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August 2, 2024

The Honorable Gene Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

We write to learn more about the work-related experiences of people who are induced to perform work in various forms of productive economic activity, including the production of goods that circulate in interstate commerce, as a result of their involvement with the courts or incarceration. For simplicity, we will refer to this phenomenon as “system-involved work.”

Much of what is known about system-involved work is focused on the subset of prison labor. About 65 percent of the 1.2 million people incarcerated in state and federal prisons have a job, according to a 2022 study.<sup>1</sup> The majority of these individuals work in prison maintenance jobs, while others work for state-owned corporations that produce goods and services, for public works projects in the community, or for private firms.<sup>2</sup>

These incarcerated workers are generally not covered by federal worker protection laws—such as the *Occupational Safety and Health Act of 1970* and the *Fair Labor Standards Act of 1938*—because of court interpretations of these laws and the Exceptions Clause of the Thirteenth Amendment to the United States Constitution.<sup>3</sup> Unsurprisingly, several investigations have found that incarcerated workers face dangerous working conditions with insufficient safety protections and that prisoners typically earn much less than the minimum wage in their states, if they are paid at all.<sup>4</sup> One study found that the average maximum hourly wage for incarcerated

<sup>1</sup> ACLU & GLOB. HUM. RTS. CLINIC, U. CHI. L. SCH., CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 8 (2022), <https://assets.aclu.org/live/uploads/publications/2022-06-15-captivelaborresearchreport.pdf> [hereinafter CAPTIVE LABOR].

<sup>2</sup> *Id.* at 8-10.

<sup>3</sup> CAPTIVE LABOR, *supra* note 1; Megan Hauptman, *The Health and Safety of Incarcerated Workers: OSHA's Applicability in the Prison Context*, 37 ABA J. LAB. & EMPLOY. L. 1 (2023).

<sup>4</sup> ANASTASIA CHRISTMAN & HAN LU, NAT'L EMPLOY. L. PROJ., WORKERS DOING TIME MUST BE PROTECTED BY JOB SAFETY LAWS (2024), [https://www.nelp.org/app/uploads/2024/04/Report\\_Incarcerated\\_Workers\\_Disasters\\_v2.pdf](https://www.nelp.org/app/uploads/2024/04/Report_Incarcerated_Workers_Disasters_v2.pdf);

persons performing jobs that benefit the prison rather than external industry<sup>5</sup> in the states that do pay incarcerated workers was 52 cents.<sup>6</sup> Some have pointed to the lack of federal worker protections for incarcerated individuals as creating an environment where such working conditions are possible.<sup>7</sup>

Whether work experience for prisoners under such conditions has a beneficial effect is an open question. Some studies have found that participants in prison work release programs may experience reduced recidivism and increased employment and wages after leaving prison.<sup>8</sup> Other studies, however, have questioned the extent to which prison work helps incarcerated individuals build the vocational skills needed for success after prison, especially if the work is in low-skill prison maintenance jobs or in fields where there is little demand in the labor market outside of prison.<sup>9</sup>

The U.S. Government Accountability Office (GAO) has examined some of these questions with respect to the federal prison system. For example, GAO identified the need for the Bureau of Prisons (BOP) to assess the recidivism impacts of work assignments through Federal Prison Industries, a government-owned corporation that uses prison labor to produce goods and services that are sold to other federal agencies, and its mission includes promotion of successful reentry to society.<sup>10</sup> GAO also identified high-risk issues in BOP's management and monitoring of programs implementing the *First Step Act*, which created a system for incarcerated individuals to earn time credits by participating in recidivism-reduction programming or productive activities.<sup>11</sup> Furthermore, in some instances, BOP has not responded to requests by other investigations for data on the number and characteristics of people on work assignments within the federal prison system.<sup>12</sup> Although the work that GAO has done has provided valuable insight into the role of work in the federal prison system and in the lives of justice-involved individuals, many questions remain unanswered.

We are also concerned about aspects of system-involved work outside of and unrelated to prisons. Such forms of system-involved work include the following:

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

<sup>5</sup> These jobs, known as “non-industry jobs,” include prison maintenance jobs such as cleaning, cooking, repair work, laundry, and other essential services.

<sup>6</sup> CAPTIVE LABOR, *supra* note 1, at 10.

<sup>7</sup> *Id.* at 61-62; Mason & McDowell, *supra* note 4.

<sup>8</sup> RASHAWN RAY ET AL., BROOKINGS-AEI, A BETTER PATH FORWARD FOR CRIMINAL JUSTICE 60 (Apr. 2021), [https://www.brookings.edu/wp-content/uploads/2021/04/Better-Path-Forward\\_Brookings-AEI-report.pdf](https://www.brookings.edu/wp-content/uploads/2021/04/Better-Path-Forward_Brookings-AEI-report.pdf).

<sup>9</sup> CAPTIVE LABOR, *supra* note 1, at 77-78.

<sup>10</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-20-505, FEDERAL PRISON INDUSTRIES: ACTIONS NEEDED TO EVALUATE PROGRAM EFFECTIVENESS 1 (2020).

<sup>11</sup> U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-106203, HIGH-RISK SERIES: EFFORTS MADE TO ACHIEVE PROGRESS NEED TO BE MAINTAINED AND EXPANDED TO FULLY ADDRESS ALL AREAS 119 (2023).

<sup>12</sup> CAPTIVE LABOR, *supra* note 1, at 8.

- Work mandated as part of a supervised release to the community following conviction, such as parole or probation;<sup>13</sup>
- Work required of people with mental health issues and/or substance abuse disorder who are diverted from the criminal justice system by specialized courts either pre- or post-conviction;<sup>14</sup>
- Community service work ordered by courts;<sup>15</sup>
- Work arrangements in connection with court-ordered substance rehabilitation;<sup>16</sup> and
- Work connected to programs for court-supervised youth.<sup>17</sup>

The adults and youth funneled into work through such arrangements may not be incarcerated, but there may still be some questions about the applicability of workplace laws in some of these cases. Additionally, even in cases where workplace laws apply, workers may be reluctant to challenge abusive conditions for fear of repercussions from courts that mandated either the work itself or placement in a program that requires such work. In comparison to prison-based labor, much less is known about experiences of people engaged in these forms of system-involved work.

To help us learn more about issues regarding system-involved work in both contexts, we request that GAO examine the following:

1. What is known about the types of work arrangements that exist for adults and youth in federal prisons and selected state criminal justice systems and other court-mandated contexts, and to what extent do federal worker protection laws apply to these arrangements?

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<sup>13</sup> Bernard Callegari & Han Lu, *Building Worker Power: How One Labor Union in New York Is Organizing and Creating Solidarity Among Formerly Incarcerated Workers—and Winning*, INQUEST (May 23, 2023), <https://inquest.org/building-worker-power/>.

<sup>14</sup> KRISTEN DEVALL ET AL., NAT'L DRUG COURT RESOURCE CTR, PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES (2023).

<sup>15</sup> HAN LU & NOAH ZATZ, NAT'L EMPLOY. L. PROJ., MINIMUM PROTECTION, MAXIMUM VULNERABILITY: LABOR STANDARDS IN COURT-ORDERED COMMUNITY SERVICE (2024), <https://www.nelp.org/app/uploads/2024/04/Minimum-Protection-Maximum-Vulnerability-Labor-Standards-Court-Ordered-Community-Service-March-2024.pdf>.

<sup>16</sup> See, e.g., U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106101, SUBSTANCE MISUSE TREATMENT AND RECOVERY: FEDERAL GUIDANCE NEEDS TO ADDRESS WORK ARRANGEMENTS FOR THOSE LIVING IN RESIDENTIAL FACILITIES (2024); Press Release, ACLU-TENNESSEE, Forced Labor, Rotten Chicken, and the Occasional AA Meeting (Nov. 2, 2017), <https://www.aclu-tn.org/en/news/forced-labor-rotten-chicken-and-occasional-aa-meeting>; Amy Julia Harris & Shoshana Walter, *Rehab or Work Camp? Addicts Labor for Businesses*, THE COLUMBUS DISPATCH (Oct. 7, 2017), <https://www.dispatch.com/story/business/2017/10/08/rehab-work-camp-addicts-labor/18356449007/>.

<sup>17</sup> See, e.g., DEVALL ET AL., *supra* note 14; Clair McFarland, *Powell Ranching Family Says Child Slavery and Trafficking Claims 'Impossible'*, COWBOY STATE DAILY (Jan. 8, 2024), <https://cowboystatedaily.com/2024/01/08/powell-ranching-family-says-child-slavery-and-trafficking-claims-impossible/>; Tyler Kingkade, *Teens Were Sent to Wyoming Ranches for Therapy. They Say They Found a Nightmare of Hard Labor and Humiliation*, NBC NEWS (Sept. 7, 2022), <https://www.nbcnews.com/news/us-news/wyoming-christian-troubled-teen-ranches-abuse-rcna46112>.

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2. To what extent does work contribute to successful rehabilitation and future employment of adults and youth involved in the criminal justice system or court-ordered diversion programs?
3. To what extent does work contribute to successful rehabilitation of adults and youth who are in diversion programs because they would be incarcerated if they were not court-ordered into another setting? What, if anything, is known about the relative efficacy based on whether individuals receive wages that are commensurate with other workers in the same field?
4. What working conditions exist for people incarcerated in federal prisons, and what steps has the Bureau of Prisons taken to ensure its work programs support rehabilitation?
5. What is known about safety, health, and other working conditions for people in system-involved work outside of the federal prison system?
6. What sources of federal funding support the courts, prisons, and programs at the state level that engage adults and youth in system-involved work?
7. What legislative or regulatory changes should be considered to ensure that system-involved work is safe and appropriate for the people doing it?

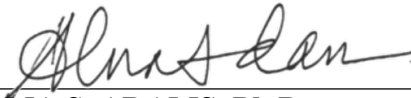
Should you have any questions about this request, please coordinate with the Democratic staff of the House Committee on Education and the Workforce by contacting Robert Shull at [Robert.Shull@mail.house.gov](mailto:Robert.Shull@mail.house.gov) and Phoebe Ball at [Phoebe.Ball@mail.house.gov](mailto:Phoebe.Ball@mail.house.gov).

Sincerely,



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**ROBERT C. "BOBBY" SCOTT**  
Ranking Member



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**ALMA S. ADAMS, Ph.D.**  
Ranking Member  
Subcommittee on Workforce Protections