ Although a public authority technically supervises these workers, many dimensions of this dynamic do not resemble a free labor relationship.

ILO Forced Labor Convention 29 – Article 2 in Convention 29 states that “the 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,” but provides an exception if (c) “any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations.”

ILO Abolition of Forced Labor Convention 105 – Article 1 in Convention 105 states “that each Member [Country] 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.”

The ILO Declaration on the Fundamental Principles and Rights to Work (1998) declares that all Members, even if they have not ratified the Conventions, have an obligation, arising from the very fact of membership in the ILO, to respect, to promote and to realize the principles concerning the fundamental rights which are the subject of the eight Fundamental Conventions, including Conventions No. 29 and No. 105.²¹

ILO Convention No. 105 on the Abolition of Forced Labor

Forced Prison Labor as a Means of Racial Discrimination

The United States is also at risk of violating ILO Convention 105, which it has ratified. As a signatory to this Convention, the United States has made a commitment to “take efforts to suppress and not to make use of any form of forced or

compulsory labor... (e) as a means of racial, social, national or religious discrimination.” Although the U.S. Constitution and legal system prohibit racial discrimination and it is not the explicit intent of state and federal governments to use prison

labor for this purpose, vastly disproportionate rates of incarceration for Black and Latino individuals mean that, in practice, racial minorities constitute a disproportionate percentage of the prison workforce, including those who could be considered to be in forced labor under ILO Convention No. 29. Black and Latino individuals are imprisoned at a rate of 4.8 and 1.3 times the rate of White individuals, respectively, according to recent data.²² The ILO, in its 2021 comments on the United States, contends 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 [105].”²³ The United States’ failure to ratify Forced Labor Convention No. 29, along with state, federal, and private authorities’ failure to comply with ILO guidance on the use of prison labor (described below), results in a high risk of forced labor within the U.S. prison system, which Black and Latino individuals are more likely to experience. This means that forced prison labor may be used as a means of racial discrimination in practice.

ILO Indicators of Forced Labor

Verité was the first organization to operationalize the ILO indicators of forced labor to identify cases of forced labor through field research and has conducted research utilizing three different iterations of the ILO indicators of forced labor over the past dozen years in a range of different countries and sectors. The most recent iteration of the ILO [indicators of forced labor](#) was approved by the International Conference of Labour Statisticians (ICLS) in 2018, with input from Verité. The ICLS has established that for forced labor to exist, each individual adult worker must experience at least one indicator of involuntary work and one indicator of threat or menace of penalty.²⁴

Verité has identified several potential indicators of forced labor in the U.S. prison system and provides an analysis below of how indicators of forced labor may occur within prisons. It is important to note that while the presence of forced labor indicators signifies an elevated risk of forced labor, it is not possible to determine the existence of forced labor unless the case of each individual worker is analyzed in isolation to determine whether they experience both indicators of involuntariness and menace of penalty.

INVOLUNTARY WORK

Abusive requirements for overtime or on-call work not previously agreed to

In some cases, workers in prisons may have to work extremely long hours or be on call for certain positions, and as these workers are often

obligated to work in specific jobs, they are not able to give their full consent. This has been documented for incarcerated individuals who act as first responders responsible for identifying and transporting other incarcerated people sick with COVID-19 to healthcare facilities.²⁵ There are also a number of other occupations that are associated with long working hours and/or on-call work, such as firefighting in California, where incarcerated individuals can work 24-hour shifts.²⁶

Work in hazardous conditions to which the worker has not consented

Incarcerated individuals, who may be forced to work without their consent, may also have to work under hazardous conditions. As prison work is not regulated under Occupational Health and Safety Administration (OSHA), statistics on workplace injuries in prisons are not collected. However, there is anecdotal evidence of prison workers being involved in serious accidents related to operating machinery.²⁷ Other examples of dangerous work include workers tasked with identifying and transporting COVID-19-positive incarcerated individuals (as mentioned above) as they are at an elevated risk of being infected, and incarcerated worker involvement in state-level emergency responses.²⁸

Work with very low or no wages

Incarcerated people often have to work for no or very low wages. A 2017 study conducted by Prison

Policy Initiative indicates that incarcerated workers are paid roughly between USD 0.86 and USD 3.45 per day of work, which is far below the minimum wage. There are other cases in which workers in prison receive no payment at all for their work.²⁹

THREAT OR MENACE OF PENALTY

Restrictions on workers' movement

In addition to the fact that incarcerated individuals' freedom of movement is inherently restricted, there have been reports that the threat of solitary confinement has been used to force them to accept or remain in jobs, even if they are dirty, dangerous, or demeaning.³⁰ A 2021 Juneteenth event sponsored by the [End the Exception campaign](#) included testimony from several formerly incarcerated individuals who had been punished with solitary confinement for not engaging in work.³¹

Debt bondage or manipulation of debt

In a number of states, prisons retain incarcerated individuals' wages without their consent to cover debts, taxes, mandatory savings, court costs, victim compensation,³² room and board, the cost of hygiene products, phone calls, and doctors' appointments.³³ Incarcerated people are often charged excessive prices for goods and services, which can contribute to a cycle of debt.

Abuse of workers' vulnerability through the denial of rights or privileges, threats of dismissal or deportation

Both federal regulations and some state-level laws allow for an incarcerated person to be punished for refusing to work. A host of punishments can be levied against incarcerated people who refuse to work under federal regulations, ranging from the cancellation of a parole hearing to solitary confinement for up to three months (referred to as "disciplinary segregation") or a loss of privileges such as visitation.³⁴

ILO Guidance on Prison Labor

Although prison labor is fundamentally different from a typical worker-employee relationship, some of the indicators used to assess forced labor are applicable to the prison context. According to the ILO, incarcerated individuals' conditions of employment – including wages, hours, consent, and occupational safety and health (OSH) – should mirror those of a free employment relationship.³⁵ The ILO has [developed guidance](#) on when the use of prison labor is acceptable (see table to the right). Chief among the requirements is that the worker must freely consent to the work and face no punishment for refusing to work. ILO guidance notes that the "practical application of these provisions may be difficult and require verification to ensure that abuse does not occur."³⁶

Although field research and direct testimony from incarcerated individuals around their working conditions is needed to dig deeper into conditions of work in U.S. prisons, it is clear from Verité's literature review that many of the conditions

outlined by the ILO are not met. For example, Verité did not identify any evidence of incarcerated individuals receiving or signing consent forms or contracts detailing their wages or other conditions of work prior to starting their employment. Further, the power dynamics between incarcerated individuals and prison authorities, who have unilateral power to impose harsh punishments on incarcerated persons for refusing to work, makes it difficult to ensure that workers are giving their free, knowing consent to work and create a high risk of menace of penalty or retaliation for refusing to work or seeking to leave their jobs, with some allegedly threatened with solitary confinement.³⁷

The ILO further stipulates that workers should receive wages comparable to free workers with similar skills and experience. However, as noted by Verité above, in almost all instances in the United States, workers in prison are paid well below federal and state minimum wages, or are provided with no wages at all in certain states.³⁸

Recommendations

The Thirteenth Amendment's exception clause has led to a high risk of forced prison labor, especially among America's disproportionately Black and Latino prison population. Verité supports amending the Constitution to remove the clause that allows for the continued enslavement of incarcerated people. As the United States takes the lead in condemning and sanctioning countries and companies that use forced labor, including forced prison labor, around the world, it must set an example at home.

Verité recommends that the ILO [continue to provide comments and recommendations](#) on the United States' compliance with ILO Convention No. 105 and issue new comments on Convention No. 29 through its Committee of Experts on the Application of Conventions and Recommendations (CEACR). Verité would also recommend that the ILO provide further guidance on how its indicators of forced labor can be applied to the context of prison labor.

Verité has developed preliminary, high-level recommendations for policymakers, companies that source goods or services from prisons, civil society organizations, and consumers.

For policymakers

Support the Abolition Amendment (introduced by Oregon Sen. Jeff Merkley and Georgia Rep. Nikema Williams), which would remove the exception clause in the Constitution that allows the forced labor of incarcerated people to persist in the U.S.

For companies

Ensure that audits of supply chains cover the use of prison labor in lower-tier suppliers. Company due diligence regulations and standards should consider the presence of forced prison labor. If prison labor is found, companies should cease sourcing from those suppliers.

For civil society

Join the [End the Exception campaign](#) coalition of civil society organizations. Civil society groups can enhance their efforts to abolish forced prison labor by understanding and operationalizing international standards and the ILO indicators of forced labor framework in order to identify new and additional lenses of analysis and levers for change.

For the public and consumers

Demand your elected officials sign on to the Abolition Amendment. Encourage your state to adopt similar language in its own governing laws. Demand that companies stop sourcing goods and services from prisons until regulations are changed. Learn more about taking action at the [Abolish Slavery National Network](#).

For researchers

Researchers could look to broaden their lens of analysis around prison work to frame it in terms of international standards. There is a dearth of direct testimony from currently or formerly incarcerated people who worked during their prison sentences and a need for in-depth research on the magnitude and characteristics of forced prison labor in the United States. A recent example of this type of research can be found in a June 2022 [report from the American Civil Liberties Union](#) (ACLU).

Contact Information

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You may also contact the following organizations for more information about prison labor and support their work in reforming the U.S. prison system more generally:

- [Worth Rises](#)
- [Abolish Slavery National Network](#)
- [Prison Policy Initiative](#)
- [Forward Justice](#)

Endnotes

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See 'Available Sanctions for Moderate Severity Level Prohibited Acts' (p. 49, 52) for a full list of available sanctions, https://www.bop.gov/policy/progstat/5270_009.pdf

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