

# WORKED TO DEATH: ADDRESSING THE ATROCITIES OF MODERN PRISON LABOR

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## INTRODUCTION

“His bucket lay beside him, tipped over, near pools of his blood.”<sup>1</sup> This was the fate of Frank Dwayne Ellington.<sup>2</sup> Mr. Ellington was a sanitation worker at Koch Foods poultry plant in Ashland, Alabama.<sup>3</sup> He was also a prisoner, employed as part of the Alabama Department of Corrections work release program. He cleaned the machinery used to kill and process chickens, often while the machinery was still running.<sup>4</sup> This practice eventually led to his death in 2018, when a machine latched onto his forearm and pulled him in up to his head, crushing his skull and killing him instantly.<sup>5</sup>

An Occupational Safety and Health Administration (OSHA) report on the incident detailed how Mr. Ellington and the other sanitation workers did not receive training on how to turn off the machines they cleaned.<sup>6</sup> OSHA had proposed a citation to the Koch Foods plant for this exact issue ten years prior.<sup>7</sup> Compounding the lack of training, the employees at the Koch Foods plant were under immense time pressure to maximize production.<sup>8</sup> In some instances, work release employees were sent back to prison if they were not able to meet their work quotas.<sup>9</sup> A plant supervisor told an OSHA investigator that “it’s possible that inmate Ellington could have left the machine running to save time in the cleaning process.”<sup>10</sup> Ultimately, OSHA proposed a \$38,802.00 fine for the death of Mr. Ellington.<sup>11</sup> Koch Foods argued that Mr. Ellington’s family should not be able to bring a wrongful death suit against it because it had paid for Mr. Ellington’s funeral expenses.<sup>12</sup> The plant and the family ultimately reached an undisclosed settlement.<sup>13</sup>

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1. Will Tucker, *The Kill Line*, S. POVERTY L. CTR. (July 26, 2018), <https://www.splcenter.org/news/2018/07/26/kill-line>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Letter from Ramona Morris, OSHA, to Will Tucker, S. Poverty L. Ctr. 9 (Apr. 10, 2018).

12. Robin McDowell & Margie Mason, *Prisoners in the US Are Part of a Hidden Workforce Linked to Hundreds of Popular Food Brands*, AP (Jan. 29, 2024) [hereinafter *Prisoners in the US Are Part of a Hidden Workforce*], <https://apnews.com/article/prison-to-plate-inmate-labor-investigation-c6f0eb4747963283316e494eadf08c4e>.

13. *Id.*

Mr. Ellington's story is not unique. It is part of a pattern, arguably a system, of severe bodily injuries experienced by incarcerated laborers across the United States. Horrifying examples abound: A cart weighing several hundred pounds fell six feet and crushed the leg of a prisoner working at Hickman's Egg Farm in Arizona.<sup>14</sup> His leg is now permanently deformed.<sup>15</sup> When a prisoner on work detail in Alabama was cutting down a tree, a branch fell on him, leaving him paralyzed.<sup>16</sup> A saw blade dislodged from a conveyor belt and cut into the skull of a Colorado prisoner while she was on work release.<sup>17</sup> While shocking stories like this are plentiful, the full extent of workplace injuries or deaths for prisoners is unknown because prisons do not collect data on these incidents.<sup>18</sup>

Incarcerated people in the United States have almost no recourse when they are forced to work in unsafe conditions or suffer injuries as a result. First, "onerous" standards make it nearly impossible to bring a claim under the Eighth Amendment.<sup>19</sup> Second, federal law makes it prohibitively difficult for incarcerated people to bring complaints without first going through an exceedingly convoluted administrative process within the prison.<sup>20</sup> Third, OSHA regulations apply only in a limited capacity to incarcerated workers, and in many states, they do not apply at all.<sup>21</sup> Thus, prisoners are left to suffer in silence.

Reform is needed and achievable. To start, the Supreme Court should extend Eighth Amendment protections to incarcerated laborers. Second, OSHA should expand its protections to cover all prisoners in the United States, in any job that they work. Third, the public should be made aware of the atrocities of prison labor so that they may be inspired to demand better treatment for prisoners. Together, these solutions could bring about much-needed protections for incarcerated workers.

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14. Elizabeth Whitman, *More Arizona Inmates Report Serious Injuries While Working at Hickman's Egg Farm*, PHX. NEW TIMES (Oct. 4, 2019), <https://www.phoenixnewtimes.com/news/arizona-inmates-report-serious-injuries-hickmans-egg-farm-osha-11367976>.

15. *Id.*

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

17. Robert Dalheim, *Inmate Sues Colorado Sawmill After Grave Saw Injury*, WOODWORKING NETWORK (Aug. 15, 2017), <https://www.woodworkingnetwork.com/news/woodworking-industry-news/inmate-sues-colorado-sawmill-after-grave-saw-injury>.

18. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 62 (2022).

19. Colleen Dougherty, *The Cruel and Unusual Irony of Prisoner Work Related Injuries in the United States*, 10 U. PA. J. BUS. & EMP. L. 483, 484 (2008).

20. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 67.

21. Megan Hauptman, *The Health and Safety of Incarcerated Workers: OSHA's Applicability in the Prison Context*, 37 ABA J. LAB. & EMP. L. 71, 78-79 (2023).

This Article, in three parts, will consider safety protections for incarcerated workers in the United States. Part I will provide a background on prison labor in the Western Hemisphere. It will focus particularly on a long history of bodily harm against incarcerated laborers. Part II will analyze the legal framework around this issue. It will look at Supreme Court and circuit court interpretations of the Eighth Amendment and how it applies to prison labor conditions. Part III will outline three solutions to the lack of safety protections for incarcerated laborers: applying the Eighth Amendment to prison labor conditions, expanding OSHA protections, and bringing public awareness to the issue.

## I. BACKGROUND

This Part explores the history of violence against incarcerated people, the origins of prison labor, and the eventual intersection of the two. It then outlines the current state of prison labor and the lack of safety protections for incarcerated people. It particularly focuses on the gaps in Occupational Safety and Health Administration (OSHA) coverage and the resulting injuries. This Part concludes with explanations of some of the current barriers to justice for victims of harsh prison labor conditions.

### *A. Prison Labor and the Treatment of Convicts Throughout History*

Perhaps the most famous account of severe bodily harm inflicted upon an incarcerated person comes from the Bible with the crucifixion of Jesus. Soldiers set a crown of thorns on Jesus's head, spat on him, and then struck him repeatedly with a staff.<sup>22</sup> The soldiers then crucified him in front of his family and disciples.<sup>23</sup> Jesus suffered and cried out before finally dying.<sup>24</sup> The soldiers then desecrated his corpse with a spear.<sup>25</sup>

Throughout history, people commonly made a public spectacle out of the gruesome killings of alleged wrongdoers.<sup>26</sup> One such spectacle was the act of drawing and quartering, where horses' leads were tied to each of a person's limbs, and then the horses were each sent running in a different direction, pulling the person apart.<sup>27</sup> Others included burning people alive,

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22. *Matthew* 27:29–30 (King James).

23. *John* 19:23–25 (King James).

24. *Matthew* 27:46–50 (King James).

25. *John* 19:34 (King James).

26. Richard Ward, *Introduction: A Global History of Execution and the Criminal Corpse*, NAT'L LIBR. MED. 1, 6 (2015).

27. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF PRISON* 3–5 (Alan Sheridan trans., Vintage Books 2d ed. 1995) (1977).

hanging, decapitating, dismembering, and breaking people's bodies on a wooden wheel.<sup>28</sup> These acts often happened with large, public audiences.<sup>29</sup> Additionally, the executioners would then frequently display the corpses, subjecting them to extensive, ostentatious desecration.<sup>30</sup> The purpose of this was, ostensibly, to deter future crime.<sup>31</sup> However, over time, Western societies soured on the practice of public execution, considering it too barbaric.<sup>32</sup>

Prison labor entered the scene as an early act of criminal justice reform.<sup>33</sup> Proponents believed that instead of killing wrongdoers, perhaps they could rehabilitate them.<sup>34</sup> Thus, over time, criminals were sent to penitentiaries instead of to their deaths.<sup>35</sup> Examples of these penitentiaries existed as early as 1596, with the Rasphuis of Amsterdam.<sup>36</sup> Here, incarcerated people worked jobs during sentences of a limited duration.<sup>37</sup> They were also subject to a variety of requirements and prohibitions, all designed to reform them before their release back into their communities.<sup>38</sup>

Similar penitentiaries cropped up in early America. First, the Walnut Street Jail in Philadelphia opened in 1776.<sup>39</sup> Quakers operated the prison and believed they could reform prisoners through the use of solitary confinement and manual labor, rather than the traditional approach of physical punishment.<sup>40</sup> Later, New York's Auburn Penitentiary opened in 1816.<sup>41</sup> Here, prisoners were allowed to work together, but they were strictly required to work in silence in order to meditate on their crimes.<sup>42</sup> These penitentiaries served as models for others in the United States.<sup>43</sup>

However, states soon realized the economic value of prison labor, and their focus shifted from rehabilitation to profit.<sup>44</sup> Throughout the 19th

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28. Ward, *supra* note 26, at 5–6.

29. *Id.* at 5.

30. *Id.* at 5–6.

31. *Id.* at 10–11.

32. FOUCAULT, *supra* note 27, at 10.

33. *Id.* at 109.

34. *Id.* at 130–31.

35. *Id.* at 9–10.

36. *Id.* at 120.

37. *Id.* at 121.

38. *Id.*

39. Rex A. Skidmore, *Penological Pioneering in the Walnut Street Jail, 1789–1799*, 39 J. CRIM. L. & CRIMINOLOGY 167, 168 (1948).

40. Dougherty, *supra* note 19, at 486–87.

41. *Both Sides of the Wall: Auburn and Its Prison*, CAYUGA MUSEUM OF HIST. & ART, <https://cayugamuseum.org/both-sides-of-the-wall/> (last visited May 17, 2026).

42. Dougherty, *supra* note 19, at 486–87.

43. *Id.*

44. *Id.* at 487.

century, northern states contracted with private companies to sell prison labor, with productivity being their primary goal.<sup>45</sup> These prisoners delivered by producing nearly \$50 billion<sup>46</sup> in goods per year during this time.<sup>47</sup> However, “[a]s productivity increased, casualties mounted: the ‘Physician’s Report’ to the warden of the Indiana State Prison at Michigan City listed 245 industrial accidents resulting in permanent disabilities or death in 1 year for a population of 378.”<sup>48</sup> Shockingly, these prisons incarcerated children as young as six years old, forcing them to labor under the same harsh conditions as the adults.<sup>49</sup> The prisons effectively became factories, able to churn out far more goods than those employing free people.<sup>50</sup> The prisons were able to accomplish this by completely disregarding the wellbeing of prisoners and simply putting new prisoners on the line if the other ones died.<sup>51</sup>

Similarly egregious practices were underway in southern states at the same time. While the Thirteenth Amendment had ended the practice of chattel slavery, a carveout allowed for involuntary servitude as a form of punishment for crimes.<sup>52</sup> The southern states fully embraced this exception and began the practice of *convict leasing*.<sup>53</sup> The states would lease out large groups of convicts to private companies, at times a state’s whole convict population.<sup>54</sup> The practice was so widespread that some states did not even build new penitentiaries—they just sent their convicts to work.<sup>55</sup> States delivered the convicts to plantations, mines, railroads, and turpentine camps in large, rolling cages.<sup>56</sup>

Once the convicts arrived, the companies would subject them to unspeakable horrors. Supervisors would whip the laborers into unconsciousness and frequently work them until they died.<sup>57</sup>

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45. Genevieve LaBaron, *Rethinking Prison Labor: Social Discipline and the State in Historical Perspective*, 15 WORKINGUSA: J. LAB. & SOC’Y 327, 334 (2012).

46. Adjusted for inflation. *Id.* at 334 (noting that “Northern prisoners work[ing] in large-scale industrial factories produc[ed] the equivalent of over US\$30 billion (in 2005 dollars) a year in goods”). \$30 billion in 2005 dollars equates to just over \$51 billion in 2026 dollars. See *CPI Inflation Calculator*, U.S. BUREAU OF LAB. STAT., [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited May 17, 2026).

47. LaBaron, *supra* note 45, at 334.

48. *Id.*

49. *Id.* at 335.

50. *Id.*

51. *Id.* at 334.

52. *Id.* at 337.

53. *Id.*

54. *Id.* at 339.

55. *Id.* at 338.

56. *Id.*

57. *Id.* at 338.

[I]t was profitable to literally work the prisoners to death because procuring new ones did not interfere with profits. In Mississippi, not a single leased convict lived long enough to serve a sentence of 10 years or more, and when they died, their unclaimed bodies were purchased by the Medical School at Nashville for students to practice on. The average life of a convict in Texas was about 7 years.<sup>58</sup>

States did nothing to prevent such horrific treatment, and, in fact, many state officials received bribes to arrest and convict more people to grow the labor force.<sup>59</sup> The vast majority of these convicts were recently freed slaves, who, under the leasing program, experienced treatment harsher than they experienced during their enslavement.<sup>60</sup>

Echoes of this treatment reverberated into modern times. Alabama prisons used “chain gangs” as recently as 2001.<sup>61</sup> Prisoners were shackled together and forced to perform manual labor along public highways.<sup>62</sup> Those who objected to the work were chained to a hitching post, with their hands over their head, all day in the hot sun.<sup>63</sup> And even today, if you step onto the grounds of the Angola Prison in Louisiana, it will look eerily reminiscent of the plantation that once occupied the same land.<sup>64</sup> Prisoners there pick cotton in fields all day in temperatures as high as 105 degrees Fahrenheit.<sup>65</sup> Prisoners who pass out are left unconscious in the field.<sup>66</sup>

In 1977, Michel Foucault wrote, “There remains . . . a trace of ‘torture’ in the modern mechanisms of criminal justice—a trace that has not entirely been overcome, but which is enveloped, increasingly, by the non-corporal nature of the penal system.”<sup>67</sup> Prison labor was originally a radical reform, moving away from the public mutilation and execution of convicts and towards rehabilitation. However, we have largely come full circle. States are now causing the mutilation and execution of prisoners via prison labor, just as they did during the 19th century and before. Foucault’s words ring truer today than ever.

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58. *Id.* at 339 (citations omitted).

59. *Id.* at 340.

60. *Id.* at 337.

61. *Alabama Ends Chain Gang Experiment*, PRISON LEGAL NEWS (Sept. 15, 2001), <https://www.prisonlegalnews.org/news/2001/sep/15/alabama-ends-chain-gang-experiment/>.

62. *Id.*

63. *Id.*

64. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 34.

65. *Id.* at 64.

66. *Id.*

67. FOUCAULT, *supra* note 27, at 16.

*B. Prison Labor Today*

Today, prison labor is a \$2 billion industry.<sup>68</sup> The American Civil Liberties Union (ACLU) estimates “that at least 791,500 people incarcerated in U.S. prisons perform work as part of their incarceration.”<sup>69</sup> These incarcerated laborers are nearly entirely exempt from the labor protections afforded to non-incarcerated people.<sup>70</sup>

Workers in the United States are typically protected by OSHA. The mission of OSHA is to “assure America’s workers have safe and healthful working conditions free from unlawful retaliation.”<sup>71</sup> It carries out this mission through a combination of regulations, training, and enforcement.<sup>72</sup>

A variety of restrictions limit OSHA’s protections over incarcerated workers to the point that the protections are almost non-existent. While OSHA has jurisdiction over federal prisons, it has issued a directive that limits its jurisdiction.<sup>73</sup> One such limitation is that OSHA must give advance notice to prisons before any inspections, which greatly reduces the efficacy of such inspections.<sup>74</sup> Additionally, courts at times appear to interpret OSHA protections as advisory rather than mandatory. For example, the Seventh Circuit held that prison labor programs “are not required by law to comply with [OSHA] safety standards . . . .”<sup>75</sup> Finally, OSHA protections explicitly do not apply to state employees, and OSHA considers laborers incarcerated in state prisons to be state employees.<sup>76</sup> This is a severely limiting factor because over 87% of United States prisoners are incarcerated in state prisons.<sup>77</sup> Thus, even these watered-down federal protections apply to, at best, around 12% of people incarcerated in the United States.

OSHA expects states themselves to fill the gaps where its regulations do not apply by creating labor regulations to protect state employees.<sup>78</sup> Twenty-

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68. *Prisoners in the US Are Part of a Hidden Workforce*, *supra* note 12.

69. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 24.

70. *Id.* at 12.

71. *About OSHA*, OSHA, <https://www.osha.gov/aboutosha> (last visited May 17, 2026).

72. *Id.*

73. OSHA, DIR. FAP 01-00-002, FEDERAL AGENCY SAFETY AND HEALTH PROGRAMS WITH THE BUREAU OF PRISONS, U.S. DEPARTMENT OF JUSTICE § H.2.d(3) (1995) [hereinafter DIR. FAP 01-00-002].

74. Hauptman, *supra* note 21, at 85.

75. *Bagola v. Kindt*, 131 F.3d 632, 635 (7th Cir. 1997).

76. OSHA, Interpretation Letter No. 1975.5 (Dec. 16, 1992) [hereinafter Interpretation Letter No. 1975.5].

77. DEREK MUELLER & RICH KLUCKOW, BUREAU OF JUST. STAT., PRISONERS IN 2023 – STATISTICAL TABLES 8 tbl 2 (2025); *see* BUREAU OF JUST. STATS., FEDERAL PRISONER STATISTICS COLLECTED UNDER THE FIRST STEP ACT, 2023, at 1 (2023).

78. Hauptman, *supra* note 21, at 85–86.

three states have chosen not to create any such protections to fill these gaps, so all of their state employees are unprotected.<sup>79</sup> Of the states that have created protections for their state employees, some states explicitly exclude state prisoners from the protections.<sup>80</sup> For example, an Arizona statute excludes prisoners from any of the rights or privileges given to employees, thus also excluding them from safety protections.<sup>81</sup> Other states choose only to provide safety protections in limited contexts, such as when prisoners are working for private companies.<sup>82</sup> At least one state, California, has extended slightly more safety protections to its prisoners.<sup>83</sup> California's law allows the state's Division of Occupational Safety and Health to review reports on prisoner injuries and deaths.<sup>84</sup> The Division then makes recommendations on how future similar incidents can be avoided.<sup>85</sup> That said, California is currently the exception in this space.

Further compounding this problem, prisoners also often find themselves in some of the most dangerous jobs. The National Employment Law Project found that, "in most states, public authorities and the carceral system knowingly place incarcerated workers in job categories with high incidences of injuries . . . while absolving themselves of responsibility for ensuring their safety."<sup>86</sup> Because prisoners are often coerced into working, they make prime candidates for the jobs that are too dangerous or degrading for others to choose to take on.<sup>87</sup> This combination of perilous conditions and near total lack of safety protections opens the door for prisoners to be seriously injured.

Prisons do not collect data on the injuries or deaths of their incarcerated workers, so it is hard to know just how pervasive this problem is.<sup>88</sup> However, the limited reports on prison labor conditions that do exist paint a dark picture. Of prisoners interviewed by the ACLU, 64% reported feeling unsafe while working.<sup>89</sup> Oftentimes, the injuries that prisoners suffer could be avoided with proper training; however, 70% of prisoners report receiving no formal training for the jobs that they perform.<sup>90</sup> Prisoners also frequently do

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79. *Id.*

80. ANASTASIA CHRISTMAN & HAN LU, NAT'L EMP. L. PROJECT, WORKERS DOING TIME MUST BE PROTECTED BY JOB SAFETY LAWS 19–20 (2024).

81. ARIZ. REV. STAT. ANN. § 31–251 (2025).

82. CHRISTMAN & LU, *supra* note 80, at 21.

83. CAL. CODE REGS. tit. 8, § 344.46 (2025).

84. *Id.*

85. *Id.*

86. CHRISTMAN & LU, *supra* note 80, at 6.

87. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 47.

88. *Id.* at 62.

89. *Id.* at 64.

90. *Id.* at 65.

not receive the necessary protective equipment to perform their jobs.<sup>91</sup> To make matters worse, prisoners also report receiving inadequate medical care after being injured, or, at times, no medical care at all.<sup>92</sup>

The story of Kandy Fuelling is emblematic of the prison labor crisis. Ms. Fuelling was on work release at a Colorado saw mill.<sup>93</sup> Her supervisor instructed her to remove a piece of stuck wood from a conveyor belt.<sup>94</sup> In the process of removing the piece of wood, a saw blade unexpectedly cut through Ms. Fuelling's helmet and into her skull.<sup>95</sup> A report of the incident states, "Pieces of her 'head matter' stuck to her shirt and she began bleeding profusely. . . . Fuelling was terrified to remove her hands from her skull because she was scared that her head was going to fall apart."<sup>96</sup> Ms. Fuelling's workplace did not call an ambulance or send her to the hospital.<sup>97</sup> Instead, someone stuck two menstrual pads over the wound, and Ms. Fuelling's fellow inmates took her back to the prison.<sup>98</sup> Ms. Fuelling eventually received medical care, but, in the process, she developed an antibiotic-resistant staph infection.<sup>99</sup> While her wound has now healed, she still suffers from short-term memory loss and severe headaches.<sup>100</sup>

### C. Barriers to Justice

To make matters worse, several formidable legal barriers currently stand in the way of justice for victims of harsh prison labor conditions. First, federal law prohibits incarcerated people from bringing civil rights claims in court without first exhausting all administrative remedies within the prison system.<sup>101</sup> Second, most incarcerated people must represent themselves in these suits, often lacking the requisite legal expertise to prevail.<sup>102</sup> Third, qualified immunity protects government officials from most civil suits.<sup>103</sup> In

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91. *Id.* at 62.

92. *Id.* at 14.

93. Dalheim, *supra* note 17.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 14.

100. Robin McDowell & Margie Mason, *US Prisoners are Being Assigned Dangerous Jobs. But What Happens if They Are Hurt or Killed?*, AP (May 16, 2024) [hereinafter *US Prisoners are Being Assigned Dangerous Jobs*], <https://apnews.com/article/prison-to-plate-inmate-labor-investigation-injuries-deaths-0ff52ff1735d7e9f858248177a2a60c3>.

101. *See infra* Part I.C.1.

102. *See infra* Part I.C.2.

103. *See infra* Part I.C.3.

combination, these factors make it nearly impossible for most prisoners to seek any sort of recompense for the workplace injuries they suffer.

### 1. Administrative Barriers

Congress passed the Prison Litigation Reform Act in 1996, seeking to quell what it saw as an excess of frivolous lawsuits being filed by incarcerated people.<sup>104</sup> The Act created what the ACLU has described as “nearly insurmountable barriers” for incarcerated people seeking to access “relief through federal courts.”<sup>105</sup> The most severe of these barriers is the Act’s requirement that incarcerated people must exhaust all available administrative remedies within the prison before they are able to seek remedies in court.<sup>106</sup> These administrative processes are so prohibitively complicated that incarcerated people often cannot advance their grievances far enough to seek external remedies.<sup>107</sup> Thus, courts may dismiss valid claims when incarcerated people cannot navigate their prison’s convoluted administrative remedy process to exhaustion.<sup>108</sup>

A Seventh Circuit case illustrates the issue. There, an incarcerated man claimed that a push lawnmower amputated his toe because the prison did not provide its incarcerated workers with the proper training or safety equipment to operate the mower safely.<sup>109</sup> The court found that the incarcerated man had a valid Eighth Amendment claim.<sup>110</sup> However, the court dismissed this claim because the man did not first exhaust the administrative remedies available to him within the prison.<sup>111</sup>

### 2. Lack of Access to Legal Counsel

The vast majority of prisoners must bring their own civil rights claims because they lack access to legal counsel. A Prison Policy Initiative report found that only 7.6% of incarcerated civil rights plaintiffs were represented by attorneys, compared to 89.8% of non-incarcerated civil rights plaintiffs.<sup>112</sup>

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104. Katherine Bennett & Rolando V. Del Carmen, *A Review and Analysis of Prison Litigation Reform Act Court Decisions: Solution or Aggravation?*, 77 PRISON J. 405, 405 (1997).

105. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 67.

106. 42 U.S.C. § 1997e(a).

107. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 67.

108. *Id.*

109. *Norris v. Cohn*, 27 F. App’x 658, 659–60 (7th Cir. 2001).

110. *Id.* at 660.

111. *Id.*

112. Andrea Fenster & Margo Schlanger, *Slamming the Courthouse Door: 25 Years of Evidence for Repealing the Prison Litigation Reform Act*, PRISON POL’Y INITIATIVE (Apr. 26, 2021), [https://www.prisonpolicy.org/reports/PLRA\\_25.html](https://www.prisonpolicy.org/reports/PLRA_25.html).

The report attributes this lack of access to legal counsel to two other provisions of the Prison Litigation Reform Act.<sup>113</sup> These provisions discourage attorneys from taking on incarcerated clients because they limit the amount of recoverable attorneys' fees to below the market rate.<sup>114</sup> Adding insult to injury, the Act also severely limits the amount of damages that courts may award to incarcerated people.<sup>115</sup> Thus, because attorneys are so disincentivized from taking on incarcerated clients, incarcerated people are often left to represent themselves.

### 3. Qualified Immunity

The doctrine of qualified immunity generally protects government officials from liability when they violate people's rights.<sup>116</sup> In order to sue a government official, a person must prove that "(1) [the official] violated a federal statutory or constitutional right, and (2) the unlawfulness of their conduct was 'clearly established at the time.'"<sup>117</sup> In order to meet the "clearly established" element, the person must prove that "the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful."<sup>118</sup> The Supreme Court calls this a "demanding standard" that protects all government officials save for "the plainly incompetent or those who knowingly violate the law."<sup>119</sup> Thus, the default presumption rests in favor of qualified immunity. The plaintiff bears the heavy burden required to overcome this presumption.<sup>120</sup>

Ms. Fuelling's case, again, provides a prime example of the issues created by the legal landscape. Ms. Fuelling's lawyer "never met with her face-to-face and her suit was dismissed after a court ruled she could not sue state entities, leaving her with zero compensation."<sup>121</sup> It appears that inadequate access to legal counsel prohibited Ms. Fuelling from being able to defeat the government's qualified immunity defense, thus preventing Ms. Fuelling from getting justice.

Incarcerated people are no longer hanged in public squares or crucified high on a mountain. Yet they are worked to the point of serious injury, and

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113. *Id.*

114. *Id.*

115. *Id.*

116. *Pearson v. Callahan*, 555 U.S. 223, 231 (2009).

117. *District of Columbia v. Wesby*, 583 U.S. 48, 62–63 (2018) (quoting *Reichle v. Howards*, 566 U.S. 658, 664 (2012)).

118. *Id.* at 63 (internal quotations and citations omitted).

119. *Id.* (internal quotations omitted).

120. *Id.*

121. *US Prisoners are Being Assigned Dangerous Jobs*, *supra* note 100.

even worked to death, while hidden away in prisons and factories. The government does not document this practice, and incarcerated people are given little to no ability to defend themselves. Thus, these horrors endure.

## II. CONSTITUTIONAL ANALYSIS

This analysis walks through the case law pertinent to the constitutionality of harsh prison labor conditions. It begins with an explanation of the Supreme Court's interpretation of the Eighth Amendment's Cruel and Unusual Punishments Clause. It then explains the Court's "deliberate indifference" standard, which applies to the conduct of prison officials. It then surveys circuit court opinions that have applied the deliberate indifference standard to prison officials' regulation of prison labor conditions. It concludes by considering an argument against the application of this standard to prison labor conditions, ultimately finding the argument without merit.

The Eighth Amendment prohibits "cruel and unusual punishments."<sup>122</sup> The Supreme Court has held that this means the government cannot use "excessive" forms of punishment.<sup>123</sup> The Court uses a two-factor test to determine whether a punishment is excessive: "First, the punishment must not involve the unnecessary and wanton infliction of pain. Second, the punishment must not be grossly out of proportion to the severity of the crime."<sup>124</sup> The Court has acknowledged that its interpretation of the Eighth Amendment is not "static," regularly holding that "[t]he Amendment must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."<sup>125</sup> Thus, as the public's attitude towards acceptable forms of punishment shifts, so too does the Court's.

In response to these "evolving standards of decency,"<sup>126</sup> the Court has chosen to apply the Eighth Amendment to the conduct of prison officials and their treatment of incarcerated people.<sup>127</sup> The Court has held that the Eighth Amendment requires that the state provide for an incarcerated person's basic needs, which include "food, clothing, shelter, medical care, and reasonable safety."<sup>128</sup> In a case focused specifically on the medical needs of prisoners,

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122. U.S. CONST. amend. VIII.

123. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976).

124. *Id.* (citation omitted).

125. *Id.* (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

126. *Id.* (quoting *Trop*, 356 U.S. at 101).

127. *Helling v. McKinney*, 509 U.S. 25, 31 (1993) ("It is undisputed that the treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny under the Eighth Amendment.").

128. *Id.* at 32.

the Court held that if a prison official accidentally deprives an incarcerated person of medical care, they do not violate the Constitution.<sup>129</sup> However, prison officials do run afoul of the Eighth Amendment if they are “deliberately indifferent” to the serious needs of incarcerated people.<sup>130</sup> The Court has held that this “deliberate indifference” can cause an “unnecessary and wanton infliction of pain,” which “no one suggests would serve any penological purpose.”<sup>131</sup> Thus, the standard to determine whether the action of prison officials violates the Eighth Amendment is that of “deliberate indifference.”

The Court’s “deliberate indifference” test has two requirements: one objective and the other subjective.<sup>132</sup> The objective requirement demands that the alleged deprivation of incarcerated people’s needs be “sufficiently serious.”<sup>133</sup> The deprivation need not result in an actual injury to constitute an Eighth Amendment violation, so long as the potential harm is sufficiently serious.<sup>134</sup> The Court has concluded that, “It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”<sup>135</sup> Thus, a prison official’s conduct can meet this objective requirement if it creates carceral conditions “posing a substantial risk of serious harm.”<sup>136</sup>

The subjective requirement is that the prison official causing the serious deprivation must have acted with a deliberately indifferent state of mind.<sup>137</sup> In order to be deliberately indifferent, a prison official must know of an “excessive risk” to the health or safety of an incarcerated person *and* deliberately disregard that risk.<sup>138</sup> Because this is a subjective requirement, the presence of “objectively inhumane prison conditions” alone is not sufficient to find an Eighth Amendment violation: there must be an element of intent on the part of the prison official to inflict cruel and unusual punishments on the incarcerated person.<sup>139</sup> Courts can use circumstantial evidence to determine this intent.<sup>140</sup> To that end, “a factfinder may conclude

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129. *Id.*

130. *Id.* at 33.

131. *Estelle v. Gamble*, 429 U.S. 97, 103 (1976).

132. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994).

133. *Id.* (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)).

134. *Helling*, 509 U.S. at 33.

135. *Id.*

136. *Farmer*, 511 U.S. at 834.

137. *Id.*

138. *Id.* at 837.

139. *Id.* at 838.

140. *Id.* at 842.

that a prison official knew of a substantial risk from the very fact that the risk was obvious.”<sup>141</sup> Thus, a prison official violates the Eighth Amendment if they are aware of a substantial risk to an incarcerated person and nonetheless choose to ignore it.

Not every current justice is convinced by this reading of the Eighth Amendment. Justice Clarence Thomas has consistently opined that the Eighth Amendment should not apply to prison conditions at all. In numerous dissenting and concurring opinions, Justice Thomas has asserted that the framers of the Eighth Amendment intended for it to apply only to those issuing a sentence, not those responsible for executing it.<sup>142</sup> Citing multiple dictionaries contemporary to the passage of the Amendment, Justice Thomas has stated that the framers likely intended for the term “punishment” to mean “the penalty imposed for the commission of a crime.”<sup>143</sup> He has thus deduced that the Eighth Amendment should not apply to prison conditions or any injuries people may suffer while incarcerated.<sup>144</sup>

Despite Justice Thomas’s persistence, his originalist view of the Eighth Amendment has not seemed to gain any traction with the Court. As established above, the Court prefers to defer to the American public’s “evolving standards of decency” when interpreting the Eighth Amendment.<sup>145</sup> The public’s response to Justice Thomas’s interpretation of the Eighth Amendment was not positive; the *L.A. Times* called it “jarring and worrisome.”<sup>146</sup> Regardless of what the framers intended, the Court held that the Eighth Amendment applies to prison conditions. In the view of the majority, “[i]t is unquestioned that ‘[c]onfinement in a prison . . . is a form of punishment subject to scrutiny under the Eighth Amendment

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141. *Id.*

142. *Helling v. McKinney*, 509 U.S. 25, 40 (1993) (Thomas, J., dissenting) (“Thus, although the evidence is not overwhelming, I believe that the text and history of the Eighth Amendment, together with the decisions interpreting it, support the view that judges or juries—but not jailers—impose ‘punishment.’”); *Hudson v. McMillian*, 503 U.S. 1, 28 (1992) (Thomas, J., dissenting) (“Abusive behavior by prison guards is deplorable conduct that properly evokes outrage and contempt. But that does not mean that it is invariably unconstitutional.”); *Farmer*, 511 U.S. at 859 (Thomas, J., concurring) (“Because the unfortunate attack that befell petitioner was not part of his sentence, it did not constitute ‘punishment’ under the Eighth Amendment.”).

143. *Helling*, 509 U.S. at 38 (Thomas, J., dissenting).

144. *Id.* at 38–39.

145. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

146. *Even Criminals Have Some Rights: Justice Thomas’ Dissent in Prison-Beating Case Is Jarring and Worrisome*, *L.A. TIMES* (Mar. 1, 1992), <https://www.latimes.com/archives/la-xpm-1992-03-01-op-5491-story.html>.

standards.”<sup>147</sup> However, the Court’s recent willingness to overturn long-standing precedent reminds us that no standard is set in stone.<sup>148</sup>

The Supreme Court has not decided whether the Eighth Amendment applies to incarcerated people’s labor conditions, but a majority of the circuit courts hold that it does. The Sixth Circuit summarizes this consensus, stating, “[i]t is widely accepted that dangerous prison work conditions can support a viable conditions-of-confinement claim under the Eighth Amendment deliberate-indifference standard.”<sup>149</sup> At least six other circuit courts have issued similar holdings.<sup>150</sup> These courts have applied the Supreme Court’s deliberate indifference standard to prison labor conditions created by prison officials and held that such conditions may violate the Eighth Amendment.<sup>151</sup>

One such application of the deliberate indifference standard appears in a Ninth Circuit case. In this case, a defective printing press ripped off an incarcerated man’s thumb.<sup>152</sup> Prior to this incident, the man had pointed out the defect to the prison official supervising his work and expressed concerns for his safety.<sup>153</sup> The prison official instructed the man to continue to use the defective press because they did not have time to fix it.<sup>154</sup> The Ninth Circuit held that the prison official’s conduct constituted an Eighth Amendment violation because he was aware of the risk that the defective equipment posed and instructed the incarcerated man to use it anyway.<sup>155</sup>

An Eighth Circuit case also applies the deliberate indifference standard to prison labor conditions.<sup>156</sup> In this case, a downed power line had started a fire, and a prison official had instructed an incarcerated man to stomp out the

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147. *Rhodes v. Chapman*, 452 U.S. 337, 345 (1981) (alterations in original) (quoting *Hutto v. Finney*, 437 U.S. 678, 685 (1978)).

148. See *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242–43 (2022); *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2273 (2024).

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

150. *Ambrose v. Young*, 474 F.3d 1070, 1075 (8th Cir. 2007) (“The Eighth Amendment’s prohibition against ‘cruel and unusual punishment’ applies to conditions of confinement and prison work assignments fall under the ambit of conditions of confinement.” (citation omitted)); *Morgan v. Morgensen*, 465 F.3d 1041, 1047 (9th Cir. 2006) (“[A] reasonable prison official would or should have understood that compelling an inmate to continue operating defective and dangerous prison work equipment would violate the Eighth Amendment.”); *Gill v. Mooney*, 824 F.2d 192, 195 (2d Cir. 1987); *Williams v. Wooten*, 119 F. App’x 625, 626–27 (5th Cir. 2004); *Balle v. Kennedy*, 73 F.4th 545, 557–58 (7th Cir. 2023); *Smith v. United States*, 561 F.3d 1090, 1104–05 (10th Cir. 2009).

151. *Smith*, 561 F.3d at 1105.

152. *Morgan*, 465 F.3d at 1044.

153. *Id.*

154. *Id.*

155. *Id.* at 1047.

156. *Ambrose v. Young*, 474 F.3d 1070, 1075 (8th Cir. 2007).

fire.<sup>157</sup> The man lost his balance and fell into the live power line.<sup>158</sup> “The power line gripped [the man], violently shaking his burning body for approximately one to two minutes.”<sup>159</sup> Afterward, his lifeless body dropped to the ground.<sup>160</sup> The Eighth Circuit concluded that the prison official’s conduct violated the Eighth Amendment because he demonstrated a “deliberate indifference to a known and substantial risk.”<sup>161</sup>

A Sixth Circuit case similarly applies the standard. In this case, an incarcerated woman was struck by an out-of-control laundry cart with enough force to crush her skull.<sup>162</sup> The woman was working alongside two prison officials to move laundry carts, which weighed up to 400 pounds.<sup>163</sup> The officials were not paying attention and released one of the carts in the woman’s direction without ensuring that it was secured.<sup>164</sup> The cart tipped over, crushing the woman under it.<sup>165</sup> As a result, “she suffered skull and facial fractures, brain injuries, internal bleeding, and further injuries to her face, scalp, and left side . . . .”<sup>166</sup> The Sixth Circuit found that the woman had presented sufficient evidence such that a reasonable jury could find that prison officials violated her Eighth Amendment rights by exhibiting deliberate indifference to her safety.<sup>167</sup>

While the country is trending towards applying the Eighth Amendment to labor conditions, resistance to this approach should be expected. Some may argue that the Eighth Amendment should not protect incarcerated people from harsh labor conditions because these conditions are part of their penalty for breaking the law. Proponents of this approach may argue that incarcerated people made a decision that resulted in their incarceration; as a result, they do not deserve the same protections afforded to people are not incarcerated. In fact, some may go so far as to say that these harsh conditions are not just incidental but integral to effective punishment. One such proponent was Alabama prison commissioner, Ron Jones, who reinstated the use of chain gangs in 1995.<sup>168</sup> He revived the practice of handcuffing prisoners to each

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157. *Id.* at 1074.

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 1078.

162. *Rhodes v. Michigan*, 10 F.4th 665, 669 (6th Cir. 2021).

163. *Id.*

164. *Id.* at 670.

165. *Id.*

166. *Id.* at 669.

167. *Id.* at 679.

168. Rick Bragg, *Chain Gangs to Return to Roads of Alabama*, N.Y. TIMES (Mar. 26, 1995), <https://www.nytimes.com/1995/03/26/us/chain-gangs-to-return-to-roads-of-alabama.html>.

other and forcing them to perform manual labor on the side of the highway because he thought it would increase the efficacy of incarceration.<sup>169</sup> “People say it’s not humane . . . . But I don’t get much flak in Alabama,” he told the *New York Times*.<sup>170</sup> The pervasive nature of severe prison labor conditions across the country suggest that Mr. Jones is likely not alone in his approach.

Proponents of these harsh labor practices are able to cherry-pick Supreme Court authority to support their position. The Court held in *Rhodes v. Chapman* that “the Constitution does not mandate comfortable prisons . . . .”<sup>171</sup> It further reasoned that, “To the extent that [prison] conditions are restrictive and even harsh, they are part of the penalty that criminal offenders pay for their offenses against society.”<sup>172</sup> However, the Court also stated that, “[c]onditions must not involve the wanton and unnecessary infliction of pain, nor may they be grossly disproportionate to the severity of the crime warranting imprisonment.”<sup>173</sup> Labor conditions under which prisoner laborers may be dismembered or killed constitute grossly disproportionate punishments. Therefore, courts should have no problem applying the deliberate indifference standard to prison labor conditions.

### III. PROPOSED SOLUTIONS

#### *A. The Supreme Court Should Adopt the Circuit Courts’ Application of the Eighth Amendment to Prison Labor Conditions*

A majority of circuit courts have held that the Eighth Amendment’s prohibition on cruel and unusual punishments applies to prison labor conditions. To extend this protection to all incarcerated Americans and ensure a uniform standard of application, the Supreme Court should do the same. The Court itself has acknowledged that its interpretation of the Eighth Amendment progresses in step with society’s “evolving standards of decency.”<sup>174</sup> It is time for the Court to acknowledge that this standard of decency has evolved to the point that it is no longer acceptable to allow prisons to get away with brutally maiming and killing incarcerated people without facing any consequences.

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169. *Id.*

170. *Id.*

171. 452 U.S. 337, 349 (1981).

172. *Id.* at 347.

173. *Id.*

174. *Gregg v. Georgia*, 428 U.S. 153, 173 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101 (1958)).

The Court has interpreted the Eighth Amendment to prohibit the “unnecessary and wanton infliction of pain” that is “grossly out of proportion to the severity of the crime.”<sup>175</sup> Prison labor conditions in the United States have certainly, at times, degraded to the point where they inflict unnecessary and wanton pain on incarcerated people. Remember, again, the story of Ms. Fuelling from above.<sup>176</sup> She was the incarcerated woman whose skull was split open by an errant saw blade after her supervisor instructed her to remove a piece of wood from the saw. Her pain was surely unnecessary—it served no penological purpose and actively prohibited her from continuing her work duties. The supervisor who instructed her to dislodge the wood also acted wantonly by providing this instruction without first turning off the saw. Furthermore, the infliction of this pain was “grossly out of proportion to the severity” of the crimes Ms. Fuelling committed.<sup>177</sup> She was “serving prison time for escape and being an [sic] habitual traffic offender.”<sup>178</sup> Surely society’s standard of decency has evolved such that the average American would consider a saw blade to the skull to be a grossly disproportionate punishment for traffic violations. If the Supreme Court chose to apply the Eighth Amendment’s prohibition on cruel and unusual punishments to prison labor conditions, it could protect Ms. Fuelling, and other incarcerated people like her, and provide them with the path to justice they so deserve.

*B. OSHA Should Issue a New Directive Classifying Incarcerated Laborers as Employees and States Should Follow Suit*

An updated directive from OSHA could fill many of the gaps in protections for incarcerated laborers. The Occupational Safety and Health Act, which establishes OSHA, endeavors “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions.”<sup>179</sup> In order to meet this goal, the Act creates requirements for workplace trainings,<sup>180</sup> inspections and investigations,<sup>181</sup> the issuance of citations,<sup>182</sup> and the creation of enforcement procedures.<sup>183</sup> Notably, the

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175. *Id.*

176. *See supra* Parts I.B, I.C.3.

177. *Gregg*, 428 U.S. at 173 (quoting *Trop*, 356 U.S. at 101).

178. Kirk Mitchell, *Inmate Sues Pueblo Sawmill, Colorado Prison Officials After Serious Injury*, DENVER POST (Aug. 14, 2017), <https://www.denverpost.com/2017/08/14/pueblo-sawmill-injury-colorado-prison-lawsuit/>.

179. 29 U.S.C. § 651(b).

180. § 670.

181. § 657.

182. § 658.

183. § 659.

protections established by the Act only apply to employer-employee relationships.<sup>184</sup> Nonetheless, the Supreme Court has held that courts should construe the provisions of the Act broadly to best effectuate the intent of Congress.<sup>185</sup> Despite this urging from the Supreme Court, OSHA issued a directive in 1995, declaring that incarcerated workers are not “employees.”<sup>186</sup> While it provided that some incarcerated workers, under certain circumstances, may still be entitled to OSHA’s protection,<sup>187</sup> this protection only applies to those incarcerated in federal prisons.<sup>188</sup> As a result, states are left to create their own workplace-safety standards for incarcerated workers.<sup>189</sup> Given this opportunity, they have chosen to give incarcerated workers severely watered-down safety protections or no protections at all.<sup>190</sup> Thus, even though OSHA could fully protect incarcerated workers, it currently does not.

OSHA should issue a new directive classifying incarcerated workers as employees and urging states to follow suit, thus entitling them to the full protections the agency offers. This would provide incarcerated workers with the same workplace-safety protections as any non-incarcerated worker, filling the gaps left by judicial remedies. While the extension of Eighth Amendment protections would address instances of severely harsh, inhumane working conditions, the extension of OSHA protections would address the more run-of-the-mill labor safety considerations. If OSHA routinely inspected prison workplaces, ensured adequate training for incarcerated workers, and required prisons to remedy violations, the need for judicial remedies would likely disappear in many cases.

Furthermore, a requirement for workplace injury and death reporting is particularly important in the context of prison labor. Currently, neither OSHA nor the Bureau of Prisons is tracking injuries or deaths related to prison labor.<sup>191</sup> As a result, they do not know the full scope of the problems that unsafe prison labor conditions pose. Once this data is collected, OSHA may consider further solutions as it better understands the situation.

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184. Hauptman, *supra* note 21, at 78.

185. *Whirlpool Corp. v. Marshall*, 445 U.S. 1, 13 (1980).

186. DIR. FAP 01-00-002, *supra* note 73, § F.

187. § G(3).

188. Interpretation Letter No. 1975.5, *supra* note 76.

189. *See id.*

190. Hauptman, *supra* note 21, at 85–86.

191. AM. C.L. UNION & U. OF CHI. L. SCH. GLOB. HUM. RTS. CLINIC, *supra* note 18, at 62.

*C. This Issue Should Be Brought to the Public's Attention*

Bringing a problem to the public's attention is a vital tool for social change. An example of this can be found at the turn of the 20th century, when Upton Sinclair put the horrors of the meat-packing industry into public view with his book, *The Jungle*.<sup>192</sup> When people found out the dark truth about what was in their food, a massive social movement came about.<sup>193</sup> In response, Congress passed comprehensive food-safety regulations.<sup>194</sup>

Ironically, Sinclair actually wrote *The Jungle* intending to bring attention to the inhumane labor conditions that meat-packing employees were facing, but the public instead focused on its effects on the food that they were eating.<sup>195</sup> While food-safety regulations are now in place, the labor conditions in meat-packing plants remain extremely dangerous.<sup>196</sup> However, the victims of these practices are no longer the Slavic immigrants of Mr. Sinclair's time, but incarcerated laborers, like Mr. Ellington who got sucked into the poultry-processing machine.<sup>197</sup>

Perhaps a story like Mr. Ellington's, broadcast widely, is what it would take to incite public action on prison labor conditions. Compelling personal stories have the power to cut through the static of media oversaturation in today's age and spur reform. In 2014, the *Serial* podcast brought mass attention to the deeply flawed prosecution of Adnan Syed.<sup>198</sup> Mr. Syed, at age 17, had been convicted of killing his girlfriend and was serving a life sentence.<sup>199</sup> *Serial* not only revolutionized podcasting and the medium of true crime, but made hundreds of millions of people aware of the profound flaws in the United States criminal justice system.<sup>200</sup> Furthermore, it brought

192. See generally UPTON SINCLAIR, *THE JUNGLE* (CreateSpace Independent Publishing Platform, 2015) (1906) (documenting dangerous and unsanitary conditions in Chicago's meatpacking industry and catalyzing landmark food safety legislation).

193. Roger I. Roots, *A Muckraker's Aftermath: The Jungle of Meat-Packing Regulation After a Century*, 27 WM. MITCHELL L. REV. 2413, 2419 (2001).

194. *Id.*

195. *Id.* at 2417.

196. *Id.* at 2419–21; Debbie Berkowitz & Patrick Dixon, *An Average of 27 Workers a Day Suffer Amputation or Hospitalization, According to New OSHA Data from 29 States*, ECON. POL'Y INST.: WORKING ECON. BLOG (Mar. 30, 2023), <https://www.epi.org/blog/an-average-of-27-workers-a-day-suffer-amputation-or-hospitalization-according-to-new-osha-data-from-29-states-meat-and-poultry-companies-remain-among-the-most-dangerous/>.

197. See discussion *supra* INTRODUCTION.

198. Serial Productions, 'Serial': Season 1, N.Y. TIMES, <https://www.nytimes.com/2022/09/20/podcasts/serial-adnan-syed.html>, (Oct. 5, 2022).

199. *Id.*

200. Aja Romano, *Serial Transformed True Crime—and the Way We Think About Criminal Justice*, VOX (June 3, 2024), <https://www.vox.com/culture/351238/serial-true-crime-podcast-criminal-justice-adnan-syed>.

enough attention to Mr. Syed's story that a judge overturned his conviction and freed him.<sup>201</sup> If hundreds of millions of people became aware of Mr. Ellington's story and other stories like it, surely they would demand that similar justice be given to the victims of inhumane prison labor conditions.

#### CONCLUSION

Every day, United States prisons subject incarcerated workers to blood-curdling, inhumane labor conditions. As it stands, these incarcerated workers have almost no recourse for this abuse. A combination of constitutional, administrative, and legislative remedies could go far to provide these workers with adequate safety protections. It would serve the United States to remember that a society is judged by how it treats its most powerless members. We are long overdue to provide basic human decency to ours.

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201. *Id.*