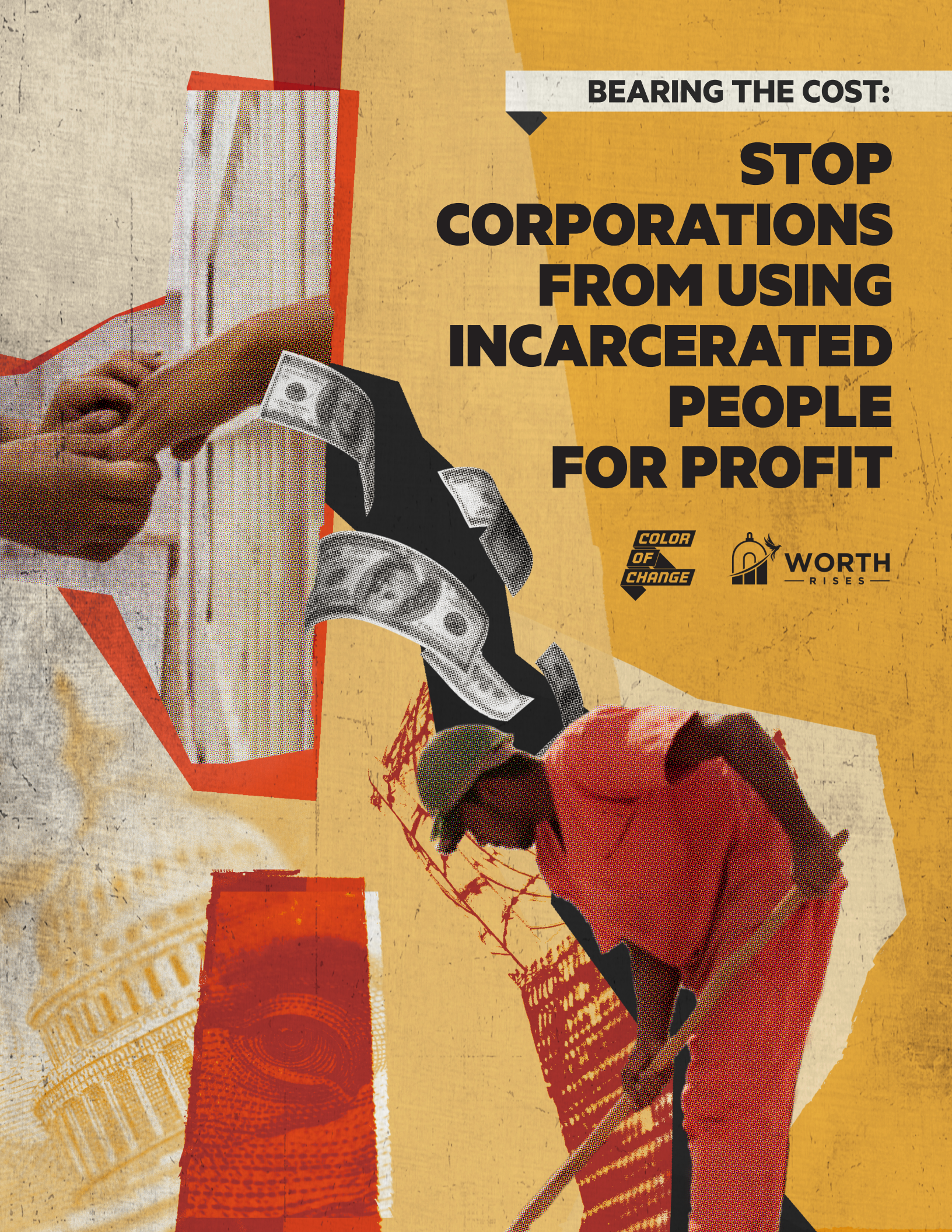


**BEARING THE COST:**

**STOP  
CORPORATIONS  
FROM USING  
INCARCERATED  
PEOPLE  
FOR PROFIT**





# ABOUT THE AUTHORS

**Color Of Change** is the nation's largest online racial justice organization. We help people respond effectively to injustice in the world around us. As a national online force driven by more than 7 million members, we move decision-makers in corporations and governments to create a more human and less hostile world for Black people in America.

**Worth Rises** is the nation's leading organization working to dismantle the prison industry and end the exploitation of those it touches. Eliminating profiteering in the U.S. criminal legal system is a central tenet of both Color Of Change's and Worth Rises' work.

Color Of Change's and Worth Rises' previous work to expose the harm caused by the prison industry and develop solutions to eliminate profiteering in the criminal legal system has targeted many of the sectors outlined in this blueprint.

**Color Of Change** has supported federal phone justice legislation such as the Martha Wright Reed Act, which would increase regulation of the prison telecom industry. Color Of Change has also exposed the predatory bail bond industry, working with both Google and Facebook, the world's most dominant online advertising corporations, to no longer run ads paid for by for-profit bail bond agencies, and has demanded Fairfax Financial Holdings, the largest financial holding company underwriting for-profit bail, to divest from the money bail industry.<sup>1</sup> Color Of Change is also a member of several national coalitions working in support of incarcerated people and their families, such as [13th Forward](#) and [#EndTheException](#), which seek to end forced labor in carceral settings, and several Connecting Families campaigns that aim to make phone calls free for incarcerated people and their loved ones.

**Worth Rises** is the nation's leader in prison phone justice. As the lead organizer of the national Connecting Families network and the convener of and advisor to several campaigns, Worth Rises has successfully passed bills to make communication in prisons and jails free in California, Connecticut, New York City, San Francisco, San Diego, and Miami, among others. Worth Rises has also blocked the merger of major prison telecommunications corporations by raising antitrust concerns to the Federal Communications Commission. Worth Rises is the lead organizer for the [#EndTheException](#) campaign, which seeks to end the exception in the Thirteenth Amendment that still allows slavery to be used as criminal punishment. Worth Rises has also advocated for and implemented policies to increase regulation of prison telecom, reduce commissary prices, eliminate fees for bail payments, prevent the privatization of care packages, and more.





# ACKNOWLEDGMENTS

**Color Of Change and Worth Rises would like to acknowledge **Ana Robinson** who spearheaded the research and analysis for this policy blueprint.**

Special thanks to **Rashad Robinson, Sakira Cook, Jade Ogunnaike, Brandon Tucker, Chad Stanton, Billy Harris, Alyssa Brown, Bonnie Winston, Joe Williams, Lawrence Mason III and Darwin Garcia** from Color Of Change; and to **Bianca Tylek and Daniel Rosen** from Worth Rises who moved this report from vision to finished product. Thanks to **Katie Unger, Annabelle Heckler, Anastasia Nelson, and Ernie Britt** who provided critical editing and support.

Color Of Change and Worth Rises graciously acknowledges everyone whose time, energy, and passion went into the development of this report including our colleagues at **13th Forward, the American Civil Liberties Union, Civil Rights Corps, Essie Justice Group, Federal Public and Community Defenders, the Legal Defense Fund, Prison Policy Initiative, and Vera Institute of Justice.**





# FOREWORD

by **Rashad Robinson**, President, Color Of Change


Each year, a matrix of private corporations generate \$80 billion in revenue by exploiting incarcerated people and their support networks.<sup>2</sup> This exploitation, powered by over 4,000 corporations engaged in a web of public-private partnerships, disproportionately targets and steals resources from Black communities.<sup>3</sup>

As of 2022, police, prosecutors, and judges detained or incarcerated almost two million people across the United States.<sup>4</sup> On a daily basis, corporate entities take advantage of these parents, children, friends, community members, and their support networks on the outside. This exploitation allows corporations to pit their bottom lines against the lives of incarcerated people with little to no government intervention. Predatory practices by corporations impede incarcerated people's ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food.

There are material, everyday consequences to this exploitation. When private corporations charge egregiously high fees, like \$11.25 for a 15-minute phone call, to pad their bottom lines, families are left to bear the burden. On a daily basis, families are faced with impossible decisions: pay rent and purchase groceries and life-saving medications, or make a phone call to speak with their incarcerated loved one this week? Oftentimes these families have already lost a wage earner and can least afford to pay the high costs and fees that federal, state, and local agencies neglect to protect them from.

These costs are overwhelmingly borne by women, especially Black, Latinx, and Indigenous women.<sup>5</sup> Such was the case of Maria Marshall, who, after spending \$120 in just two weeks to maintain contact with both her teenage son and her ex-husband behind bars, was forced to make the difficult choice between the two, as she struggled to pay exorbitant phone rates and could only afford one of their accounts.<sup>6</sup> Maria Marshall's experience is not singular and is the direct result of exploitation by private corporations.





While corporate greed forces Maria to choose between essential contact with her family members, the two largest carceral telecommunications corporations generate over \$1.3 million in revenue a year.<sup>7</sup> **Corporations force one in three families with an incarcerated loved one to go into debt just to be able to talk to and visit their loved ones.**<sup>8</sup>

Two private equity-owned corporations, Securus and ViaPath, dominate the \$1.4 billion prison telecommunications industry.<sup>9</sup> Private corporations like these exploit incarcerated people –especially those that are Black and brown and vastly overrepresented in our prisons and jails– in every sector of the \$80 billion prison industry.

Despite only accounting for 13% of the U.S. population, Black people make up 38% of those incarcerated in the nation's prisons and jails.<sup>10</sup> This is the result of a legal system marred by systemic racism in which Black people are routinely criminalized and unfairly targeted. Racial bias permeates every stage of the criminal legal system, from the overpolicing of Black neighborhoods to prosecutorial decisions, pretrial release options, conviction and sentencing, incarceration, release, and beyond. Because of this racial targeting, an estimated 63% of Black Americans have had family members who have been in jail or prison.<sup>11</sup> Black children are also disproportionately impacted by systemic racism and mass incarceration. The targeted and disproportionate incarceration of Black people has made Black children six times more likely than their white counterparts to have an incarcerated parent.<sup>12</sup>

In the 2020 presidential election and the 2022 midterm elections, Black voters were essential in restoring our government. It is time for the government to do right by Black communities by eliminating private profiteering from our nation's carceral system and reducing the injustices Black communities face.

On January 26, 2021, President Biden tweeted, “No one should be profiteering off of our criminal justice system.” **Two years later, it's time for his administration to act.** The proposed administrative actions outlined in the following Policy Blueprint would weaken the power of prison profiteers, strengthen protections for Black people and families with incarcerated loved ones, and ultimately end carceral profiteering at the federal level. The solutions proposed in this Policy Blueprint will increase regulation and oversight of private corporations operating in carceral settings, spur investigations, research, and reporting to lift the veil of secrecy private corporations operate under, and establish protections for incarcerated people and their loved ones through legislation, rulemaking, and guidance.

The Biden-Harris Administration has the unique opportunity to create real material change in the everyday lives of Black communities, incarcerated people, and their loved ones. Many of these policy changes can be implemented in the final two years of the Biden-Harris Administration's current term through executive action.





On January 5, 2023, after two decades of tireless advocacy, the Martha Wright-Reed Just and Reasonable Communications Act of 2022 was passed and signed by President Biden. The legislation gives the Federal Communications Commission (FCC) the authority to establish maximum service rates in prisons for communication providers, an encouraging first step in protecting Black communities against corporate exploitation. However, the legislation does not apply to other telecommunication services private corporations often use to exploit incarcerated people and fails to address predatory anti-trust and lobbying practices telecommunications corporations engage in to consolidate power. It would be a crucial misstep for the Biden-Harris Administration to not build on this historic effort to protect Black communities, incarcerated people, and their loved ones and do more. To not take strong action to divest from profiteering throughout the criminal legal system in its entirety would be a complete failure.

Outlined in our Policy Blueprint for Ending Carceral Profiteering are seven key areas where the federal government can make significant progress toward eliminating carceral profiteering in the overall federal prison system and the following sectors: healthcare, food and commissary, telecommunications, financial services, electronic monitoring, and labor. An in-depth summary of the seven areas and corresponding demands outlined in the Policy Blueprint can be found in the report's executive summary.

**Ending corporate exploitation throughout the federal carceral system is not only the right thing to do—it's low-hanging fruit** that will reduce harm to Black communities, and improve public safety. It's time for the Biden-Harris Administration to fulfill its campaign promises and actions.

A handwritten signature in black ink, appearing to read 'Rashad Robinson', written in a cursive style.

**Rashad Robinson**  
President, Color Of Change



# FOREWORD

by **Bianca Tylek**, Executive Director, Worth Rises

Prisons and jails are a business. Each year, billions of dollars are made off of the millions of people that cycle in and out of our nation's carceral facilities. It's way past time we end this gross predation.

Over the last 40 years, the carceral system has grown into a vast network of over four thousand corporations working through public-private partnerships to profit from the incarceration of our grandparents, parents, siblings, children, and other loved ones. Federal, state, and local governments have opened the door to their predatory practices in exchange for corporate kickbacks and giveaways, lobbying support, and campaign financing. Together, they fought to expand incarceration into a carceral crisis and collected the windfalls.

Today, we are left with a \$80 billion prison industry that is exploiting the devastation of people and communities impacted by incarceration — especially those that are Black and brown and vastly overrepresented in our prisons and jails — bleeding them dry of their resources and leeching off taxpayers whose dollars support the carceral system. It has expanded its tentacles into almost every corner of the carceral experience, from food to healthcare, telecom to financial services, and labor to community corrections, and it is undermining our public safety and public health. But the \$80-billion-figure captures only the most direct system costs and obscures the rippling, and often intergenerational, financial devastation the industry causes.

President Biden addressed the issue of prison profiteering in blunt terms almost immediately after his inauguration, calling out the damage done to American families by corporations that profit from incarceration. Now, halfway through President Biden's first term, we are calling on his Administration to live up to his commitment to make real change and start protecting Americans from the predatory prison industry. Incarcerated people and their families must no longer be treated as profit centers to enrich shareholders.







The White House has the authority to change the way we do business in the federal prison system, model best practices, provide technical assistance, and work with states and localities to implement similar changes at those levels. This *Policy Blueprint for Ending Carceral Profiteering* calls for changes in seven sectors of the prison industry that remove the profit motive from our carceral system.

We've provided recommendations that put teeth into the White House's original vision and mapped areas where the Administration can take direct action, and also ways to stimulate other actors across the system to do the same. We hope this report provides a blueprint for fulfilling some of the promises of justice that the Biden-Harris Administration made and many expect it to meet.

**Bianca Tylek**

Executive Director, Worth Rises



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# EXECUTIVE SUMMARY





President Biden committed to “stop[ping] corporations from profiteering off of incarceration” and promised to address the “unbearable human costs of systemic racism” during his presidential campaign and presidency.<sup>13</sup> On January 26, 2021, the Biden-Harris Administration took the first step in fulfilling this commitment by issuing an executive order to end the Federal Bureau of Prisons’ (BOP) reliance on private prisons.<sup>14</sup>

However, banning the federal use of private prisons has a limited impact on the widespread use of private prisons nationwide. The roughly 14,000 people incarcerated in private federal prisons represent a small fraction of the nearly 160,000 people currently detained in federal facilities.<sup>15</sup> Also, the guidance does not apply to immigration detention or state and local facilities, which house most of the people incarcerated in the United States.<sup>16</sup>

Additionally, curbing the use of private prisons, while important, does not end the exploitation of incarcerated people and their families. Whether confined in private or government-run facilities, incarcerated individuals are vulnerable to exploitation by every sector of the carceral system. Corporate exploitation throughout the carceral system harms people detained on the inside, families and communities on the outside, taxpayers, and public safety at large.

Due to a legal system marred by systemic racism, in which Black people are routinely criminalized and unfairly targeted, corporate exploitation of incarcerated people disproportionately impacts Black people and communities. Racial bias permeates every stage of the criminal legal system, from the overpolicing of Black neighborhoods to prosecutorial decisions, pretrial release options, conviction and sentencing, incarceration, release, and beyond. Despite only accounting for 13% of the U.S. population, Black people make up 38% of those incarcerated in the nation’s prisons and jails.<sup>17</sup>

**Color Of Change and Worth Rises call on the Biden-Harris Administration to do more to end carceral profiteering, using existing levers we identify in this blueprint.**

Ahead of the 2024 elections, the Biden-Harris Administration has the opportunity to uphold its campaign commitments and to forge a legacy defined by taking action to weaken the power of prison profiteers and strengthen protections for Black people and families with incarcerated loved ones.

**Corporations profit off incarcerated people and their families through particularly egregious practices such as charging high fees, funneling kickbacks to governments, cutting corners, and lobbying to expand incarceration and surveillance. The exploitation powered by corporations impedes incarcerated people’s ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food.**

Further, the low wages that corporations and carceral agencies pay incarcerated workers leave them without the financial means to provide for themselves behind bars, and the burden of paying high fees and exorbitant rates falls on their loved ones.

The largest corporations in each carceral sector, many of which are owned by private equity firms, cement their ability to profit off incarcerated people through mergers and acquisitions. Through consolidation, conglomerates reduce competition, increase market power, vertically integrate, and cross-sell their products and services to churn profits out of incarcerated people and their families. Consolidation also makes it harder to hold exploitative actors accountable.<sup>18</sup> Federal intervention is essential to holding carceral profiteers accountable at the federal level and across the nation. In the absence of federal intervention, states and localities have a patchwork of guidelines regarding private sector participation in the carceral system. Lack of federal action has resulted in a general lack of enforcement, regulations, and protections for incarcerated people and their loved ones. The result is a series of monopolistic actors exploiting vulnerable populations. Companies like ViaPath (formerly Global Tel\*Link, or GTL) were forced to pay back \$121 million for funds they seized from people incarcerated from 2011 to 2019.

The federal government is uniquely situated to advance systemic policy changes at the federal, state, and local levels to eliminate profiteering in the U.S. criminal legal system. The following blueprint begins with policy changes for the entire federal system before providing specific administrative actions for the following carceral sectors: healthcare, food and commissary, telecommunications, financial services, electronic monitoring, and labor. The policy changes outlined in this blueprint should be applied across the federal system. This includes people incarcerated in federal prisons run by the BOP, those detained by the Department of Homeland Security, and those incarcerated in state and local facilities under contracts with the U.S. Marshals Service.

**In every case, where possible, the Administration should provide guidance to state and local carceral agencies to take comparable actions, publish model legislation, and publicly support executive actions and legislation that would require comparable actions. Finally, in all cases, the Administration should ban federal funding to any state or local agency collecting revenue from fee-based products and services in their prisons and jails, and include language in the White House budget to signify the Administration's support for state and local policies to end carceral profiteering in their correctional systems.**



## OVERALL CARCERAL POLICY CHANGES

- End the federal use of private prisons for federal immigration detention facilities. Expand Obama-Biden era guidance to the Department of Justice (DOJ) to ultimately end the use of private prisons to the Department of Homeland Security (DHS) by requiring that DHS not renew contracts with private prison operators to run immigration detention centers when they expire.<sup>20</sup>
- Conduct a comprehensive review of the size and scope of corporate involvement in the federal prison system. Direct the BOP to conduct and publish a comprehensive review of all programs and services for which incarcerated people or their families are charged, including the fees and who collects revenue (an outside corporation and/or the BOP) and provide recommendations as to how to eliminate those charges.
- Issue guidance to the DOJ to prohibit entry into new long-term agreements with private corporations while a review of programs and services is underway.
- Review all contracts with private healthcare, food and commissary, telecommunications, financial services, electronic monitoring, and other service providers, rebidding all contracts originating more than three years ago only after exhausting all public partnership and nonprofit options.
- Prohibit payments in all forms (e.g., kickbacks, commissions, grants, reimbursements, etc.) paid by carceral vendors to all federal agencies. Ban federal funds to any carceral agency at the federal, state, or local level that collects commissions.
- Support new federal regulation and/or legislation limiting the collection, storage, and use of electronic monitoring, digital surveillance, and telecommunications data, including voice recognition and biometrics, mail digitization, and GPS tracking, and banning its sale entirely.
- Require full transparency, including publication on the federal government's official website, of annual data that includes all contracts with private corporations, their itemized cost of goods or services, and the prices they charge incarcerated people and their families.



## HEALTHCARE

- Prohibit the BOP from contracting with for-profit prison healthcare vendors, encouraging them to explore new models such as partnerships with public universities and health systems.<sup>21</sup> Ban federal funds to any carceral agency that contracts with a for-profit prison healthcare vendor.
- Eliminate medical co-pays in federal facilities.
- Direct the BOP to ensure all medications administered in federal detention facilities are provided to incarcerated persons free of charge.
- Direct the BOP to provide hygiene and sanitary products, including but not limited to soap, toilet paper, toothbrushes and toothpaste, menstrual products and lotion, to incarcerated persons free of charge.
- Ensure the standards defining safe, high-quality healthcare in carceral settings are constitutional and in line with the healthcare quality standards published by the Department of Health and Human Services Agency for Healthcare Research and Quality (AHRQ). Standards should be informed by existing guidelines released by standard-setting organizations, such as AHRQ, Centers for Disease Control and Prevention (CDC), the National Commission on Correctional Health Care, and the National Institute of Corrections. Strengthen oversight and investigate private healthcare corporations operating in prisons and jails.



- Direct the BOP to prioritize filling vacant healthcare positions in federal prisons with highly qualified healthcare providers in accordance with healthcare quality standards published by the Agency for Healthcare Research and Quality.
- Direct the BOP to communicate with people with incarcerated loved ones in BOP facilities in the event of a medical emergency and arrange for emergency in-person visits and phone calls.
- Direct the Bureau of Justice Statistics to conduct and publish a comprehensive study on the treatment of incarcerated pregnant people. The study should include, but not be limited to, their access to prenatal medical care and adequate nutrition, noting the incidence of negative health outcomes, such as miscarriages and low fetal birth weights, and the harmful short-term and long-term impacts of current policies and practices. Direct the BOP to report data annually detailing the number of people incarcerated in federal facilities while pregnant and the birth outcomes of their pregnancies. Provide recommendations as to how carceral facilities can ensure the health and well-being of pregnant people in their custody and their children, including medical and nutritional guidance, and limiting practices such as solitary confinement or the use of restraints throughout the course of pregnancy.
- Publish model prison healthcare legislation through the DOJ for states and localities to adopt that prohibits contracting with for-profit healthcare vendors, ensures adequate staffing and licensing of personnel, bans medical co-pays, and provides digitized records for free.<sup>22</sup>
- Condition federal grants to states and municipalities to provide incentives for terminating or declining to sign new contracts with privately operated healthcare corporations.



## FOOD & COMMISSARY

- Issue universal guidance on food services in carceral facilities, including quality, handling, and preparation, based on nationally recognized dietary standards and ensure the BOP's prison food service and commissary vendors conform to the guidance by imposing punitive fines for any contract breaches. Survey incarcerated people regularly about meal satisfaction and commissary choices.
- Issue an executive order prohibiting the BOP from contracting with the same private vendor for food and commissary services.
- Ensure BOP contracts with private carceral food service and commissary corporations require providers to accommodate requests for special diets for incarcerated people when necessary to meet their religious beliefs, as required by the U.S. Constitution.
- Publish model prison food and nutrition legislation through the DOJ for states and localities to adopt that ensures food quality and quantity through procurement and oversight, subsidizes the provision of healthy food, and ensures compliance with state and local health department regulation.
- Direct the BOP to adopt accountability measures to enforce the BOP regulation codified in the First Step Act of 2018 that requires the provision of free menstrual products in federal women's prisons.
- Prohibit commissary markups or commissions and provide commissary products "at cost" in federal facilities. Ban federal funds to any carceral agency that receives commissary commissions or does not provide commissary products "at cost."





## TELECOMMUNICATIONS

- Make federal prison phone calls, video calls, and electronic messages (i.e., emails) free for incarcerated people and their support networks with an increased minimum allowance of 120 minutes per person per day and ensure adequate communications infrastructure.
- Publish model-free communication legislation through the DOJ for states and localities to adopt that codifies free communication in all forms, a ten-to-one ratio of people in custody to voice communication devices, and a minimum guarantee of 120 minutes per person per day for voice calls.
- Strengthen antitrust oversight over the prison telecommunications sector and investigate the anti-competitive impact of integrating and bundling unregulated services.
- Prohibit the BOP from signing contracts or extending contracts with providers that include clauses limiting or eliminating in-person visits. Ban federal funds to any carceral agencies that do not allow in-person visits.
- Make electronic messaging services resemble email services outside carceral facilities to the extent possible (e.g., remove the max word count, allow attachments without cost, etc.).
- Prohibit physical mail from being replaced by scans or copies, and from being scanned or copied prior to delivery.
- Ensure that there are free options on all tablets for all content (e.g., e-books, music, games, etc.) and that prices are commensurate with carceral wages and prices outside of carceral settings.
- Ensure incarcerated people retain access to all saved content (e.g., music, books, files, etc.) on their individual tablets in the event of a change in vendors and after their release.



## FINANCIAL SERVICES

- Eliminate fees associated with money transfers to incarcerated people in federal facilities.<sup>23</sup>
- Eliminate fees on debit release cards issued upon release from a federal facility, including but not limited to fees for account maintenance, making purchases, checking account balances, closing an account, and account inactivity.
- Prohibit the BOP from requiring that recently released incarcerated people receive their remaining money on prepaid debit release cards.
- Direct the Consumer Financial Protection Bureau (CFPB) to use its rulemaking power to eliminate or limit the fees on debit release cards, including but not limited to fees for account maintenance, making purchases, checking account balances, closing an account, and account inactivity.
- Publish model prison financial reform legislation through the DOJ for states and localities to adopt that eliminates fees on money transfers and debit release cards, requires that financial vendors are FDIC-insured, and affords incarcerated people the same protections afforded to people with financial accounts managed by FDIC-insured financial institutions.





## ELECTRONIC MONITORING

- Conduct a comprehensive review of electronic monitoring nationally, including the uses, number of people, fees charged, and its harmful impacts.
- Require state prisons and local jails that receive federal funding to report data annually detailing the number of people on electronic monitors for both pretrial and post-release purposes and the fees charged.
- Prohibit the use of electronic monitoring for pretrial except as bond. Limit the use of electronic monitoring to 90 days post-release. Ban re-incarceration for technical monitoring violations.
- Eliminate all fees associated with the fitting and maintenance of ankle monitors or other electronic monitoring devices, including replacement fees and phone line installation.
- Strengthen oversight and regulation of corporations that provide electronic monitoring services.
- Publish model electronic monitoring legislation through the DOJ for states and localities to adopt that eliminates fees for electronic monitoring, bans incarceration for technical monitoring violations or failure to pay fees, provides time-served credit for time spent on electronic monitors, includes a presumption of freedom of movement for those monitored, and a presumption of truthfulness when malfunctions are reported.

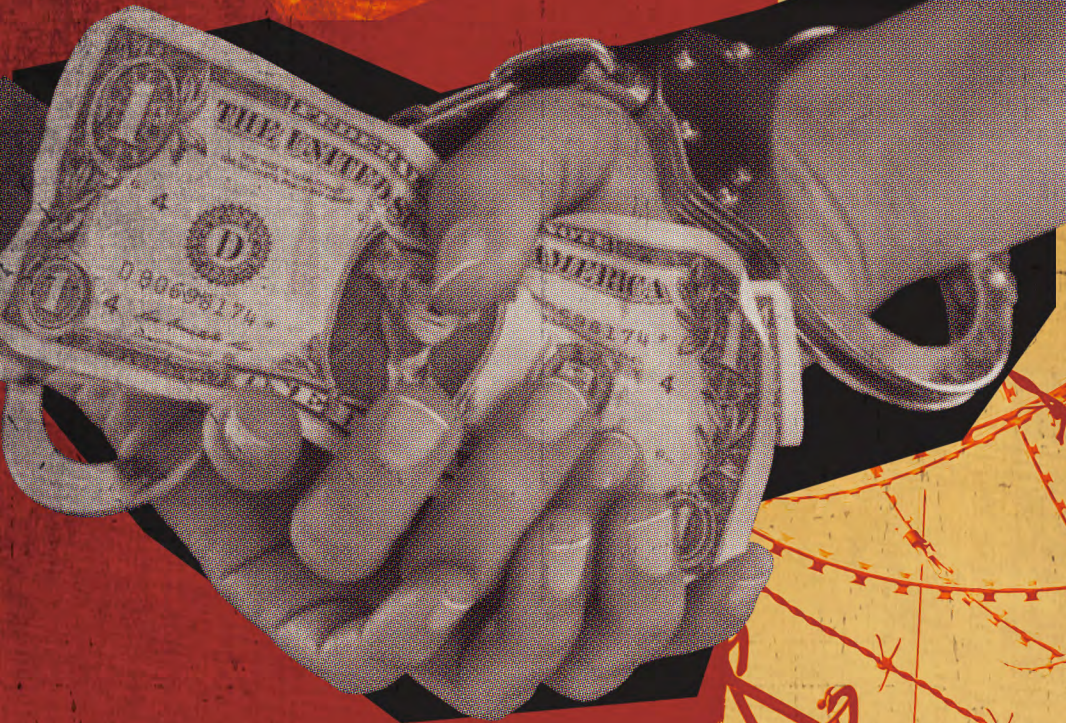


## LABOR

- Publicly support federal resolutions (S.J.RES.21, H.J.RES.53) to abolish the exception in the Thirteenth Amendment that still allows the use of slavery or involuntary servitude as punishment for a crime and federal legislation to extend standard workers' rights to incarcerated workers.
- Conduct a comprehensive evaluation of prison labor nationally, including the size of the market and the impacts of excluding incarcerated workers from basic labor protections such as minimum wage, workers' compensation, health and safety requirements, and the right to form a union. Include an analysis of the short- and long-term impacts on the U.S. economy.
- Ensure that labor in federal facilities is fully and genuinely voluntary and support the elimination of any federal, state, and local laws and policies that impose, or threaten to impose, adverse consequences on incarcerated people who are unable to work, choose education or vocational programs over work, or are unwilling to work.
- Pay incarcerated workers in federal facilities the prevailing wage for their work, which should be no less than minimum wage, ban garnishments for room and board, and offer incarcerated workers the same workplace health and safety protections required outside of carceral settings.
- Publish model prison labor legislation through the DOJ for states and localities to adopt that extends standard workers' rights to incarcerated workers.



# INTRODUCTION





**An array of corporations at every possible level find ways to profit off incarceration, implementing particularly egregious practices such as charging high fees, funneling kickbacks to governments, cutting corners, and lobbying to expand incarceration and surveillance. The exploitation powered by corporations impedes incarcerated people's ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food.**





President Biden committed to “stop[ping] corporations from profiteering off of incarceration” and promised to address the “unbearable human costs of systemic racism” during his presidential campaign and presidency.<sup>24</sup> On January 26, 2021, the Biden-Harris Administration took the first step in fulfilling this commitment by issuing an executive order to end the Federal Bureau of Prisons’ (BOP) reliance on private prisons.<sup>25</sup>

However, banning BOP use of private prisons has a limited impact on the overall use of private prisons nationwide. The roughly 14,000 people incarcerated in private federal prisons represent a small fraction of the nearly 160,000 people currently detained in federal facilities.<sup>26</sup> Additionally, the guidance does not apply to immigration detention or state and local facilities, which house the majority of the people incarcerated in the United States.<sup>27</sup> As of 2022, almost two million people were detained or incarcerated across the United States.<sup>28</sup>

Further, curbing the use of private prisons, while important, does not end the exploitation of people who are incarcerated. Whether confined in private or government-run facilities, incarcerated individuals are vulnerable to exploitation by every sector of the carceral system. Corporate exploitation throughout the system harms people detained on the inside, families and communities on the outside, taxpayers, and public safety at large.

An array of corporations at every possible level find ways to profit off incarceration.

The exploitation powered by corporations impedes incarcerated people’s ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food. Further, the low wages corporations and governments pay incarcerated workers leave them without the financial means to provide for themselves behind bars, and their families with the burden of paying high fees and exorbitant rates. Oftentimes these families have already lost a wage earner and can least afford to pay the high costs and fees that federal, state, and local agencies neglect to protect them from.

Increasingly, the largest corporations in each carceral sector, many of which are owned by private equity firms, are consolidating through mergers and acquisitions to increase their power. Below is just one example of how private equity firms consolidate products and services to control the market and profit from multiple aspects of the carceral system.

The private equity firm H.I.G. Capital owns TKC Holdings, a prison product and services conglomerate, which in turn owns Keefe Group and Trinity Services Group. Keefe Group is the nation’s largest carceral commissary vendor. Keefe Group is also the parent company to ICSolutions, the nation’s third-largest carceral telecommunications provider, and Access Corrections, a financial services vendor. Trinity Services Group is another major carceral commissary vendor and a carceral foodservice vendor. Beyond TKC Holdings, H.I.G. Capital also owns Wellpath, the nation’s largest carceral healthcare provider. H.I.G. purchased all of these portfolio companies in the last decade without any regulatory intervention.<sup>29</sup>

Through this consolidation, conglomerates are strengthening their market power and reducing competition. For example, just two vendors own roughly 79% of the carceral telecom market.<sup>30</sup> Moreover, cross-sector consolidation also allows corporations to vertically integrate their businesses and thus profit off incarcerated people and their families repeatedly from even one transaction, or cross-sell products and services in bundled contracts in a way that makes it harder to hold them accountable for exploitative practices. In the end, carceral facilities have few options when contracting for services and difficulty switching vendors, even when their performance is substandard—or fatal.<sup>31</sup>

**The federal government is uniquely situated to advance systemic policy changes at the federal, state, and local level to eliminate profiteering in the American criminal legal system in its entirety. The Biden-Harris Administration can do this through several existing levers:**

- **Eliminating the use of private profiteers from federal BOP facilities and the federal immigration detention system.**
- **Publicly supporting relevant legislation that eliminates profiteering within the carceral system, expands federal regulation over private vendors operating within the carceral system, and clarifies and establishes rights and protections for incarcerated persons and their loved ones.**
- **Issuing guidance and offering model legislation to states to end profiteering at the state and local level and conditioning grants and funding on their passage and implementation of best practices to avoid profiteering at the state and local level.**
- **Using its investigatory and regulatory powers to hold accountable corporations profiting off incarcerated people and their loved ones.**
- **Improving research and reporting to increase transparency and determine the extent of corporate profiteering in the carceral system.**





The above levers have been used by the federal government in the past to create much needed change. For example, in August 2013, the Obama-Biden Administration released Smart on Crime guidance, which outlined five principles aimed at creating a more “fair, efficient, and effective” criminal legal system.<sup>32</sup> In December 2014, the Obama-Biden Administration also released guidance to federal, state, and local law enforcement agencies prohibiting racial profiling.<sup>33</sup> In 2015, the Administration created grants through the Smart Policing initiative to promote data-driven policing practices.<sup>34</sup> The federal government has also supported criminal legal reform legislation such as the Fair Sentencing Act of 2010 (S. 1789).<sup>35</sup> Additionally, the Obama-Biden Administration leveraged its executive power to conduct investigations and research criminal justice issues. Following the killing of Michael Brown in Ferguson, Missouri, the Obama-Biden Administration created the President’s Task Force on 21st Century Policing to research and identify best practices to help improve police relations.<sup>36</sup> Also under the Obama-Biden Administration, the DOJ entered into 15 consent decrees with law enforcement agencies and launched numerous investigations into police departments.<sup>37</sup> In response to concerns over the use of military-style equipment during these same protests in Ferguson, President Obama leveraged unilateral executive action by releasing Executive Order 13688, which required federal agencies to better track military-style equipment provided to police, increased training for officers, and mandated reviews of “significant incidents” in which the equipment was used.<sup>38</sup>

Federal intervention is essential to eliminate profiteering in the U.S. carceral system and seed new models of carceral services. In the absence of federal intervention, states and localities have a patchwork of guidelines regarding private participation in the carceral system. Lack of federal action has resulted in a general lack of enforcement, regulations, and protections for incarcerated people and their loved ones, as well as vast opportunities for profiteering by corporations.

The use of available levers stalled under the Trump-Pence Administration. It is imperative that the Biden-Harris Administration revive them to fulfill the President’s promise to end corporate profiteering throughout the criminal legal system.<sup>39</sup>

The following memorandum contains a blueprint outlining opportunities to eliminate profiteering from the federal carceral system. The solutions included in this blueprint are gathered from leading policy experts and organizations in criminal justice, informed by research and data, and supported by communities, advocates, and states already implementing these policy changes.

The blueprint begins with overall policy changes for the entire federal system before providing solutions within the following sectors of the carceral system: healthcare, food and commissary, telecommunications, financial services, electronic monitoring, and labor. The proposed policy changes should be applied across the entirety of the federal system including in federal prisons run by the BOP, in state and local facilities under contracts with the U.S. Marshals Service, and in immigration detention facilities.



**In every case, where possible, the Administration should provide guidance to state and local carceral agencies to take comparable actions, publish model legislation, and publicly support executive actions and legislation that would require comparable actions. Finally, in all cases, the Administration should ban federal funding to any state or local agency collecting revenue from fee-based products and services in their prisons and jails, and include language in the White House budget to signify the Administration's support for state and local policies to end carceral profiteering in their correctional systems.**



# PRIVATE PRISONS AND A SYSTEM THAT NEEDS OVERHAUL





The Biden-Harris Administration must stand firm in its commitment to “stop corporations from profiteering off of incarceration” and fulfill its promise to end the federal government’s use of private prisons in all capacities.<sup>40</sup> The federal government is the single largest user of private prisons in the U.S.<sup>41</sup> Roughly 20% of people in the custody of the BOP are held in private prisons.<sup>42</sup> Additionally, 80% of those in federal immigration detention are held in privately run facilities.<sup>43</sup> As a result, federal contracts account for half or more of the revenues for the nation’s largest private prison owners and operators, CoreCivic (56%) and GEO Group (50%).<sup>44</sup>

Per a memo released by former Deputy Attorney General Sally Yates, private prisons continue to fail to maintain an acceptable level of safety, security, and services, and do not substantially save on cost.<sup>45</sup> Private facilities cut corners; they hire fewer employees and pay and train their employees less, which leads to higher employee turnover and compromised security.<sup>46</sup> The Justice Department’s inspector general found that private prisons reported higher rates of assault, more uses of force, and more contraband than facilities run by the BOP.<sup>47</sup>

Since his executive order to end the use of private prisons, President Biden has said he “will take additional action in the future relating to the detention of undocumented immigrants” but has offered no public plan for removing private profiteering from the immigrant detention system.<sup>48</sup> The Biden-Harris Administration should release a public timeline and process for eliminating the use of private prisons for immigrants.

## **Curbing the use of private prisons, while essential, does not end the exploitation of incarcerated people. Whether confined in private or government-run facilities, incarcerated individuals are vulnerable to exploitation by every sector of the carceral system.**

Corporations profit off incarcerated people and their families through particularly egregious practices such as charging high fees, funneling kickbacks to governments, cutting corners, and lobbying to expand incarceration and surveillance. The exploitation powered by corporations impedes incarcerated people’s ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food. Further, the low wages that corporations and carceral agencies pay incarcerated workers leave them without the financial means to provide for themselves behind bars, and the burden of paying high fees and exorbitant rates falls on their loved ones. Corporate exploitation throughout the carceral system harms people detained on the inside, families and communities on the outside, taxpayers, and public safety at large.



## OVERALL CARCERAL POLICY CHANGES

- End the federal use of private prisons for federal immigration detention facilities. Expand Obama-Biden era guidance to the Department of Justice (DOJ) to ultimately end the use of private prisons to the Department of Homeland Security (DHS) by requiring that DHS not renew contracts with private prison operators to run immigration detention centers when they expire.<sup>49</sup>
- Conduct a comprehensive review of the size and scope of corporate involvement in the federal prison system. Direct the BOP to conduct and publish a comprehensive review of all programs and services for which incarcerated people or their families are charged, including the fees and who collects revenue (an outside corporation and/or the BOP) and provide recommendations as to how to eliminate those charges.
- Issue guidance to the DOJ to prohibit entry into new long-term agreements with private corporations while a review of programs and services is underway.
- Review all contracts with private healthcare, food and commissary, telecommunications, financial services, electronic monitoring, and other service providers, rebidding all contracts originating more than three years ago only after exhausting all public partnership and nonprofit options.
- Prohibit payments in all forms (e.g., kickbacks, commissions, grants, reimbursements, etc.) paid by carceral vendors to all federal agencies. Ban federal funds to any carceral agency at the federal, state, or local level that collects commissions.
- Support new federal regulation and/or legislation limiting the collection, storage, and use of electronic monitoring, digital surveillance, and telecommunications data, including voice recognition and biometrics, mail digitization, and GPS tracking, and banning its sale entirely.
- Require full transparency, including publication on the federal government's official website, of annual data that includes all contracts with private corporations, their itemized cost of goods or services, and the prices they charge incarcerated people and their families.



# MEDICAL CARE BEHIND BARS: A PUBLIC HEALTH CONCERN





## **Private for-profit carceral healthcare corporations are often paid a flat fee, and as a result, they are incentivized to cut costs, pitting an incarcerated person's health and well-being against the cost to their bottom line.**

The U.S. spends over \$12 billion annually on carceral healthcare, about 15% of all carceral spending.<sup>50</sup> Spending on healthcare has increased both at the federal and state level since 2000. The BOP increased healthcare spending by 24% between just 2010 and 2014, while state carceral agencies increased healthcare spending by 41% in the 10-year period between 2001 and 2011.<sup>51</sup> Healthcare spending by U.S. Immigration and Customs Enforcement (ICE) has also increased in recent years. In FY 2020, ICE spent \$337.5 million on direct medical, dental, mental, and public health services to people in ICE custody, a 21% increase from the prior year.<sup>52</sup>

The use of private for-profit healthcare corporations to administer medical services to incarcerated people is pervasive at all levels of the U.S. carceral system. More than half of U.S. states and 60% of the nation's largest jails contract with private carceral healthcare corporations, such as Wellpath, YesCare (formerly Corizon), Wexford, and NaphCare, to deliver medical care to incarcerated people.<sup>53</sup> Notably, these corporations provide healthcare in carceral settings only and take advantage of low service expectations by administrators.

The privatized carceral healthcare market is estimated to amount to at least half of the overall \$12.3 billion spent on carceral healthcare.<sup>54</sup>

The BOP provides healthcare services to incarcerated people through a mix of in-house medical providers employed by the BOP or assigned to the BOP from the Public Health Service and contracted medical providers.<sup>55</sup> A Color Of Change analysis of BOP contracts with more than five major carceral healthcare corporations between FY 2016 and FY 2021 found that the BOP spent at least \$1.2 billion on privatized healthcare for incarcerated people—\$255 million during FY 2021 alone. BOP facilities in at least 31 states, in addition to the District of Columbia, contracted with private healthcare providers to provide medical services to incarcerated individuals.<sup>56</sup>

ICE also contracts with private for-profit healthcare corporations to provide medical services to detained people. According to a 2021 report by the Office of the Inspector General, Department of Homeland Security, the majority of those detained in ICE custody were housed in facilities in which private contractors provided medical care.<sup>57</sup>

In FY 2020, ICE Health Services Corps provided direct onsite medical services to approximately 100,000 people while for-profit, private contractors provided medical care to approximately 169,000.<sup>58</sup>

Private for-profit carceral healthcare corporations are often paid a flat fee, and as a result, they are incentivized to cut costs, pitting an incarcerated person's health and well-being against the cost to their bottom line. These corporations engage in practices such as routinely understaffing facilities, hiring unqualified practitioners, ignoring preventative care, refusing pain relief, and denying life-saving treatments and hospitalizations.<sup>59</sup>

These practices have resulted in thousands of lawsuits at the federal, state, and local levels including medical malpractice and wrongful death lawsuits. For Wellpath (formerly Correct Care Solutions) alone, nearly 1,400 federal lawsuits were filed over the course of a decade.<sup>60</sup> A Reuters study of healthcare and death data for 523 of the nation's largest jails found that from 2016 to 2018, jails relying on one of the five leading private jail healthcare contractors had higher death rates than facilities where medical services are publically run.<sup>61</sup> Depending on the contractor, death rates ranged from 18% to 58% higher than those in jails with publicly run healthcare.<sup>62</sup> Overall, as local law enforcement reliance on for-profit, private healthcare providers has increased in the decade ending in 2019, so has the death rate in carceral facilities by 35%.<sup>63</sup> Black people disproportionately die under the care of for-profit, private carceral healthcare corporations. Of the 7,571 incarcerated people who have died between 2008 and 2019, Black people accounted for at least 28%, more than twice their share of the U.S. population.<sup>64</sup>



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Substandard and unregulated medical care in the nation's prisons and jails is a public health crisis, as more than 600,000 people are released each year from federal and state prisons and return to their communities. This statistic is significantly larger once jail populations are taken into account. In one year, an estimated nine million people cycle through local jails.<sup>65</sup> Incarcerated people are more likely than the general population to report having chronic conditions and infectious diseases, such as tuberculosis, hepatitis B or C, high blood pressure, diabetes, or asthma.<sup>66</sup> Failure to provide adequate healthcare in prisons and jails contributes to the spread of infectious diseases and has lasting public health effects on those being released and their communities. Those released from jail, who are disproportionately Black, Latinx, and Indigenous people and people with low income, return to communities where these same medical conditions also flourish at rates well above national averages. The risks of heart disease, diabetes, obesity, high blood pressure, and stroke are much higher in low-income communities and among people of color, as are many forms of respiratory illness such as asthma.<sup>67</sup> More than a year after release, formerly incarcerated people have a mortality rate that is 3.5 times higher than the general public.<sup>68</sup>

Importantly, the disparate impact on women is assumed but poorly understood. Between 1980 and 2020, the number of incarcerated women increased by more than 475%.<sup>69</sup> While all U.S. prisons and jails are required to provide prenatal care under the Eighth Amendment to the Constitution, there exist no federal standards to ensure that pregnant people behind bars actually receive the care they need. In addition to a lack of universal standards, there are also significant informational gaps about pregnancy behind bars. The most recent data from the Bureau of Justice Statistics (BJS) was collected over 18 years ago. A 2004 survey conducted by the BJS found that only 54% of pregnant people in prison reported receiving some form of prenatal care while incarcerated.<sup>70</sup>



According to data gathered by the John Hopkins School of Medicine in 2019, in some states, over 20% of prison pregnancies resulted in miscarriages; in others, preterm birth rates exceeded the national average.<sup>71</sup> As the number of incarcerated women in the U.S. has dramatically increased in recent decades, comprehensive and up-to-date research on female incarceration is critical to understanding the full consequences of mass incarceration and the unique burdens women face behind bars.

COVID-19 outbreaks in prisons and jails bring new urgency to addressing the failures of for-profit healthcare. By now it is well documented that prisons and jails have among the highest rates of COVID infections. The mishandling of COVID in facilities where medical care is provided by private carceral healthcare corporations, such as YesCare, has led to increased community spread, according to a study conducted by the Prison Policy Initiative.<sup>72</sup> At Hudson County Correctional Center in New Jersey, two nurses employed by Wellpath died of COVID within a month of each other.<sup>73</sup> At the time, both nurses were among more than 60 employees and incarcerated persons at the jail infected with the virus.<sup>74</sup> In Michigan, two doctors employed by Wellpath at the Wayne county jail also died of COVID as the virus tore through the facility, infecting 208 employees and at least 83 people who were incarcerated.<sup>75</sup>

Private carceral healthcare corporations are able to provide inadequate care to incarcerated people because many prisons and jails are not subject to any enforceable standards for the healthcare they provide. In the absence of federal oversight, states have developed a patchwork of guidelines for health care providers. For example, 17 states have no rules or oversight mechanisms for local jails; the standards in the 28 states that do are often minimal, and the agencies that write and monitor the standards often lack enforcement power or authority to refer substandard jail healthcare for investigation.<sup>76</sup> In the remaining five states, healthcare in all detention facilities is provided through state corrections agencies.<sup>77</sup>

**In 2019, death rates in big jails reached 8%—the highest in over a decade.<sup>78</sup>**

The impact of this lack of universal regulation and oversight of private carceral healthcare providers was especially apparent throughout the COVID-19 pandemic, during which incarcerated people were subjected to experimental treatments for the virus. On August, 25, 2021, Tim Helder, the Sheriff of Washington County, Arkansas, confirmed that the medical provider for the Washington County Detention Center, Karas Correctional Health, was prescribing the animal dewormer ivermectin to people detained in the jail since at least July of that year.<sup>79</sup>



The U.S. Food and Drug Administration (FDA) has routinely warned against using ivermectin to treat COVID-19 in humans, as recently as August 21, 2021.<sup>80</sup> Specifically, the FDA has stated that taking large doses of the drug is dangerous and can cause serious harm, including overdosing on the drug, nausea, vomiting, diarrhea, hypotension (low blood pressure), allergic reactions (itching and hives), dizziness, ataxia (problems with balance), seizures, coma, and even death.<sup>81</sup> While Dr. Karas has insisted that people incarcerated in the jail were not forced to take ivermectin, accounts given by people incarcerated in the facility undermine that claim. Some have stated that they were unaware they were taking the animal anti-parasitic drug until reading about it in the news and that jail medical staff told those who questioned the pills that they were vitamins or antibiotics.<sup>82</sup> The American Civil Liberties Union of Arkansas has also reported similar complaints in which those incarcerated in the jail claimed that they were told the pills were steroids.<sup>83</sup>

Despite these grave medical abuses and the common misconception that medical care— however abysmal —is provided at no cost, most facilities charge incarcerated people co-pays for physician visits, medication, dental treatments, and other health services. Typically ranging from \$2 to \$5, these fees deter sick people from getting the medical care they need and expose other incarcerated people to health issues.<sup>84</sup> Medical co-pays are extremely cost-prohibitive to incarcerated people, whose wages often range from 0 to 63 cents per hour. An average of 25 hours of work is required for an incarcerated person to afford a medical co-pay in prison. Often these costs are transferred to loved ones on the outside who shoulder the financial burden of ensuring their incarcerated loved ones have access to medical care.<sup>85</sup>

**Medical co-pays are extremely cost-prohibitive to incarcerated people, whose wages often range from 0 to 63 cents per hour. An average of 25 hours of work is required for an incarcerated person to afford a medical co-pay in prison.**

## HEALTHCARE

- Prohibit the BOP from contracting with for-profit prison healthcare vendors, encouraging them to explore new models such as partnerships with public universities and health systems.<sup>86</sup> Ban federal funds to any carceral agency that contracts with a for-profit prison healthcare vendor.
- Eliminate medical co-pays in federal facilities.
- Direct the BOP to ensure all medications administered in federal detention facilities are provided to incarcerated persons free of charge.
- Direct the BOP to provide hygiene and sanitary products, including but not limited to soap, toilet paper, toothbrushes and toothpaste, menstrual products and lotion, to incarcerated persons free of charge.
- Ensure the standards defining safe, high-quality healthcare in carceral settings are constitutional and in line with the healthcare quality standards published by the Department of Health and Human Services Agency for Healthcare Research and Quality (AHRQ). Standards should be informed by existing guidelines released by standard-setting organizations, such as AHRQ, Centers for Disease Control and Prevention (CDC), the National Commission on Correctional Health Care, and the National Institute of Corrections. Strengthen oversight and investigate private healthcare corporations operating in prisons and jails.
- Direct the BOP to prioritize filling vacant healthcare positions in federal prisons with highly qualified healthcare providers in accordance with healthcare quality standards published by the Agency for Healthcare Research and Quality.
- Direct the BOP to communicate with people with incarcerated loved ones in BOP facilities in the event of a medical emergency and arrange for emergency in-person visits and phone calls.



- Direct the Bureau of Justice Statistics to conduct and publish a comprehensive study on the treatment of incarcerated pregnant people. The study should include, but not be limited to, their access to prenatal medical care and adequate nutrition, noting the incidence of negative health outcomes, such as miscarriages and low fetal birth weights, and the harmful short-term and long-term impacts of current policies and practices. Direct the BOP to report data annually detailing the number of people incarcerated in federal facilities while pregnant and the birth outcomes of their pregnancies. Provide recommendations as to how carceral facilities can ensure the health and well-being of pregnant people in their custody and their children, including medical and nutritional guidance, and limiting such practices as solitary confinement or the use of restraints throughout the course of pregnancy.
- Publish model prison healthcare legislation through the DOJ for states and localities to adopt that prohibits contracting with for-profit healthcare vendors, ensures adequate staffing and licensing of personnel, bans medical co-pays, and provides digitized records for free.<sup>87</sup>
- Condition federal grants to states and municipalities to provide incentives for terminating or declining to sign new contracts with privately operated healthcare corporations.





# FOOD BEHIND BARS: "NOT FOR HUMAN CONSUMPTION"



The carceral food and commissary markets are multibillion-dollar industries. The size of the carceral foodservice market is \$4.1 billion, while annual commissary sales amount to \$1.6 billion.<sup>88</sup> The largest provider of jail and prison meals, Aramark, brings in \$1.6 billion in revenue annually from its carceral businesses.<sup>89</sup> The overlap in notable players in both of these sectors perpetuates a cycle in which foodservice corporations, like Aramark, provide inadequate meals lacking nutritional value or meaningful portion sizes to incarcerated people, and are then rewarded with increased revenue via higher demand for commissary food.

Unlike restaurants and other public eating places, few laws regulate food service in carceral facilities and contractors are able to set their own standards for quality and safety. In doing so, private carceral food service corporations can provide food that is spoiled or lacks nutritional value, creating new health risks and exacerbating chronic health conditions like diabetes and hypertension.<sup>90</sup> Commissary foods also fail to provide nutritional choices, usually offering highly processed products loaded with sodium and sugar—which, again, results in and exacerbates health issues among incarcerated populations.<sup>91</sup>

Aramark has a long history of providing substandard food in carceral facilities. The corporation has repeatedly been accused of severe health and safety violations, sanitation infractions, unauthorized food substitutions, undercooked food, and food shortages. In Ohio, for example, in the first seven months of 2014, there were five reports of maggots in Aramark-run prison kitchens.<sup>92</sup>

In 2015, Michigan terminated its contract with Aramark to provide food in its prisons a year early due to multiple violations, including food shortages and unauthorized menu substitutions.<sup>93</sup> And in 2021, Mississippi declined to renew their contract with Aramark due to accusations of the company serving “spoiled, rotten, molded or uncooked” meals to incarcerated people.<sup>94</sup>

Importantly, menu substitutions can have long-lasting health impacts on incarcerated people. For instance, in 2003, Illinois replaced meat with soy-based products, as many other facilities have, subjecting incarcerated people to four times the recommended amount of soy. Over 200 people have since come forward with digestive disorders and other ailments attributed to the soy-heavy diets.<sup>95</sup>

Aramark is not the only private carceral food service provider that has faced complaints for the quality of the food they serve. Trinity Services Group, which contracts with over 400 correctional facilities in 43 states and operates commissary services in carceral facilities, has also faced complaints of unauthorized meal substitutions, delays serving meals, and sanitation infractions, among other penalties.<sup>96</sup> In January 2017, Trinity Services Group was fined \$2 million by Michigan for complaints related to its food services, and after two failed attempts of privatizing food services, the state transitioned back to providing food services in-house.<sup>97</sup> In 2019, incarcerated women at Arizona’s Perryville prison complained of being served food labeled as “not for human consumption.”<sup>98</sup>

**A 2018 survey of incarcerated people conducted by the Incarcerated Workers Organizing Committee found that 66% of respondents reported that in the year prior they had been served food that contained bugs, was moldy or spoiled, or was not intended for humans.**







Substandard food services in carceral facilities is a widespread issue. A 2018 survey of incarcerated people conducted by the Incarcerated Workers Organizing Committee found that 66% of respondents reported that in the year prior they had been served food that contained bugs, was moldy or spoiled, or was not intended for humans.<sup>99</sup> COVID further compromised food quality and quantity in carceral settings. In Ohio, meals were reduced to two a day in state prisons, while Florida and Georgia replaced hot meals with sandwiches and little else for both lunch and dinner.<sup>100</sup>

Alongside food, commissaries also exploit incarcerated people and their support networks by selling low-quality basic necessities like menstrual products, soap, shampoo, and deodorant at significantly marked-up prices. Some prisons and jails outsource their commissary operations to private corporations and often take a commission from sales, while others run the commissary in-house, purchasing specialized products from commissary corporations and marking them up. In either case, both the commissary corporations and government agencies generate revenue.

**Where the same vendor provides food services and commissary products, they are able to profit off incarcerated people and their families twice, as insufficient and unpalatable food pushes incarcerated people to buy more commissary food to supplement inadequate diets.**

Lack of access to menstruation products in carceral facilities is widespread. Only 12 states and the District of Columbia have passed menstrual equity laws that require no-cost menstrual products in state carceral facilities.<sup>101</sup> Limited access forces incarcerated people to beg and bargain with staff for basic hygienic materials, perpetuating a degrading and dehumanizing power imbalance and putting incarcerated people in danger.<sup>102</sup> Lack of access to menstrual products can also have damaging health impacts, such as negative pregnancy outcomes, and higher susceptibility to sexually transmitted infections.<sup>103</sup> The lack of access to feminine hygiene products while incarcerated has had permanent effects. For example, in 2015, after being released from prison, a Maryland woman had to undergo an emergency hysterectomy as a result of using makeshift tampons while incarcerated.<sup>104</sup>

The failure of facilities to provide free, high-quality hygiene products is a public health concern, especially during the COVID-19 pandemic.<sup>105</sup> Due to COVID, commissary access in some facilities has been limited or banned altogether, and plagued by shortages of popular items, often used as a solution to hunger resulting from inadequate meals. The situation has become dire, leading to food strikes in Ohio and Massachusetts, and a riot in Arkansas.<sup>106</sup>





## FOOD & COMMISSARY

- Issue universal guidance on food services in carceral facilities, including quality, handling, and preparation, based on nationally recognized dietary standards and ensure the BOP's prison food service and commissary vendors conform to the guidance by imposing punitive fines for any contract breaches. Survey incarcerated people regularly about meal satisfaction and commissary choices.
- Issue an executive order prohibiting the BOP from contracting with the same private vendor for food and commissary services.
- Ensure BOP contracts with private carceral food service and commissary corporations require providers to accommodate requests for special diets for incarcerated people when necessary to meet their religious beliefs, as required by the U.S. Constitution.
- Publish model prison food and nutrition legislation through the DOJ for states and localities to adopt that ensures food quality and quantity through procurement and oversight, subsidizes the provision of healthy food, and ensures compliance with state and local health department regulation.
- Direct the BOP to adopt accountability measures to enforce the BOP regulation codified in the First Step Act of 2018 that requires the provision of free menstrual products in federal women's prisons.
- Prohibit commissary markups or commissions and provide commissary products "at cost" in federal facilities. Ban federal funds to any carceral agency that receives commissary commissions or does not provide commissary products "at cost."





# **TELECOMMUNICATIONS: INCARCERATION & THE HIGH COST OF STAYING IN TOUCH**



On April 29, 2021, the FCC took an important step in addressing egregiously high rates and fees for carceral phone calls that impede incarcerated people's ability to stay connected with family and support networks by imposing interim caps on interstate calls.<sup>107</sup> The FCC set interstate call rates at 12 cents per minute for prisons and 14 cents per minute for jails.<sup>108</sup> We're encouraged by the Biden-Harris Administration's acknowledgement of the importance contact with support networks and family members holds for incarcerated people. However, the Administration must build on this progress and take additional steps to safeguard the ability to regulate jail and prison telecommunications services.

Contact with family is vital for the health and future success of incarcerated people upon release. Research shows that individuals maintaining family ties during incarceration has measurable impacts on public safety.<sup>109</sup> Those who do are more likely to have and secure opportunities for post-release housing and employment and are less likely to be rearrested. Further, these individuals are less likely to experience depression, alcohol dependence, stress, and borderline personality disorder.<sup>110</sup>

Despite the clear public benefits, families are left with the financial burden of maintaining close ties with their incarcerated loved ones.

**One in three families with an incarcerated loved one goes into debt trying to pay for calls and visits alone.**

**These costs are overwhelmingly borne by women, especially Black, Latinx, and Indigenous women.<sup>111</sup> An estimated 63% of Black Americans have had family members who have been in jail or prison.<sup>112</sup>**

The \$1.4 billion dollar prison telecommunications industry is dominated by two private equity-owned corporations, Securus and ViaPath (formerly Global Tel\*Link, or GTL), which control 79% of the market.<sup>113</sup> ViaPath provides telecommunications services to the BOP directly and to all immigration detention facilities through its subsidiary Talton.<sup>114</sup> ViaPath controls 37% of the prison telecommunications market and generates \$654 million in revenue from its communication services, including telephone, video calling, and electronic messaging.<sup>115</sup>

Mergers and acquisitions have further consolidated the field, giving significant power to the industry giants and the private equity firms that own them.<sup>116</sup> The FCC and DOJ have begun taking steps to increase antitrust oversight.<sup>117</sup> In 2019, after petitioning from advocates including Worth Rises, the FCC and DOJ blocked Securus' attempt to purchase ICSolutions, the carceral telecommunications industry's third largest company, stating that the deal "posed significant competitive concerns and would not be in the public interest."<sup>118</sup>

However, in the face of increased regulation, telecom corporations have begun taking other anti-competitive routes that exploit incarcerated people and their families, including the practice of bundling.<sup>119</sup>

Private telecommunications corporations, like ViaPath, typically offer carceral facilities a portion of the revenue generated from phone calls, or kickbacks, in exchange for monopoly control over a facility's communication services. An estimated 85% of state carceral systems collect kickbacks on prison phone calls—as high as 90% of call rates.<sup>120</sup> The kickbacks are paid by incarcerated people and their families through wildly inflated call rates. Moreover, corporations add additional fees to further pad their profit margins. For example, these corporations require incarcerated people and their loved ones to maintain prepaid accounts to pay for calls and charge flat fees to deposit funds. Deposits are also often capped, forcing more transactions, thus more fees. These fees can increase the cost of staying in touch with loved ones by 40%.<sup>121</sup>

These corporations also use voice recognition and recording software to surveil incarcerated people and their support networks. Historically, they have even been accused of illegally buying and selling GPS tracking data for people who received calls from prison facilities and recording attorney-client calls.<sup>122</sup> In August 2018, ViaPath was accused of recording thousands of privileged calls between incarcerated people held in Orange County, California, jails and their attorneys. The recordings continued through November 2020, even after the company claimed it was no longer engaging in the practice. ViaPath has also been accused of recording confidential calls in other locations where it operates, including Pinellas and Charlotte counties in Florida.<sup>123</sup>

Telecommunications conglomerates have even actively fought advocacy efforts to legislatively lower call rates and regulate the industry at large.<sup>124</sup>



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Nevertheless, momentum for phone justice to connect families has grown in the last decade.<sup>125</sup> The importance of accessible, affordable, and reliable communication between incarcerated people and their loved ones has also received increased attention during the COVID pandemic, which halted in-person visits around the country and exacerbated the economic burden facing incarcerated people and their support networks.<sup>126</sup> In 2021, Connecticut became the first state to provide incarcerated people and their loved ones entirely free communication from prisons, including phone and video calls and electronic messages. The new policy went into effect July 2022, and call volume has more than doubled since.<sup>127</sup> And in October 2022, Governor Newsom signed SB 1008, making California the second state in the nation to make prison calls free for incarcerated people and their loved ones. Numerous localities have also moved to make jail phone calls free, including New York City (2018), San Francisco (2019), San Diego (2021), and Miami (2022).<sup>128</sup> Further, both the federal government and numerous states and localities provided incarcerated people varying amounts of free phone and video calls during the pandemic.<sup>129</sup> In fact, as part of the CARES Act, Congress made calls entirely free across the BOP and increased the monthly allowance of call minutes from 300 to 500 per person.<sup>130</sup> Making calls free permanently across the BOP will send a strong signal to states and localities that this change is not a temporary solution but a long-term policy best practice.

Congress has also shown increased interest in expanding federal protection over the right of incarcerated people to remain in contact with their support networks. The most recent phone justice bills introduced in Congress include the Martha Wright Prison Phone Justice Act (H.R.2489) and the (related) Martha Wright-Reed Just

and Reasonable Communications Act of 2022 (S.1541), which clarify the FCC's legal authority to mandate rate caps for phone calls from carceral facilities. These bills have been introduced in multiple congresses and represent a decades-long campaign to achieve phone justice for incarcerated people.<sup>131</sup> On January 5, 2023, after two decades of tireless advocacy, the Martha Wright-Reed Just and Reasonable Communications Act of 2022 was passed and signed by President Biden.

However, the rise of other communication methods in the telecommunications industry, such as video calling, electronic messaging, and the scanning of mail—which are typically subject to no regulation at all—has expanded the opportunities through which corporations can profit off communication with incarcerated people. Federal intervention on behalf of incarcerated people and their families is essential to ensure incarcerated people are able to maintain emotional connections with loved ones on the outside.

Carceral telecommunications corporations have required, incentivized, or lobbied carceral administrators to end in-person visits to drive the use of their products and services, specifically video calling. In-person visits and video calls are not the same. More expensive than phone calls on average, video calls run as high as a dollar per minute.<sup>132</sup> Video calls are often prepaid for a set length of time—usually in 10-, 20-, or 30-minute intervals—and refunds are rarely issued when a call is interrupted or prematurely terminated, both common occurrences.<sup>133</sup> Research on in-person visitation suggests a strong relationship between visitation and positive post-release outcomes.

A 2008 study found that the chances of recidivism were 31% lower within the first two years of release for incarcerated people in a state prison for at least 12 months who received visits from a significant other, relative, or friend.<sup>134</sup> A Minnesota Department of Corrections study found that even a single visit reduced recidivism by 13% for new felonies and 25% for technical violations.<sup>135</sup> When compared to in-person visits, video calls hinder the natural flow of conversation, slow the process of establishing trust, impede intimacy and the social connection of in-person interactions, shorten conversations, and restrain interactivity and responsiveness.<sup>136</sup>

Private telecommunications providers are also increasingly providing specialized tablets—promoted as educational devices—that incarcerated people can use for communication as well as entertainment, like movies, music, and games. In many facilities, these corporations charge incarcerated people to purchase tablets. For example, in Pennsylvania, ViaPath charges people \$147 per tablet.<sup>137</sup> In other facilities, tablets are provided to incarcerated people for free, but they are then either charged a subscription fee to use it or required to purchase each product or service used, or both. Tablets are often used to eliminate physical libraries, forcing incarcerated people to pay for previously free materials, including educational content that has been shown to reduce recidivism.<sup>138</sup>





In recent years, telecommunications corporations have also begun to eliminate postal mail by using misinformation and fearmongering about fentanyl and contraband to get carceral administrators to adopt policies of photocopying mail and withholding the originals from recipients. In some facilities, the photocopies are physically delivered; in others, digital versions of the scans are provided through shared kiosks in common spaces where others can see or through costly individual tablets. Delays in mail delivery due to the scanning process can also contribute to missed legal deadlines.<sup>139</sup>

The corporation that pioneered this predatory trend is Smart Communications. Two federal prisons, USP Canaan (Pennsylvania) and FCI Beckley (West Virginia), piloted the Smart Communications MailGuard program from March 2020 to June 2021. In the accompanying proposal, Smart Communications marketed various services that heighten the potential to surveil incarcerated people and their loved ones, including a review process that allows authorized people, through a database called “Smart Tracker,” to access digitized scanned copies of mail as well as information on the senders. The database would allow carceral agencies to gain secret intelligence into every public sender, including email addresses, home address, IP address, GPS location tracking, and the devices used to send the mail. Smart Communications says this data can be useful to investigators who have the option to receive “real time text or email alerts and be instantly sent a copy when an inmate receives mail.”<sup>140</sup>

In addition to violating people’s privacy or frustrating their legal defense, mail elimination also impedes connections between incarcerated people and their loved ones. Complaints about scanned mail have included missing pages, misdirected letters, weeks-long delays, and copy quality so low that mail is at times illegible. Photographs have been shrunk to fit four to a page and colored photographs have arrived in black and white. These practices undermine the emotional value of mail sent by loved ones to their incarcerated family members and disproportionately affect Black families and children in particular. Black children are six times more likely than their white counterparts to have an incarcerated parent.<sup>141</sup> An estimated one in four Black students has a parent that is or has been incarcerated.<sup>142</sup> The growing practice of eliminating mail distances Black people behind bars from their children on the outside, robbing incarcerated parents of their ability to receive mail of sentimental value, such as school pictures, a crayon drawing, or even a birthday card. Some incarcerated people and their families have been deterred from sending mail entirely, citing concerns about personal photographs or correspondence being stored in a database or converted to searchable text.

Scanning mail also has a disproportionate impact on survivors of sexual abuse, people with mental illness, LGBTQ people, and other at-risk communities. Survivors of sexual abuse rely on outside communication from advocates and loved ones. They also rely on confidential communications, which are severely undermined by mail-scanning by third-party vendors. For example, the MailGuard process directly violates the Prison Rape Elimination Act standards that require survivors to receive their mail “in as confidential a manner as possible.”<sup>143</sup>



People with disabilities and people with limited resources are also negatively affected—incarcerated people are three times more likely than people in the community to have visual impairment, making kiosk screens and printed scans less accessible than physical material.<sup>144</sup> For those without the resources to purchase a tablet where they are offered at a price, the only option for reading their mail is often prison kiosks in public spaces with limited accessible hours, offering little privacy.

Finally, telecommunications corporations have begun to acquire other prison services providers in recent years, namely financial services providers, allowing them to manage money transfers in similar predatory ways. This expansion also allows them to double-dip, as they profit off not just the provision of communication and tablet services, but also the deposits required to make communication and tablet purchases.

**The federal government must intervene to protect the right of incarcerated people to maintain contact with their loved ones.**



## **TELECOMMUNICATIONS**

- Make federal prison phone calls, video calls, and electronic messages (i.e., emails) free for incarcerated people and their support networks with an increased minimum allowance of 120 minutes per person per day and ensure adequate communications infrastructure.
- Publish model-free communication legislation through the DOJ for states and localities to adopt that codifies free communication in all forms, a ten-to-one ratio of people in custody to voice communication devices, and a minimum guarantee of 120 minutes per person per day for voice calls.
- Strengthen antitrust oversight over the prison telecommunications sector and investigate the anti-competitive impact of integrating and bundling unregulated services.
- Prohibit the BOP from signing contracts or extending contracts with providers that include clauses limiting or eliminating in-person visits. Ban federal funds to any carceral agencies that do not allow in-person visits.
- Make electronic messaging services resemble email services outside carceral facilities to the extent possible (e.g., remove the max word count, allow attachments without cost, etc.).
- Prohibit physical mail from being replaced by scans or copies, and from being scanned or copied prior to delivery.
- Ensure that there are free options on all tablets for all content (e.g., e-books, music, games, etc.) and that prices are commensurate with carceral wages and prices outside of carceral settings.
- Ensure incarcerated people retain access to all saved content (e.g., music, books, files, etc.) on their individual tablets in the event of a change in vendors and after their release.





# **FINANCIAL SERVICES: THE PRICEY REALITY OF BASIC MONEY TRANSACTIONS**



## **Family members are forced to choose between sending money to their loved ones behind bars to stay in contact, afford basic necessities and hygiene products, or pay for medical treatment, and paying their own bills.**

Carceral agencies contract with private financial services corporations to provide money transfer services and debit release cards to incarcerated people. The small number of corporations in the field allows them to set predatory rates, an issue further compounded by their mergers with predatory telecommunications corporations, including Securus' acquisition of JPay, and ViaPath's acquisition of TouchPay.<sup>145</sup>

Money transfer services charge families high fees to deposit money in an incarcerated loved one's account. The money deposited is often used by incarcerated people to maintain contact with support networks, buy basic necessities and hygiene products, or access medical care. Fees can range from 5% to 37% nationwide for online transfers.<sup>146</sup> In 2015, the carceral money transfer market was estimated to be \$172 million.<sup>147</sup> JPay, acquired by Securus in 2015, is the largest player in the carceral financial services sector with a stranglehold over the market at the federal, state and local levels.<sup>148</sup> In 2014, JPay controlled 71% of the market share across state agencies. In 2018, JPay's financial services business generated \$143.7 million.<sup>149</sup>

Charging families money transfer fees adds insult to injury. On top of many families having lost a wage earner and now being charged egregious rates for basic products and services, they are charged exorbitant fees to simply deposit the money to pay for them. The end result is that family members are forced to choose between sending money to their loved ones behind bars to stay in contact, afford basic necessities and hygiene products, or pay for medical treatment, and paying their own bills. Some family members shoulder the burden by working extra jobs or going into debt.<sup>150</sup>

Debit release cards, which are given to people upon release with their remaining funds, are often accompanied by significant fees for the card's use and maintenance. Holders of the cards are often charged fees on purchases, on declined transactions, for weekly service, for balance inquiry, and even to close their accounts.<sup>151</sup> People are not given a choice about how to receive their remaining balance and thus have fee-laden cards forced upon them. Numerous lawsuits have been filed against the financial institutions that offer and manage these cards. Most recently, in October 2021, the CFPB fined JPay \$6 million for unfair, deceptive, and abusive practices related to its debit release cards.<sup>152</sup> The use of debit release cards is widespread across federal, state, and local carceral agencies.<sup>153</sup>

## FINANCIAL SERVICES

- Eliminate fees associated with money transfers to incarcerated people in federal facilities.<sup>154</sup>
- Eliminate fees on debit release cards issued upon release from a federal facility, including but not limited to fees for account maintenance, making purchases, checking account balances, closing an account, and account inactivity.
- Prohibit the BOP from requiring that recently released incarcerated people receive their remaining money on prepaid debit release cards.
- Direct the Consumer Financial Protection Bureau (CFPB) to use its rulemaking power to eliminate or limit the fees on debit release cards, including but not limited to fees for account maintenance, making purchases, checking account balances, closing an account, and account inactivity.
- Publish model prison financial reform legislation through the DOJ for states and localities to adopt that eliminates fees on money transfers and debit release cards, requires that financial vendors are FDIC-insured, and affords incarcerated people the same protections afforded to people with financial accounts managed by FDIC-insured financial institutions.



# ELECTRONIC MONITORING: EXPANSION OF THE SURVEILLANCE STATE





Electronic monitoring is a highly intrusive form of control and coercion that sets people up for failure and was once described as creating an “open-air digital prison.”<sup>155</sup> Further, when used post-release for parole or probation, it actually impedes an individual’s reintegration into the community.<sup>156</sup>

Electronic monitoring restricts the movement of people unnecessarily, limiting their ability to contribute to their household and community, often restricting people from visiting an emergency room or even taking out the trash. In most jurisdictions, people monitored cannot take their children to school, attend religious services, go grocery shopping, or visit relatives without prior approval.<sup>157</sup> Ankle monitors limit wearers from receiving routine medical tests like MRIs and CAT scans. Given the many limitations it imposes, electronic monitoring makes it difficult to hold a job, which prevents productive habits and reentry into society. In 2011, the National Institute of Justice surveyed 5,000 people on electronic monitors and found that 22% said they had been fired or asked to leave a job because of the device.<sup>158</sup>

Additionally, with the fall of *Roe v. Wade*, electronic monitoring presents a unique burden for people seeking reproductive healthcare services. For pregnant people on parole, on probation, or otherwise under community supervision, accessing abortion services without government detection, a necessity in states that have passed restrictive abortion laws, is impossible. GPS-equipped monitors often track one’s location 24/7. Some are even equipped with two-way audio that allows supervising agents to listen in on conversations. Those under community supervision are also often subject to warrantless searches of cell phones, social media, and web browsing history, giving government officials access to communications with doctors, pharmacists, and others pertaining to reproductive health decisions. Freedom of movement under electronic monitoring is also severely limited; those under community supervision are often not permitted to leave their homes or change their schedules without prior permission.

**Electronic monitoring restricts the movement of people unnecessarily, limiting their ability to contribute to their household and community, often restricting people from visiting an emergency room or even taking out the trash. In most jurisdictions, people monitored cannot take their children to school, attend religious services, go grocery shopping, or visit relatives without prior approval.**





As a result, trips to the doctor or pharmacy rely on approval from a government official, which either never comes or fails to meet time constraints dictated by restrictive anti-abortion laws due to bureaucratic red tape or personal beliefs. Those on probation or parole are also often prohibited from leaving the state, and thus cannot leave one state where abortion is banned for another one where they may legally get abortion care.<sup>159</sup>

Pitched as an alternative to incarceration, electronic monitoring has undergone a massive expansion over the past two decades. It is being heavily marketed by the corporations that provide electronic monitoring products and services as less harmful, cheaper, and more effective than incarceration.<sup>160</sup> In localities that have eliminated cash bail as a matter of economic justice and criminal legal reform, ankle monitors have become a de facto alternative. For example, San Francisco's use of electronic monitoring tripled when cash bail was abolished.<sup>161</sup> However, while electronic monitoring is often latched on to decarceral policies like the abolition of cash bail, it is adopted frequently without them. Consequently, rather than reducing the number of people in prison or jail, the expanded use of electronic monitoring has simply increased the number of people under correctional supervision. And the COVID pandemic has accelerated its use even further.<sup>162</sup>

The BOP, all 50 states, and hundreds of local jurisdictions use electronic monitoring. According to a Pew Charitable Trust survey, more than 125,000 people were recorded as being on monitoring devices on a single day in 2015, representing a 140% increase from 10 years prior.<sup>163</sup> The number was likely a significant undercount for various reasons, including the exclusion of those monitored for immigration violations, at least another 38,000 individuals.<sup>164</sup> Those on electronic monitors are also disproportionately Black and brown. In Cook County, Illinois, for instance, Black people make up 24% of the population but 67% of those on monitors.<sup>165</sup>

In response to the CARES Act and guidance provided by the Attorney General, the BOP transferred roughly 52,000 people from custody to home confinement, most of whom were also placed on electronic monitoring as a condition of release. As of February 2023, the BOP has 5,631 people on home confinement.<sup>166</sup>

Electronic monitoring also has many rudimentary technological problems. People on monitors are often forced to sit next to an outlet for hours each day to charge their devices since a dead device could result in an arrest warrant and incarceration. The technology also fails constantly—signaling an alarm for unacceptable movement when people are at home in bed in the middle of the night—subjecting people on monitors to erroneous violations, torment and trauma, and restless nights.

Correctional agencies and their corporate partners also charge people exorbitant fees for electronic monitoring. A 2014 survey by NPR found that every jurisdiction but Hawaii and the District of Columbia charged end-users fees ranging from \$5 to \$40 a day, setup fees of up to \$300, and replacement costs for lost or damaged devices of up to \$1,000.<sup>167</sup> Those costs create a serious burden, especially for those who are recently released and trying to rebuild their lives.

According to a 2018 Media Justice report, private corporations like BI, Attenti, Sentinel, and Satellite Tracking of People were earning hundreds of millions a year from electronic monitoring prior to COVID, and the numbers have only mushroomed since.<sup>168</sup> Importantly, the largest electronic monitoring corporations are subsidiaries of private prison corporations, which are pivoting in the face of their fall out of favor with the public. GEO Group owns BI, which has an exclusive contract with ICE for the electronic monitoring of undocumented people, and G4S recently acquired Attenti.<sup>169</sup> But private prison operators are not the only ones in the business. Satellite Tracking of People is a subsidiary of carceral telecommunications provider Securus.

As a policy matter, the Biden-Harris Administration should work toward ending electronic monitoring in the federal system and encourage its elimination in states and localities. At the same time, recognizing that some jurisdictions may continue to use electronic monitoring, the White House should advocate strongly for reforms to the way monitoring is conducted and reduce the profit motives that incentivize electronic monitoring expansion.



## **ELECTRONIC MONITORING**

- Conduct a comprehensive review of electronic monitoring nationally, including the uses, number of people, fees charged, and its harmful impacts.
- Require state prisons and local jails that receive federal funding to report data annually detailing the number of people on electronic monitors for both pretrial and post-release purposes and the fees charged.
- Prohibit the use of electronic monitoring for pretrial except as bond. Limit the use of electronic monitoring to 90 days post-release. Ban re-incarceration for technical monitoring violations.
- Eliminate all fees associated with the fitting and maintenance of ankle monitors or other electronic monitoring devices, including replacement fees and phone line installation.
- Strengthen oversight and regulation of corporations that provide electronic monitoring services.
- Publish model electronic monitoring legislation through the DOJ for states and localities to adopt that eliminates fees for electronic monitoring, bans incarceration for technical monitoring violations or failure to pay fees, provides time-served credit for time spent on electronic monitors, includes a presumption of freedom of movement for those monitored, and a presumption of truthfulness when malfunctions are reported.





# INVOLUNTARY SERVITUDE: LABOR AS PUNISHMENT



The egregious costs outlined throughout this policy blueprint impede incarcerated people's ability to remain in contact with their loved ones, purchase basic hygiene products and necessities, and access medical care and healthy, high-quality food. Further, the low wages corporations and governments pay incarcerated workers leave them without the financial means to provide for themselves behind bars, and the burden of paying high fees and exorbitant rates on their loved ones.

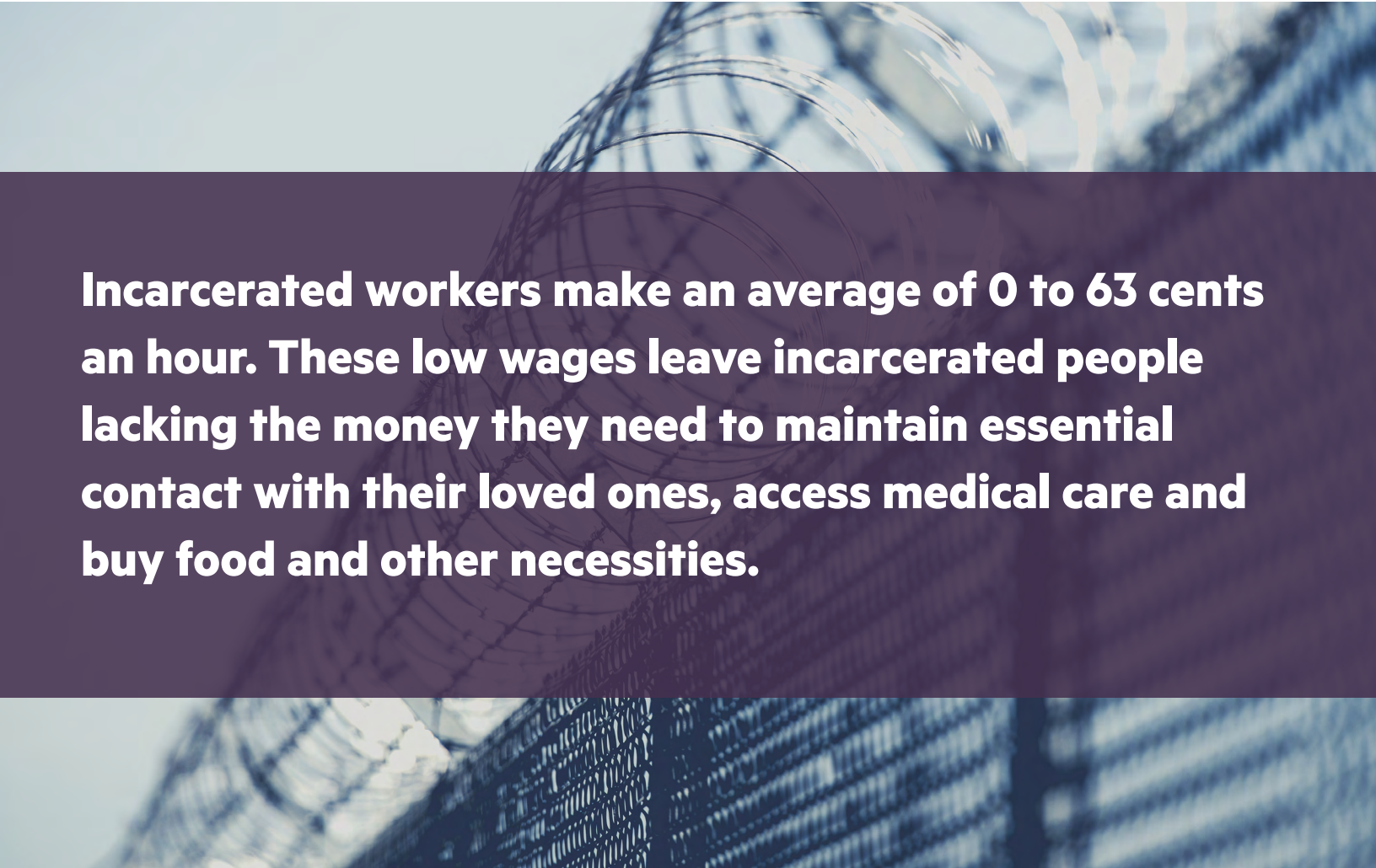
Nationwide, there were approximately 870,000 incarcerated workers in 2014 but government employment statistics exclude incarcerated workers, making it difficult to truly understand the magnitude of the prison labor industry.<sup>170</sup>

Incarcerated people are forced to work for little to no pay under the threat of additional punitive measures, such as the loss of family visits, solitary confinement, and denial of basic privileges like care packages and recreation time.<sup>171</sup> Refusal to work can affect good time credits and parole hearing decisions. Incarcerated workers make an average of 0 to 63 cents an hour. These low wages leave incarcerated people lacking the money they need to maintain essential contact with their loved ones, access medical care, and buy food and other necessities.<sup>172</sup>

Workers' protection statutes, such as the Fair Labor Standards Act (FLSA) or the National Labor Relations Act, were enacted to protect all workers in the U.S. from unfair employment practices.

The FLSA mandates basic labor protections, including the right to minimum wage and overtime pay and the right to collectively bargain. However, courts have routinely ruled against incarcerated workers bringing suits against facilities and employers under these statutes, rationalizing that the relationship between the two is not purely economic, thus the de facto exclusion of incarcerated workers from labor protections is justified.<sup>173</sup> In 1993, a federal appeals court ruled that it is the responsibility of Congress to clarify whether the FLSA applies to incarcerated workers rather than that of the courts.<sup>174</sup> Thus far, Congress has failed to enact legislation that would protect incarcerated workers under the FLSA.

The lack of workplace protections for incarcerated people can have dangerous consequences. For example, incarcerated workers continued to labor for meager to no wages throughout the COVID pandemic in circumstances that put their lives at risk.<sup>175</sup> Incarcerated workers have been forced to work under threat of disciplinary action, even after testing positive or having been exposed to COVID. Workers have been unable to socially distance on assembly lines, in accordance with widespread medical recommendations. In some places like Texas, incarcerated workers were forced to move the bodies of individuals who died from COVID.<sup>176</sup> Incarcerated workers have also been enlisted across the country to produce personal protective equipment and hand sanitizer for the public, even as carceral settings increasingly became hotspots for COVID-related outbreaks, illnesses, and death, and they were denied the same equipment.<sup>177</sup> In some states, incarcerated people were banned from using the very hand sanitizer they were employed to produce.<sup>178</sup>



**Incarcerated workers make an average of 0 to 63 cents an hour. These low wages leave incarcerated people lacking the money they need to maintain essential contact with their loved ones, access medical care and buy food and other necessities.**

Beyond its own exploitation of prison labor, the DOJ advertises access to prison labor to private corporations by highlighting the potential cost savings while downplaying its exploitative nature. In its own marketing brochure to the private sector, the DOJ touted its “cost-effective labor pool” and a workforce with “native English and Spanish language skills.”<sup>179</sup> By marketing incarcerated workers as “cost-effective,” the federal government directly facilitates the exploitation of incarcerated workers by private companies.

The Biden-Harris Administration must take quick and decisive action to eliminate the exploitation of incarcerated workers by ending forced labor practices and providing incarcerated laborers workplace protections. However, efforts should not impede on the rights of those who seek consensual employment—in safe conditions, for a fair wage—to be able to work if they choose to.



## LABOR


- Publicly support federal resolutions (S.J.RES.21, H.J.RES.53) to abolish the exception in the Thirteenth Amendment that still allows the use of slavery or involuntary servitude as punishment for a crime and federal legislation to extend standard workers' rights to incarcerated workers.
- Conduct a comprehensive evaluation of prison labor nationally, including the size of the market and the impacts of excluding incarcerated workers from basic labor protections such as minimum wage, workers' compensation, health and safety requirements, and the right to form a union. Include an analysis of the short- and long-term impacts on the U.S. economy.
- Ensure that labor in federal facilities is fully and genuinely voluntary and support the elimination of any federal, state, and local laws and policies that impose, or threaten to impose, adverse consequences on incarcerated people who are unable to work, choose education or vocational programs over work, or are unwilling to work.
- Pay incarcerated workers in federal facilities the prevailing wage for their work, which should be no less than minimum wage, ban garnishments for room and board, and offer incarcerated workers the same workplace health and safety protections required outside of carceral settings.
- Publish model prison labor legislation through the DOJ for states and localities to adopt that extends standard workers' rights to incarcerated workers.



# CONCLUSION







For too long we've allowed corporations to pit their bottom lines against the lives of incarcerated people. Placing profits over people undermines public safety, creates public health concerns, and disproportionately impacts Black communities.

**Two years ago, President Biden himself claimed, “No one should be profiteering off of our criminal justice system.”**<sup>180</sup> Since then, the Biden-Harris Administration has taken small steps to begin addressing carceral profiteering in the federal prison system, such as ending the BOP's reliance on private prisons.<sup>181</sup> The executive order, while an encouraging first step, does not apply to the vast majority of people detained in carceral facilities throughout the U.S., including people detained in federal prisons run by the BOP, people detained by the Department of Homeland Security, people incarcerated in state and local facilities under contracts with the U.S. Marshals Service, and those incarcerated at the state and local levels. Perhaps even more importantly, it does not curb the multitude of other ways that incarcerated people and their families are exploited for financial gain by corporations and government agencies.

Federal, state, and local governments have a duty of care to protect those in their custody from exploitation, a duty they have long-neglected. **This neglect has disproportionately affected Black communities.** The solutions outlined in this briefing represent best practices agreed upon by policy experts, researchers, advocates, and organizations in the criminal justice field. By enacting these proposed policy changes, the Biden-Harris Administration can build on its Agency Equity Action Plans to ensure that racial equity is being advanced, as outlined in Executive Order 13985.<sup>182</sup>

**For the health and safety of our communities, it is imperative that the Biden-Harris Administration make every effort to divest from profiteering throughout the criminal legal system in its entirety.**

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