From Slavery to Dependency: How Courts Misinterpret the Fair Labor Standards Act to Justify Prison Labor

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ABSTRACT

The Fair Labor Standards Act (FLSA) was designed to ensure fair wages and put an end to exploitative labor conditions. Despite recent reconsideration of the FLSA as it applies to incarcerated workers, courts continue to reject the idea that they fall within the Act's purposes. This Note seeks to understand why courts maintain this exclusion—particularly when they have begun to reconsider other aspects of FLSA coverage for incarcerated labor.

To answer this question, this Note presents the dependency framework—a legal rationale that assumes incarcerated workers are fully dependent on prisons and, therefore, have no needs beyond those provided for by prisons. Ultimately, this Note argues that this framework has its roots in slavery, and that is why courts continue to misinterpret the purposes of the FLSA to exclude incarcerated workers.

To make this argument, the Note begins by showing how, even in the generous holding of Scott v. Baltimore County*, the Fourth Circuit perpetuated the dependency framework and denied that incarcerated workers fall within the FLSA's purpose due to impacts on their well-being. It then takes a step back and examines the origins of the dependency framework, tracing its foundations to 1990s case law. From there, the Note shows how the framework and courts are out of touch with reality, highlighting how incarcerated workers have unmet needs and fall within the original purposes of the FLSA. Finally, the Note situates the dependency framework within the broader historical context of slavery and post-Reconstruction convict leasing, revealing how modern prison labor practices remain tethered to America's legacy of racial and economic exploitation.*

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INTRODUCTION

Courts have long rejected the argument that incarcerated workers should be covered by the Fair Labor Standards Act (FLSA), but recently, the Fourth Circuit reconsidered this well-established standard. In *Scott v. Baltimore County*, the Fourth Circuit held that, in limited circumstances, incarcerated workers may be entitled to protections under the FLSA if they work outside of a prison.[1] This step towards potentially finding incarcerated workers covered under the FLSA is significant and moves further than other courts. However, there is an aspect of the FLSA doctrine regarding incarcerated workers that courts still have not reconsidered. This is the courts' long-held belief that incarcerated workers do not fall within the purpose of the FLSA to provide a decent standard of living, because their needs are taken care of by prisons, and therefore, they do not need a minimum wage.

The FLSA "establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in Federal, State, and local governments."[2] The Act defines covered employees as "any individual employed by an employer" and "to employ" means "to suffer or permit work."[3] This definition is largely circular, so courts rely on different legal tests to determine who counts as an employee. Using these tools, courts have long reasoned that incarcerated workers do not fall within the intent of the FLSA and, as such, are not employees for the sake of the Act. The courts have determined that there are two purposes of the FLSA: first, to provide a decent standard of living, and second, to prevent unfair competition.[4] This Note focuses on the first purpose and argues that it is much broader than courts construe.[5] When the FLSA is understood in its entirety, this Note argues that it becomes clear that incarcerated workers are included within the purpose of the FLSA. As such, this Note seeks to

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[1] Scott v. Baltimore Cnty., Md., 101 F.4th 336, 350 (4th Cir. 2024).

[2] U.S. Dep't of Lab., WAGE & HOUR DIV., *Wages and the Fair Labor Standards Act*, https://www.dol.gov/agencies/whd/flsa [https://perma.cc/DRL6-9F7A]; 29 U.S.C. §§ 201–19.

[3] Kenneth G. Dau-Schmidt, *The Problem of "Misclassification" or How to Define Who is an "Employee" under Protective Legislation in the Information Age*, *in* THE CAMBRIDGE HANDBOOK OF U.S. LABOR LAW FOR THE TWENTY-FIRST CENTURY 140, 142 (2019) (citing 29 U.S.C.A. §§ 203(e)(1), (g) (2018)).

[4] Gambetta v. Prison Rehab. Indus. & Diversified Enters., Inc., 112 F.3d 1119, 1119 (11th Cir. 1997).

[5] Importantly, the Fourth Circuit found that incarcerated workers may fall under the second purpose, but not the first. *See Scott*, 101 F.4th at 336.

understand why courts continue to accept the argument that incarcerated workers[6] do not fall within the aims of the FLSA, especially as they begin to reconsider whether other aspects of the FLSA may apply to incarcerated workers, and specifically whether incarcerated workers may fall under the second purpose. This Note specifically focuses on this Fourth Circuit case because the court was generous in finding that incarcerated workers may sometimes be covered by the FLSA, but still rejected that they fall within the FLSA's purpose due to impacts on their own well-being.

To answer this question, this Note relies on an idea put forth by Professor Noah Zatz. Specifically, Zatz introduces the idea that one way courts exclude incarcerated workers as covered employees under the FLSA is by "[p]ortraying inmates as dependent" and "emphasiz[ing] prisoners' reliance on the state for the provision of food, housing, and other basic needs."[7] In doing so, courts assert that prisons meet the needs of incarcerated people, so the FLSA's purpose to provide a "decent standard of living for all workers" is not implicated.[8] Building on this idea, this Note argues that courts have created a dependency framework that facilitates their outright rejection of incarcerated workers falling within the purposes of the FLSA. The framework enables this rejection because when courts see incarcerated workers as entirely dependent on prisons, they are unable to conceive that incarcerated people may have needs that are not met by the prisons. As such, the courts do not see that incarcerated workers have needs that fall within the true purpose of the FLSA, which is to provide a decent wage for a decent standard of living. Ultimately, this Note will posit that this framework, and its use as a tool to justify excluding incarcerated workers from FLSA coverage, is a remnant of slavery.

To make this argument, Part I begins with a discussion of *Scott v. Baltimore County*, highlighting how the Fourth Circuit made essential strides in including incarcerated workers under the FLSA and yet still rejected the possibility that they fall within the intent of the FLSA because their well-being is impacted, instead finding they may fall within the purposes because "free" workers and businesses were affected.[9] From there, Part II of this Note zooms out and provides the background of how courts have historically developed the argument for excluding incarcerated workers, specifically showing how courts have created and perpetuated a dependency framework for incarcerated workers. This Part then shows how this dependency framework has been used in modern cases. Next, Part III critiques the exclusion of incarcerated workers under the FLSA. To do this, it first shows that courts have gotten the aims of the FLSA wrong when excluding

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[6] By incarcerated workers, this Note refers to all persons who are detained by the state or federal government and are engaged in labor.

[7] Noah D. Zatz, *Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships*, 61 VAND. L. REV. 857, 931 (2008).

[8] *Id.* at 931 n.333 ("This argument draws on one of the FLSA's statutory purposes: to provide a 'decent standard of living for all workers.'" (quoting *Gambetta*, 112 F.3d at 1124 (11th Cir. 1997)).

[9] *See infra* Part I.

incarcerated workers. It then contends that the FLSA was intended to promote well-being, health, and efficiency. Following this, it shows how incarcerated workers have expenses related to their well-being and health, and how prisons are not meeting their basic needs. Through this analysis of case law and claims of incarcerated workers, the Note argues that remnants of slavery and racism likely cause courts to continue using the dependency framework to exclude incarcerated workers. It concludes with a discussion of the origins and development of prison labor in response to the end of slavery.

I. *SCOTT V. BALTIMORE COUNTY*

In *Scott v. Baltimore County*, the Fourth Circuit issued one of the most generous holdings for incarcerated workers seeking to be protected by the FLSA. And yet, the court rejected the idea that incarcerated workers may fall within the purpose of the FLSA to provide a decent wage, conceding only that incarcerated workers may fall within its objective of eliminating unfair competition.[10] Instead, since it was bound by precedent,[11] the court promoted the argument that incarcerated workers do not need a wage because their needs are taken care of by the prison.[12] This Part examines how, in reaching its generous yet limited holding, the Fourth Circuit focused on the impacts of exclusion on "free" labor and the market, instead of on the impacts felt by incarcerated workers.

The court reviewed three factors to examine whether the FLSA covered Scott and his co-appellants.[13] First, the court considered whether the relationship had the characteristics of an employer-employee relationship;[14] Second, the court considered whether the purposes of the Fair Labor Standards Act call for its application. Lastly, the court considered whether the "employer" had a rehabilitative rather than pecuniary interest in the labor.[15] The court was generous in its determinations on these factors, ruling that there was a possibility that each of them would favor Scott.[16] This Note, however, is concerned with the second factor.

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[10] *Scott*, 101 F.4th at 345.

[11] Harker v. State Use Indus., 990 F.2d 131, 133 (4th Cir. 1993) ("Even with a broad reading of this term, we see no indication that Congress provided FLSA coverage for inmates . . . ."); Ndambi v. CoreCivic, Inc., 990 F.3d 369, 374 (4th Cir. 2021) (finding that appellants were not covered by the FLSA and that finding otherwise "would require us to . . . contravene our own precedent"); Matherly v. Andrews, 859 F.3d 264, 278 (4th Cir. 2017) (saying that appellant's claim to be included under the FLSA "runs head first into our FLSA jurisprudence").

[12] *Scott*, 101 F.4th at 345.

[13] *Id*. at 343–49.

[14] *Id*. at 341–42.

[15] *Id*. at 347. Some may argue that work done by incarcerated workers always has a rehabilitative purpose rather than pecuniary purpose, however the court in *Scott* found that not to be the case. The court said there may be instances, like Scott's, where the purpose is not primarily rehabilitative. *Id.* at 348. Additionally, the court clarified this factor and said that "[t]he question under this . . . factor is whether DPW's principal or primary purpose for using incarcerated workers . . . was for 'rehabilitation and job training.'" *Id*. at 349 (quoting *Harker*, 990 F.2d at 133).

[16] *Id*. at 350.

As the Fourth Circuit puts it, the FLSA's "purpose is to ensure 'the minimum standard of living necessary for health, efficiency, and general well-being of workers.'"[17] Scott asserted that he and his fellow incarcerated workers fell within this purpose because they have expenses related to their well-being, and the prison was not providing them with their basic needs.[18] Referencing Fourth Circuit caselaw, the court rejected Scott's argument because it circumvented binding precedent. The court determined that "[i]f the purposes of the Act call for its application here, it cannot be to benefit Scott and those he represents."[19] Instead of examining how exclusion impacted Scott and his well-being, the court examined whether workers in the "free" market were negatively affected by not paying Scott a minimum wage.[20]

Specifically, the court asserted that "the Act is concerned not only with the individual workers claiming coverage (here, Scott and those he represents) but also with the effect that the work they do has on other workers and businesses."[21] The court focused on the fact that because the state was not paying the incarcerated workers a minimum wage, their work was causing unfair competition to other businesses and "free" workers.[22] As such, the court determined that Scott and his co-appellants' situation may fall within the purposes of the FLSA, but not because their well-being was being impacted, but because "free" workers and businesses were affected.[23]

While this application does benefit Scott and those he represents, it perpetuates a problematic rejection of incarcerated workers' well-being possibly falling within the purpose of the FLSA. This Note seeks to understand why courts continue to assert that incarcerated workers' own needs do not fall within the FLSA's purpose to provide a living wage. To understand this, the following Part examines the case law in this area, revealing how the courts have created a dependency framework that portrays incarcerated workers as entirely reliant on prisons, having no needs beyond those that are provided for by prisons.

II. THE DEPENDENCY FRAMEWORK

This Part will further explore how the courts have rejected the idea that incarcerated workers need the protection of the FLSA, showing how courts have created and perpetuated a dependency framework for incarcerated workers. To do this, this Part will show how courts have recently advanced the argument that incarcerated workers do not fall within the purpose of the FLSA. From there, this

[17] *Scott*, 101 F.4th at 345 (citing 29 U.S.C. § 202(a)).
[18] *Id.*
[19] *Id.*
[20] *Id*. at 346.
[21] *Id.*
[22] *Id.*
[23] *Id*.

Part will discuss the landmark cases that introduced this argument and created a dependency framework.

A. Excluding Incarcerated Workers from the Purposes of the FLSA

As *Scott v. Baltimore County* highlighted, courts reject the argument that incarcerated workers might be covered by the purpose of the FLSA to provide a decent wage. The courts base this conclusion in part on reasoning that one of the primary purposes of the FLSA is to provide wages that facilitate "a minimum standard of living necessary for health, efficiency, and general well-being of workers."[24] The courts argue that incarcerated workers do not need these minimum wages for this reason because they are under the care of the prison, and the prison provides for their basic needs.[25] Specifically, these courts assert that incarcerated workers are different from workers in the "free" labor market because they have their basic needs taken care of by prisons. Most courts base this argument on the FLSA, which says "Congress finds that the existence, in industries engaged in commerce or the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers."[26] Specifically, lower courts argue that the aim of the minimum wage provision of the FLSA was so that workers could meet their basic needs, which prisons meet for incarcerated workers.[27]

By arguing that incarcerated workers do not need minimum wages because prisons meet their needs, the courts are perpetuating a dependency framework. In doing so, these courts highlight incarcerated workers' "economic dependence on the prison" and "place inmates in opposition to the 'free citizens in [sic] the labor market' who are self-reliant, independent, and competent wageworkers."[28] This Note argues that this juxtaposition and categorization of incarcerated workers as dependent allows courts to assert that prisons' provisions are sufficient for meeting incarcerated workers' basic needs. By accepting this narrative, it appears that courts refuse to examine whether the needs of incarcerated workers are truly met. As this Note will assert in Part IV, this harmful framework has its roots in racism and slavery.

B. Creating the Dependency Framework

Courts can argue that incarcerated workers do not need the minimum wage guaranteed by the FLSA because they have long framed incarcerated workers as

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[24] 29 U.S.C. § 202(a).

[25] *See, e.g.*, Gamble v. Minn. State-Operated Servs., 32 F.4th 666, 670–71 (8th Cir. 2022); Ndambi v. CoreCivic, Inc., 990 F.3d 369, 373 (4th Cir. 2021); Matherly v. Andrews, 859 F.3d 264, 278 (4th Cir. 2017).

[26] 29 U.S.C. § 202(a).

[27] *See, e.g.*, *Gamble*, 32 F.4th at 670 (finding that "the detainees have their basic needs met by the state").

[28] Zatz, *supra* note 7, at 932 (quoting McGinnis v. Stevens, 543 P.2d 1221, 1239 (Ala. 1975)).

dependent on prisons for their basic needs. As such, courts claim that workers have no needs beyond those that the prisons provide for. The courts are also able to assert that prisons meet these needs and, therefore, incarcerated workers do not need the protections guaranteed by the FLSA.

The dependency framework was solidified in three landmark cases from the 1990s—*Harker v. State Use Industries*, *Vanskike v. Peters*, and *Miller v. Dukakis.* These cases occurred against the backdrop of increased mass incarceration. Between 1990 and 1995 the federal prison population grew by fifty-three percent and every state, except for Maine, increased its prison population.[29] This increase in prison population mirrored a national sentiment of "tough on crime" and was fueled by beliefs that rehabilitation did not work.[30] This time period also coincided with the Violent Crime Control and Law Enforcement Act of 1994, which funded more prisons, increased sentences, expanded the use of the death penalty, mandated life imprisonment for third violent felonies.[31] Naturally, with an increase in prison populations came an increase in lawsuits filed by prisoners.[32]

In *Harker*, the court juxtaposed incarcerated workers to "free" workers, holding that their work was rehabilitative and not "traditional employment."[33] This case concerned inmates who brought an FLSA claim for minimum wage for the work they performed in a print shop run by State Use Industries of Maryland.[34] It facilitated a dependency framework by saying, "[w]hile incarcerated, inmates have no such needs because the DOC provides them with the food, shelter, and clothing that employees would have to purchase in a true employment situation."[35] This holding contrasted incarcerated workers with "free" workers and painted them as dependent. Based on this, the court rejected the idea that incarcerated workers could have any of the needs for which the FLSA was intended to provide wages.

In *Vanskike*, the court addressed FLSA claims brought by an incarcerated worker in Illinois.[36] The court elaborated on the presumption made in *Harker* and

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[29] Ashley Nellis & Sabrina Pearce, *Mass Incarceration Trends*, SENT'G PROJECT (Apr. 9, 2026), https://www.sentencingproject.org/reports/mass-incarceration-trends/ [https://perma.cc/SY3U-5EKU]; Darrell K. Gilliard & Allen J. Beck, *Prison and Jail Inmates, 1995*, BUREAU OF JUST. STAT. 1 (1996).

[30] Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, BRENNAN CTR. (Sep. 9, 2019), https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice [https://perma.cc/9BL2-WVRZ]; Jerome Miller, *Is Rehabilitation a Waste of Time?*, WASH. POST (Apr. 22, 1989), https://www.washingtonpost.com/archive/opinions/1989/04/23/criminology/3e8fb430-9195-4f07-b7e2-c97a970c96fe/ [https://perma.cc/5KDL-GE7H].

[31] Eisen, *supra* note 30.

[32] Christy Perez, *How the Prison Litigation Reform Act Blocks Justice For Prisoners*, APPEAL (May 8, 2023), https://theappeal.org/prison-litigation-reform-act-repeal-unjust/ [https://perma.cc/7N42-ZGNX]; Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1558 (2003).

[33] Harker v. State Use Indus., 990 F.2d 131, 133 (4th Cir. 1993).

[34] *Id*. at 132.

[35] *Id.*

[36] Vanskike v. Peters, 974 F.2d 806 (7th Cir. 1992).

said that the "purpose of the FLSA has little or no application in the context presented here."[37] The court made this determination by reasoning that "[p]risoners' basic needs are met in prison."[38] Through this language the court reiterated the belief that incarcerated workers can have no needs beyond those that are determined by and provided for by prisons. The court continued and said because incarcerated workers are dependent, "[r]equiring the payment of minimum wage for a prisoner's work in prison would not further the policy of ensuring a 'minimum standard of living,' because a prisoner's minimum standard of living is established by state policy."[39] The court could not accept that incarcerated workers may want to work to meet needs for which the prison does not provide. This rhetoric solidified the dependency framework, by portraying incarcerated workers as lacking self-reliance and independence.[40]

The court in *Miller v. Dukakis* used a similar rationale. In that case the court examined FLSA claims from persons who had been detained at a Massachusetts treatment center for sexually dangerous persons.[41] The court rejected that incarcerated workers may fall within the purposes of the FLSA and explained that they do not need a minimum wage "to protect [their] well-being and standard of living."[42] Like the court in *Vanskike*, the *Miller* court held that the incarcerated workers "are cared for (and their standard of living is determined, within constitutional limits) by the state."[43] In making this determination, the court rejected any idea that incarcerated workers may have needs that the state does not acknowledge or provide for, further cementing the dependency framework.

As the language of these cases shows, "judicial images of inmate workers evoke [] the figure of the welfare dependent—defined as reliant on state support by virtue of inability or unwillingness to participate in market labor."[44] As such, these courts create a dependency framework that allows judges to reject outright the possibility that incarcerated workers fall within the FLSA's purpose without further analyzing or examining the lived realities of incarcerated workers.

This dependency framework has been perpetuated in recent cases as well. One example is *Gamble v. Minnesota State-Operated Services*.[45] This case involved a group of civil detainees in the Minnesota Sex Offender Program who participated in a vocational work program.[46] They brought multiple actions against

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[37] *Id*. at 810.
[38] *Id*.
[39] *Id*.
[40] For further discussion of this point, *see* Zatz, *supra* note 7, at 932.
[41] Miller v. Dukakis, 961 F.2d 7, 8 (1st Cir. 1992) (saying the appellants are "all 'sexually dangerous persons' (SDPs) who have been committed, under the authority of Chapter 123A of the Massachusetts General Laws, to the Massachusetts Treatment Center for Sexually Dangerous Persons, and who work at the Treatment Center in a variety of jobs.").
[42] *Id*. at 10.
[43] *Id*.
[44] Zatz, *supra* note 7, at 932.
[45] 32 F.4th 666 (8th Cir. 2022).
[46] *Id*. at 669.

state agencies and officials, including one that alleged a violation of the Fair Labor Standards Act for not paying them minimum wage.[47] The court determined that the detainees were not employees covered by the FLSA because "the state provided for their basic needs, making the FLSA's primary purpose of 'providing minimum standards of living for workers' inapplicable."[48] The court based this holding on its understanding that the purpose of the FLSA is to "maintain a 'standard of living necessary for health, efficiency, and general well-being of workers'" and that purpose did not apply to these detainees because they had no needs beyond what the state provided for.[49]

Other courts have recently relied on this dependency framework to exclude incarcerated workers from protection under the FLSA. For example, the Fourth Circuit in *Matherly v. Andrews* rejected an FLSA claim by a civil detainee against the Bureau of Prisons (BOP).[50] The court juxtaposed the incarcerated worker to "free" workers by saying that the FLSA did not apply "to inmates because '[w]hile incarcerated' they 'have no such needs' since the prison 'provides them with the food, shelter, and clothing that employees would have to purchase in a true employment situation,'" thus "satisfying the underlying purpose of the FLSA's minimum wage provision."[51]

In *Ndambi v. CoreCivic, Inc.*, the Fourth Circuit reiterated this argument when denying immigration detainees' claims under the FLSA.[52] There, the court further contrasted incarcerated workers and "free" workers by finding that "unlike workers in a free labor market who use their wages to maintain their 'standard of living' and 'general well-being,' detainees in a custodial institution are entitled to the provision of food, shelter, medicine, and other necessities" and thus do not fall within the FLSA.[53] Circuit courts across the country follow similar lines of reasoning to determine that incarcerated workers do not fall under the FLSA.[54] As

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[47] *Id*.

[48] *Id*.

[49] *Id*. at 670 (internal citations omitted).

[50] Matherly v. Andrews, 859 F.3d 264 (4th Cir. 2017).

[51] *Id.* at 278 (quoting Harker v. State Use Indus., 990 F.2d 131, 133 (4th Cir. 1993)).

[52] 990 F.3d 369 (4th Cir. 2021). This case differs from others because the incarcerated workers are immigration detainees. However, the dependency framework is still present in and perpetuated by this case, as courts analyze civil detainees in the same way they analyze people incarcerated after being convicted of crimes. Indeed, detainees and those convicted of crimes are often incarcerated in the same jails and prisons and work the same jobs. For example, the defendant in this case, CoreCivic, runs jails and prisons that detain immigrants and those convicted of crimes. *See* Shane Bauer, *Today It Locks Up Immigrants. But CoreCivic's Roots Lie in the Brutal Past of America's Prisons*, MOTHER JONES (Sep. 2018), https://www.motherjones.com/criminal-justice/2018/09/corecivic-private-prison-shane-bauer-book/ [https://perma.cc/RVC2-RTRL]; Alexandra Berzon, Allison McCann & Hamed Aleaziz, *Private Prisons Are Ramping Up Detention of Immigrants and Cashing In*, N.Y. TIMES (Mar. 7, 2025), https://www.nytimes.com/2025/03/07/us/politics/private-prisons-immigrants-detention-trump.html [https://perma.cc/98PS-U7G8].

[53] *Ndambi*, 990 F.3d at 373.

[54] *See* Villarreal v. Woodham, 113 F.3d 202, 206 (11th Cir. 1997) (holding that "pretrial detainees are in a custodial relationship," "[c]orrectional facilities provide pretrial detainees with their

such, the courts perpetuate a harmful dependency framework that ignores the lived realities of incarcerated workers and refuses to acknowledge that they may have needs beyond those provided for by prisons and that they may fall within the purposes of the FLSA.

III. HOWEVER, INCARCERATED WORKERS FALL WITHIN THE PURPOSES OF THE FLSA

This Part argues that the dependency framework has allowed courts to miss the fact that incarcerated workers do indeed fall within the scope and purpose of the FLSA to provide a decent wage. Courts have reasoned that the FLSA was written to ensure that workers can meet their basic needs, and that prisons already meet these basic needs for incarcerated workers. However, this Note argues that this narrative is not the whole story. Instead, this Note asserts, Congress intended the FLSA to ensure workers could meet more than their basic minimum needs. Congress designed the FLSA to allow them to ensure their well-being, health, and efficiency are met. This interpretation is supported by Supreme Court jurisprudence. However, because courts have relied on the dependency framework, they do not reexamine the purposes of the FLSA in light of the experiences and claims of incarcerated workers.

A. Intent of the FLSA

The FLSA's concept of a minimum standard of living encompasses more than just necessities; it also includes efficiency, health, and overall well-being. When workers are underpaid, they lose the ability to pursue these broader needs.[55] However, lower courts have largely overlooked this more expansive purpose of the FLSA when evaluating incarcerated workers. Instead, the courts have dismissed the possibility that incarcerated workers might fall under its protections by framing them as economically dependent on prisons. As a result, the courts fail to recognize that incarcerated workers may have needs extending beyond the bare minimum

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everyday needs," and "'prisoners' living standards are determined by what the prison provides'" so "pretrial detainees . . .are not entitled to the protection of the FLSA minimum wage requirement."); Nicastro v. Reno, 84 F.3d 1446, 1447 (D.C. Cir. 1996) (per curiam) (holding that federal prisoners who work for Federal Prison Industries, Inc. do not meet "'employee' status under the FLSA."); Danneskjold v. Hausrath, 82 F.3d 37, 42 (2d Cir. 1996) (reasoning that "prisoners' living standards are determined by what the prison provides" and that in part means that they do not count as employees under the FLSA); Hale v. Arizona, 993 F.2d 1387, 1396 (9th Cir. 1993) (en banc) (finding that "the problem of substandard living conditions, which is the primary concern of the FLSA, does not apply to prisoners, for whom clothing, shelter, and food are provided by the prison"); Tourscher v. McCullough, 184 F.3d 236, 243 (3d Cir. 1999) (rejecting "that pretrial detainees and convicted prisoners are covered by the FLSA minimum wage section" because "the minimum wage provisions of the FLSA [] apply only to workers who are 'employees' within the meaning of the Act.").

[55] *See infra* discussion in Sections III.B and III.C.

provided by prisons and that those needs were considered in the drafting of the FLSA.

When discussing the intent of the FLSA, lower courts often focus on the words "standard of living" and determine that this language means basic survival needs like food, water, and shelter.[56] They support this argument by finding that the legislative intent and purpose of the FLSA was simply to meet the minimum standard of living. However, the Supreme Court has discussed the FLSA in much broader terms.[57] While the Court acknowledges that part of the intent and purpose of the FLSA is to promote a minimum standard of living, the Court has also said that the congressional purpose behind the Act extended beyond that.[58] For example, in one case discussing whether an FLSA claim was precluded by collective bargaining, the Court noted that the FLSA's purpose was to protect workers "from substandard wages and oppressive working hours [and] 'labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.'"[59] The lower courts have often left out discussions of substandard wages, oppressive working hours, efficiency, and general well-being when considering the claims of incarcerated workers. However, this Note asserts that this exclusion is detrimental because it ignores the acknowledgment by the Supreme Court that the intent of the Act encompassed more than simply meeting basic needs. Instead, Congress recognized that substandard pay meant that workers could not meet an *adequate* standard of living that included health, efficiency, and well-being. Importantly, this shows that the minimum standard of living goes beyond basic needs like food, water, and shelter, which is how lower courts often misinterpret it.

The lower courts, however, have not examined this robust purpose of the FLSA when addressing claims from incarcerated workers. Instead, the courts have quickly dismissed the possibility that incarcerated workers may need the protections of FLSA because they have accepted that incarcerated workers are entirely dependent on the prisons. For example, in *Gamble*, the incarcerated workers asserted that the state did not meet their basic needs and that they had "to purchase many items for themselves."[60] The court, however, found this argument unconvincing and determined that the plaintiffs "provided no evidence that the state failed to provide clothing, a bed, food, medical care or dental care, and the fact that the plaintiffs choose to buy higher quality or additional items is not evidence that

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[56] *See supra* Part II.B.

[57] *See, e.g.*, Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 739 (1981) (citing 29 U.S.C. § 202(a)).

[58] *Id.*

[59] *Id.* (In this case the Court was deciding whether an employee, who was alleging a minimum wage violation of the FLSA, could bring an action in federal court after having unsuccessfully submitted a wage claim with the same facts to a joint grievance committee in accordance with their union's collective bargaining agreement. The Court discussed the FLSA's purpose to show that it was intended to protect the individual so collective bargaining and arbitration did not preclude an FLSA claim.).

[60] Gamble v. Minn. State-Operated Servs., 32 F.4th 666, 670 (8th Cir. 2022).

the state fails to provide for their basic needs."[61] This example shows how courts do not look at the need for wages that incarcerated workers may have for the "maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers"[62] which the Supreme Court explained was part of the intent of the FLSA. As a result, courts fail to acknowledge that prisons do not actually provide for health, efficiency, and well-being in the way the FLSA envisions, leaving incarcerated workers without the basic protections that the statute was meant to guarantee.

B. Incarcerated Workers Have Expenses Related to Their Health, Efficiency, and Well-being

The Supreme Court has been clear that one purpose of the FLSA is to ensure a minimum standard of living for health, efficiency, and well-being. However, lower courts often do not acknowledge this broad understanding of the FLSA, and even when they do, courts ignore that incarcerated workers have expenses related to this broad understanding. One reason lower courts assert that incarcerated workers do not need the minimum wage prescribed by the FLSA is that prisons provide healthcare for incarcerated people, so they do not need a wage to meet their minimum standard of health. However, "while the Supreme Court has concluded that incarcerated individuals must be provided with necessary care to address serious medical needs, courts have stopped short of banning jails and prisons from charging incarcerated individuals for such care."[63] As a result, many incarcerated persons must pay for their medical care while in prison.[64] It is important to note that these expenses are often less than what non-incarcerated people pay for their healthcare.[65] Without having a way to earn a meaningful wage, however, even low costs add up, especially since incarcerated persons often must pay for prescription costs, over-the-counter medications, and health devices.[66] Incarcerated persons are also generally not eligible for public or private health insurance.[67] It may seem fair

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[61] *Id*. at 671. It is important to note that the provision of health care does not mean *free* health care, but rather that prisons are allowed to charge for healthcare but cannot deny care if a person cannot pay. *See* Anna Anderson, *Medical Debt Behind Bars,* NAT'L CONSUMER L. CTR. 1, 5 (Sep. 2024), https://www.nclc.org/wp-content/uploads/2024/09/202409_Report_Medical-Debt-Behind-Bars-1.pdf [https://perma.cc/YM65-TNZ3] ("While jails and prisons cannot legally deny care due to a person's inability to pay, charging fees for care deters many people from seeking care because of the costs that they will incur, leading to worsening health outcomes for individuals and prison populations as a whole.").

[62] *Barrentine*, 450 U.S. at 739 (citing 29 U.S.C. § 202(a)).

[63] Anderson, *supra* note 61, at 5.

[64] *Id.* at 7.

[65] *Id.* at 3 ("At first glance, carceral medical fees may seem modest compared to the costs people pay for healthcare outside of prison or jail–some prison copays may be as little as a few dollars per visit. However, in practice, these fees make it nearly impossible for the majority of incarcerated people to afford medical assistance without accumulating debt.").

[66] *Id.* at 7–8.

[67] *Id.*

for incarcerated persons to pay something for treatment they receive, but when they are not being sufficiently paid for their labor, it is unclear where they can get the money to cover medical care. In reality, incarcerated persons often take on significant medical debt while in prison or, even worse, forgo treatment.[68] As such, it seems clear that incarcerated workers need minimum wage protection under the FLSA to meet "the minimum standard of living necessary for health."[69]

Beyond health, the Supreme Court has recognized that the FLSA sets a minimum wage because "[e]mployees receiving less than the statutory minimum are not likely to have sufficient resources to maintain their well-being and efficiency."[70] Despite this, lower courts often overlook that incarcerated workers have expenses related to their well-being that prisons do not meet. For example, incarcerated people must pay to stay in touch with their family and friends. It has been shown that contact with family and friends is vital to incarcerated people's general well-being.[71] Regular contact with family members leads to better parent-child relationships, less misconduct in prison, and reduced recidivism.[72] The price of staying in contact with family and friends varies from prison to prison. Phone calls range from $0.06 to $0.12 per minute, video calls range from $0.11 to $0.25 per minute, and most prisons charge between $0.27 and $0.30 per e-message.[73] These amounts add up over time, especially when incarcerated workers are not being paid adequately for their labor. Without pay, they may be unable to afford to stay in contact with their loved ones, or they may have to choose between calling their family and friends or saving money for when they leave prison.

Money for successful reentry is another determinant of an incarcerated person's general well-being that extends beyond the bare necessities that prison provides. Many incarcerated people come to prison saddled with debt, whether it be fines, court fees, restitution, taxes, or child support.[74] These payments are sometimes, but not always, paused while in prison. However, they resume after release from incarceration.[75] Beyond debt, once incarcerated people leave prison,

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[68] *Id.* at 7.

[69] Barrentine v. Arkansas-Best Freight Sys., Inc., 450 U.S. 728, 739 (1981) (citing 29 U.S.C. § 202(a)).

[70] Brooklyn Sav. Bank v. O'Neil, 324 U.S. 697, 707–08 (1945).

[71] Brief for American Civil Liberties Union et al. as Amici Curiae Supporting Appellants, 28–29, Scott v. Baltimore Cnty., Md., 101 F.4th 336 (4th Cir. 2024) [hereinafter Brief for ACLU].

[72] *Id*.

[73] Nazish Dholakia, *The FCC Is Capping Outrageous Prison Phone Rates, but Companies Are Still Price Gouging*, VERA INST. (Sep. 4, 2024), https://www.vera.org/news/the-fcc-is-capping-outrageous-prison-phone-rates-but-companies-are-still-price-gouging [https://perma.cc/AP8V-8V34].

[74] *Work Release Program*, CALVERT CNTY. MD., https://www.calvertcountymd.gov/311/Work-Release-Program [https://perma.cc/GTV5-ZPS3] (last visited Apr. 21, 2026) (arguing that work release "allows offenders to provide for their families"); *Inmate Work Release Program*, ANNE ARUNDEL CNTY. MD., https://www.aacounty.org/detention-facilities/inmate-programs/inmate-work-release-program [https://perma.cc/23GY-UK3C] (last visited Apr. 21, 2026).

[75] *Restitution*, CRIM. DIV., U.S. DEP'T OF JUST., https://www.justice.gov/criminal/criminal-vns/restitution-

they also immediately face other expenses like rent, furniture, and food. In various studies and surveys, incarcerated workers expressed concerns over these expenses and tried to save for them on their substandard wages.[76] One worker said that with his below minimum-wage pay, if he saved every penny he made for six years, he would only have $2,534.40.[77] Another noted that he tries to save as much as possible, spending money exclusively on phone calls and food, but he has only been able to save $3,100 working two jobs.[78] Incarcerated workers are not able to save every penny they make because they have expenses related to their basic needs.[79]

When incarcerated workers are not paid for their work, they do not have a way to save for these expenses meaningfully. These growing debts and the debts accrued for reentry have been shown to negatively impact the mental health of incarcerated persons and their families, as well as negatively impact their financial well-being and successful reentry.[80] These negative impacts show that paying incarcerated workers a substandard wage goes against the intent of the FLSA, as their wages do not provide "the minimum standard of living necessary for health, efficiency and general well-being."[81] As such, courts' reasoning that incarcerated workers do not fall within the intent of the FLSA because prisons meet their needs as outlined in the FLSA is unconvincing. This is because lower courts overlook this expansive purpose of the FLSA when evaluating its application to incarcerated workers, however beyond this courts also incorrectly conclude that prisons meet incarcerated workers' basic needs.

C. And Yet Their Basic Needs Are Not Met

process#:~:text=Compliance%20with%20the%20Order%20of,the%20Inmate%20Financial%20Responsibility%20Program [https://perma.cc/P7G2-HBJW] (last visited Apr. 21, 2026).

[76] Tina Vasquez & Derek R. Trumbo, Sr., *86 Cents for a Day of Work is a Reality for Most Incarcerated People*, PRISM (Sep. 6, 2023), https://prismreports.org/2023/09/06/86-cents-work-incarcerated-people/ [https://perma.cc/WT7S-GBWP]; Beth Schwartzapfel, *Prison Money Diaries: What People Really Make (and Spend) Behind Bars*, THE MARSHALL PROJ. (Aug. 4, 2022), https://www.themarshallproject.org/2022/08/04/prison-money-diaries-what-people-really-make-and-spend-behind-bars [https://perma.cc/BGX8-3JKJ].

[77] Vasquez & Trumbo, *supra* note 76.

[78] Schwartzapfel, *supra* note 76.

[79] Vasquez & Trumbo, *supra* note 76.

[80] *See generally* Annie Harper et al., *Debt, Incarceration, and Re-entry: A Scoping Review,* 46 AM. J. CRIM. JUST. 25 (2021) (finding that incarcerated people are heavily burdened by debt and that debt had a negative impact on financial well-being, reentry, family, and mental health.); Callie Ginapp et al., *Exploring the Relationship between Debt and Health after Incarceration: A Survey Study*, 100 J. URB. HEALTH 181 (2023) (finding that high financial stress was associated with poor self-reported health and number of debts owed among previously incarcerated individuals); Patrice A. Fulcher, *Emancipate the FLSA: Transform the Harsh Economic Reality of Working Inmates*, 27 J. C.R. & ECON. DEV. 679, 704 (2015) (arguing that paying incarcerated workers could alleviate the financial stress that contributes to recidivism); Benjamin Syroka, *Unshackling the Chain Gang: Circumventing Partisan Arguments to Reduce Recidivism Rates Through Prison Labor,* 50 U. TOL. L. REV. 395 (2019) (arguing that a minimum wage for incarcerated individuals would allow them to save fund for reentry and decrease recidivism).

[81] 29 U.S.C § 202(a).

As demonstrated in Section III.B, lower courts do not examine incarcerated workers' needs within the broader understanding of the FLSA that includes health, well-being, and efficiency, and instead assert that the purpose is to meet basic needs. The courts then posit that prisons meet basic needs. However, even if the aims of the FLSA were as narrowly defined as the circuit courts have described, prisons do not meet even the *basic* needs of incarcerated workers, making this reasoning unpersuasive. Courts have justified excluding incarcerated workers from FLSA protections by portraying them as wholly dependent on the prison system, reinforcing a framework that contrasts them with "free" workers. This dependency framing not only serves as a justification for incarcerated workers' exclusion but also prevents courts from even considering the possibility that incarcerated workers' basic needs are not met. By assuming that prisons provide everything incarcerated workers require, courts overlook well-documented failures in prison healthcare, nutrition, and living conditions.[82] Because this assumption shields prisons from scrutiny, courts dismiss the idea that incarcerated workers could have needs beyond what the prison provides. As a result, the courts' reasoning is not only legally flawed but also factually disconnected from the lived reality of incarcerated workers.

Courts have based their rejection of incarcerated workers' FLSA claims in part on the argument that "prisons provide[] [incarcerated people] with the food, shelter, and clothing that employees would have to purchase in a true employment situation."[83] The courts reject the argument that incarcerated workers have to buy many necessities like clothes and hygienic items on the basis that incarcerated workers choose to buy higher quality options.[84] This complete denial, this Note argues, is wrong and out of touch with reality for two reasons. First, prisons do not provide incarcerated people with the items they need. Second, even when they do, their provisions are often insufficient and inadequate.

Prisons must provide incarcerated persons with "adequate food, clothing, shelter, and medical care."[85] However, this is not what happens in reality.[86] Prisoners are not given access to all the necessary hygienic or medical items they need. For example, over thirty-eight states have no laws requiring the provision of menstrual care products, and prisoners report limited access to adequate menstrual products.[87] Instead, they are forced to buy them from the commissary or, worse,

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[82] *See supra* notes 86, 90, 91, 94, and accompanying text.

[83] Harker v. State Use Indus., 990 F.2d 131, 133 (4th Cir. 1993).

[84] Gamble v. Minn. State-Operated Servs., 32 F.4th 666, 670–71 (8th Cir. 2022).

[85] Farmer v. Brennan, 511 U.S. 825, 832 (1994).

[86] Brianna Borrelli, *The Interplay of Mass Incarceration and Poverty*, 30 GEO. J. ON POVERTY L. & POL'Y 288, 294 (2023).

[87] Kimberly Haven, *Why I'm Fighting for Menstrual Equity in Prison*, ACLU (Nov. 8, 2019), https://www.aclu.org/news/prisoners-rights/why-im-fighting-for-menstrual-equity-in-prison [https://perma.cc/VH73-C675]; Victoria Law & Rachel Kauder Nalebuff, *Prisons Use Menstruation as a Form of Punishment*, TIME (Mar. 29, 2023), https://time.com/6265653/prison-menstruation-punishment/ [https://perma.cc/648M-UDKH].

make unsafe versions.[88] One incarcerated woman reported that she had gotten tired of begging for menstrual products from correctional officers and could not afford the commissary, so she made her own. This then caused an infection that led to her needing a hysterectomy.[89]

Prisoners are also often not provided with things like over-the-counter medication, cough drops, or shower shoes, and instead have to purchase these items at the commissary.[90] Even the most basic items that one would think are required, "like deodorant, shampoo, and fingernail clippers are seen as privileges and must be paid for out of pocket—often at prices that far exceed the regular cost in grocery stores."[91] Being forced to buy things to meet their basic needs at the commissary is terrible enough. Still, it is only made worse because items at the commissary are often significantly more expensive than outside the prison.[92] Because of this, prisoners cannot purchase these items on their substandard or nonexistent prison wages.[93]

Prisons are also notorious for providing inadequate and unsafe food.[94] This has negative health impacts, and incarcerated people are "six times more likely to contract a foodborne illness."[95] In addition to hazardous food, the amount of food prisoners are given is abysmal.[96] In some prisons, incarcerated persons only get breakfast and dinner on the weekends, no lunch.[97] This means that incarcerated people have to turn to the commissary to supplement their diet, but this costs money that they are not earning through their work.[98]

Across the board, incarcerated persons have shown that their needs are not met, and they are unable to change this. Instead, they are burdened with spending money to meet their basic needs. As such, this Note argues that even if prisons are meant to provide for basic needs, they do not. It is not just that some prisons are not meeting true ethical standards of basic care. From available accounts, these deficiencies appear widespread.[99] Because of this, it seems illogical that courts still

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[88] Haven, *supra* note 87.

[89] *Id*.

[90] Brief for ACLU, *supra* note 71, at 28.

[91] Vasquez & Trumbo, *supra* note 76.

[92] *Captive Labor: Exploitation of Incarcerated Workers*, ACLU (June 15, 2022), https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers [https://perma.cc/33VZ-9AQ3].

[93] *Id*.

[94] Jessica Carns & Sam Weaver, *Two Cups of Broth and Rotting Sandwiches: The Reality of Mealtime in Prisons and Jails*, ACLU (Nov. 23, 2022), https://www.aclu.org/news/prisoners-rights/the-reality-of-mealtime-in-prisons-and-jails [https://perma.cc/R2N7-S6LT].

[95] *Id*.

[96] Elizabeth Allen, *Cheap Jail and Prison Food Is Making People Sick. It Doesn't Have To*, VERA INST. (Feb. 27, 2024), https://www.vera.org/news/cheap-jail-and-prison-food-is-making-people-sick-it-doesnt-have-to [https://perma.cc/9N78-T2WN]; Carns & Weaver, *supra* note 94.

[97] Schwartzapfel, *supra* note 76.

[98] *Id*.

[99] Carns & Weaver, *supra* note 94 (citing national surveys and observations from prisons in Alabama, Arizona, California, Maryland, and Texas to show that prisons do not provide adequate

base their decisions on an assumption that prisons meet incarcerated people's basic needs. The reality of prisons today is that they do not provide for incarcerated people's basic needs. Therefore, courts should not rely on this assumption to make the decision that incarcerated workers are not included in the aim of the FLSA.

This Note does not argue that a court should sometimes accept individual one-off prisoners' claims when they have shown that the prison is not providing for their basic needs. This argument is not being made because, as courts have explained, an FLSA claim is not the appropriate place to make a claim against a prison's treatment of incarcerated people. Instead, this Note argues that because prisons across the board are not adequate providers of basic needs, courts should no longer claim that prisons meet the basic needs of incarcerated workers, nor use this as part of their reasoning in excluding incarcerated workers from the intent of the FLSA.

IV. ROOTED IN SLAVERY AND RACISM

The courts' rejection of the idea that incarcerated workers fall under the FLSA's protections is not merely a matter of legal interpretation—it is deeply entrenched in a historical framework that dehumanizes incarcerated people and reinforces their economic dependency. By portraying incarcerated workers as wholly reliant on prisons, courts dismiss the possibility that their needs extend beyond the bare minimum provided for by prisons or that those needs may not be met at all by prisons. This denial is not incidental. It is rooted in the long-standing relationship between prison labor and slavery. This is seen in the way judges describe incarcerated workers and liken them to "that of the slave or servant who, while economically productive, is incorporated into the master's household, rather than using his wages to act as an independent consumer in his own home."[100]

As such, this Note argues that the persistence of the dependency framework in judicial reasoning is a direct consequence of the racial and economic foundations of prison labor. From convict leasing systems to the chain gang to the modern prison-industrial complex, prison labor has functioned as a mechanism to extract value from incarcerated workers while denying them the rights and protections afforded to "free" laborers. Understanding prison labor's origins in slavery reveals how courts continue to justify the exploitation of incarcerated workers by framing them as dependent and undeserving of labor protections, perpetuating a system designed to control and extract labor rather than ensure fairness or well-being.

The prison labor system can be traced to slavery. After the Thirteenth Amendment abolished slavery, there was an increase in the incarceration of Black people in the South. The Thirteenth Amendment has an explicit exception for involuntary servitude as a punishment for crime. FLSA coverage of incarcerated

food); Schwartzapfel, *supra* note 76 (noting the costs incarcerated workers in various states pay for basic supplies—like medicine, soap, toothbrushes, and warm clothes—at the commissary).

[100] Zatz, *supra* note 7, at 932.

workers is not foreclosed by this exception because they are separate claims with different assertions and requirements.[101]

The increase in incarcerated Black people was in direct response to the abolition of slavery and was intended as a substitute.[102] This was accomplished by a legal movement that "criminaliz[ed] black life."[103] As punishment for these crimes, Black people were often sentenced to hard labor and leased to white employers.[104] As such, "[b]y 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites."[105] The new norm was the convict leasing system where private companies could lease prisoners to complete unpaid work. This system "criminaliz[ed] people so that their bodies could be forced to work for profit."[106] Under this regime, slavery was given a new legal justification, and unpaid forced labor became the norm.

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[101] When making FLSA claims, incarcerated workers are not asserting a constitutional right to pay or that no pay violates the Thirteenth Amendment. They are asserting a statutory right under the FLSA to minimum wage. Indeed, courts treat these as two separate claims and inquiries. *See* Watson v. Graves, 909 F.2d 1549 (5th Cir. 1990). While beyond the scope of this Note, the Thirteenth Amendment's exception clause is relevant to the thesis here. Some argue that the Thirteenth Amendment means incarcerated workers do not have a constitutional right to compensation; other scholars and courts reject this claim. *See, e.g.*, *Watson*, 909 F.2d at 1552 (5th Cir. 1990) (finding that "a prisoner who is not sentenced to hard labor retains his thirteenth amendment rights" and separately addressing an FLSA claim while finding no violation of the Thirteenth Amendment because the incarcerated workers voluntarily participated in the work program); Adam Davidson, *Administrative Enslavement*, 124 COLUM. L. REV. 633, 637–39 (2024) (arguing that the Thirteenth Amendment permitted involuntary servitude as a punishment, but today it is not a criminal punishment and instead has become administrative enslavement). For further discussion of prison labor and the Thirteenth Amendment, *see generally* Josh Halladay, *The Thirteenth Amendment, Prison Labor Wages, and Interrupting the Intergenerational Cycle of Subjugation*, 42 SEATTLE U. L. REV. 937 (2019); Ryan S. Marion, *Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts*, 18 WM. & MARY BILL RTS. J. 213 (2009).

[102] DOUGLAS BLACKMON, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II 353 (2008) (saying "[w]ith the southern economy in ruins…the concept of reintroducing the forced labor of blacks was viewed by whites as an inherently practical method of eliminating the cost of building prisons and returning blacks to their appropriate position in society."); DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE 37, 57 (1996) (saying "leasing would become a functional replacement for slavery, a human bridge between the Old South and the New."); Christopher R. Adamson, *Punishment after Slavery: Southern State Penal Systems, 1865–1890,* 30 SOC. PROBS. 556 (1983) (saying "In a real sense, the convict lease system was a functional replacement for slavery."); *see generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).

[103] *See* BLACKMON, *supra* note 102.

[104] *Id.*

[105] *Id.*

[106] Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About "Criminal Justice Reform,"* 128 YALE L.J. 848, 863 (2019).

Eventually, the convict leasing system became less popular because it undermined free labor and profited private companies instead of the State.[107] Specifically, the public was upset that private companies were taking advantage of free labor instead of employing people and contributing to the economy.[108] Instead, the public argued that incarcerated people should be put to work on projects that benefited the State and the public.[109] Although this form of labor may not seem as egregious as leasing out incarcerated workers, its roots are just as racist and just as connected to slavery. For example, "while thousands of state prisoners in Georgia, the Carolinas, and other states were no longer leased to private corporations, they were being forced into an 'improved' method of coercing labor and intimidating African Americans—the chain gang."[110] This supposed improved method led to incarcerated workers having to labor in brutal conditions.[111] And even worse, this work was described as "humanitarian in its motive and . . . designed especially to favor Negro offenders."[112]

Our prison labor system is the direct descendant of this system.[113] For example, North Carolina "leased prisoners to the Caledonia plantation before purchasing the land to operate a penal farm and prison in 1899."[114] Today, the land is a correctional institution, and the incarcerated workers grow the same crops that enslaved people grew on the exact same land.[115] Similar to this evolution, road work crews have evolved from the chain gangs of the past.[116] The North Carolina Department of Corrections has perpetuated this narrative when describing the correctional officers supervising the work. Their press release said "[t]hey're the modern day version of the old chain gang guards, armed men supervising inmates who work outside the prison fences every day. The inmates no longer wear stripes and chains, and they work along the highways not the railroads."[117] Given the

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[107] Brief for ACLU, *supra* note 71 (citing James Gray Pope, *Mass Incarceration, Convict Leasing, and the Thirteenth Amendment: A Revisionist Account*, 94 N.Y.U. L. REV. 1465, 1525–29 (2019)).

[108] *Id*.

[109] BLACKMON, *supra* note 102, at 353 (2008).

[110] *Id.* at 352.

[111] ACLU & THE UNIV. OF CHI. GLOB. HUM. RTS. CLINIC, CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 25 (2022), https://www.aclu.org/report/captive-labor-exploitation-incarcerated-workers [https://perma.cc/TX2P-9FJX].

[112] JEROME DOWD, THE NEGRO IN AMERICAN LIFE VOL. 10 132 (1926).

[113] *See generally* Bryan Stevenson, *Why American Prisons Owe Their Cruelty to Slavery*, N.Y. TIMES (Aug. 14, 2019), https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html [https://perma.cc/PQJ3-UP7N]; Andrea C. Armstrong, *Slavery Revisited in Penal Plantation Labor*, 35 SEATTLE U. L. REV. 869 (2012); Blake S. Rutherford, *Prison Labor in America: History, Race, and State Power*, TENN. J. OF RACE, GENDER, & SOC. JUST. (2024).

[114] Brief for ACLU, *supra* note 71, at 12.

[115] *Id.*

[116] *Id.* at 14.

[117] Press Release, N.C. Dep't of Correction, Road Squad Officers Supervise Inmates Working Along State Highways (May 1, 2001), https://www.doc.state.nc.us/news/2001/releases/cogarnerauman.html.

development of this labor and its justifications, it is evident that the prison labor system is racist and has its origins in slavery.

Specifically, by declining to review prisoners' claims about not being able to maintain a standard of living and meet their basic needs, courts are perpetuating the harms of slavery and racism. Courts are reinforcing a legal system that sees Black people as less than human. As one expert on the prison industry put it, "[w]hen slavery was legal back in the 1800s, it was rooted in this concept that Black people that were enslaved were less than human . . . . When we talk to people who are incarcerated about how they feel are not being protected from slavery by the 13th amendment, the first thing we hear are about feeling less than human—about feeling worthless, about feeling like society doesn't recognize them."[118] When incarcerated people are forced to work and then told that their needs and standard of living do not fall within the intent of the FLSA, they are dehumanized.

CONCLUSION

Courts have begun to reconsider the complete rejection of including incarcerated workers under the Fair Labor Standards Act. However, even as courts reconsider their inclusion generally, courts still reject the idea that incarcerated workers may fall within the purpose of the FLSA to provide a decent wage. Instead, by relying on the dependency framework that falsely assumes prisons meet all the needs of incarcerated workers, courts perpetuate a legal fiction that facilitates exploitative labor.

As this Note has shown, the dependency framework did not originate by accident. It is rooted in slavery and the historic exploitation of incarcerated workers. By clinging to the dependency framework, courts are not only misinterpreting the intent of the FLSA but also upholding and promoting a system that dehumanizes incarcerated workers and denies their lived reality. Beyond dehumanization, courts are saddling incarcerated people with debts, isolating them from their communities, subjecting them to substandard living, and limiting their ability to re-enter successfully.

As such, once courts acknowledge that incarcerated workers fall within the purpose of the FLSA, more workers will be eligible for coverage by the FLSA. By including incarcerated workers under the FLSA, they would be required to receive minimum wage for their labor, along with the other protections of the FLSA. This means incarcerated workers would have money to pay for their basic needs while in prison. Beyond that, they would have more money to use for connecting with family members, to save for reentry, and to avoid taking on debt. The implications

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[118] Edwin Rios, *Movement Grows to Abolish US Prison Labor System that Treats Workers as 'Less than Human*,*'* THE GUARDIAN (Dec. 24, 2022), https://www.theguardian.com/us-news/2022/dec/24/us-prison-labor-workers-slavery-13th-amendment-constitution [https://perma.cc/MQ9Q-3GVA].

of this are likely substantial, as it would greatly increase rehabilitation, decrease recidivism, and improve reentry.[119]

In addition to having real monetary impacts, including incarcerated workers within the purpose of the FLSA would also begin to address one of the ongoing harms of slavery in the United States. Specifically, by acknowledging that incarcerated workers are not solely dependent on prisons and instead may have needs beyond those provided for by prisons, courts would begin to undo the dehumanization of incarcerated workers that traces back to slavery. This, of course, would not solve all of the problems associated with prison labor and slavery, but it would be an important step.

Therefore, as courts reassess the application of the FLSA to incarcerated workers, they must begin to recognize that incarcerated workers fall within its purposes. They are the very workers it intended to protect, those whose exploitation negatively impacts their health, efficiency, and well-being. Specifically, courts must begin to see that incarcerated workers have basic needs that are not being met and that they have financial needs that fall within the intent of the FLSA. A failure 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."[120] As such, it is imperative that courts stop dehumanizing incarcerated workers and acknowledge that they have needs that fall within the purposes of the FLSA. Only then will the courts be able to realize that incarcerated workers are entitled to the guarantees of the FLSA.

[119] See *supra* notes 72 and 80 accompanying discussion.

[120] Lauren-Brooke Eisen, *Covid-19 Highlights the Need for Prison Labor Reform*, THE BRENNAN CTR. (Apr. 17, 2020), https://www.brennancenter.org/our-work/analysis-opinion/covid-19-highlights-need-prison-labor-reform [https://perma.cc/J67M-3JCK].