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Prison Incarcerated workers

Incarcerated workers do not have a right to strike in the US.

Harvard Law Review, 19 - ("Striking the Right Balance: Toward a Better Understanding of Prison Strikes," Harvard Law Review 03/8/2019, accessed 10-28-2021, <https://harvardlawreview.org/2019/03/striking-the-right-balance-toward-a-better-understanding-of-prison-strikes/>)/ML

II. LEGAL FRAMEWORK GOVERNING PRISON STRIKES: STATE LAW AND FEDERAL STATUTES¶ A. Statutes and Regulations¶ As a threshold matter, state and federal statutory law provides no recourse for protecting prison strikes. Incarcerated individuals are not included as protected “employees” in the text of federal labor laws like the Fair Labor Standards Act⁷⁸ and the National Labor Relations Act.⁷⁹ and courts have refused to extend the protections that these statutes offer to those confined within prison walls.⁸⁰ Further, this Note is aware of **no state labor laws, or for that matter any state constitutional provisions, that have been interpreted to allow prisoners to strike.** ¶ Not only are **prison strikes** not protected by statutory law — they also **are often explicitly prohibited** State statutes and prison regulations pose the most immediate barrier to prison strike activity, as states across the union appear to categorically bar prison strikes and other forms of inmate collective organizing. For instance, Alaska’s administrative code lists “participation in an organized work stoppage” and “encouraging others to engage in a food strike” as “[h]igh-moderate infractions.”⁸¹ The same is true at the federal level, as the Bureau of Prisons has made “[e]ngaging in or encouraging a group demonstration” and “[e]ncouraging others to refuse to work, or to participate in a work stoppage” prohibited acts.⁸² ¶ Further research is certainly necessary to develop a fuller, more nuanced treatment of the various state and federal statutory schemes that impact prison strikes.⁸³ But even this brief overview drives home a clear bottom line: that state and **federal laws**, in their current forms, likely **offer no viable protection** for prison strikes and indeed often prohibit them outright. ¶ B. Constitutional Law ¶ The Supreme Court has not spoken directly on the question of whether peaceful prison protests merit constitutional protection. However, two areas of constitutional analysis — prisoners’ rights broadly and prisoners’ First Amendment rights specifically — suggest that under current law, the answer to this question is likely also a **resounding no.** ¶ 1. Prisoners’ Constitutional Rights Generally. — Section 1 of the Thirteenth Amendment states: “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.”⁸⁴ By its express terms, the amendment creates an explicit exception for persons serving a sentence pursuant to conviction of a crime, and it therefore offers prisoners no basis to refuse to work or to engage in other forms of peaceful strikes.⁸⁵ ¶ Despite the Thirteenth Amendment’s clear textual carve-out, courts have not, in modern times, read the wording of the amendment literally to allow the State to treat inmates like slaves.⁸⁶ According to the Court, “[t]here is no iron curtain drawn between the Constitution and the prisons of this country.”⁸⁷ Instead, as neither slaves nor free people,⁸⁸ inmates retain some (but not all) of their constitutional rights when they cross into the prison.⁸⁹ The Supreme Court has time and again asserted that “[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights.”⁹⁰ This is the case not only because of the inherently “deprivat[ory]” nature of imprisonment,⁹¹ but also because prison administrators must be accorded wide latitude in the complex and difficult task of operating a penal institution.⁹² This deference, however, “yield[s] to the strictures of the Constitution.”⁹³ Indeed, courts recognize that inmates, despite being incarcerated, retain particular constitutional rights “that the courts must be alert to protect.”⁹⁴ Such rights that an inmate retains are those “that are not inconsistent with his status as a prisoner or with the legitimate penological objective of the corrections system.”⁹⁵ ¶ However, as the Court explained in *Turner v. Safley*, 96 a prison regulation may infringe on a prisoner’s retained constitutional rights as long as “it is reasonably related to legitimate penological interests.”⁹⁷ Turner identified four relevant factors in determining the reasonableness of a prison regulation: (1) whether there is “a ‘valid, rational connection’ between the regulation and the legitimate governmental interest [advanced] to justify it”;⁹⁸ (2) whether alternative means for exercising the asserted right remain available;⁹⁹ (3) whether accommodation of the asserted right will adversely affect “guards[,] other inmates, and . . . the allocation of prison resources generally”;¹⁰⁰ and (4) whether there is a “ready alternative[.]”¹⁰¹ to the regulation “that fully accommodates the prisoner’s right at de minimis cost to valid penological interests.”¹⁰² ¶ So, under the general legal framework for prisoners’ rights, finding constitutional protection for peaceful collective actions like the 2018 prison strike will likely face an uphill battle. Such a right to strike not only must fit within the confines of a “retained

right," which appears to be narrowly defined; it also must go up against Turner and its progeny, which mandate rational basis review for any prison regulation — providing prison officials with broad deference to curtail any rights that a prisoner might retain.¹⁰³ Turning to prisoner First Amendment jurisprudence specifically, it becomes even clearer that a right to strike likely cannot navigate either difficulty successfully.^{¶ 2. Prisoners' First Amendment Rights.} — The First Amendment of the Constitution includes within its guarantees political rights to communicate, associate, and present grievances to the government.¹⁰⁴ These rights go to the very heart of our political system — one that, as a democracy, values the participation of its citizens.¹⁰⁵ Outside of prison walls, the Supreme Court has recognized that individuals may, in many situations, exercise their First Amendment associational rights by peacefully engaging in a work strike.¹⁰⁶ Inside prison walls, however, the right to strike is a legal gray area. The Court has analyzed a number of First Amendment rights, including those implicating concerted political activity and association, in the prison context — asking whether (1) the First Amendment right in question is inconsistent with an inmate's status as a prisoner and (2) prison officials' interference with such a right reasonably relates to a legitimate penological interest.^{¶ 107} However, the Court has yet to perform such an

analysis for prison strikes specifically. But one seminal Supreme Court case — Jones v. North Carolina Prisoners' Labor Union, Inc.¹⁰⁸ — casts serious doubt on prisoners' collective right to strike. In Jones, a prisoners' labor union¹⁰⁹ brought an action under 42 U.S.C. § 1983, claiming that the North Carolina Department of Corrections violated its First Amendment rights¹¹⁰ by promulgating a prison rule that prohibited, among other things, union meetings among inmates.¹¹¹ The three-judge district court agreed, granting substantial injunctive relief to the union.¹¹² The Supreme Court

reversed, however, doing so on two main grounds. Writing for the majority, then-Justice Rehnquist first invoked the familiar notion that "[t]he fact of confinement and the needs of the penal institution impose limitations on constitutional rights," especially First Amendment associational rights.¹¹³ Then, without engaging with the specific nature of the potentially retained associational interest in question (that is, that of organizing as a union), Justice Rehnquist concluded that the challenged regulation did not unduly abridge inmates' First Amendment rights.¹¹⁴ He did so by adopting a rational basis test — emphasizing the critical importance of "wide-ranging [judicial] deference" to prison officials and their informed discretion in carrying out penological goals.¹¹⁵ In particular, Justice Rehnquist argued that "[r]esponsible prison officials must be permitted to take reasonable steps to forestall" the "everpresent potential for violent confrontation" within prisons.¹¹⁶ And as he highlighted, North Carolina prison administrators had testified that the presence of, and potentially even the very objectives of, a prisoners' union did potentially pose a danger¹¹⁷ — likely resulting in increased friction between inmates themselves or between inmates and prison personnel, as well as in "easily foreseeable" outcomes like "[w]ork stoppages."¹¹⁸ ¶ In light of Jones, it is unlikely that the Supreme Court would, if the question came before it, recognize inmates' First Amendment right to strike. Although the case concerned the specific issue of prison unions, the Jones Court's holding was, in its methodology and reasoning, farreaching — (1) providing prison administrators with wide latitude to curtail any inmate collective activity that, in their "reasonable" judgment, threatened institutional order and security¹¹⁹ and, as a result, (2) appearing to severely curtail inmates' First Amendment rights.¹²⁰ The Court's broad deference and narrow First Amendment view should therefore naturally be expected to extend to prison strikes and other forms of collective protest, about which prison officials have consistently offered similar safety concerns and which they have uniformly sought to ban.¹²¹ And which Jones specifically acknowledged as a possible unwelcome outcome of allowing prisoners to unionize. ¶ That Jones likely prevents any constitutional protection for prison strikes — and therefore liberally protects prison regulations banning strike activities — is reinforced by how the Supreme Court has applied the case over the past forty years. In Turner, for example, the Court rejected efforts to cabin Jones to barring only "presumptively dangerous" inmate activities.¹²² The Court specifically discussed Jones as part of a line of "prisoners' rights" cases permitting "reasonable" prison regulations to impinge on inmates' constitutional rights¹²³ and ultimately relied in part on Jones to fashion its general four-part framework for assessing "reasonableness" across prison regulations.¹²⁴ And in Overton v. Bazzetta, ¹²⁵ the Supreme Court again invoked Jones to emphasize that "freedom of association is among the rights least compatible with incarceration"¹²⁶ — though it declined to draw any precise boundaries that would be helpful for determining what, if any, associational rights inmates retain within prison walls, and whether those include strikes.¹²⁷ ¶ Lower courts have not been as wary to draw such boundaries. Under Jones, lower federal courts have uniformly held that prisoners have no constitutionally protected right under the First Amendment to strike. One district court interpreted Jones to hold that prison officials may act to prevent such strikes whenever they have a "good faith" belief that such strikes "threaten the security of the institutions they manage."¹²⁸ Lower courts have rejected a right to strike by simply citing to or briefly discussing Jones and contending that it naturally compels such a result,¹²⁹ or by drawing an explicit connection between the prohibited prison unions at issue in Jones and prison strikes, dubbing strikes to be "a species of 'organized union activity.'"¹³⁰ They have also done so by delving into the specifics of why strikes purportedly pose safety and security risks within prisons and why prison regulations barring strikes are therefore rationally related to legitimate penological goals.¹³¹ ¶ Lower courts also have justified upholding prison regulations barring strikes by explicitly or implicitly turning to the general Turner framework that Jones helped create — including by arguing that there are ready alternatives to prison strikes,¹³² or that such regulations are generally permissible exercises of penal authority.¹³³ And finally, it is worth noting that lower federal courts have, in deferring to prison officials' judgments regarding security, also permitted all manner of regulations designed to punish strikers¹³⁴ and aid officials in preventing strikes from occurring.¹³⁵ In short, there exists little, if any, room under current constitutional case law for protecting prison strikes.

Incarceration disproportionately affects people of color, which causes a permanent reduction in job opportunities and quality of life. Rezal 21

Adriana Rezal [data journalism fellow with U.S. News and World Report], 21 - ("A New Report Explores Racial Disparities in America's Incarceration Rates," US News & World Report, 10-3-21, accessed 11-3-2021, <https://www.usnews.com/news/best-states/articles/2021-10-13/report-highlights-staggering-racial-disparities-in-us-incarceration-rates>)/LF

A national view of **U.S. incarcerated populations** by race and ethnicity **shows high rates of disparity among the country's communities of color and white Americans, especially among Black communities.** While **Black Americans are on average 4.8 times more likely to be incarcerated than white Americans, in some states such as New Jersey, Black Americans can be up to 12.5 times more likely to be incarcerated than white Americans.** [Hawaii](#) demonstrates the lowest differential of Black to white American imprisonment, as shown by the map below.

However, Black Americans in Hawaii are still over twice as likely to be incarcerated than white residents. While Latino individuals are on average 1.3 times more likely to be incarcerated than whites in the U.S., in some states such as [Massachusetts](#), Latino populations are up to 4.1 times more likely to be incarcerated than whites. In 20 states, including Oklahoma, North Carolina and New Hampshire, the data in the report shows the likelihood of imprisonment is higher for whites compared to the Latino population. However the report emphasizes the unreliability of ethnicity data possibly contributing to an underestimation of Black and Latino American data. "An example lies in Florida, which claims that 13% of its prison population is Latinx though more than one quarter of its residents are Latinx," (a gender neutral term for 'Latino,' according to the report. "There are most assuredly more Latinx people in prison than are officially reported but the exact

number is unknown." **When it comes to incarceration, the U.S. is a world leader with 1.2 million people in state prisons across the country.** According to the report, **imprisonment is a life-altering event that can create negative impacts on the individual and societal level. Individuals released from incarceration may have difficulty gaining employment, finding stable housing and experience reduced lifetime earnings. Additionally, high levels of incarceration within communities can result in increased crime rates and contribute to neighborhood deterioration,** according to the study. Although the U.S. remains a world leader in imprisonment, The Sentencing Project reports that nine states have been successful in decreasing their incarcerated population by more than 30% in recent years as a result of policy reforms and reduced prison admissions and lengths of stay. These states include Alaska, New Jersey, New York, Connecticut, Alabama, Rhode Island, Vermont, Hawaii and California. The report cites a number of causes for racial disparity within U.S. prisons. According to the report, **the nation's history of white supremacy over Black people created a legacy of racial subordination that impacts their criminal justice outcomes today.** The report also asserts that communities of color, especially Black Americans, are negatively affected by biased policies and practices including police-citizen relations, pre-trial detention, the weight criminal history records can carry in sentencing and unequal prosecutorial charging.

Prison working conditions are terrible—prisoners work in unsafe conditions and accrue thousands of dollars in debt. Eisen 20

Lauren-Brooke Eisen [director of the Brennan Center's Justice Program where she leads the organization's work to end mass incarceration], 20 - ("Covid-19 Highlights the Need for Prison Labor Reform," Brennan Center for Justice, 4-17-2020, accessed 11-4-2021, <https://www.brennancenter.org/our-work/analysis-opinion/covid-19-highlights-need-prison-labor-reform>)/ML

For decades, prisoners in American correctional facilities have worked for no wages or mere pennies an hour. As the United States attempts to reduce transmission of Covid-19, more than a dozen states are now relying on this captive labor force to manufacture personal protective equipment badly needed by healthcare workers and other frontline responders.¶ **Prisoners in Missouri are currently earning between \$0.30 and \$0.71 an hour to produce hand sanitizer, toilet paper, and protective gowns that will be distributed across the state.** In Louisiana, prisoners are **making hand sanitizer for about \$0.40 an hour.** And in Arkansas, where incarcerated workers are **producing cloth masks for prisoners, correctional officers, and other government workers, their labor is entirely uncompensated.**¶ This unprecedented health emergency is re-exposing how our country's long-held practice of paying nothing or next-to-nothing for incarcerated labor, with no labor protections, is akin to modern-day slavery.¶ Prisoners are not protected by the Fair Labor Standards Act (FLSA), the federal law establishing minimum wage and overtime pay eligibility for both private sector and government workers. In 1993, a federal appeals court **held** that it is up to Congress, not the courts, to decide whether the FLSA applies to incarcerated workers.¶ Courts have also **ruled** that the National Labor Relations Act, which guarantees the right of private sector employees to collective bargaining, does not apply in prisoners.¶ Even worse, **prisoners are excluded from the U.S. Occupational Health and Safety Administration protections that require employers to provide a safe working environment. This dehumanizing lack of protection for prison workers has long subjected them to conditions that have endangered their physical safety.**¶ Amid a health threat that **worsens in crowded environments, many prisoners are working without any mandated protections.** Congress must amend the language of federal employment protections to explicitly extend to work behind bars.¶ Forced labor in prisons has its roots in the post-Civil War Reconstruction period, when Southern planters faced the need to pay the labor force that had long worked for free under brutal conditions to produce the economic capital of the South.¶ Though the 13th Amendment abolished "involuntary servitude," it excused forcible labor as punishment for those convicted of crimes. As a result, Southern states codified punitive laws, known as the Black Codes, to arbitrarily criminalize the activity of their former slaves. Loitering and congregating after dark, among other innocuous activities, suddenly became criminal. Arrest and convictions bound these alleged criminals to terms of incarceration, often sentenced to unpaid labor for wealthy plantation owners.¶ In the following decades, Southern states — desperate for cheap labor and revenue — widely began leasing prisoners to local planters and Northern industrialists who took responsibility for their housing and feeding, a practice known as convict leasing.¶ Under this system, the captive labor market worked long hours in unsafe conditions, often treated as **poorly** as they had been as slaves. Records **approximate** that on an average day between 1885 and 1920, 10,000 to 20,000 prisoners — the overwhelming majority of them Black Americans — continued to toil under these insufferable circumstances.¶ In the 1930s, a **series of laws** prohibited state prisons from using prison labor, but the federal government continued to rely on this workforce to meet the demands of the rapidly changing markets of mid-century. By 1979, Congress passed **legislation** allowing state corrections officials to collaborate with private industries to produce prison-made goods, birthing the modern era of prison labor. ¶ Today, **approximately 55 percent** of the American prison population works while serving their sentences. Prison jobs are broadly divided into two categories: prison support work — such as food preparation, laundry services, and maintenance work — and "correctional industries" jobs, in which prisoners might make license plates, sew military uniforms, or

staff a call center. It is prisoners in correctional industries who are currently being deployed to help meet the nation's need for protective gear.[¶] While so many behind bars are manufacturing items the country desperately needs to combat our current health crisis, their low wages and lack of labor protections — among myriad other factors — mean they are not accorded the same benefits or recognition as other workers.[¶] What's more, the measly cents per hour that is typical compensation across often-dangerous prison jobs is not nearly enough to cover the court fees and fines, restitution, child support, and room and board expenses that most state departments of corrections deduct from prisoners' earnings. When there is anything left, it is barely enough to pay for commissary goods such as food, hygienic products, and toiletries, let alone marked-up email services that prisoners rely on to stay in touch with their loved ones. Despite working for years, many prisoners are left with thousands of dollars in crippling debt by the time they complete their sentences.[¶] In 2018, prisoners in dozens of facilities across the country went on strike and issued a list of demands, which included "an immediate end to prison slavery" and that prisoners be "paid the prevailing wage in their state or territory for their labor."[¶] This time of national emergency requires that everyone do their part to slow the spread of coronavirus. The significant shortage of face masks, protective gowns, and hand sanitizer that is putting the lives of our frontline workers in jeopardy necessitates bold and swift action. But if the states and federal government are going to rely on correctional labor to manufacture this equipment, they need to improve the wages and labor protections of our incarcerated workers. To fail to do so is not far off from the devaluation and brutalization of slave labor that was ostensibly abandoned a century and a half ago.

Prisoners make almost no money for their labor. Fulcher 15

Patrice A. Fulcher [Associate Professor at The John Marshall Law School], 15 - ("Journal of Civil Rights and Economic Development, Winter 2015, accessed 10-28-2021, <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1759&context=jcred>)/ML

B.87 In 2011, FPI's net sales were 745 million dollars and their earnings were 62 million dollars.⁸⁸ Restricted to sell its products only to federal agencies, FPI's largest purchaser is the U.S. Department of Defense, which makes up 52% of its revenues.⁸⁹ The FPI use to have a mandatory source requirement for all federal agencies, but it was amended to prohibit any federal agency from purchasing FPI products or services, unless the agency determines that the products offered are the "best value".⁹⁰ So in addition to making license plates, furniture and other typical prison-made goods, thousands of federal inmates work for FPI making supplies for the U.S. military. FPI inmates who are given this assignment find themselves making anti-tank missiles, body armor, land mine sweepers, components for fighter aircrafts, and other gear for the Pentagon.⁹¹ Consequently, an inmate who works within the federal prison labor system may make a maximum of \$64.00 a month (prior to any state deductions for room and board, taxes, etc., assuming an inmate works 5 days a week for 8 hours), and a maximum of \$92.00 a month (subtracting 50% of the wages for the IRFP, assuming an inmate works 5 days a week for 8 hours) if he works for FPI.[¶] B. State Prison Labor Systems

[¶] There are approximately 1,382,000 inmates in state prisons in the U.S.⁹² State prisoners work within varying labor systems while incarcerated. ⁹³ State inmates may (1) work within the confines of a prison, where state or private entities manage the facility, sell the products produced, and receive the profits, (2) work in jobs directly benefiting prison operations by cleaning, cooking, or doing laundry, or (3) work outside of prison walls laboring for the state or private companies. ⁹⁴ Over the last 30 years, at least 37 states have enacted laws permitting the use of inmate labor by private enterprise. ⁹⁵ State inmates' wages are determined by the state in which they are incarcerated, and may be affected depending on whether the state correctional facility is certified under the Prison Industry Enhancement Certification Program. [¶] 1. State Prison Labor [¶] Under The Prison Industry Enhancement Certification Program ("PIE") In 1979, Congress passed the Prison Industry Enhancement Certification program ("PIE") under the Justice System Improvement Act.⁹⁶ The PIE exempts state and local correction departments from the Ashurst-Sumners Act legislation, which placed restrictions on the interstate sale and transportation of prison-made goods.⁹⁷ The specific goal of the PIE was to provide private-sector work opportunities to prisoners by certifying 50 state correctional agencies to sell prison made goods interstate and to the Federal Government (over the original \$10,000 limitation).⁹⁸ Once a state agency is certified under the PIE, its corrections department may either sell prison made goods on its own, or enter into prison labor contracts with private companies to sell goods in the free market.⁹⁹ [¶] In order to qualify for PIE certification, correctional agencies have to apply through the Bureau of Justice Assistance ("BJA") or the National Correctional Industries Association, pay state prisoners a prevailing wage, and meet several other statutory requirements.¹⁰⁰ 0 Paying inmate workers prevailing wages under the PIE may appear equitable on its face, but it

is not. Most inmates see only 20% of their gross wages because the PIE also allows for 80% wage deductions for room and board, victim assistance, taxes, and family support.¹⁰ While expecting convicts to defray the cost of their incarceration and victim services is reasonable, as will be seen in part x of this article, the current scheme is short sighted and unwise because, among other things, so little attention is given to reducing recidivism through prison programs and support for newly released inmates.

[¶]According to the Bureau of Justice Assistance, there were 37 state, and 4 county-based PIE certified correctional industry programs in the U.S. in 2011.¹⁰² These PIE programs include the management of at least 175 business partnerships with private industry. ¹⁰³ In 2012, the number of PIE certifications increased to 45; these certified correctional agencies employed a total of 4,700 inmates. ¹⁰⁴ Furthermore, the 45 certified PIE agencies generated \$9,780,130 in gross salary revenues in 2012. ¹⁰⁵ A majority of those earnings went to net inmate salaries (\$3,958,354), then correctional institution for room and board (\$3,482,883), state and federal taxes (\$989,503) victims' programs (\$947,770), and the lowest amount to inmate family support (\$401,620).¹⁰⁶ Therefore, each of the 4,700 prisoners working for PIE certified programs made approximately \$842.00 in 2012, which equates to \$70.00 a month.[¶] [¶]12. State Prison Labor Without PIE

Protections [¶] **State correctional industries without PIE protection**s are prohibited from selling prison-made products

interstate. ¹⁰⁷ They also are under no federal obligation to pay working prisoners prevailing wages as required for certification under PIE.¹⁰⁸ **Depending on the facility, these state correctional agencies typically require inmates to work, and pay inmates from \$0.17 to \$5.35 per hour.**¹⁰⁹ There are also several state-operated correctional institutions that force prisoners to work, but pay them absolutely nothing for their labor. For example, the Georgia Department of Corrections does not pay working inmates.¹¹⁰ Once a person is sentenced to one of the Georgia's 31 state prisons, he or she will be ordered to either work jobs that directly benefit the prison, make products to be sold to government agencies, or perform city work detail jobs without getting paid a cent.¹¹¹ In light of these facts, it is not surprising that on December 9, 2010, thousands

of Georgia inmates staged the largest prison protest in U.S. History.¹¹² **Through the use of contraband cell phones, Georgia inmates in at least seven different state prisons coordinated a nonviolent prison strike.**¹¹³ These protesting inmates had several demands, but high on their list was to be paid a living wage for work ¹¹⁴ "If they would start paying us, that would reduce crime behind the walls," said Mike, one of the protesting prisoners, "inmates would have the means to get hygiene [items] and food from the commissary." ¹⁵ The protest lasted approximately 5 days and unfortunately, the prisoners' demands have still not been met.¹¹⁶ Almost all Georgia state-prisoners are still working for free, at least three inmates have publicly complained that they were brutally beaten for their involvement in the protest, and in July 2012 several Georgia prisoners went on a hunger strike to protest additional inhumane punishments stemming from the 2010 prison protest.¹¹⁷ [¶]Finally, state prisoners labor for correctional institutions that fall under the supervision of state departments of correction, but are separate self-sustaining corporate entities. Some of the prison industries have PIE certification for all of their work programs while others certify only certain jobs under PIE. Two such institutions in the U.S. are the Georgia Correctional Industries ("GCI") and the Oregon Corrections Enterprise ("OCE").¹¹⁸ GCI and OCE utilize state inmate labor to produce and sell a plethora of services and products to state and local government agencies. ¹⁹ For instance, GCI employs 1,400 Georgia inmates, who manufacture garments and bedding, institutional and office furniture, cleaning chemicals, perform embroidery, screen printing, reupholstering, engraving, optical, and framing services, work in milk and meat processing plants, and on farms to produce beef and pork, and harvest fruits and vegetables, eggs, grits, and corn. ¹²⁰ GCI has some work programs certified under PIE, but a majority of the employed inmates work for less than minimum wage.¹²¹ GCI boast on its website that they "maintain one of the lowest raw food costs in the nation-\$1.57 per day per inmate".¹²² So inmates laboring in GCI food production factories and fields in the sweltering heat of the Deep South are paid roughly \$31.40 a month if they are lucky (prior to state deductions and if they work 5 days a week). Approximately 1,100 of Oregon's 14,300 prisoners work for OCE and perform a variety of services for Oregon government agencies; printing, call centers, laundry service, and mailing projects, and document scanning to name a few. ¹²³ OCE has PIE certification, but it is difficult to determine whether it applies to all of their work programs since inmates' wages still appear to be low.¹²⁴ In a study conducted by University of Oregon students, three inmates at OCE reported that after working each month, they had \$50.00 to send home to their families or add to phone call accounts. ¹²⁵ [¶] C. Private Prison Labor Systems [¶] State governments turned to prison privatization in order to solve the problems arising from the mass incarceration of people in the U.S.¹²⁶ Thus, the top two private prison corporations in the U.S., Corrections Corporation of America, Inc. ("CCA") and The GEO Group, Inc. ("GEO"), have made billions from acquiring state and federal contracts to manage prisoners. ¹²⁷ CCA is the leading private prison in the U.S. for it profits from housing more than 80,000 prisoners in the U.S.¹²⁸ GEO, is one of the world's largest private prison corporations with approximately 80,000 beds and 114 facilities located in the U.S., the United Kingdom, Australia, and South Africa. ¹²⁹ GEO is only second to CCA in the U.S. because GEO has 56 Facilities and a bed capacity of 61,132,130 while CCA 60 facilities with a bed capacity of more than 90,000.¹³¹ [¶] It is clear that CCA and GEO deliver profits to their shareholders from housing inmates, but they also create wealth through forced prison labor. CCA maintains that inmates work in vocational jobs including carpentry, computer applications, construction and building trades, electrical, horticulture and landscaping, masonry, painting, and plumbing. ¹³² GEO also reports that it provides vocational training, but does not list the specific jobs that inmates perform.¹³³ Since the PIE only applies to state correctional agencies, CCA and GEO are unable to apply directly for certification. As a result, CCA and GEO are under no obligations to pay their inmates prevailing wages. [¶]It is difficult to determine how much private prisons actually pay working inmates, but there is nothing to dispute that private prisons also force able inmates to work. It is estimated that private prisons on average pay inmates 17¢ per hour for a maximum of six hours a day, with CCA paying working prisoners the most at .50¢ per hour for "highly skilled positions".¹³⁴ Other sources suggest that CCA pays working inmates \$1.00 a day, and at the same time charges them \$5.00 a minute for telephone calls. ¹³⁵ Additional reports indicate that private prisons pay an average of 93¢ to \$4.73 per hour.¹³⁶ [¶] Private prison companies also capitalized on the growing incarceration of undocumented workers in the U.S. by obtaining million dollar federal detention contracts to house detainees for Immigration and Customs Enforcement ("ICE"). ¹³⁷ Like the other inmates they house, private prison companies also force immigration detainees to work. ¹³⁸ CCA operates an immigration detention center in Gainesville, Georgia.¹³⁹ Female detainees in this facility have complained that they are paid subminimum wages for their work and about inadequate medical and living conditions. ¹⁴⁰

Low wages for prisoners create cycles of recidivism. Fulcher 15

Patrice A. Fulcher [Associate Professor at The John Marshall Law School], 15 - ("Journal of Civil Rights and Economic Development, Winter 2015, accessed 10-28-2021, [//ML](https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1759&context=jcred)

B. Reallocate Greater Wealth To Working Prisoners and Decrease Recidivism ¶ Working for slave wages or as a slave without compensation is the harsh economic reality for millions of prisoners in the U.S. Then after succumbing to living a life as a slave for the duration of their sentence, these prisoners are released back to society, without any means of financial support from their labors. Often indigent, homeless, and unable to overcome the challenge of obtaining employment with a conviction, many former inmates reoffend.¹⁹² Moreover, for those who do secure jobs, their earnings are greatly limited by their criminal records. A recent PEW study revealed "past incarceration reduced subsequent wages by 11 percent, cut annual employment by nine weeks and reduced yearly earnings by 40 percent."¹⁹³ As a result, **U.S. recidivism rates will remain high unless former prisoners have economic resources immediately upon release.** Thus, the FLSA should be emancipated from the constraints imposed, not by Congress, but by rigid and unsupported judicial interpretation that wrongly exclude working prisoners from its provisions. **Free the FLSA and compensate working inmates: allow prisoners to accumulate capital while they are incarcerated, so they will have a means of support to help them rebuild their lives, and not have to commit crimes to survive.** ¶ Hence, I propose the following basic guidelines in providing FLSA coverage to working inmates: (1) employment should be voluntary; those who do not wish to work must take vocational classes for their entire prison sentence, (2) working inmates should be paid at least minimum wage, (3) automatic wage deductions shall be allowed for taxes and other previous court ordered obligations only, and (4) a forced 80 percent wage deduction will be deposited into an outside interest bearing bank account, accessible only upon release. In adopting this payment scheme, the economic reality for working prisoners will be greatly improved. ¶ Utilizing the total PIE quarterly statics from 2012 mentioned above in section III(B)(1) (only subtracting family costs and taxes), each of the, 4,700 inmates working in PIE programs would have received approximately \$356.00 a month instead of \$70.00.¹⁹⁴ This figure represents net wages after an 80 percent deduction of \$1,427.00 is transferred into an interest bearing account.¹⁹⁵ Additionally, since today's prisoners serve an average of 5.2 years in prison, ¹⁹⁶ each of the 4,700 inmates under the proposed new FLSA guidelines would have at least \$3,567.50 upon his or her release if the 80% were placed in an account with an interest rate of at least a 3%. Granted, this amount may not seem significant, but it is better than expecting that a bus ticket and a knapsack of clothes will be enough to enable a person who has been incarcerated to build his life in free society. ¶

Plan

Plan: The United States ought to recognize the unconditional right of incarcerated workers to strike.

Solvency

The right to strike is key for prisoners hoping to reform the criminal justice system, allows prison laborers to publicize their conditions and assert their right to dignity

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But in order to ensure that the Constitution truly does not stop at the prison walls, courts cannot simply accept prison administrators' fears regarding strikes at face value and instead should rigorously test their credibility and basis in fact.¹⁴³ And more importantly, by over-deferring and failing to engage in any analysis of the merits of prison strikes, courts miss an important opportunity. As this Note has argued, **prison strikes represent an underappreciated aspect of**

prison life — the means by which prisoners have, throughout the course of American history, surfaced pressing problems of our carceral state and initiated important transformations in our prison system. Therefore, **it is imperative to** meaningfully **consider** why and how **such strikes merit legal protection** — even if such protection appears to fly in the face of the current state of the law and to defy conventional wisdom. To

that end, this Part first explores the First Amendment as one potential avenue for considering the merits of prison strikes, by presenting three critical First Amendment values contained within prison strikes,¹⁴⁴ and it then briefly discusses other potential legal avenues for courts and scholars to consider. A. Considering the First Amendment Values of Prison Strikes The right to strike within prisons may be conceptually viewed as a composite of three separate fundamental First Amendment freedoms: the freedom to

peacefully associate, the freedom of speech, and the freedom to assemble and petition for redress of grievances.¹⁴⁵ Each is considered in turn. 1. **Association.** — The right to

peaceful association is one that captures the right of individuals to commune with others for the expression of ideas and for effective advocacy.¹⁴⁶ Strikes, like **prison unions**, represent an important means of association for prisoners — allowing them to “lay

claim to a social identity as ‘workers’ . . . and in doing so **generate claims to respect and solidarity.**”¹⁴⁷ This identity and

solidarity **can**, in turn, **enable inmates to engage in productive and peaceful bargains with prison**

officials for better conditions, higher pay, and other reform desires. Bargaining is, in many respects, already very common in prisons, “for the simple reason that [prison] administrators rarely have sufficient resources to gain complete conformity to all the rules.”¹⁴⁸ However, such bargaining typically happens in an informal, ongoing, private process;¹⁴⁹ in their recurrent, day-to-day contact with inmates, prison administrators use their arsenal of tools¹⁵⁰ to “negotiate” only with select inmate leaders,¹⁵¹ with the central goal of maintaining “short term surface order.”¹⁵² This informal bargaining is “dysfunctional” to the long-term stability of prison institutions and “the real needs of those incarcerated within” them¹⁵³ — creating hierarchical relationships¹⁵⁴ that breed mistrust¹⁵⁵ and leave many inmates

powerless and feeling aggrieved.¹⁵⁶ As a result, **inmates often feel that they have to resort to violence to protect**

themselves from exploitation. express their dissatisfaction, and obtain redress.¹⁵⁷ Alternatively, **peaceful,**

collective prison strikes avoid these harmful consequences by allowing for “open” and

“formal” negotiations between all inmates and prison staff.¹⁵⁸ Such transparent and legitimated bargaining benefits

both inmates and prisons as a whole. **By initiating peaceful protests such as work stoppages, all inmates**

are able “to solve problems, maximize gains, articulate goals, develop alternative

strategies, and deal with [administrators] without resorting to force or violence.”¹⁵⁹ And

by permitting peaceful strikes, prison administrators “provide inmates with a channel for

airing grievances and gaining official response . . . giv[ing] the institution a kind of

safety-valve for peaceful, rather than violent, change”¹⁶⁰ — avoiding potentially expensive and time-consuming litigation

and even helping rehabilitate inmates,¹⁶¹ all while deemphasizing hierarchical structures in prisons that harm institutional order.¹⁶² 2. **Speech.** — A prison strike also

represents a critical way by which inmates can express themselves.¹⁶³ First, as alluded to above, **a strike allows inmates to claim and**

communicate an identity — as more than just marginalized, ignored convicts with little to

no self-determination, but instead as workers and human beings entitled to basic dignity.

Such collective actions represent the “performative declaration and affirmation of rights that one does not (yet) have.”¹⁶⁴ And, as Professor Jocelyn Simonson discusses,

these strikes are collective contestations to “demand dignity, calling attention to the

ways in which [prisoners] are treated as less than human and in the process reclaiming

their own agency.”¹⁶⁵ Such dignitary considerations, which courts have sought to protect under First Amendment principles, should therefore naturally extend

to prisoners attempting to, through strikes, express their basic selfworth.¹⁶⁶ Beyond representing a form of inherent, individual expression for inmates, **prison**

strikes also represent a broader form of expression, allowing inmates to be visible to and

heard by the public at large Over the course of American history, **inmates** — by virtue of being locked up in isolated, impregnable

penitentiaries — **have largely been a silent and ignored** segment of the American population.¹⁶⁷ **Through peaceful**

protests like the 2018 national prison strike, however, **their suffering**, their calls for reform, and their voices are, for the first time, **directly**

expressed on a large scale, ringing out loudly beyond the prison walls and **jumpstarting important conversations**

of criminal justice reform It is critical to protect such expression; “[i]ndeed, it is from the voices of those who have been most harmed by the punitive

nature of our criminal justice system that we can hear the most profound reimaginings of how the system might be truly responsive to local demands for justice and equality.”¹⁶⁸

3. **Petition for Redress.** **Inmates’ strikes** can be seen not only as expressions of their dignity and

general efforts to express their voices beyond prison walls but also as significant

methods of assembly to call attention to specific grievances and seek redress from the

government.¹⁶⁹ While in theory “[t]here is no iron curtain drawn between the Constitution and the prisons of this country,”¹⁷⁰ in practice, “prisons often escape the

daily microscope focused on other American institutions such as schools, churches, and government.”¹⁷¹ Courts grant prison administrators wide deference not only in running

day-to-day life within prisons but also in restricting press access to prisons.¹⁷² Therefore, **much of the American public** — already

closed off from and largely indifferent to the lives of prisoners — is kept even more in the

dark about prison conditions and the state of our carceral system as a whole. Prison conditions, from

what has been documented, are horrendous across states. Many prisons are severely overcrowded and seriously understaffed;¹⁷³ inmates routinely experience physical abuse and even death at the hands of prison guards,¹⁷⁴ receive inadequate protection from guards, are deprived of basic necessities,¹⁷⁵ are given substandard medical care,¹⁷⁶

and are forced to live in squalor and tolerate extreme circumstances;¹⁷⁷ most prisoners have minimal, if any, access, to rehabilitative or mental health services;¹⁷⁸ and prisoners have little legal recourse, as internal prison grievance procedures are often stacked against inmates,¹⁷⁹ and judicial deference and federal legislation have effectively shut the courthouse doors on prisoners' civil rights claims.¹⁸⁰ And across prisons, criminal sentencing laws not only have contributed to an unprecedented era of mass incarceration, but also have forced African Americans and people of color broadly to bear much of this burden.¹⁸¹ As the Marshall Project states, **“[s]ociety won’t fix a prison system it can’t see”**;¹⁸² **peaceful prison strikes like the 2018 strike, however, draw back the “iron curtain” of prison walls, bringing to light many of the pressing issues described above. Through these strikes, inmates are able not only to express their grievances to their prison administrators, but also to “publicize their on-the-ground realities to the larger world”**¹⁸³ and, in turn, **gain attention from and access to the political branches able to implement policy reforms.**¹⁸⁴ As recent history has shown, inmates have experienced some success by pressing their claims against the government through publicized strikes. For example, as described above, **the California strikes in 2011 and 2013 generated public outcry that eventually resulted in transformations to the California prison system’s solitary confinement policies.**¹⁸⁵ **In Alabama, inmates’ participation in the 2016 nationwide prison strike helped prompt the Department of Justice to open an investigation into the state’s prison conditions.**¹⁸⁶ And more broadly speaking, strikes like the 2018 strike have begun to **“remedy power imbalances, bring aggregate structural harms into view, and shift deeply entrenched legal and constitutional” barriers to critical prison reforms.**¹⁸⁷

B. Considering Additional Legal Avenues for Protecting Prison Strikes The foregoing analysis suggests that the First Amendment is a critical, worthwhile vehicle for considering the merits of a right to strike for prisoners. As Justice Black recognized, the importance of such analysis likely transcends prisoners themselves. He wrote: **“I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.”**¹⁸⁸ But this Note acknowledges that judicial recognition of prison strikes’ First Amendment values requires significant doctrinal change. Convincing the Supreme Court to overturn its *Jones* and *Turner* precedents, and instead to adopt a test with less deference than is currently afforded to prison administrators, is unlikely. As a result, future research is necessary to identify other potential avenues to consider the legal status and merits of prison strikes. As alluded to above, labor law presents one such promising avenue, as does state constitutional and statutory law. Drawing from the broader j

Incarcerated workers are uniquely vulnerable to exploitation the right to strike is a key weapon in fighting for better conditions

Kelly 18 [Kim Kelly is a freelance journalist and organizer based in Philadelphia. Her work on labor, class, politics, and culture has appeared in the *New Republic*, the *Washington Post*, the *Baffler*, and *Esquire*, among other publications, and she is the author of *FIGHT LIKE HELL*, a forthcoming book of intersectional labor history. “How the Ongoing Prison Strike is Connected to the Labor Movement”. 9-4-2018. *Teen Vogue*.

<https://www.teenvogue.com/story/labor-day-2018-how-the-ongoing-prison-strike-is-connected-to-the-labor-movement>. Accessed 11-1-2021; MJen]

It’s a tough time to be a worker in America. The Trump administration has [slashed important workplace safety regulations to ribbons](#); the economic gap between the poor and working classes and the 1% [continues to widen](#) at an alarming rate; poverty remains [rampant](#); and overall, union membership, which affords protection to workers throughout the country, hovered [around only 11%](#) for 2017. Headlines alleging worker exploitation at Silicon Valley giants like Amazon, Tesla, and Uber bombard our screens; even “progressive” media organizations swept up in [the digital media organizing wave](#) are struggling, as [BuzzFeed](#) founder Jonah Peretti has repeatedly spoken out against unionizing, while [Slate](#) and [Thrillist](#) employees who have unionized have accused the companies of using anti-union tactics and stalling the process. And the most vulnerable worker populations—[sex workers](#), [immigrants](#), and [undocumented people](#)—face increased repression from the government. There is hope, though. For centuries, **a worker’s most potent weapon against exploitation from capitalism and oppression from the powers that be has been direct action: the strike. And right now, America’s prisoners are on strike. Incarcerated workers across the nation are standing up to protest their inhumane living conditions** and buck the horrific yoke of prison slavery with organized labor’s strongest weapons—solidarity and collective action. The prison strike was organized by workers both inside and outside detention facilities, spearheaded by Jailhouse Lawyers Speak (JLS), and supported by the Incarcerated Workers

Organizing Committee (IWOC) and the Free Alabama Movement (FAM), and sparked by [deadly uprisings at Lee Correctional Institution in South Carolina earlier this year that cost seven prisoners' lives]. The strike began on August 21 and ends on September 9, dates that reflect the legacy of rebellion in American prisons: on August 21, 1971, George Jackson was killed by prison guards in San Quentin, and his death was met by protests from other prisoners across the country, culminating in the famed September 9 uprising at the Attica Correctional Facility in upstate New York. By choosing these dates, participants in the prison strike of 2018 are drawing a direct line between their current struggle and the struggles of those who have come before, emphasizing the stark fact that very little has changed in terms of conditions or opportunities for those who are locked up and held by the state since the birth of the modern prison system. The striking prisoners of today have released a list of ten demands, which calls for improvements to the current living conditions in prisons, increased rehabilitation programs, educational opportunities, and specific policy goals. This essentially articulates the idea of non-reformist reforms, a central plank of prison abolition. By illuminating the barbarity of the current prison system and calling for its abolishment while advocating for an improvement in current conditions, they are—to paraphrase French socialist André Gorz—asking not for what can be achieved within a current system, but for what should be possible. As of August 21, across 17 states (and one Canadian province), these incarcerated workers are demanding real, tangible prison reform, and the abolition of one of America's great enduring shames—the loophole enacted by the 13th amendment that decrees slavery can be used to penalize those convicted of a crime. This is where the term “prison slavery” originates, as director Ava DuVernay laid out in her groundbreaking 2016 documentary 13th, which argues that slavery never ended — it was just repurposed by the prison industrial complex and blossomed as mass incarceration. Her documentary argued that the new American plantations don't grow cotton, they work prison jobs churning out license plates and other cheap goods, for which prisoners are paid mere pennies on the hour—if at all. Meanwhile, prison labor generates an estimated \$1 billion per year, proving to be quite a profitable business for the private companies and corporations who benefit from prisoners' work. Prison labor is used to manufacture a vast array of consumer goods, from Christmas toys and blue jeans to military equipment, lingerie, and car parts. Incarcerated people also frequently serve as a captive labor force for prisons themselves as kitchen and maintenance workers, and for a variety of other services, from shoveling snow after a Boston blizzard to harvesting oranges in Florida. (California recently made headlines when it was revealed that it was using prison labor to fight its deadly wildfires, which it has done since the 1940s; the prisoners (which included some juvenile offenders) were reportedly paid \$1 per hour plus \$2 per day to risk their lives, and are barred from becoming firefighters after their release.) Prisoners are paid very little for their work; the average wage in state prisons ranges, on average, from 14 cents to 63 cents per hour for “regular” prison jobs, and between 33 cents and \$1.41 per hour for those who work for state-owned businesses, and while they are working full-time jobs, prisoners do not always have the benefit of basic labor protections, such as minimum wage, sick leave, or overtime pay. Given that the United States has the highest incarceration rate in the world, with 2.3 million people currently behind bars, the prison industrial complex would collapse were it to pay incarcerated workers the minimum wage—which creates further incentive for them to keep locking people up. Many prisoners welcome the chance to work during their incarceration, because it gets them out of their cells, allows them to make purchases from commissary, and gives them the opportunity to send money home to their loved ones, but not everyone is given a choice: according to Newsweek, some prisoners in eight states—Alabama, Arkansas, Florida, Georgia, Mississippi, Oklahoma, South Carolina, and Texas—are not paid at all for their labor in government-run facilities. Unlike most other workers, prisoners cannot simply walk off the job; they are forced to get more creative. Participants in the strike have several options available to them, according to Mother Jones, including commissary boycotts, work stoppages, sit-ins, and hunger strikes, and reports of participation are continually coming in from different facilities. In addition, these workers also have much more to fear in terms of retaliation, and several organizers say that they have already endured punitive measures. Participating in a prison strike is a matter of life or death, but for prisoners seeking justice, if not freedom, there is really no other option. There has been a huge amount of media coverage over this prison strike, a massive contrast to the last major national prison strike in 2016, which was said by some to be the largest prison strike in American history and involved what one organizer estimated as roughly 20,000 incarcerated workers and across at least 20 facilities yet received little to no mainstream media coverage. The tide seems to be turning, buoyed by a number of factors, from the continuing outcry over police brutality and more visible conversations over the horrors of the prison industrial complex to the overtly racist practices of the Trump regime. More people on the outside are waking up to the terrible plight of our siblings behind the walls, but awareness isn't enough: they need support, solidarity, and action. It bears remembering that, above all, this strike is a human rights campaign. Ending prison slavery and supporting incarcerated workers is absolutely a labor issue, and every union and labor activist in the nation should be standing up to support their efforts. The companies who profit off of this modern day slavery have blood on their hands, just like history's craven factory owners and coal bosses who oversaw the deaths and degradation of previous generations. We need to equate monetarily supporting companies that use prison labor with crossing the picket line, and to scabbing for enslavement. The fact that there are human beings housed in cages who are forced to work for slave wages is completely unacceptable by any metric, and fixing (if not completely abolishing) this wretched system should be a priority for those who consider themselves part of the labor movement, or on the right side of history. An injury to one is an injury to all, and our fellow workers on the inside are bleeding out.

Prisoners currently face massive barriers to striking – they get punished and aren't allowed to unionize

Kozlowska 16 [Hanna is a reporter on Quartz's investigations team. She previously worked for The New York Times as a writer for NYT Opinion and was a fellow at Foreign Policy magazine. She was also a stringer for the Times in Poland. “US prisoners are going on strike to protest a massive forced labor

system". 9-06-2016. Quartz.

<https://qz.com/777415/an-unprecedented-prison-strike-hopes-to-change-the-fate-of-the-900000-americans-trapped-in-an-exploitative-labor-system/>. Accessed 11-1-2021; MJen]

On Friday (Sept. 9) prison inmates across the US will participate in what organizers are touting as the "largest prison strike in history," stopping work in protest of what many call a modern version of slavery. The protest, organized across 24 states, is spearheaded by the inmate-led Free Alabama Movement (FAM) and coordinated by the Incarcerated Workers Organizing Committee (IWOC), a branch of an international labor union. Its manifesto, published online by "prisoners across the United States," reads: This is a call to end slavery in America... To every prisoner in every state and federal institution across this land, we call on you to stop being a slave, to let the crops rot in the plantation fields, to go on strike and cease reproducing the institutions of your confinement. The strike will be held on the 45th anniversary of the Attica prison revolt, when prisoners took control of a maximum-security correctional facility near Buffalo, New York, demanding better conditions and an end to their brutal treatment. Today, nearly 900,000 US prisoners work while incarcerated. The Bureau of Prisons, which oversees all federal inmates requires that all prisoners (barring medical reasons) work. State prisoners are in the same boat: according to Eric Fink, a professor at Elon Law school, in all or nearly all US states prisoners must work. If they refuse, they can be punished with solitary confinement, revoking visitation, or other measures. Inmates receive very little pay for their labor—in federal prisons it ranges from \$0.12 to \$0.40 an hour. In some states, like Texas, those held at state prisons receive zero compensation. The majority of inmates work on prison maintenance and upkeep—cleaning, cooking, etc.—but approximately 80,000 do work for the outside world. Sometimes these jobs are the result of government contracts; other times, prisoners end up doing work for private companies such as Victoria's Secret, Whole Foods or Walmart. Unlike other American workers, these prisoners are not protected by labor laws. They don't have access to worker's compensation, they get payed well below the minimum wage, and they cannot effectively form unions. Courts have ruled that because the relationship between prisons and inmates is not that of an employer and a worker, inmates don't get these labor protections. According to The Nation, there is a faction among the organizers that would rather see prison labor abolished, but IWOC is pushing for inmates to unionize. "Prisoners are the most exploited labor class in this country," says Azzurra Crispino, spokesperson for the organization. The moral case to let prisoners unionize and have the protections given to civilian workers is straightforward: forcing people to work is inhumane, as are the ridiculously low wages and often the labor conditions themselves. The economic case is much more complex. Prisons argue that paying inmates a minimum wage would bankrupt them—in fact, Alex Friedmann, an editor for Prison Legal News told The American Prospect that the criminal justice system would collapse has little potential to significantly add to the GDP, there are longer-term and broader effects to consider. Higher wages can help not only inmates, but their dependents in the outside world, who might avoid ending up on welfare having greater support. Cheap inmate labor may save money for prisons or corporations, but meaningful, decently-paid employment and job training could reduce recidivism and future crime. Ultimately, it's the taxpayers who pay for most of the criminal justice system, and that means they are subsidizing cheap labor for big corporations instead of investing in reducing crime in the future. In addition to putting pressure on individual institutions, strike organizers are hoping to raise awareness among the public. "Nothing is preventing employers from paying prisoners a decent wage and offering benefits and after 300 years it's pretty clear it isn't going to happen on its own. No more than slavery was ended in this country because slave owners got enlightened," said Paul Wright, editor of Prison Legal News and prisoner rights advocate. "Alas, there is no General Sherman coming to rescue and liberate America's prison slaves."

Framework

The impact of structural violence cumulatively outweighs – challenging the structures that facilitate inequality is necessary

Ansell 17 - David A. Ansell, Senior Vice President, Associate Provost for Community Health Equity, and Michael E. Kelly Professor of Medicine at Rush University Medical Center (The Death Gap: How Inequality Kills, p. 7-10)

There are many different kinds of violence. Some are obvious: punches, attacks, gunshots, explosions. These are the kinds of inter- personal violence that we tend to hear about in the news. Other kinds of violence are intimate and emotional. But the deadliest and most thoroughgoing kind of violence is woven into the fabric of American society. It exists when some groups have more access to goods, resources, and opportunities than other groups, including health and life itself. This violence delivers specific blows against particular bodies in particular neighborhoods. This unequal advantage and violence is built into the very rules that govern our society. In the absence of this violence, large numbers of Americans would be able to live fuller and longer lives. This kind of violence is called structural violence, because it is embedded in the very laws, policies, and rules that govern day-to- day life.⁸ It is the cumulative impact of laws and social and economic policies and practices that render some Americans less able to access resources and opportunities than others. This inequity of advantage is not a result of the individuals personal abilities but is built into the systems that govern society. Often it is a product of racism, gender, and income inequality. The diseases and premature mortality that Windora and many of my patients experienced were, in the words of Dr. Paul Farmer, "biological reflections of social fault lines."⁹ As a result of these fault lines, a disproportional burden of illness, suffering, and premature mortality falls on certain neighborhoods, like Windora's. Structural violence can overwhelm an individual's ability to live a free, unfettered, healthy life. As I ran to evaluate Windora, I knew that her stroke was caused in part by lifelong exposure to suffering, racism, and economic deprivation. Worse, the poverty of West Humboldt Park that contributed to her illness is directly and inextricably related to the massive concentration of wealth and power in other neighborhoods just miles away in Chicago's Gold Coast and suburbs. That concentration of wealth could not have occurred without laws, policies, and practices that favored some at the expense of others. Those laws, policies, and practices could not have been passed or enforced if access to political and economic power had not been concentrated in the hands of a few. Yet these political and economic structures have become so firmly entrenched (in habits, social relations, economic arrangements, institutional practices, law, and policy) that they have become part of the matrix of American society. The rules that govern day-to-day life were written to benefit a small elite at the expense of people like Windora and her family. These rules and structures are powerful destructive forces. The same structures that render life predictable, secure, comfortable, and pleasant for many destroy the lives of others like Windora through suffering, poverty, ill health, and violence. These structures are neither natural nor neutral. The results of structural violence can be very specific. In Windora's case, stroke precursors like chronic stress, poverty, and uncontrolled hypertension run rampant in neighborhoods like hers. Windora's illness was caused by neither her cultural traits nor the failure of her will. Her stroke was caused in part by inequity. She is one of the lucky ones, though, because even while structural violence ravages her neighborhood, it also abets the concentration of expensive stroke-intervention services in certain wealthy teaching hospitals like mine. If I can get to her in time, we can still help her. Income Inequality and Life Inequality Of course, Windora is not the only person struggling on account of structural violence. Countless neighborhoods nationwide are suffering from it, and people are dying needlessly young as a result. The magnitude of this excess mortality is mind-boggling. In 2009 my friend Dr. Steve Whitman asked a simple question, "How many extra black people died in Chicago each year, just because they do not have the same health outcomes as white Chicagoans?" When the Chicago Sun- Times got wind of his results, it ran them on the front page in bold white letters on a black background: "health care gap kills 3200 Black Chicagoans and the Gap is Growing." The paper styled the headline to look like the declaration of war that it should have been. In fact, we did find ourselves at war not long ago, when almost 3,000 Americans were killed. That was September 11, 2001. That tragedy propelled the country to war. Yet when it comes to the premature deaths of urban Americans, no disaster area has been declared. No federal troops have been called up. No acts of Congress have been passed. Yet this disaster is even worse: those 3,200 black people were in Chicago alone, in just one year. Nationwide each year, more than 60,000 black people die prematurely because of inequality.¹⁰ While blacks suffer the most from this, it is not just an issue of racism, though racism has been a unique and powerful transmitter of violence in America for over four hundred years.¹¹ Beyond racism, poverty and income inequality perpetuated by exploitative market capitalism are singular agents of transmission of disease and early death. As a result, there is a new and alarming pattern of declining life expectancy among white Americans as well. Deaths from drug overdoses in young white Americans ages 25 to 34 have exploded to levels not seen since the AIDS epidemic. This generation is the first since the Vietnam War era to experience higher death rates than the prior generation.¹² White Americans ages 45 to 54 have experienced skyrocketing premature death rates as well, something not seen in any other developed nation.¹³ White men in some Appalachian towns live on average twenty years less than white men a half-day's drive away in the suburbs of Washington, DC. Men in McDowell County, West Virginia, can look forward to a life expectancy only slightly better than that of Haitians.¹⁴ But those statistics reflect averages, and every death from structural violence is a person. When these illnesses and deaths are occurring one at a time in neighborhoods that society has decided not to care about—neighborhoods populated by poor, black, or brown people—they seem easy to overlook, especially if you are among the fortunate few who are doing incredibly well. The tide of prosperity in America has lifted some boats while others have swamped. Paul Farmer, the physician-anthropologist who founded Partners in Health, an inter- national human rights agency, reflects on the juxtaposition of "unprecedented bounty and untold penury": "It stands to reason that as beneficiaries of growing inequality, we do not like to be reminded of misery of squalor and failure. Our popular culture provides us with no shortage of anesthesia."¹⁵ That people suffer and die prematurely

because of inequality is wrong. It is wrong from an ethical perspective. It is wrong from a fairness perspective.
And it is wrong because we have the means to fix it.

Underview

Their disads will surely be ridiculous.

(A) Ethics – The state is complicit in perpetuating inequalities that are terrible for incarcerated workers. Apply a VERY high standard of proof to any rationalization of that policy.

(B) Compound Probability - Multiplied probabilities of long link chains have negligible net probabilities. This is the slippery slope fallacy.

(C) Causal Direction - They will say the fractional probability of a huge impact still has a large expected value, but it's impossible to determine the direction of low-probability links. Does the butterfly flapping its wings cause the hurricane or prevent it? Disregard tiny-probability links because they don't guide decision-making.

(D) Complexity – the DA presents a simplistic and deterministic narrative that fails to account for the myriad confounding factors that can disrupt or reverse the link chain of the DA. The most important of these is the probability that people will recognize the dangerous path they're on and change course, e.g. leaders backing down during the Cuban Missile Crisis.

(E) Decision Gridlock – Every course of action or inaction has a negligible possibility of causing extinction. This makes it impossible to prioritize averting existential risk over all else because such risk is unavoidable. We have no choice but to prioritize REALISTIC probabilities.