

COVERING THE GAP: CONVICT LEASING IN AGRICULTURE

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I. Introduction.....	395
II. The Evolution of Convict Leasing.....	396
III. Problematic History.....	401
A. The Role of Immigrants in the Agricultural Industry.....	404
B. Convicts as Laborers.....	407
C. Positive Possibilities	409
IV. Conclusion.....	415

I. INTRODUCTION

The Thirteenth Amendment to the United States Constitution abolished slavery.¹ However, this same amendment makes an exception to the general rule prohibiting slavery, “except as a punishment for crime whereof the party shall have been duly convicted.”² Ratified by the states in 1865, this loophole has resulted in over 150 years of what is known as “convict leasing.”³ Convict leasing was a system in which Southern States leased out prisoners for various forms of manual labor.⁴ While many thought convict leasing to be a thing of the past, it has reemerged through the privatization of prisons and the consistent denial by courts to ascribe any worker rights to prisoners.

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1. *13th Amendment: Abolition of Slavery*, NAT’L CONST. CTR. (Aug. 19, 2021, 4:51 PM), <https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiii> [<https://perma.cc/X4RM-YXUJ>].

2. U.S. CONST. amend. XIII, § 1.

3. THE INFORMED CITIZEN, *Thirteenth Amendment Ends Slavery But Makes Way for a Different Kind*, N.J. STATE BAR FOUND. (Oct. 28, 2019), <https://njsbf.org/2019/10/28/thirteenth-amendment-ends-slavery-but-makes-way-for-a-different-kind/> [<https://perma.cc/3RNM-493E>].

4. *Convict Leasing*, EQUAL JUST. INITIATIVE (Nov. 1, 2013), <https://eji.org/news/history-racial-injustice-convict-leasing/> [<https://perma.cc/8W8P-MJQ8>] [hereinafter *Convict Leasing*].

Flaws in the institutions that provide agricultural labor have resulted in large amounts of produce left unpicked, increased costs for consumers, and decreased investment in agricultural industries.⁵ Instead of solving problems plaguing the immigration system or fixing flawed worker protection laws for agricultural laborers, convicts are being used to cover these labor shortages.

This Note will first walk through the evolution of convict leasing followed by a discussion of the United States prison system's problematic history. Next, this Note will address the role immigrants play in the American agricultural industry. Lastly, this Note will focus on convicts as laborers; specifically, the positives and negatives associated with using incarcerated individuals to cover the agricultural labor shortage in the United States. This Note's ultimate conclusion follows that convict leasing in agriculture can be a rehabilitative and positive solution to the labor shortage so long as inmates are treated with the same respect as other workers in these industries.

II. THE EVOLUTION OF CONVICT LEASING

While the practice of convict leasing was constitutionalized within the United States in 1865, Britain implemented this system long before, as it began sending its convicts to America as early as the 1700s.⁶ In 1718, labor became an option for those convicted of certain nonviolent crimes—such as theft or forgery—as an alternative to hanging.⁷ In order to entice businesses to engage with the convict-leasing program, Britain gave companies a property interest in the felon they were leasing, which meant they could sell the felon into slavery.⁸

This dynamic usually resulted in tobacco plantation owners purchasing convicts for the remainder of their sentences.⁹ Banishment to the colonies usually lasted between 7 to 14 years, after which convicts were allowed to return home, though oftentimes they stayed.¹⁰ Convicts were especially coveted forms of labor

5. See Mary Jo Dudley, *These U.S. Industries Can't Work Without Illegal Immigrants*, CBS NEWS (Jan. 10, 2019, 3:55 PM), <https://www.cbsnews.com/news/illegal-immigrants-us-jobs-economy-farm-workers-taxes/> [<https://perma.cc/7SZQ-GMB9>].

6. Shane Bauer, *5 Ways Prisoners Were Used for Profit Throughout U.S. History*, PBS NEWSHOUR (Feb 26, 2020, 12:30 PM), <https://www.pbs.org/newshour/arts/5-ways-prisoners-were-used-for-profit-throughout-u-s-history> [<https://perma.cc/9FTA-LAQ5>].

7. *Id.*

8. *Id.*

9. *Id.*

10. See Matt Novak, *Britain Sent Thousands of Its Convicts to America, Not Just Australia*, GIZMODO (May 29, 2015), <https://paleofuture.gizmodo.com/britain-sent-thousands-of-its-convicts-to-america-not-1707458418> [<https://perma.cc/5KME-EERJ>].

because, unlike slaves, owners did not have to worry about the long-term health of their convict laborer because it was a temporary lease.¹¹

After the passage of the Thirteenth Amendment, Southern States began to implement what came to be known as “Black Codes.”¹² These laws were targeted at Black people and were created to “ensure their availability as a cheap labor force after slavery was abolished during the Civil War.”¹³ South Carolina, for example, required Black individuals to pay a yearly tax in order to hold an occupation other than farmer or servant.¹⁴ Black Codes applied harsh punishments to nonviolent crimes and mirrored the recently abolished slave codes.¹⁵ As a result, the prison populations of many Southern States consisted of more Black individuals than White, all of whom were eligible to be leased out for profit.¹⁶ Aside from being worked nearly to death, if not completely to death, the conditions these convicts labored under were abysmal.¹⁷

Workers were malnourished, living in pest filled housing, and beaten if they did not make the work quota for the day.¹⁸ Evidence of this treatment was recently discovered in Sugar Land, Texas.¹⁹ There, 95 skeletal remains were uncovered when construction for a new school began on the site in 2018.²⁰ The site had been used as a convict-leasing camp following the Civil War.²¹ These remains were from Black prisoners ranging between the ages of 14 to 70 years old with misshaped back bones due to the beatings and hard labor they endured.²² It is

11. See Bauer, *supra* note 6; Whitney Bennis, *American Slavery, Reinvented*, THE ATLANTIC (Sept. 21, 2015), <https://www.theatlantic.com/business/archive/2015/09/prison-labor-in-america/406177/> [<https://perma.cc/TR4S-6N8K>].

12. *Convict Leasing*, *supra* note 4.

13. *Black Codes*, HISTORY.COM (June 1, 2010), <https://www.history.com/topics/black-history/black-codes> [<https://perma.cc/BNE4-WGXP>].

14. *Id.*

15. See *Convict Leasing*, *supra* note 4; A.E. Raza, *Legacies of the Racialization of Incarceration: From Convict-Lease to the Prison Industrial Complex*, 11 J. INST. JUST. & INT’L STUD. 159, 162-63 (2011).

16. See *Convict Leasing*, *supra* note 4.

17. *Convict Leasing*, CONVICT LEASING & LAB. PROJECT (Aug. 19, 2021, 5:09 PM), <https://www.cllptx.org/convictleasing> [<https://perma.cc/UZV2-P6GZ>].

18. *Id.*

19. Monica Rhor, *Discovery of African-American Graves in Texas Highlights ‘Moment of Reckoning’*, USA TODAY (Dec. 27, 2018, 6:13 PM), <https://www.usatoday.com/story/news/2018/12/27/graves-95-african-americans-forced-into-labor-after-slavery-convict-leasing-system-texas/2364201002/> [<https://perma.cc/7PAC-F2ST>].

20. *Id.*

21. *Id.*

22. *Id.*

unclear how many more remains from such labor camps exist throughout the United States.

The first “prison boom” occurred in 1865.²³ Public fear over the perceived increase in crime that would result from newly freed slaves caused the government to react through use of incarceration. The new, predominantly Black prison population was a shift from before the Civil War when most prisoners in the Southern States were White.²⁴ Such measures were the response to a recent labor shortage due to the abolition of slavery.²⁵ Prisons were a way to keep recently freed slaves in bondage under the protections of the Constitution.²⁶ In the nineteenth century, the *Telegraph and Texas Register* wrote, “[i]f a profit of several thousand dollars can be made on the labor of twenty slaves . . . why may not a similar profit be made on the labor of twenty convicts?”²⁷

Oftentimes, these new prisons were modeled after plantations. One infamous example is Parchman Farm, a Mississippi State Penitentiary for men founded after the Civil War.²⁸ These men worked on the Parchman Farm for over 15 hours a day in extreme heat.²⁹ It was not until the “Freedom Riders” were sent to the Parchman Farm in 1961 that the inhumane conditions received national spotlight and ruled unconstitutional by the Fifth Circuit Court of Appeals.³⁰ However, not much changed at the Parchman Farm after this ruling.³¹ Instead of plowing and picking cotton, the fields are now covered with fruits and vegetables that inmates involuntarily harvest under the guise of “inmate idleness.”³² In fact, as recent as

23. Ruth Delaney et al., *American History, Race, and Prison*, VERA (Aug. 19, 2021, 5:13 PM), <https://www.vera.org/reimagining-prison-web-report/american-history-race-and-prison> [<https://perma.cc/GEE3-HPYA>].

24. Bauer, *supra* note 6.

25. See Stian Rice, *Convicts are Returning to Farming—Anti-Immigrant Policies are the Reason*, THE CONVERSATION (June 7, 2019, 7:27 AM), <https://theconversation.com/convicts-are-returning-to-farming-anti-immigrant-policies-are-the-reason-117152> [<https://perma.cc/FZT7-FRZX>].

26. *See id.*

27. Shane Bauer, *The True History of America’s Private Prison Industry*, TIME (Sept. 25, 2018, 3:00 PM), <https://time.com/5405158/the-true-history-of-americas-private-prison-industry/> [<https://perma.cc/88VE-7FWZ>].

28. See Innocence Staff, *The Lasting Legacy of Parchman Farm, the Prison Modeled After a Slave Plantation*, INNOCENCE PROJECT (May 29, 2020), <https://innocenceproject.org/parchman-farm-prison-mississippi-history/> [<https://perma.cc/DF66-STD8>].

29. *Id.*

30. *See id.*

31. *Id.*

32. *Id.*

2019, a health inspection report showed that unsanitary conditions and poor treatment toward inmates persists.³³

Another example is the Louisiana State Penitentiary in Angola, an 18,000-acre plantation.³⁴ Roughly the size of Manhattan, the plantation has remained in operation since the nineteenth century.³⁵ Dennis Childs, associate professor of African American Literature at the University of California San Diego, describes Angola as it is today: “[i]t is a place in which Black prisoners (and other poor people) are made to pick cotton, corn and soybeans in the same fields in which their ancestors have been enslaved for centuries.”³⁶

Aside from the racial motive behind convict leasing after the Civil War, there were also economic reasons for introducing this system.³⁷ Penitentiaries in the Southern States post-Civil War were in need of serious modification.³⁸ Bankrupt state governments were unable to fund the necessary renovations, so they turned to private companies to lease prisoners at a fee.³⁹ Penitentiaries were privatized shortly thereafter.⁴⁰ This privatization meant the companies who owned the prisons were responsible for the health and living costs of the prisoners.⁴¹ However, it also meant the inmates could be used for labor toward a company’s own profit.⁴² With no monetary incentive for lessees to not work convicts to death, inmate mortality rates substantially increased, reaching as high as 25% annually.⁴³

Lessees would send a cut of the profits back to the state to ensure the system continued,⁴⁴ but, after realizing the incredible economic gains that could be made off or prison labor, states stopped leasing their inmates to private companies and began opening their own labor camps and plantations.⁴⁵ By 1886, it is estimated

33. *Id.*

34. Mark Karlin, *The Inseparability of Capitalism, Racism, and Imprisonment: An Interview with Dennis Childs*, OPEN DEMOCRACY (Mar. 17, 2016), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/inseparability-of-capitalism-racism-and-imprisonment-interview-with-dennis/> [<https://perma.cc/D643-YK54>].

35. *Id.*

36. *Id.*

37. Calvin R. Ledbetter Jr., *The Long Struggle to End Convict Leasing in Arkansas*, 52 ARK. HIST. Q. 1, 2 (1993).

38. *See id.* at 2-4

39. *See id.* at 9.

40. *See, e.g.*, Bauer, *supra* note 6.

41. *See id.*

42. *See id.*

43. *Id.*

44. Bauer, *supra* note 27.

45. Bauer, *supra* note 6.

that the revenue brought by convict leasing was almost four times the cost of actually running the prison.⁴⁶ Some states even implemented a “trustee guard” system that had inmates monitor one another instead of paid officers.⁴⁷ Oftentimes, the inmates convicted of incredibly violent offenses would be appointed as guards because they could and would punish uncooperative inmates aggressively and violently.⁴⁸

Convict leasing came to an end in the 1930s after the passage of the Ashurst-Summers Act.⁴⁹ This Act imposed a fine of up to \$50,000 or up to 2 years in prison for those who purchased or sold any prison-made goods.⁵⁰ This Act was implemented to eliminate the competition prison labor had on outside businesses, not necessarily for moral purposes.⁵¹ However, by the late 1970s, the increased competition from foreign manufacturing caused the United States labor market to look for a domestic source of cheap labor, and they again chose prisoners.⁵² Convict leasing has continued to be used ever since, especially in agriculture.⁵³

Prison labor is not regulated by any employment law nor can prisoners unionize, as affirmed by the United States Supreme Court.⁵⁴ Prisoners are also excluded from federal minimum wage protections.⁵⁵ While inmates are not specifically excluded from the definition of “employee” in worker protection statutes, courts often rule against prisoners who attempt to sue their “employer,” or the prison.⁵⁶ The Ninth Circuit Court of Appeals, after ruling against the incarcerated party, reasoned that because inmates are essentially taken out of the economy when they are incarcerated their labor is not a contract, but instead part of their sentence.⁵⁷ The court emphasized the validity of this reasoning when

46. Bauer, *supra* note 27.

47. Bauer, *supra* note 6.

48. *Id.*

49. See Stian Rice, *Farmers Turn to Prisons to Fill Labor Needs*, HIGH COUNTRY NEWS (June 12, 2019), <https://www.hcn.org/articles/agriculture-farmers-turn-to-prisons-labor-to-fill-labor-needs> [<https://perma.cc/8GHC-7FNT>].

50. See *Transport of Prison Made Goods Illegal*, PRISON LEGAL NEWS (July 15, 1994), <https://www.prisonlegalnews.org/news/1994/jul/15/transport-of-prison-made-goods-illegal/> [<https://perma.cc/8X8E-242S>].

51. *See id.*

52. Rice, *supra* note 49.

53. *See* Benns, *supra* note 11.

54. *See id.*; *Jones v. N.C. Prisoners' Lab. Union, Inc.*, 433 U.S. 119, 131-34 (1977).

55. Rice, *supra* note 49.

56. *See, e.g., Hale v. Arizona*, 993 F.2d 1387, 1400 (9th Cir. 1993).

57. *See id.* at 1395.

applied to prisoners who are working in a prison-labor program created for purposes of inmate “training and rehabilitation.”⁵⁸

III. PROBLEMATIC HISTORY

Convict leasing in agricultural labor does not occur in a vacuum. Convict leasing is only possible as a source of labor when the prison system is housing those laborers. Therefore, prison history in America must be addressed in order to come to an informed, holistic conclusion. The compilation of events that led to contemporary prisons in America has been described as “the history of a troubled search for solutions.”⁵⁹

The invention of prisons in America began with pure intentions. In 1790, the Pennsylvania Quakers were seeking a more humane solution than the dungeons and workhouses they had been using for prisoners.⁶⁰ Prisons were formed to allow inmates to read scripture and repent as a means of rehabilitation.⁶¹ Interestingly, punishment for crime was in the form of bodily punishment (such as labor or flogging) or fines.⁶² Incarceration is a rather new historical development for minor offenses.⁶³

Rehabilitation for criminals was a new theory amongst the colonists.⁶⁴ This thinking resulted from the constitutional idea that all men were created free and equal, and thus worthy of liberty and a chance at happiness.⁶⁵ Of course, these rights only applied to men, not slaves or women. These well-intentioned prisons soon became harsh and cruel.⁶⁶ Prisoners were either living in solitary confinement or were housed in massive common areas causing overcrowding and inefficient crowd control methods.⁶⁷ However, over time, as many as 40 prisoners were being housed in 18-foot-by-18-foot cells,⁶⁸ with the next method being to isolate the

58. *Id.* (citations omitted).

59. Roger T. Pray, *How Did Our Prisons Get That Way?*, AM. HERITAGE (July 1987), <https://www.americanheritage.com/how-did-our-prisons-get-way> [<https://perma.cc/9HK2-CNUV>].

60. *See id.*

61. *See id.*

62. *See id.*

63. *See id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

worst prisoners in solitary confinement.⁶⁹ After many inmates serving long sentences began to have mental breakdowns, this method was abolished.⁷⁰

In 1816, the Auburn prison was established, which followed a very different model.⁷¹ Prisoners were locked in their individual cells at night, but during the day they were required to work together.⁷² While working, any form of communication was explicitly prohibited.⁷³ Complete silence and no eye contact were enforced with the threat of beatings.⁷⁴ Restricting communication amongst prisoners was meant to take away their sense of self. The prison guards did not even speak to them and instead used signals to convey directions.⁷⁵ The goal was to prevent the influence of one prisoner upon another through isolation and long, 10-hour workdays.⁷⁶ Unsurprisingly, the state-run shops were incredibly profitable and drew interested onlookers to view the prisoners forced into such cruel conditions and humiliation.⁷⁷

Originally, the use of humane laws to eliminate crime from society was favored, but the focus transitioned to rehabilitation in prison.⁷⁸ However, this “rehabilitation” took on the form of order and discipline centered around proper values and work habits.⁷⁹ As a result, correspondence with family members was often forbidden for the entire sentence.⁸⁰

With the twentieth century came the theory that prisoners could be treated for their propensity toward crime, just as doctors treated patients for their diseases.⁸¹ Correctional administrators were given wide discretion in determining who should be incarcerated and who should not.⁸² This thinking contributed to the creation of the presentence report, which is an investigative report done about the defendant which outlines their prior criminal history, socioeconomic factors,

69. *Id.*

70. *Id.*

71. *Id.*

72. *The Auburn System*, CAYUGA MUSEUM OF HISTORY & ART (Aug. 19, 2021, 05:26 PM), <https://cayugamuseum.org/the-auburn-system/> [<https://perma.cc/RD5F-3SPS>].

73. *See id.*

74. *Id.*

75. *Id.*

76. *See id.*

77. *Id.*

78. *See Pray, supra* note 59.

79. *See id.*

80. *Id.*

81. *See id.*

82. *Id.*

childhood, and more.⁸³ The presentence report was used as an aid to judges and prison administrators to help assess the individual and determine their sentence.⁸⁴ Overcrowding in prisons was a consistent problem, so the use of parole and probation developed to test whether the convicted individual could handle being a law-abiding citizen.⁸⁵

Another wave of politics centered around prison rehabilitation came about in the 1930s.⁸⁶ Physical abuse and silence amongst prisoners was outlawed.⁸⁷ However, solitary confinement became the new, dominant form of punishment.⁸⁸ The 1940s, in turn, brought a new model focused on inflicting a tolerable amount of pain on prisoners, but increased communication with family members, the outside world, and recreation.⁸⁹ Notably, programming was introduced to address addiction and job training.⁹⁰ Racial disparity was, of course, a part of this selective programming—White people were deemed as the most capable and worthy of reform.⁹¹ Simultaneously, racial segregation remained stagnant within the prisons.⁹²

By the 1960s, prisons were viewed as cruel and ineffective institutions.⁹³ Prison populations were declining, and politicians went to work advocating for mandatory minimum sentences for drug offenders and life without parole for juveniles.⁹⁴ Thus, the “law and order” era began.⁹⁵ With increased crime across the country, politicians from both parties started to draw comparisons between race and crime.⁹⁶ As Black Americans made historical gains from the Civil Rights Movement, politicians were working hard to keep Black people in prisons as slaves of the state.⁹⁷ From 1970 to 1985, the federal and state prison population had grown

83. *See id.*

84. *Id.*

85. *See id.*

86. *See id.*

87. *Id.*

88. *Id.*

89. Delaney et al., *supra* note 23.

90. *See id.*

91. *Id.*

92. *See id.*

93. *See id.*

94. *See id.*

95. *Id.*

96. *Id.*

97. *See id.*

by almost 300,000 people.⁹⁸ These numbers have continued to increase, with a substantial effect on people of color.⁹⁹

A. The Role of Immigrants in the Agricultural Industry

Agricultural labor is consistently ranked as one of the most dangerous fields of work.¹⁰⁰ Not only are the working conditions posed by the environment incredibly harsh, but the labor law protections often do not extend to the agricultural industry.¹⁰¹ For example, children are not excluded from working in these industries and are often paid only \$4.25 per hour with no entitlement to overtime compensation.¹⁰² However, even in places where the pay is comparable to nearby factory jobs, farm owners say they often get zero response from native-born applicants.¹⁰³ Experts say the pay would need to increase to at least \$25 per hour in order for native-born workers to even consider applying.¹⁰⁴ But farmers explain that such high rates are unrealistic if they want to make a profit.¹⁰⁵ Unfortunately, the increased labor costs are already happening to farmers, even without offering such competitive pay due to supply and demand.¹⁰⁶ In 2018, there was a 7% decline in hired laborers for the agriculture industry, yet a 5% increase in labor wages.¹⁰⁷

Unsurprisingly, agriculture employers have a hard time finding and keeping employees.¹⁰⁸ They have turned to foreign-born workers who are willing to do the unpopular jobs most United States citizens refuse to do themselves.¹⁰⁹ Aside from the undesirability of agricultural work, it was traditionally a family industry, which has now been declining because of rural flight, a fluctuating economy, and the

98. *Id.*

99. *Id.*

100. Rebecca McCray, *A Disturbing Trend in Agriculture: Prisoner-Picked Vegetables*, TAKEPART (Apr. 14, 2014), <http://www.takepart.com/article/2014/04/14/prison-ag-labor> [<https://perma.cc/S4CY-CB2T>].

101. *Id.*

102. *Id.*

103. Keith Good, *Immigration Policy: Rural and Agricultural Concerns*, FARM POL'Y NEWS (Mar. 21, 2017), <https://farmpolicynews.illinois.edu/2017/03/immigration-policy-rural-agricultural-concerns/> [<https://perma.cc/M9HG-P43Q>].

104. *See id.*

105. *Id.*

106. *See (Infographic) The U.S. Farm Labor Shortage*, AGAMERICA LENDING (Feb. 26, 2020), <https://agamerica.com/the-impact-of-the-farm-labor-shortage/> [<https://perma.cc/L5RK-DSVQ>].

107. *Id.*

108. Good, *supra* note 103.

109. Dudley, *supra* note 5.

physical demands that come with being a farmer.¹¹⁰ These industries cannot stay profitable without the help of immigrants – both documented and undocumented.¹¹¹

Within the last several years, migrant workers have become increasingly scarce. The Trump Administration cracked down on the deportation and removal of undocumented workers.¹¹² The priority categories, which mostly focused on undocumented immigrants who had been convicted of crimes, have been eliminated.¹¹³ This means anyone who is present in the United States without proper documentation is in danger of deportation.¹¹⁴ All hierarchical priorities have been removed and wide discretion has been given to Immigration and Customs Enforcement (ICE) officers as to who to deport and when.¹¹⁵ As a result, more and more undocumented migrant agricultural workers are being deported, removed, denied admission, and more.¹¹⁶ Undocumented migrants are fearful of being caught by ICE, so they decline to work or cross the border at all.¹¹⁷ Furthermore, the fact that these migrant workers are undocumented makes them more susceptible to employer abuse because of the inherent power imbalance.¹¹⁸ Even if they do come to the United States under a visa, these types of visas rely on employer cooperation.¹¹⁹ Employers can work migrants to death at an unlivable wage without any consequences.¹²⁰ Migrants often do not know their rights and are exploited as a result.¹²¹

110. Alana Semuels, *'They're Trying to Wipe Us Off the Map.'* *Small American Farmers are Nearing Extinction*, TIME (Nov. 27, 2019, 1:16 PM), <https://time.com/5736789/small-american-farmers-debt-crisis-extinction/> [<https://perma.cc/5NYS-MK7L>]; (*Infographic*) *The U.S. Farm Labor Shortage*, *supra* note 106.

111. Dudley, *supra* note 5.

112. Miranda Cady Hallett, *Severed Families, Raided Workplaces and a Climate of Fear: Assessing Trump's Immigration Crackdown*, THE CONVERSATION (Oct. 26, 2020, 7:59 AM), <https://theconversation.com/severed-families-raided-workplaces-and-a-climate-of-fear-assessing-trumps-immigration-crackdown-147344> [<https://perma.cc/7W2L-DBEH>].

113. See Lazaro Zamora, *Comparing Trump and Obama's Deportation Priorities*, BIPARTISAN POL'Y CTR. (Feb. 27, 2017), <https://bipartisanpolicy.org/blog/comparing-trump-and-obamas-deportation-priorities/> [<https://perma.cc/VSN3-46M7>].

114. *Id.*

115. *See id.*

116. Dudley, *supra* note 5.

117. *See* Good, *supra* note 103.

118. McCray, *supra* note 100.

119. *Id.*

120. *See id.*

121. *See id.*

The practice of hiring immigrants at low wages started in the 1800s when the Transcontinental Railroad was built in the United States.¹²² Chinese immigrants, recruited to build the railroad in California, were pushed out of western cities and had no choice but to become seasonal workers at low pay.¹²³ These low wages caused an increase in land costs, which was justified to buyers by the cheap labor Chinese immigrants provided included with their recent land purchase.¹²⁴ Once the Chinese immigrants were banned from immigrating in 1882, farmers had to find a new source of cheap labor, as they were told it was unlikely White people would cover the labor shortage at such a low pay.¹²⁵ Next, farmers turned to the Japanese.¹²⁶ The cycle of exploiting immigrants for cheap labor continued over the centuries across many different ethnic groups.¹²⁷ The agricultural industry would focus on one source of foreign born-labor, then over time the competition would become too great for American-born workers, so the immigrants from the country producing the most immigrants would be excluded from emigrating to the United States.¹²⁸ When another labor shortage came around, the incoming immigrants would be encouraged to take on the cheap, difficult farm work no one else was willing to do.¹²⁹ Today, the cycle has landed on Latinx immigrants—specifically, Mexican-born men.¹³⁰

To properly function, the agricultural industry requires over 1.5 million workers.¹³¹ Labor costs account for 48% of all production expenses for fresh fruits and 35% for fresh vegetables.¹³² With such high labor requirements, farmers are the first to feel the impact when immigration control increases and causes a decrease in migrant workers.¹³³

122. Philip Martin, *Immigration Policy and Agriculture: Possible Directions for the Future*, 5 J. MIGRATION & HUM. SEC. 252, 254 (2017).

123. *Id.*

124. *Id.* at 254-55.

125. *Id.* at 255.

126. *Id.*

127. *See id.*

128. *See id.*

129. *See id.*

130. *Id.* at 256.

131. *Economic Impact of Immigration*, FARM BUREAU (Aug. 19, 2021, 5:38 PM), <https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/economic-impact-of-immigration> [<https://perma.cc/6S42-ETBG>].

132. *Id.*

133. *Id.*

The H-2A visa creates an opportunity for migrant workers to come to the United States temporarily for agricultural work.¹³⁴ The H-2A visa allows migrants to live in the United States as long as they meet certain qualifications.¹³⁵ These migrants are allowed to stay in the United States for up to 3 years, if all their extensions are granted.¹³⁶ The H-2A program began in 1986 under the Immigration Reform and Control Act.¹³⁷ Between the years 1997 and 2014, the use of the program quadrupled, creating several administrative flaws that impacted farmers seeking immigrant labor.¹³⁸ The H-2A program “provides less than 4 percent of the hired workers needed in agriculture.”¹³⁹ Additionally, farmers complain migrants are not approved on time, arriving on average 22 days after the “date of need.”¹⁴⁰ The problem only increases when immigration reform is focused solely on enforcement.¹⁴¹ Employers who use this visa program fear the increased enforcement effects will cause a flood in H-2A visa applications, making their applications even less likely to be processed on time.¹⁴² President Trump’s comments about prioritizing higher-skilled workers also poses a problem for those seeking low-skilled help, such as agricultural laborers.¹⁴³

B. Convicts as Laborers

Instead of focusing on the devastating effect immigration enforcement and inadequate visa programs have on the rest of the United States, the Trump Administration continued to increase immigration enforcement.¹⁴⁴ So, who is filling the ever-dwindling agricultural labor shortage? Convicts. This fact is a disturbing trend because, as outlined in the history above, this movement came as a response to the labor shortage brought about by the end of slavery.¹⁴⁵ We are now continuing to take advantage of a group of people who are deemed to have a lesser

134. *H-2A Temporary Agricultural Workers*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 19, 2021, 5:40 PM), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers> [<https://perma.cc/P5BF-9UNF>].

135. *Id.*

136. *Id.*

137. *(Infographic) The U.S. Farm Labor Shortage*, *supra* note 106.

138. *Id.*

139. *Economic Impact of Immigration*, *supra* note 131.

140. *Id.*

141. *Id.*

142. Good, *supra* note 103.

143. Good, *supra* note 103.

144. See Zamora, *supra* note 113.

145. See McCray, *supra* note 100.

social status than the rest of law-abiding society.¹⁴⁶ In fact, this tactic is often a strategy used by those in the agricultural industry to save money on labor and worker protections.¹⁴⁷ When legislatures are confronted with this troubling comparison, they often use the argument that slaves were not paid.¹⁴⁸ Even if the inmates are not being paid for their work, prison labor advocates argue they are still teaching inmates valuable skills, such as how to work a job for eight hours a day.¹⁴⁹

Upon taking a deeper look into how inmates are compensated, it is not too far from the free, involuntary labor slaves provided. Wages vary from state to state, but the average wage is below \$1 per hour according to 2017 statistics.¹⁵⁰ Some states do not pay their inmates anything for their labor. This sparked the 2016 national prison strikes by inmates who were seeking an end to “prison slavery.”¹⁵¹ One Idaho senator, in particular, argued her bill would make agricultural work a voluntary position.¹⁵² But the word voluntary does not have the same meaning in prison as it does in the rest of society. Prisoners who make the choice not to work may be retaliated against through solitary confinement, deprivation of resources, increased sentences, and disciplinary tickets.¹⁵³

Back in 1871, the Virginia Supreme Court noted in *Ruffin v. Commonwealth* that prisoners were equivalent to “slaves of the state.”¹⁵⁴ Almost 150 years later, modern day courts still recognize and affirm this sentiment. In 2010, the Ninth Circuit Court of Appeals ruled the Fifth Amendment did not grant prisoners a judicially enforceable right to any level of compensation for work performed in prison.¹⁵⁵ The court in *Serra v. Lappin* noted the Thirteenth Amendment justifies

146. *See id.*; Rice, *supra* note 49.

147. Rice, *supra* note 49.

148. McCray, *supra* note 100.

149. German Lopez, *Slavery or Rehabilitation? The Debate About Cheap Prison Labor, Explained*, VOX (Sept. 7, 2015, 11:01 AM), <https://www.vox.com/2015/9/7/9262649/prison-labor-wages> [<https://perma.cc/4RER-T8EN>].

150. *See State and Federal Prison Wage Policies and Sourcing Information*, PRISON POL’Y INITIATIVE (Apr. 10, 2017), https://www.prisonpolicy.org/reports/wage_policies.html [<https://perma.cc/D2S6-FZNM>].

151. Tom Kutsch, *Inmates Strike in Prisons Nationwide Over ‘Slave Labor’ Working Conditions*, THE GUARDIAN (Sept. 9, 2016), <https://www.theguardian.com/us-news/2016/sep/09/us-nationwide-prison-strike-alabama-south-carolina-texas> [<https://perma.cc/3X95-EW3H>].

152. McCray, *supra* note 100.

153. *See id.*

154. *Ruffin v. Commonwealth*, 62 Va. 790, 796 (1871).

155. *Serra v. Lappin*, 600 F.3d 1191, 1195 (9th Cir. 2010).

this decision by the nature of involuntary servitude as an exception in the case of prisoners.¹⁵⁶ Furthermore, the *Sierra* Court cites a 1985 opinion by the Ninth Circuit that held the state does not deprive a prisoner of a constitutionally protected liberty interest by forcing them to work without pay.¹⁵⁷ Despite the lack of protection and autonomy for prison laborers, there are programs centered on convict leasing in agriculture, which keep the goal of rehabilitation at the forefront.

C. Positive Possibilities

If the practice of hiring inmates to do agricultural labor is done properly, it can be beneficial to inmates as well as the rest of society. This path forward starts with paying them the same wage a non-inmate would be paid. In Idaho, for example, inmates are paid the prevailing wage for their work on potato farms, earning up to \$15.45 per hour.¹⁵⁸ One prison official, who sets up the partnership between farms and prisons, outlined how she views using inmates for labor: “[w]e do this to ensure that the ag partner isn’t getting any type of discount by using inmate labor. This isn’t a good solution if you’re looking for cheap labor. This is a good solution if you’re very desperate for workers.”¹⁵⁹ Idaho goes one step further and requires inmates put a portion of their paychecks into savings in order to prepare them for their release.¹⁶⁰ Their paychecks may also be put toward paying court fees and restitution.¹⁶¹ The prisoners become enthusiastic about their agricultural jobs because it pays significantly more than internal prison work, and they get the influence of the outside world – a place they will be rejoining.¹⁶² Excitement around job opportunities for incarcerated individuals extends to other prison labor as well.¹⁶³ Chandra Bozelko, a former inmate, reflected on her prison

156. *Id.*

157. *Id.* at 1196 (citing *Piatt v. MacDougall*, 773 F.2d 1032, 1035 (9th Cir. 1985)).

158. Derrick Cain, *Lacking Workers, Idaho Set to Allow Prisoners to Work Private Farms*, AGRI-PULSE (Sept. 19, 2014), <https://www.agri-pulse.com/articles/4408-lacking-workers-idaho-set-to-allow-prisoners-to-work-private-farms> [<https://perma.cc/C544-L2ST>]; Joel Millman, *Captive Labor on the Farm*, WALL ST. J. (Oct. 18, 2011), <https://www.wsj.com/articles/SB10001424052970204774604576630972860034248> [<https://perma.cc/7UMA-Y3NM>].

159. Olivia Weitz, *With Labor Shortage, Idaho Inmates Learn Farm Work*, SPOKESMAN-REV. (Aug. 26, 2017), <https://www.spokesman.com/stories/2017/aug/26/with-labor-shortage-idaho-inmates-learn-farm-work/> [<https://perma.cc/98YV-D48K>].

160. Millman, *supra* note 158.

161. Cain, *supra* note 158.

162. Millman, *supra* note 158.

163. See Chandra Bozelko, *Op-Ed: Think Prison Labor is a Form of Slavery? Think Again*, L.A. TIMES (Oct. 20, 2017, 4:00 AM), <https://www.latimes.com/opinion/op-ed/la-oe-bozelko-prison-labor-20171020-story.html> [<https://perma.cc/93WG-ZJ6M>].

experience: “[m]y prison job made me feel like I was fulfilling my existential duty to society: I was contributing.”¹⁶⁴ Bozelko criticized anti-prison labor movements, arguing that prison labor and convict leasing are comparable to the post-slavery Jim Crow days in the Southern States that inherently keep progressive companies from investing in prison labor.¹⁶⁵ Progressive companies tend to pay higher wages, train inmates for better jobs, and do more to prepare inmates for life post-incarceration.¹⁶⁶

Whole Foods, for example, sold goat cheese made from an inmate-ran farm in Colorado, until protests caused the company to end the practice in 2015.¹⁶⁷ However, it should be noted the inmates were being paid only 60 cents per day, so the protests were arguably justified as there was no indication Whole Foods was supporting progressive, inmate-centered programs.¹⁶⁸ Unionization may be one of the better forms of inmate worker protection, but until the United States Supreme Court overturns *Jones v. North Carolina Prisoners’ Labor Union, Incorporated*, other protection methods must be utilized.¹⁶⁹

Elon University Labor Law Professor Erik Fink thinks there may be another way for prisoners to get the benefits of unionization without unionizing.¹⁷⁰ In *Jones v. North Carolina Prisoners’ Labor Union, Incorporated*, prisoners filed suit claiming their First Amendment rights had been violated after being denied the ability to unionize – the prison claiming assembly was a security threat.¹⁷¹ The United States Supreme Court highlighted the appellant’s argument, subsequently agreeing, “[t]he creation of an inmate union will naturally result in increasing the existing friction between inmates and prison personnel. It can also create friction between union inmates and non-union inmates. . . the units are already seriously over-crowded and such an element could aggravate already tense conditions.”¹⁷²

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. See Lauren Karaffa, *Sweatshop Prisons: The Civil War Didn’t End Slavery Afterall*, COUNTERPUNCH (June 16, 2016), <https://www.counterpunch.org/2016/06/16/sweatshop-prisons-the-civil-war-didnt-end-slavery-after-all/> [<https://perma.cc/FT4M-SKN5>].

169. See *Jones v. N.C. Prisoners’ Lab. Union, Inc.*, 433 U.S. 119, 120 (1977); Bozelko, *supra* note 158.

170. Mike Elk, *The Next Step for Organized Labor? People in Prison*, THE NATION (July 11, 2016), <https://www.thenation.com/article/archive/the-next-step-for-organized-labor-people-in-prison/> [<https://perma.cc/F37B-KFYB>].

171. *Id.*; see *N.C. Prisoners’ Lab. Union, Inc.*, 433 U.S. 119, 121 (1977).

172. *N.C. Prisoners’ Lab. Union, Inc.*, 433 U.S. 119, 127 (1977).

Professor Fink, however, argues inmates could use the National Labor Relations Board (NLRB) process to help advocate and form collective bargaining units.¹⁷³ If the inmates are hired by private contractors, such as farms, they should have a right to form a union just as other employees do under NLRB.¹⁷⁴ Even if they are employed by the state, Professor Fink says this fact may make their ability to organize and meet easier.¹⁷⁵ All they need is an endorsement by a local union leader who can advocate to the Public Employee Relations Board (PERB), which governs how labor law is applied locally.¹⁷⁶

The problem is many local labor unions represent prison guards, who may not feel comfortable with prisoners forming these unions, thus making it more difficult to have this discussion.¹⁷⁷ The reason these local labor unions are unwilling to take on representing inmates is because they have a hard-enough time gaining traction for the correctional officers they represent. As Robbie Purner, one of the organizers for the North Carolina Prisoners' Labor Union, puts it, "[i]f free people are not allowed to have unions, how are prisoners to have unions?"¹⁷⁸ In February of 2020, Missouri's governor terminated automatic payroll deductions from the Missouri Correctional Officers Association, alleging their contract had expired.¹⁷⁹ As a result, only about 200 members were paying union dues, causing a decrease in funding.¹⁸⁰ This deficit could result in their union going out of business, leaving the correctional officers at the mercy of the Missouri Department of Corrections Director with no labor contract and thus, no guaranteed protections or pay.¹⁸¹

In New York, the union representing correctional officers sued the Department of Corrections for their insufficient efforts to not only protect

173. Elk, *supra* note 170.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. Jonathan Michels, *Unions Are Needed Everywhere—Especially Prisons*, SCALAWAG (July 5, 2018), <https://scalawagmagazine.org/2018/07/if-free-people-are-not-allowed-to-have-unions-how-are-prisoners-to-have-unions-conversations-with-organizers-of-the-north-carolina-prisoners-labor-union/> [<https://perma.cc/J7GN-H9LB>].

179. Kurt Erickson, *Missouri's Prison Guard Union Runs Low on Funds, Warns it Could Go Out of Business*, ST. LOUIS POST-DISPATCH (Feb. 28, 2020), https://www.stltoday.com/news/local/govt-and-politics/missouri-s-prison-guard-union-runs-low-on-funds-warns-it-could-go-out-of/article_9f8b21e7-cd20-5f03-94ce-07f56fa5be39.html [<https://perma.cc/E7AC-F6TD>].

180. *Id.*

181. *Id.*

correctional officers from COVID-19, but also the inmates.¹⁸² Elias Husamudeen, the President of the correctional officer union suing New York City, acknowledges this has become a problem not only for officers, but also for inmates: “[w]ell, in this particular incident, I’m not just concerned about correction officers because if the inmates are sick, we’re sick. When the inmates are living in squalor, we’re living in squalor.”¹⁸³ Heather Ann Thompson, a professor of history at the University of Michigan, argues this mindset—of seeing prisoners’ rights as synonymous with prison guard rights—is the best way to advocate for a safer prison environment thus benefiting both groups.¹⁸⁴

Other prisons have used farming as a way to not only build inmate self-esteem through a hard day’s work, but also to improve the food served within the prisons.¹⁸⁵ The Richard J. Donovan Correctional Facility in San Diego started the Farm and Rehabilitation Meals Program (FARM).¹⁸⁶ Through this program, inmates are trained to garden and harvest three acres of farmland.¹⁸⁷ All the fresh fruits and vegetables are served directly in the prison cafeterias and any excess food goes to a local food bank.¹⁸⁸ Aside from the tremendous savings the prison has obtained, this program also teaches inmates about sustainability, farming skills, healthy eating, and more.¹⁸⁹ Vermont, Montana, Washington, Michigan, and Oregon have all followed California’s example and implemented similar farming programs focused on improving the nutrition at the prisons as well as decreasing recidivism rates for inmates.¹⁹⁰ Farm labor programs are seen as valuable in other disciplines as well. For example, Jacob’s Ladder, a substance abuse treatment organization, has a working farm program meant to help those suffering from addiction work toward recovery.¹⁹¹

182. Alisa Chang, *Correction Officers Union Sues New York City Over Lack of Coronavirus Protection*, NPR (Apr. 3, 2020, 4:28 PM), <https://www.npr.org/2020/04/03/826945375/correction-officers-union-sues-new-york-city-over-lack-of-coronavirus-protection> [<https://perma.cc/9L6E-HUZ8>].

183. *Id.*

184. Elk, *supra* note 170.

185. Morgan Bulger, *Six U.S. Correctional Facilities with ‘Farm to Prison’ Local Food Sourcing Programs*, SMARTCITIESDIVE (Aug. 19, 2021, 6:14 PM), <https://www.smartcitiesdive.com/ex/sustainablecitiescollective/six-us-correctional-facilities-farm-prison-local-food-sourcing-programs/1033746/> [<https://perma.cc/NTX7-Y32C>].

186. *Id.*

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Working Farm*, JACOB’S LADDER (Aug. 19, 2021, 6:18 PM), <https://www.jacobsladderbrookside.com/farming.html> [<https://perma.cc/T7WD-5QAR>].

It is important to note the type of training these inmates receive is not high-skilled. In reality, when they leave prison, they are not entering the work force as a competitive employee, but a low-skilled individual competing against other low-skilled individuals who do not have a criminal conviction on their record.¹⁹² Even if they do gain practical skills, such as training as a plumber, they have to elaborate on job applications how they gained these skills—from prison.¹⁹³ Therefore, even if the state they are applying in has “banned the box” requiring convicted individuals to indicate their criminal status on the job application, they will have to include it anyways to explain where the training was received.¹⁹⁴ In fact, a 2018 study found about one third of 30-year-old men in the United States who were unemployed were either in prison, jail, or were ex-cons.¹⁹⁵ Finding employment is crucial to ensuring a reduction in recidivism but having a criminal record reduces the chances of a job offer or callback by 50%.¹⁹⁶

The United States makes up only 5% of the world’s population but accounts for 25% of the world’s total prison population.¹⁹⁷ These statistics become even more staggering when race comes into play. Approximately 56% of the United States prison population is represented by African Americans and Hispanics, who only represent a combined 32% of the United States population as a whole.¹⁹⁸ Furthermore, Black people are imprisoned at five times the rate White people are imprisoned.¹⁹⁹ In prison, White inmates on average receive better jobs—higher pay and more beneficial skills—than their Black counterparts.²⁰⁰ With such a high representation for people of color in the prison system today, prison labor and convict leasing does not look much different than it did when it first began after the ratification of the Thirteenth Amendment.²⁰¹

192. Katherine E. Leung, Note, *Prison Labor as a Lawful Form of Race Discrimination*, 53 HARV. C.R.-C.L. L. REV. 681, 683 (2018).

193. *Id.* at 704.

194. *Id.* at 707.

195. Adam Looney, *5 Facts About Prisoners and Work, Before and After Incarceration*, BROOKINGS (Mar. 14, 2018), <https://www.brookings.edu/blog/up-front/2018/03/14/5-facts-about-prisoners-and-work-before-and-after-incarceration/> [<https://perma.cc/B9A5-K35R>].

196. *Fair Chance Hiring Fact Sheet*, NAACP (Aug. 25, 2021, 1:09 PM), <https://naacp.org/resources/fair-chance-hiring-fact-sheet> [<https://perma.cc/6SFT-ZDFJ>]; see generally *Criminal Justice Fact Sheet*, NAACP (Aug. 19, 2021 6:20 PM), <https://www.naacp.org/criminal-justice-fact-sheet/> [<https://perma.cc/C7BT-C3FR>].

197. *Criminal Justice Fact Sheet*, *supra* note 196.

198. *Id.*

199. *Id.*

200. Rice, *supra* note 49.

201. See Lopez, *supra* note 149; Ashley Mott, *Fact Check: Southern States Used Convict Leasing to Force Black People into Unpaid Labor*, USA TODAY (July 7, 2020, 11:12 AM),

Because of the substantial rates of incarceration for people of color versus White people, the prison system and these low-skill job programs disproportionately impact people of color applying for work after release.²⁰² The screening process alone encourages this result by requiring racial identification and criminal record on the applications.²⁰³ Studies show White men are three times more likely to get a call back or job offer than Black men with the same qualifications who also applied.²⁰⁴ White men with criminal records are also offered more jobs than Black men with no criminal record.²⁰⁵ Furthermore, Black individuals are more likely to be asked upfront if they have a criminal record than their White counterparts.²⁰⁶

Research has found those federal prisoners who take a paid prison job, even if it is only \$1.15 an hour with UNICOR, are 24% less likely to reoffend and 14% more likely to have a job a year after they have been released.²⁰⁷ This data is arguably a justification for spending more on prison labor programs where inmates are actually getting paid decent wages, are treated well, and everyone can participate.²⁰⁸

The power structure between prisoners and guards also plays a role in the experience the inmates have with the labor programs.²⁰⁹ The role of prison guards is to maintain social control over the prisoners they supervise.²¹⁰ Prison guards do this by enforcing rules and regulations with the threat of punishment if the prisoner disobeys.²¹¹ Correctional officers are also considered the lowest link in the chain of command—they are both a manager and a worker in that sense.²¹² Thus, it is not

<https://www.usatoday.com/story/news/factcheck/2020/07/07/fact-check-convict-leasing-forced-black-people-into-unpaid-labor/5368307002/> [<https://perma.cc/H53P-AL6K>].

202. Leung, *supra* note 192, at 707.

203. *Id.* at 704.

204. Paul Von Zielbauer, *Race a Factor in Job Offers for Ex-Convicts*, N.Y. TIMES (June 17, 2005), <https://www.nytimes.com/2005/06/17/nyregion/race-a-factor-in-job-offers-for-exconvicts.html> [<https://perma.cc/D84X-Y5XF>].

205. *Id.*

206. Gwen Sharp, *Race, Criminal Background, and Employment*, THE SOCIETY PAGES (April 3, 2015), <https://thesocietypages.org/socimages/2015/04/03/race-criminal-background-and-employment/> [<https://perma.cc/LL93-VYEG>].

207. Lopez, *supra* note 149.

208. *Id.*

209. Robert M. Freeman, *Prisons: Correctional Officers*, L. LIBR. – AM. L. & LEGAL INFO. (Aug. 19, 2021, 8:29 PM), <https://law.jrank.org/pages/1793/Prisons-Correctional-Officers.html> [<https://perma.cc/3MCF-5NMV>].

210. *Id.*

211. *Id.*

212. *Id.*

shocking to learn violence and abuse are oftentimes used by correctional officers against inmates as a form of control and power.²¹³ Officers also operate under a code of silence where abuse is not reported or prevented.²¹⁴ Scandinavian countries attempt to break this power structure by encouraging inmates and officers to share meals and spaces together, as rehabilitation is the main goal instead of punishment.²¹⁵ It matters who is maintaining supervision over the farm labor programs when considering whether this is a humane option for incarcerated individuals. Ensuring there is no abuse of power by prison guards over prisoners is the only way these programs can achieve the goals they were created to meet.

IV. CONCLUSION

The “Positive Possibilities” section of this Note outlines the various ways convict leasing in the agricultural industry can be a benefit to prisoners if implemented correctly. However, because convict leasing as a practice is rooted in the re-capturing of free labor after the emancipation of slavery, the practice carries an incredible risk of repeating shameful history. This risk is especially true because the prison system is disproportionately represented by people of color.

Convict leasing in agricultural industries would not even be possible without the prison system. As outlined above, the prison system also has a troubling past. Under the guise of “rehabilitation,” the prison system evolved into various forms of inhumane and cruel punishment. Prison labor was a part of almost every piece of United States history.²¹⁶ While a lot can be regulated in leasing convicts for agricultural labor, a lot cannot be controlled. History has shown us that just because there are laws, laws do not mean people who hold power follow them. There are far too many opportunities for abuse going unregulated and undeterred.

The positives and negatives of the current convict leasing system have been laid out by this Note as well as the history of how we got to where we are today. Autonomy is a necessary piece to a humane, rehabilitative, and positive solution. Prison is about taking away a person’s freedom and seeing how good they are willing to be to get it back. The prison system and labor within should be about giving freedom back in an empowering and rehabilitative way. If decreasing recidivism is the true goal of the prison system, treating inmates with dignity and respect is the only way they will feel human enough not to reoffend.

213. Jessica Pishko, *When Prison Guards Are Violent Blame Culture – Not Bad Apples*, THE GUARDIAN (Jan. 20, 2016, 4:26 PM), <https://www.theguardian.com/commentisfree/2016/jan/20/prison-guards-violence-culture> [<https://perma.cc/VQ5M-NNDL>].

214. *Id.*

215. *Id.*

216. Pray, *supra* note 59.

There are important benefits agricultural work provides, such as contributing to prisoner's self-esteem, skill building, and health. However, the program must be built in a way which focuses on the well-being of the prisoners they have employed, pays a competitive wage, and prevents abuse through the power structure imposed between guard and prisoner. The position must also be a voluntary choice made by the prisoner who participates. Incarcerated individuals need to be shown the same respect others in this industry are shown to facilitate successful, rehabilitative outcomes. If all of these objectives can be accomplished and applied consistently to every prisoner who participates in a convict-leasing agricultural program, it may allow for a positive and humane solution to the United States agricultural labor-shortage.