

Expert Report of Terry A. Kupers, M.D., M.S.P.

Re: *Lilgerose & Mortis v. Jared Polis et al. v. Colorado D.O.C.*

I. Background and Qualifications

I am a board-certified psychiatrist, Professor Emeritus at the Wright Institute, Distinguished Life Fellow of the American Psychiatric Association, and an expert on the psychiatric effects of prison conditions and correctional mental health issues. I have testified more than fifty times over 50 years in state and federal courts about the psychiatric effects of jail and prison conditions, the quality of correctional management and mental health treatment, and prison sexual assaults. I have also served as a consultant to the U.S. Department of Justice and Human Rights Watch.

I am author of *Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It* (University of California Press, 2017) and *Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It* (Jossey-Bass/Wiley, 1998), co-editor of *Prison Masculinities* (Temple University Press, 2001), and a Contributing Editor of *Correctional Mental Health Report*. I have authored and co-authored dozens of professional articles and book chapters, including "Posttraumatic Stress Disorder (PTSD) in Prisoners," in *Managing Special Populations in Jails and Prisons*, ed. Stan Stojkovic, Kingston, NJ: Civic Research Institute, 2005, "Prison and the Decimation of Pro-Social Life Skills," in *The Trauma of Psychological Torture*, Editor Almerindo E. Ojeda, Vol 5 of *Disaster and Trauma Psychology Series*, Westport, Connecticut: Praeger, 2008, "Violence in Prisons, Revisited," (with Hans Toch), *Journal of Offender Rehabilitation*, 45,3/4, 49-54, 2007, and I authored two entries, "Posttraumatic Stress Disorder in Incarcerated Offenders" and "Imprisonment and Stress," in the *Sage Encyclopedia of Criminal Psychology*, Sage Publications, 2019. I served as Guest Editor for a special issue of

Psychiatric Annals, 2, 1, 1996, on "Men's Issue in Treatment," and contributed an article to that journal issue, "Men at Work and Out of Work."¹

I served as a consultant to the Connections Program in San Francisco, California, a collaboration between San Francisco Court Case Managers, San Francisco Jail Mental Health Services, and Community Mental Health agencies designed to provide alternatives to jail for mentally ill and substance-abusing offenders. I was a member of the California Department of Health Task Force to write "Health Standards for Local Detention Facilities" in 1976-77. I also served as court-approved monitor for the *Presley v. Epps* consent decree in federal court in Mississippi, regarding incarcerated people with mental illness in isolated confinement at Mississippi State Penitentiary.²

I have also received numerous awards for my contributions in forensic mental health. For example, I am the recipient of the 2005 Exemplary Psychiatrist Award; the 2020 Gloria Huntley Award from the National Alliance on Mental Illness (NAMI); and the 2024 Judge Stephen Goss Lifetime Achievement Award from the Judges and Psychiatrists Leadership Initiative (JPLI) and the Council of State Governments. My *curriculum vitae* and a list of cases in which I have served as an expert in the past four years are attached to this report as Exhibits 1 & 2.

I have been retained by Plaintiffs' counsel to offer opinions about the effects of policies and practices related to incarcerated people being required to work in the Colorado Department of Corrections. My fee is \$300/hour for the first six hours I worked on the case, and then pro bono for all additional hours beyond the first six hours. Exhibit 3.

¹ T. Kupers, Men at Work and Out of Work, Psychiatric Annals, 2,1, 1996.

² No. 4:05CV148-JAD (N.D. Mississippi, 2005 & 2007).

II. Preparation

I have reviewed the following:

- the Complaint
- 2020 Interview with Executive Director Dean Williams³
- 2021 Declaration of Julian Garcia
- 2021 Declaration of Richard Lilgerose
- 2021 Declaration of Charles Elliot
- 2021 Declaration of Donald Busto
- 2021 Declaration of Lawrence Sanchez
- 2021 Declaration of Harold Mortis
- 2024 Declaration of Charles Garrison with Exhibits
- 2024 Declaration of Corey Myers with Exhibits
- 2024 Declaration of Elias Vasquez with Exhibits
- 2024 Declaration of Nathan Martinez with Exhibits
- 2024 Declaration of Timothy West with Exhibits
- 2024 Declaration of Casey Lowe with Exhibits
- 2024 Declaration of David Turner with Exhibits
- 2024 Declaration of Domenic Aguilar with Exhibits
- 2024 Declaration of Kenneth Naranjo
- 2024 Declaration of Mario Ortega
- 2024 Declaration of Melvin Woolley
- 2024 Declaration of Nadia Reed
- CDOC Administrative Regulations 150-01, 600-01, 600-05
- Offender Orientation Handbook, July 2021
- Failure to Work Excel Spreadsheets

³ Brandon Moss, "Dean Williams Pushes Culture Change: Interview with Executive Director Dean Williams," *Inside Report*, Vol. 1, Issue 2, July, 2020.

- Deposition Transcript, Richard Lilgerose
- Deposition Transcript, Harold Mortis
- CDOC Violence Statistics Excel Spreadsheet

III. Opinions and Commentary

Based on my review of the above-referenced materials, as well as my psychiatric acumen and decades of study of prison conditions and programs, it is my opinion that the Colorado D.O.C.'s policy of mandatory work for incarcerated people is coercive and compels involuntary labor against the will or free choice of persons incarcerated within the system. Punishments and consequences—and the threat of such consequences—for failure to work include Restricted Privileges involving an increase of cell confinement or use of solitary confinement, Restricted Housing or use of solitary confinement, Code of Penal Discipline (COPD) charges and penalties, an increase in custody level, loss of “good time,” loss of “earned time,” delay or prevention of parole, transfer to a higher security facility where there is greater risk of victimization, and ineligibility for halfway house admission. These punishments and threats of punishment for failure to work standing alone are coercive, and cumulatively each adds to the level of coercion and the harm involved in the Colorado D.O.C.'s work requirement. In addition, the work requirement is bad policy, because it undermines the rehabilitative goals of the prison system. Because the Colorado D.O.C. requires incarcerated individuals to work and punishes those who refuse, and for reasons explained below, it is my professional opinion that this mandatory work requirement is entirely coercive.

A. **Prison is inherently coercive due to the conditions of confinement and experience of institutionalization**

Understanding coercion and involuntary servitude in prison first requires at least a basic understanding of the experience of imprisonment and the vulnerability of people

in prison. Prison in the United States, and in Colorado specifically, is an inherently coercive environment because incarcerated people are subject to involuntary requirements in nearly every aspect of their lives: they must dress as required by prison rules, follow a strictly enforced daily schedule, and follow a large number of rules at the risk of punishment for breaking any of them. Contact with loved ones is subject to the institution's control and monitoring. Incarcerated people also depend on prison staff for every aspect of their lives. Their physical safety in the facility and their very life depends on the will of the jailers, who control security in the facility, determine the movement and cell placement of incarcerated people, control when incarcerated people can have soap or toilet paper or sanitary napkins, and possess the authority to use physical force and other measures to achieve compliance. Together, these rules, enforced by punishments, subtly and not-so-subtly ensure that incarcerated people will behave as desired by those who run the institution. This makes incarcerated people especially vulnerable to coercion by the system in which they are confined.

Craig Haney, a social psychologist and renowned expert on prison conditions, utilizes the term "prisonization" to describe the ways in which individuals submit to prison rules. "The process of prisonization involves the incorporation of the norms of prison life into one's habits of thinking, feeling and acting... the longer persons are incarcerated, the more significant is the nature of their institutional transformation."⁴ The process includes all the phenomena sociologists describe as "institutionalization," where the institution is the prison. Incarcerated people experience loss of the identity they had in the community as they become anonymous prisoners known by a number. Their clothing choices are vastly restricted, their grooming is proscribed, and prison rules govern almost every aspect of their existence. Stern correctional officers surveil,

⁴ Craig Haney, "The Psychological Impact of Incarceration: Implications for Postprison Adjustment," in J. Travis & M. Waul, Eds., *Prisoners Once Removed*, Washington, D.C.: The Urban Institute Press, 2003, pp. 33-65.

give orders, and otherwise control incarcerated people's lives. When rules are broken, these officers mete out punishments on a regular basis. Prisons maintain a lengthy list of formal rules, many of which can seem petty, and officers issue frequent disciplinary tickets for rule-breaking, punishment for which can involve solitary confinement in a segregation cell. Through this process, prisons condition incarcerated people to do as they are told and submit to the will of the correctional officers.

There is implicit coercion in many of the day-to-day decisions and actions of incarcerated people. Consider the fact that officers enjoy a great deal of discretion as they closely monitor, supervise and discipline incarcerated people. Just like the police officer who stops a driver who is going a few miles over the speed limit, where the officer can either give a warning or write a ticket, the Corrections Officer (C.O.) has the discretion to ignore minor rule violations, give incarcerated people warnings, or write a disciplinary charge that can lead to conditions similar to solitary confinement and other harsh consequences. A big difference between the police officer and the C.O. is that the police usually interact with individuals for a few minutes as they issue a warning or write a ticket, whereas C.O.s monitor and discipline incarcerated people for entire shifts and on every workday. Thus, whether the incarcerated person is on a C.O.'s "good side" or is viewed by officers as "difficult" can make a very big difference in the incarcerated person's life. It is little wonder, then, that incarcerated people generally feel their every decision is coerced, because if they do anything that displeases a C.O., the C.O. could give them a serious punishment the next time they are out of place or violate a minor rule. The experience of prison therefore renders individuals more exposed to these pressures and likely to feel compelled to comply with rules, including a requirement to work.

An incarcerated person's decision to perform a job they are assigned or ordered to do is obviously coercive within this environment, particularly given the punitive consequences of not performing the job present in the Colorado D.O.C. Even without

particular coercive consequences, due to the nature of prison a requirement to work standing alone is likely to be coercive; when you add punishments and consequences like those present in Colorado, the effect is powerful coercion and compulsion to labor involuntarily. The repercussions of refusal can include transfer to a punitive "Restrictive Privileges" (RP) setting including wearing required orange pants which serve to stigmatize and shame; a term in solitary confinement and other punishments within the COPD; loss of "privileges" including reductions in food access and other needs, commissary, communicating with loved ones, and visitation; an increase in custody level; transfer to a higher security facility where there is a greater prevalence of violence and gang activity; loss of "good time," loss of "earned time;" delay or prevention of parole; and prevention of admission to a halfway house and other programs in the community. In other words, if an incarcerated person refuses to work, the consequences are severe and make the work requirement extremely coercive. But more subtle forms of coercion are in effect all the time simply because officers monitor incarcerated people and have the discretion to severely punish them. Requiring work in the prison environment, backed by these serious sanctions, is therefore powerfully coercive and would cause incarcerated people to work against their will, even if they have legitimate reasons to decline to work or would like to exercise a choice not to work.

Here and throughout this Report, I will insert quoted statements of incarcerated people because they describe in very poignant terms the coercive factors at play, incarcerated people's experience of the coercion, and the harm caused by the CDOC's work requirement for the people it incarcerates.

For instance, Harold Mortis testifies in his Declaration that he felt compelled to work despite legitimate concerns for his health and safety due to COVID-19:

Despite myself and many others in my unit (Unit 7, the incentive unit) contracting COVID-19 last fall, around November 13, 2020, FCF staff told my unit that we were deemed 'recovered,' and that we were being put to work in the kitchen for 8-hour shifts. We

were told that 'Failure to comply' would result in 'removal from the Incentive Living Program and review for COPD charges.' Even with this threat, I did not feel safe working in the kitchen. I told my case manager that I wasn't refusing to work because I am defiant or lazy, but because, as someone with asthma, I did not feel safe working in the kitchen where I believe I was exposed to COVID the first time. I promised to comply once I felt it was safe for me to do so. As a result, I was terminated from the kitchen. I received negative chrons and they punished me by taking away two days of earned time.

He reiterates this testimony in his deposition.

And there are many other examples among the Declarations I reviewed of objectively legitimate reasons for incarcerated individuals to avoid the work they are assigned, but very often in the CDOC they are punished anyway. An individual who refuses to work, despite the requirement, faces serious consequences including the punitive sanctions discussed in detail below, COPD disciplinary write-ups, or other serious adverse consequences, as well as getting on the "bad side" of the officers, which can jeopardize the incarcerated person's well-being and entire life inside the facility. The highly structured, rule-bound environment with its stringent consequences for infractions functions to compel people to work who would otherwise choose not to.

B. CDOC punishments—and the threat of such punitive consequences—for not working are highly coercive and result in compelled work

Harsh punishment for work refusal displays the coercive nature of the work requirement, as illustrated by the experiences of incarcerated people who perform work even against their will, and especially when working is likely to result in serious harm to them. It is my opinion that each of these punishments and consequences is coercive, as I discuss herein. The effect of the policy of forced, mandatory work is to compel labor

against individual choice. I will touch on several of the coercive punishments illustrated in the materials.

1. Loss of good and/or earned time increases the coercive power of the work requirement.

I have been informed by Plaintiffs' counsel that the court in Denver did not consider loss of earned or good time coercive. I must respectfully disagree. Based on my long experience with prison cases and the experience of incarcerated people, it is my opinion that withholding or taking time credits will be felt as very coercive in getting people to work involuntarily. In the Colorado Department of Corrections, consequences for refusal to work at an assigned job or non-attendance at the job trigger a series of punishments, including the loss of up to 30 days of "good time" or loss of "earned time" (deducted time that moves parole eligibility date closer and that reduces length of sentence). This means that people considering whether to "choose" not to work know that the consequence of doing so may be additional time in prison, and that time being in very harsh circumstances, for their refusal. This is a highly coercive situation. Naturally, every incarcerated person anticipates his or her release. That is not only the day they gain their freedom and leave confinement to return to the liberties of daily life, it is also the day they can return to their families, their friends, and their communities. The threat that, should they decline to work, the relief of freedom will be postponed, and their prison time extended, exerts a coercive power over these individuals and will compel them to work against their will.

Corey Myers testifies in his Declaration about the coercive effect of taking away good time credits:

And a COPD conviction also means you lose time credits, and this is also part of how they force us to work. They know people want to get out and home to their families as soon as possible, so taking time credits, or threatening to take time credits that you should

otherwise get, is another reason people work against their will. I've lost out on good time credits, and I can tell you it is very coercive for them to use that to force us to work. I have a relatively minor sentence, so when CDOC can take away up to 30 days of good time as a result of a "failure to work" COPD, that means I spend an extra month in prison tha[n] I otherwise would. That's a coercive threat to me.

Describing the coerciveness of losing good time, and how that effected his parole eligibility date, Timothy West testifies in his Declaration:

About three weeks after being transferred to Buena Vista, staff served me with a COPD charge for "failure to work" due to the incident missing work around New Years at Colorado State Penitentiary. Despite my explanation about what happened, staff found me guilty at the hearing and sanctioned me to 8 days in Restricted Housing (RH), with credit for the 8 days I had served in RH already. I also lost good time as a result of the COPD, which affected my parole eligibility date. Despite multiple attempts to get an appeal form, staff would not give me the form, so I could not appeal the COPD conviction. This added to the pressure on me to ensure I work in the future. A COPD has consequences, and not just RH isolation. It's a mark on my record and impacts my chances at parole and my parole eligibility date. Everybody knows we are forced to work against our will, but this experience made it even more clear to me that if I did not work, CDOC would punish me with sanctions like RH and COPD charges. They locked me in RH, removed me from incentive, took my incentive property I bought which was worth about 3 years of pay, transferred me, and gave me COPD charges, to force me to work in the future because they know these consequences are intolerable. They also sanctioned me like that to send a message to everyone else working in the kitchen, they'd better keep working or else the same will happen to them.

For incarcerated people, getting home in timely manner is a high priority, Threats to good time are thus very coercive. Nathan Martinez explains in his Declaration:

Losing time credits for COPD convictions is also something CDOC does to force people to work. Everyone wants to get out as soon as possible, so losing time credits is a big deal and it

adds up. If you get a COPD write up for 'failure to work,' they can and do take up to 30 days of your good time, which means 30 more days in prison and 30 days less to spend with your family and move on with your life outside of prison. This is very hard for me and for my family.

David Turner explains in his Declaration how delay of parole adds even more to the length of one's sentence and delays one's return home:

CDOC staff will also take away good or earned time if you are not work compliant and receive negative 'chrons' or writeups related to work compliance, which causes our parole eligibility date to get pushed out further. This happened to me when CDOC place me on RP status. I lost my good time for the two months I was on RP status. Now, I have to wait until July 2024 to see the parole board, when I would have already seen parole otherwise. This is very coercive because it means I potentially spend more time in prison because I attempted to choose not to work. Getting out of prison and back to my family is very important to me, and knowing I can be kept in prison longer if I attempt to choose not to work coerces me to work against my will.

In his Declaration, Richard Lilgerose illustrates how loss of good time can be as severe a punishment as Restricted Privilege, and that various punishments seem to be meted interchangeably:

Because CDOC refused to let me leave the kitchen position they forced me into, I felt like I had no choice but to stop going. I did not report to the job in December of 2020. In response, I was 'terminated' from my food service assignment. They would have put me on Restricted Privilege Status (RP), but because Fremont Correctional Facility was under Phase III lockdown, they took four days of my earned time instead.

As is evident from these and other testimonies quoted in this report, loss of good and earned time alters one's parole eligibility date and mandatory release date, which means that person's parole eligibility date is set further out in the future than it would have been had they not lost the good time, and the person's mandatory release date is set

further out in the future than it would have been had they not lost the earned time. Such punishment is very coercive because if a person declines to work, their freedom could be postponed. People will work against their will to avoid such punishment.

2. Adverse impact on parole or halfway house eligibility for refusal to work is coercive.

Along the same vein, effects on parole or halfway house eligibility are also highly coercive to getting people to work against their will. For example, since being admitted to a halfway house can lead to release from prison and a gateway to success upon release, not being admitted means a delayed release from prison and potentially no bridge between release from prison and release from state custody. This also means that incarcerated people will spend additional time in prison, and away from their loved ones and communities if they do not work as required. As highlighted above, this is a highly coercive situation.

In describing the coercive negative effects on parole and halfway house eligibility, Casey Lowe testifies in his declarations that:

CDOC putting me in RP also derailed the goals I set for myself and resulted in me being confined in prison longer than I should have been. I could not get into a halfway house even though I was halfway house eligible because my case manager told me I had to have no job-related issues for at least 60 days before he would submit my application to halfway houses. So, placing me on RP status for refusing to work resulted in me spending more time in prison, and prevented me from getting into halfway house where I could start working in the community, see my family, and work on my goals. This consequence is also widely known by incarcerated people, and CDOC staff use that to compel people to work-no one wants to lose halfway house eligibility, and staff know that. Not only did RP affect my ability to apply for halfway houses, but my case manager also informed me that RP on my record can negatively affect my placement in

halfway house or getting paroled even if I'm no longer on RP status and have no other job related issues for 60 days.

Elias Vasquez explains in his Declaration how punishments for failure to work extend to ineligibility for halfway house or community corrections:

The COPD for failure to work has many impacts that staff use to force us to work. A COPD also makes you ineligible for halfway house, or community corrections, and is used by the parole board to deny you parole. So, it means you will spend more time in prison simply for not working as their policy requires. This is extremely coercive, we all want to get out of prison as soon as possible and get home to our families. A COPD for not working means you'll be in prison longer than you should be even if you should get parole or Halfway House. People fear that and it is extremely coercive in getting people to work against their will.

Loss of eligibility for halfway house or community corrections, or a lost opportunity at being paroled, is coercive in the same sense as loss of good and/or earned time described above. But here, loss of eligibility for halfway house or community corrections is doubly coercive in the sense that not only is the individual's release from prison is delayed, he or she also loses an important opportunity to gain social skills that will improve prospects for success at "going straight" after release from prison.

3. CDOC Restricted Privileges status and other forms of increased confinement compels work against individual will.

Another way CDOC punishes people who decline to work is by placing them on "Restricted Privilege" (RP) status, which is also highly coercive and contributes to compelled, nonvoluntary work. RP status often involves transfer to a more restrictive housing unit, greater physical restraint, loss of program opportunities, reduced time in the dayroom or recreation area, and confinement in one's cell for greater amounts of time -- approximately 21 hours per day but in practice it can be even more -- compared to those

not on RP status. RP status also involves limitations on contact with fellow incarcerated people, limitations or no contact with loved ones, less time for meals, greater restrictions on the property permitted in their cells, and fewer visits. In addition, incarcerated people on RP status must wear orange pants, and therefore suffer a certain amount of stigma and humiliation.

Elias Vasquez, a Latino restaurant worker prior to incarceration, testifies about his experience on RP:

I feel coerced to work in CDOC and that I don't have a choice. When I was at Rifle as an 18-year-old, the staff assigned me to work in the kitchen. It was mandatory. When I said I did not want to work, they put me on Restricted Privileges (RP) status. When I was on RP, I could not talk on the phone with my loved ones, which caused some of my relationships to fail. I wasn't allowed to leave my cell for a large majority of the day. I could not go to the day hall or go to recreation. I could only leave my cell for chow – where I got 20 minutes per meal – and to use the restroom and shower. It's pretty much just like being in the "hole", or solitary confinement, but it was a much longer period of time to be isolated than just 15 days in solitary, so it was even worse than the hole. On RP they make you wear orange pants, and staff threaten you with "orange pants" if you try not to work.

David Turner testifies about RP Status in his Declaration,

I recall being on RP status for 43 days. When on RP, CDOC confined me to my cell almost all day, forced me to wear orange pants, turned off my phone, and restricted my canteen purchases such that I could only purchase a limited amount of hygiene items. I recall being allowed out on the yard for one hour per day and being allowed out of my cell for meals for just a few minutes per meal. I could also leave my cell to use the restroom and to shower. Otherwise, I was confined to my cell for about 22 hours per day. This isolation caused me significant mental and emotional distress. I would just lay in my bed in my cell and try to sleep for most of the day. It made me start to go crazy. My anxiety and depression increased.

And I could not contact my support network to help me cope with my anxiety and depression because my phone was turned off and I was not allowed to purchase stamps, so I could not even write to my loved ones. I wouldn't wish RP status on anyone. It was cruel and wrong to keep me confined in my cell like that, it felt like CDOC was treating me less than human. I believe RP was even worse than being placed in segregation or Restricted Housing ("RH") because at least in RH, you are released after 15 days. CDOC used RP and confinement in my cell for 22 hours a day for 43 days to coerce me to work. Everyone knows it's all part of CDOC's policy of forcing us to work. If you don't work, you get in serious trouble and face these kinds of consequences, and CDOC uses those consequences, especially RP status, to make us work against our will. We don't have a choice in it, people work even if they don't want to in order to avoid RP and other consequences.

Casey Lowe testifies about his experience on RP:

I recall being on RP status for at least 30 days, and I believe it was 35 days. When on RP, CDOC staff confined me mostly to my cell, forced me to wear orange pants, cut off my contact with family and restricted my canteen purchases so I could only purchase limited hygiene products. I recall being allowed out on the yard at the beginning of the day for about an hour, and being allowed out of my cell for meals for approximately 15 minutes per meal. I could also leave my cell to use the restroom and to shower. Otherwise, while in RP, staff kept me in essentially solitary confinement in my cell for about 22 hours per day. It was horrible. This experience caused me to suffer pretty bad anxiety and depression. It was really mentally and emotionally distressing. I would get in my head a lot, I had trouble sleeping. I suffered a lack of energy, and I found it very difficult to remain positive. I felt hopeless all the time. This was made even worse by the fact that I could not contact my support network to help me cope with my anxiety and depression because my phone was cut off, and that I did not even get the minimum recreation and library time I should have been allowed. CDOC staff are aware of the isolation and distress that we experience in RP. That is the whole point.

CDOC puts us in RP to force us back to work, and they set an example with us so that other people know they must work or suffer the same terrible punishments. Confinement in my cell for 22 hours a day for over a month was very coercive. I would do anything to avoid this severe isolation again, so I have felt compelled to work against my will to avoid suffering those horrible consequences.

Besides providing a very representative list of symptoms and pains reported by a large proportion of incarcerated people in solitary confinement,⁵ Mr. Lowe provides a poignant description of his pain and suffering in RP Status, aka solitary confinement.

Mario Ortega also provided graphic testimony about RP:

As a result of attempting to choose not to work as required, CDOC placed me on RP status in August 2023. I recall being on RP status for 30 days. When on RP, I was "celled up" by myself, meaning confined to my cell by myself, I had no access to any electronics, and I was restricted with my canteen purchases where I could only purchase hygiene items. I could only leave my cell for 15-20 minutes per meal, for one hour a day for rec, and when I needed to use the restroom. When I did get my hour of rec time, most days I was on the yard by myself, secluded from others. Otherwise, I was confined to my cell for between 21 and 22 hours per day. Being isolated in my cell all day for a month caused me mental distress and frustration. It was a terrible experience being so isolated and I would do anything to get out of that situation.

Based on the testimony of these and other incarcerated people, these RP conditions are quite comparable to solitary confinement. Even for individuals confined in RP with a cellmate, the level of restriction and its impact on the individual is severe. Until

⁵ See Kupers, T. (2013). "Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?," *The Routledge Handbook of International Crime and Justice Studies*, Eds. Bruce Arrigo & Heather Bersot, Oxford: Routledge, pp. 213-232.

recently, solitary confinement was generally defined as in-cell confinement for 22 or more hours per day with very limited programming.⁶ Even when confinement is less than 22 hours per day, or has a cellmate, the damaging effects of solitary confinement remain the same. Professor Haney clarifies the evolving definition of solitary confinement: "Solitary confinement is a term of art in corrections, one whose longstanding negative connotations have spawned a number of seemingly less pejorative alternative descriptors across different jurisdictions (including 'administrative segregation,' 'close management,' 'security housing,' and what appears to be the current favorite, 'restrictive housing'). In this Essay, I will use the original term to encompass all of these variations. From a psychological perspective, 'solitary confinement' is defined less by the purpose for which it is imposed, or the exact amount of time during which prisoners are confined to their cells, than by the degree to which they are deprived of normal, direct, meaningful social contact and denied access to positive environmental stimulation and activity. Thus, even a regime incorporating a considerable amount of out-of-cell time during which a prisoner is simultaneously prohibited from engaging in normal, direct, meaningful social contact and positive stimulation or programming would still constitute a painful and potentially damaging form of solitary confinement. Especially in a prison context, the terms 'normal' and 'direct' mean that the contact itself is not mediated or obstructed by bars, restraints, security glass or screens, or the like. 'Meaningful' refers to voluntary contact that permits purposeful activities of common interest or consequence that takes place in the course of genuine social interaction and engagement with others."⁷

⁶ See United Nations Minimum Rules on the Treatment of Prisoners, known as the "Mandela Rules." <<http://solitaryconfinement.org/mandela-rules>>. See also

⁷ Haney, C. (2020). THE SCIENCE OF SOLITARY: EXPANDING THE HARMFULNESS NARRATIVE, *Northwestern University Law Review*, 115:211.

RP status in the Colorado Department of Corrections involves daily cell-confinement for 21 hours or more per day. While 21 hours per day is less than the 22 hours mentioned in the U.N.'s Mandela Rules, in practice individuals who are supposed to be released from their cells at least three hours per day report that there are very many days when, due to staff shortages, lockdowns and other exigencies, they actually get out of their cell for much less time. And then there is Professor Haney's more apt definition of solitary confinement.⁸ Other restrictions include limited contact with other incarcerated people, limited or no contact with loved ones, fewer in-person visits, restrictions on property and mail, and limited time in the dayroom and for recreation. All of these restrictions are also imposed on incarcerated people already in solitary confinement. As Professor Haney points out, and I concur, there is little reason to believe that reduction of daily cell-confinement by just one hour, from 22 to 21 hours, would alleviate the well-known harmful effects of solitary confinement. To the contrary, punishment with RP status approximates the general definition of solitary confinement, and in my opinion meets the definition of solitary confinement, and certainly contributes to the coercive nature of the work requirement. In my opinion, because of the severe symptoms and pains associated with isolation in the prison setting, the threat and use of increased confinement and isolation of RP status is extremely coercive and would have the effect of compelling people to work involuntarily. I also find it noteworthy that the use of "orange pants" sends a threatening signal to all in the facility that work is mandatory, or else they too will suffer the humiliating consequences.

And, solitary confinement as a means to punish those who do not work as required is not limited to RP status. Take, for example, Charles Garrison, a 56 year-old man at Arkansas Valley Correctional Facility, who was a traveling nurse prior to his incarceration, testifies in his Declaration:

⁸ Ibid.

I told my case manager at Fremont that I could not work a morning shift in the kitchen because I took medication that made it impossible for me to wake up at such an early hour (3:30 A.M.). CDOC nevertheless assigned me to the morning shift in the kitchen. I did not go to work as assigned. On the second day I did not go to work, officers came to my cell in the incentive unit and physically handcuffed me and escorted me to segregation, which they call Restricted Housing (RH). It's basically "the hole": they lock you in a cell for about 22 hours every day in isolation. It's terrible to experience this and the staff know that – that is the point. CDOC threaten us with RH and then follows through on their threats in order to force us to get back to work. CDOC held me in RH in solitary confinement for at least a few days. ... I have also witnessed CDOC staff threaten other people with being placed in RH if they try not to work. For example, at Fremont Correctional Facility, correctional officers would threaten anyone who did not want to work with "seg," or RH. I have heard CDOC staff say, "get in the kitchen or you're going to seg," that kind of thing, to get people to work against their will.

Substantial research confirms the harmful effects of isolated or solitary confinement.⁹ Even relatively stable incarcerated people without specific vulnerabilities to mental illness suffer serious mental and emotional harm when kept in a cell much of the time. Predictably, an incarcerated person's mental state deteriorates in isolation. Human

⁹ Kupers, T. (2013), *Isolated Confinement: Effective Method for Behavior Change or Punishment for Punishment's Sake?*, The Routledge Handbook of International Crime and Justice Studies, Eds. Bruce Arrigo & Heather Bersot, Oxford: Routledge, pp. 213-232; Scharff-Smith, P. (2006). 'The effects of solitary confinement on prison inmates: A brief history and review of the literature,' In M. Tonry (Ed.), Crime and justice, Vol. 34, 441-528, Chicago: University of Chicago Press; Kupers, T. (2017), Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It, Berkeley, University of California Press. In their amicus brief in *Wilkinson v. Austin*, 545 U.S. 209 (2005), leading mental health experts summarize the clinical and research literature about the effects of prolonged isolated confinement and conclude: "No study of the effects of solitary or supermax-like confinement that lasted longer than 60 days failed to find evidence of negative psychological effects" (p. 4).

beings require social interaction and productive activities to establish and sustain a sense of identity and to maintain a grasp on reality.

Some individuals on RP status or in RH have a cellmate and some do not. Research on solitary confinement does not reflect that having a cellmate improves upon the ramifications of prolonged cell confinement. The conditions still constitute solitary confinement, and the same symptoms tend to emerge even when incarcerated people have a cellmate in solitary confinement.

The impact of solitary confinement is not merely psychological, as solitary confinement also harms physical health. People subjected to solitary confinement can experience detrimental physical health impacts including chronic headaches, hypertension, diabetes, digestive problems, cardiovascular disorders, chronic pain, weight loss, sleep deprivation, and other physical symptoms and health effects. There is a significant amount of research evidencing significant changes in brain morphology and function from solitary confinement.¹⁰

To a reasonable degree of medical certainty, the physical and psychological impact of RP and RH is very similar to the impact of solitary confinement. Incarcerated people are therefore likely to be coerced by the threat of RP status or RH, as well as the threat of being transferred to a higher security facility where gang activity is prominent, into working in order to avoid RP status. Those who attempt to choose not to work will face severe and coercive consequences. Consider Julian Garcia's Declaration testimony:

RP status feels almost like time in "the hole." We are locked in our cells 21 hours per day. We get fed in our cells instead of being let out. The food sits out and is cold by the time it gets

¹⁰ Smith, D. G., Neuroscientists Make a Case Against Solitary Confinement, *Scientific American*, November 9, 2018, <https://www.scientificamerican.com/article/neuroscientists-make-a-case-against-solitary-confinement/>; Akil, Huda, The Brain in Isolation: A Neuroscientist's Perspective on Solitary Confinement, in J. Lobel & P. S. Smith (Editor), *Solitary Confinement: Effects, Practices and Pathways toward Reform*, Oxford University Press, 2020, pp. 199-220.

to us. We cannot buy anything we want or need from commissary—we are limited to a specific list of items. These include only certain brands of soap and toothpaste, and no food to snack on. We don't get to use the phone to call our families. When I was on RP because of my failure to work, not having phone time was very hard because I was worried about my parents due to COVID, but I could not contact them. We are also limited to significantly fewer and shorter visits from family, and these have to be non-contact visits. Additionally, anyone on RP has to wear orange pants to mark us as different from the other inmates.

CDOC adds the harsh living conditions and deprivation of amenities, programs, and nearly all human contact of RP status or RH to the loss of good and/or earned time and other negative eventualities, making the punishment for non-attendance at work very harsh and coercive indeed. These conditions will also make incarcerated people's psychiatric symptoms and psychiatric disorders all the more severe. Incarcerated people who would rather freely choose not to work would feel they have no choice but to avoid those harms by participating in the prison work requirement. It is my professional opinion that avoiding the harms of RP status and/or RH is a powerful motivator for prisoners – including the Named Plaintiffs and other individuals whose declarations I reviewed – and likely coerces them to perform work they would not otherwise perform and that may be harmful to them.

The prospect of solitary confinement is entirely intimidating to someone who is incarcerated. Incarcerated people know of and live what researchers like Hans Toch, Stuart Grassian, Craig Haney and myself find about the severe emotional damage solitary confinement causes. The threat of solitary confinement, and the harms people in prison know it causes, are certainly enough to coerce labor from incarcerated people against their will.

4. The policy of increased custody and classification for refusal to work is highly coercive.¹¹

Higher classification categories, e.g., close or maximum custody, and higher security prisons are more violent places, on average. This is true in the Colorado Department of Corrections, as well, as indicated by violence statistics in C.D.O.C. prisons from across the state. A prisoner who is able to survive and feel a certain amount of peace in a lower security level security prison is at higher risk of physical harm by other incarcerated people and C.O.s in a higher security prison. They will experience a more restrictive environment that includes more lockdowns where rehabilitation programs are paused. Because of that increased risk of harm and increased restrictive environment, the very threat of being transferred to a higher security prison will coerce people to work against their will.

Nadia Reed testifies in her Declaration about having a traumatic experience upon transfer to a higher security level:

As a result of attempting to choose not to work, I received two COPD write ups stemming from this same incident - one for "failure to work" and another for "advocating or creating a facility disruption" - and I was punished for each COPD conviction. My classification regressed from medium to close custody as a result of these COPD convictions I received related to failure to work. I remained in the transport unit at Centennial for a while due to the ongoing pandemic at the time, but eventually, CDOC transferred me from Centennial to the close custody unit at Fremont Correctional Facility. While in close custody at Fremont, I was sexually assaulted. I should never have been in close custody merely for trying not to work. But because CDOC classified me as close custody after

¹¹ In addition, incarcerated people who are in an Incentive Unit enjoy a safer living environment than those incarcerated people in regular general population, but if they are cited for refusal to work they are removed from the Incentive Unit. In his declaration, Richard Lilgerose describes how a move from the Incentive Unit can put his safety at risk: "I was also removed from the incentive unit and put into general population. General population is significantly more dangerous than the incentive unit, and I felt under threat of danger by being in that hostile environment."

my COPD write-ups related to attempting to choose not to work, I suffered a terrible sexual assault. I will be traumatized by it for the rest of my life.

Nadia Reed's recounting of dreadful repercussions of her COPD write-up for failure to work, and subsequent transfer to close custody, is just one of many accounts I found in the Declarations I reviewed.

Nathan Martinez explains in his Declaration his concerns of being "regressed to a higher custody level":

In my case, CDOC specifically recommended I be regressed to a higher custody level just for not working. A higher custody level means a more restrictive prison or unit around more violence, gang activity, people with more violent convictions, and people with more violent behavior exhibited in prison. So, it means both more time locked down, and also that your life may be in danger. For example, in Sterling, there is a minimum restricted side and a medium/close custody level side. The medium/close side is higher custody level, and is accordingly referred to as the "high side." The high side of Sterling is much worse than being on the "low side." On the high side, it's all cement and steel cages, and much more restrictive than the low side. Due to more violence and incidents it gets locked down a lot more. And you have toilets in the cells on the high side, so they can lock it down for longer. So, you'll be locked down in your cell more often, sometimes for days, when there is a gang-related fight, for example. They also use other threats of prison violence to coerce us to work. Some prisons, and some yards, are a lot more dangerous, and everyone knows that, including staff. Everyone knows places like Limon and Buena Vista, and the high side at Sterling, are more dangerous and have more gang activity. And we know that if you don't work and continue to get COPDs for 'failure to work,' that you will end up on a Level IV yard, or the high custody yards, that are both more restrictive and more dangerous than lower custody yards....

Charles Garrison testifies that the threat of transfer to a higher security facility, where typically there is heightened risk of violence and gang activity, serves to coerce incarcerated people to work involuntarily:

Another way CDOC forces us to work is threatening COPD charges and increasing custody level and transferring us if we try not to work. COPD charges and not being compliant with the work requirement are ways custody level can increase, because your points go up. I'm not affiliated with any gangs, and I would be concerned for my safety if transferred to a unit or facility that has gang activity. In fact, during my time in CDOC, I have been physically assaulted, and it was related to gangs. So, concerns about safety and gang activity are real fears and threats we deal with, and staff know it. There are some facilities – like Sterling Correctional Facility, Limon Correctional Facility, and Buena Vista Correctional Facility – that have a especially bad reputation for gang activity and violence. Staff know people fear this kind of transfer and its part of how they force us to work.

Elias Vasquez testifies in his Declaration:

Another way CDOC forces us to work is threatening or using custody level and transfer. They will increase your custody level and send you to a worse facility if you don't work. I'm worried about being sent to more dangerous facility at a higher custody level where there is more gang activity and violence. No one wants to be in that environment, and the staff know it. In my case I have prior gang affiliation, so depending on where they send me, which I would have no control over, that could put my life in danger. You can even be "pointed out" for not working if you keep refusing, which means you will be reclassified close custody, the highest level. You'll be locked down far more and in a more dangerous situation. They hold this over our head and it is part of how they force people to work. They know people will work under these threats. People get killed in here. And I've seen people get stabbed and killed. I just saw someone get beat to death at Crowley Correctional Facility

When CDOC threatens incarcerated individuals with re-classification to a higher security level, or transfer to a higher security prison, those individuals are undoubtedly being coerced into working. To avoid both increased risk of physical harm and to avoid being housed in a more restrictive environment, people will work against their will, even if the work would be harmful to their mental or physical health.

5. The policy of punitive COPD charges for failure to work is highly coercive.

Threats of COPD charges by themselves are coercive because of COPD convictions set off a series of events that can make one's living situation worse by increasing custody level and increasing confinement and restrictions, can result in loss of good time, and can delay one's release from prison because of the impact a COPD has on one's record when they are up for parole or halfway house. Each of these events multiply the coercive nature of the work rules.

First, as described above with Ms. Reed's and Mr. Garrison's testimony, a COPD can result in re-classification and transfer to a higher security prison with all the increased danger and restriction that entails. Mr. Lilgerose also reiterates this in his deposition. The individual is then at greater risk of being physically harmed. The threat of transfer that increases one's confinement and risk of harm is a very coercive tactic by the Colorado Department of Corrections to gain compliance from incarcerated people to work as required.

Second, COPD charges can result placement in solitary confinement. Timothy West and Elias Vasquez both describe how they received RH sanctions for failure to work COPDs. Both Mr. West and Mr. Vasquez received credit for the 8 days they each served in RH as a sanction for their failure to work COPDs. And Ms. Reed also describes being placed in RH for approximately 14 days before her COPD hearing. As I described above, placement in solitary confinement is very harmful. And such a sanction as a result of getting a COPD is very coercive to get people to work as required.

Third, there is the likelihood of loss of good time. As described above with the testimony of Mr. West and Nathan Martinez, a COPD conviction often results in loss of good time of up to 30 days, and loss of good and/or earned time delays freedom from prison, which is very coercive to get people to work against their will.

Fourth, the COPD charges often delay parole and make admission to halfway houses less likely.

Elias Vasquez testifies in his Declaration about the impact of a COPD on parole and halfway house placement:

The COPD for failure to work has many impacts that staff use to force us to work. A COPD also makes you ineligible for halfway house, or community corrections, and is used by the parole board to deny you parole. So, it means you will spend more time in prison simply for not working as their policy requires. This is extremely coercive, we all want to get out of prison as soon as possible and get home to our families. A COPD for not working means you'll be in prison longer than you should be even if you should get parole or halfway house. People fear that and it is extremely coercive in getting people to work against their will.

And as I described above, delays in parole and halfway house placement are very coercive because the individual's release from prison is delayed and he or she also loses an important opportunity to gain social skills that will improve prospects for success at "going straight" after release from prison.

Finally, the testimony of Ms. Reed and Melvin Woolley show that people who refuse to work as required can also receive more than one write up as a result. Ms. Reed describes her double write up in her declaration:

As a result of attempting to choose not to work, I received two COPD write ups stemming from this same incident – one for 'failure to work' and another for "advocating or creating a facility disruption" – and I was punished for each COPD conviction.

And Mr. Woolley describes how he also received a double write up from one incident where he refused to work:

I later received two COPD write ups stemming from this same incident – one for ‘failure to work’ and another for ‘disobeying a lawful order’ – and I was subjected to punishment for each COPD conviction. I recall losing 60 days of good time along with the 10 days I spent in RH as punishment for these COPDs.

I’ve already described how coercive one COPD conviction can be with all its associated sanctions. Two COPD convictions – or a double write up – resulting from one incident of failure or refusal to work again multiplies the coercive effects of COPD convictions because double write ups result in double sanctions. And, it may be that correctional officers use these additional COPDs charges of disobeying a lawful order and creating a facility disruption to sanction people to RH, or solitary confinement, as both Ms. Reed and Mr. Woolley spent time in RH before their respective COPD hearings.

Dreading the entire series of punishments associated with COPD write ups, incarcerated individuals are prone to accept the work even against their will. Based on testimony in many of the Declarations I have reviewed, COPD charges for failure to work, and other COPDs related to failure to work such as disobeying a lawful order and creating a facility disruption, have multiple severe ramifications and serve to coerce people into working.

6. The harm resulting from CDOC’s work requirement, and incarcerated people’s willingness to work in spite of the known harm, further illustrates its coercive nature.

Many incarcerated people in the Colorado Department of Corrections report to work even though they believe the work is harmful to their health or mental health. The fact that many people who wish not to work in order to avoid negative health or mental health impacts, nevertheless feel compelled to do so or face harsh punitive consequences, demonstrates the coerciveness of the work requirement.

Donald Busto, who was suffering from severe injuries of his ankle and arm and had been declared by medical staff an "orthopedic nightmare," and had been told he needed physical therapy, testifies in his Declaration:

"I am still working now, despite my physical pain, because of the threat of further punishment if I don't work."

This is prototypical coercion: an individual working against his will and at great risk of further medical harm, despite being in pain.

Charles "Chuck" Elliot testifies in his Declaration as follows:

I am 57 years old. I have multiple medical conditions that make it difficult for me to work, including a hernia that I got two years ago working in the commissary, rotator cuff problems in my right shoulder, painful ankles, and flattened lumbar discs. In May or June of 2020, staff in the facility forced me and other people in my unit (Unit 2) to work in kitchen positions. We already had jobs in other places, but they didn't care and forced us to work in the kitchen. The staff said we had no choice and had to work as we were told or we would face legal consequences like restricted privileges. My food service position required me to wrap food service flatware with salt and pepper packets and a napkin. To do so, I had to remain bent at the waist for as long as 8 hours, which causes me extreme pain and discomfort. If I refused to work, I was informed I would be penalized through the COPD process and placed on Restricted Privileges (RP) status. On RP status, you wear orange pants, lose 'privileges' like phone access, and lose your property. This deterred me from quitting the job even though the work was painful. Losing my property would be a serious penalty to me, because I have been in here for a long time and the few items I possess for my personal use are extremely important to my wellbeing. I felt coerced to work in the kitchen, despite being in pain as a result.

Lawrence Sanchez was in Fremont Correctional Facility when he testified in his 2021 Declaration:

It was also difficult to work in the kitchen because I had to be on a catheter from my medical issues. I wanted to quit, but I didn't because I was afraid of punishment and retaliation.

In his Declaration, Kenneth Naranjo illustrates just how dangerous coercive work requirements in CDOC can be for people with disabilities:

After arriving at Limon Correctional Facility in September 2023, I was assigned to the kitchen within the first few weeks of being at the facility. My case manager told me it was mandatory that everyone work in the kitchen for the first 90 days of their incarceration at Limon. I tried to explain to my case manager that I am legally blind, and this disability makes it difficult to work a job in the kitchen. He told me that I had to work in the kitchen, or I would be moved to close custody, placed in segregation, or transferred out of Limon all together to a higher security prison. Close custody is very dangerous, and I believe that danger is why correctional officers use close custody as a threat. People tend to be more violent as you move up in custody levels, so you are around more violent people when you are in close custody. You could get raped, stabbed or killed in close custody. I knew I could actually get put in close custody at Limon because I had seen other incarcerated people there get placed in closed custody as a result of attempting to choose not to work, including others with disabilities. Because I feared these consequences, I reported to work in the kitchen beginning in September 2023. There were no Americans with Disabilities Act (ADA) accommodations for me in the kitchen - there were no slip mats, the tile surface in the doorways was uneven, the drains didn't have covers on them, and I was not allowed to have my OCA escort me to and from work. Because of my disability, and the lack of accommodations, the kitchen staff actually took me off of the kitchen workers roster several times because correctional officers in the kitchen did not believe it was a safe working environment for me. But each time, my case manager reassigned me to the kitchen, so I kept showing up because I didn't want to get put in close custody. On or around November 6, 2023, before reporting to my 3:30am shift in the kitchen, I tripped or slipped on a tile sticking up about half an inch, fell, and hit my head because I had been denied my OCA escort to and from work. I went unconscious. Correctional officers had to take me on a gurney to medical and I had symptoms of a concussion. I

reported to work the next day, because the nurse in medical would not give me a medical excuse not to report to work.

That these individuals, as well as Mr. Mortis as described above, performed work even when that work is contrary to their health demonstrates the coercive nature of the CDOC policy because it indicates the person is working involuntarily, at the expense of their health, to avoid the harsh punishments they will be subjected to if they don't work as required. The experiences of Mr. Mortis, Mr. Busto, Mr. Elliot, Mr. Sanchez, Mr. Naranjo, and others I have quoted throughout this report confirm that if given the choice, they would exercise their own volition and choose not to work, or at least not to engage in work that was physically harmful. In the community, workers complaining of the medical conditions these men have would likely be eligible for disability or workers compensation, yet men with these conditions in the CDOC have no acceptable alternative to working at the detriment of their health and wellbeing. The CDOC requirement that they work despite their medical situation is therefore fundamentally coercive.

The CDOC requirement that incarcerated people perform a job, usually not of their choosing, is also emotionally stressful and psychiatrically damaging to prisoners. Despite this stress, however, many incarcerated people nevertheless perform the required work – a testimony to the power of coercion. Richard Lilgerose testifies in his Declaration about the significant impact of the CDOC work requirement on his psychological well-being – and yet he still performed work under this level of compulsion and duress:

I am 45 years old. I have been incarcerated for 21 years, 7 of which have been spent in administrative segregation (solitary confinement)... As a result of spending so much time in solitary confinement, I have PTSD and other mental health problems. I have a hard time being in crowded and busy environments. I was living in the incentive unit when I was told I had to work in the kitchen. I tried to get an exemption because of my mental health issues. I tried to talk to the housing sergeant and then the housing lieutenant about being removed from kitchen duty. I also talked to mental health staff. However, they refused to acknowledge my

mental disability and the pressure that I was experiencing by working in the kitchen. The kitchen is a crowded and stressful environment. We were locked in a little serving room that would be over 90 degrees, even 100 degrees at some times. CDOC staff ordered us around and between kitchen jobs without any real structure or explanation. I felt uncertain and uncomfortable at all times. I had a lot of anxiety, and I was losing sleep and not eating properly because of the stress of this forced condition.

The punishments and threatened punishments described here and throughout this report are severely coercive, forcing many individuals to work against their will and at the expense of their health and wellbeing.

7. Reports of Consequences of Failure to Work are Remarkably Representative.

I have reviewed 18 Declarations of potential class members in this matter and two Depositions of the Named Plaintiffs, as well as spreadsheets prepared by Defendants that reflect consequences of failure to work for well over ten thousand incarcerated people between December, 2018 and November, 2023 in CDOC, and I have discovered widespread, remarkably consistent consequences for failure to work, as well as fears on the part of incarcerated people of known consequences for failure to work in the CDOC. When many incarcerated people in different settings describe very similar conditions, practices, fears and feelings of coercion, and there are no contrary descriptions, that is very strong evidence that the incarcerated people's statements I cite are representative of the entire incarcerated population. The descriptions of these dreaded consequences that these incarcerated people testify to are clearly representative of the fears of, and actual consequences experienced by most, if not all, incarcerated people in the CDOC.

C. Involuntary work and harsh punishment for not working run counter to the aim of rehabilitation within the Colorado Department of Corrections.

The Colorado Department of Corrections requirement that incarcerated people work, often in undesirable or unhealthy conditions, is antithetical to the principles of rehabilitation. In general, coerced work worsens incarcerated people's overall sense of being, locks them in an overwhelmingly coercive environment, and tends to deaden their initiative, as well as their motivation to rehabilitate themselves and develop skills and attitudes that will permit them to do better in the future, after they get out of prison.

The Colorado Statute concerning sentencing to prison, C.R.S. 18-1-102.5, contains the following statement about the purpose of incarceration within the Colorado Department of Corrections:

(d) To promote rehabilitation by encouraging correctional programs that elicit the voluntary cooperation and participation of convicted offenders;...

There is wisdom in this statute: voluntary work is rehabilitative. Prison rehabilitation work seeks to foster initiative and discipline; to maximize a sense of pride in the incarcerated person's work; to increase and support the incarcerated person's work-related skills and capacities; and to increase the worker's sense of agency. In contrast, involuntary coerced labor (many incarcerated people describe as slavery in their declarations) is undesirable and unsatisfying, and causes resentment and other serious harms in very many individuals forced to work against their will. The only thing these incarcerated people will learn from the work is that the coercion of prison life extends into the workplace, and too often this undermines their incentive to learn work skills that will help them succeed in the community after they are released from prison.

Dean Williams, Former Executive Director of CDOC, spoke publicly about a "culture shift" in the department, fostering "normalization," e.g., staff treating

incarcerated people with respect (including shaking hands), incarcerated people choosing their clothes and washing their own clothes as well as doing some cooking for themselves, and generally making “conditions behind the walls, as normal as they can, that are comparative to outside the walls.”¹² Director Williams’ emphasis on culture change and “normalization” compliment and support the aim of rehabilitation. But coercing incarcerated people into unwanted job assignments and punishing them harshly for not working these unwanted job assignments runs counter both to the notion of “normalization” as well as the aims of rehabilitation.

Requiring incarcerated people to do jobs, paying them with a paltry sum, and punishing them if they don’t work is the antithesis of “normalization” and “rehabilitation.” Truly rehabilitative programs encourage incarcerated people to work on the lessons they are studying, to master the skills they are learning, and to learn from their training the work discipline that will make them employable after release from prison. Incarcerated people often choose rehabilitative programs and pride themselves on the skills they acquire. Being forced to work is prone to make incarcerated people sour on work altogether. Adding insult to injury, the punishments for not working – e.g., spending 21 hours or more per day in a cell – make participation in most rehabilitation programs impossible. And there is evidence from the declarations I’ve reviewed that punishments for not working can even include getting kicked out of rehabilitation programming, like what happened with Ms. Reed and her SOTMP program. The symptoms reported by most incarcerated people, including here, in any form of solitary confinement – including anxiety, paranoia, trouble concentrating, memory problems, a lack of energy and a lack of initiative, and despair – are counter-productive when it comes to developing initiative and succeeding in rehabilitation. As a result, the

¹² “Dean Williams Pushes Culture Change: Interview with Executive Director Dean Williams,” by Brandon Moss, *Inside Report*, Vol. 1, Issue 2, July, 2020.

incarcerated person who does not work in an assigned job is doubly punished, first with restricted privileges and/or and less desirable and harmful housing, and secondly with diminished opportunities to hone the skills that will improve his or her chances of success at “going straight” after being released from prison. Requiring work is also contrary to the “normalization” concept because in the free world, work is voluntary and based on the idea of a voluntary work ethic. Forced work contradicts the goal of culture change within CDOC because it reinforces the degrading idea that incarcerated people are lesser in the eyes of officers, and can be compelled to work against their will as involuntary servants (or slaves) of the institution.

To be effective, rehabilitation programs as well as correctional mental health and recovery treatment programs, must instill in people a strong sense of self-esteem, pride in work, and a sense that the work they do is appreciated and they are respected all the more for their productivity. Rather than perceiving the work as rehabilitative, when work is forced or coerced, incarcerated people view work as involuntary servitude akin to slavery. For example, Harold Mortis testifies in his declaration:

I do not think it is fair that we can be forced to work, under threat of legal punishment and a longer term of incarceration, especially now that **the Colorado Constitution says there shall be no slavery or involuntary servitude, period.**

Richard Lilgerose testifies in his declaration, which he also reiterates in his deposition:

I was told I could be forced to work because of C.R.S. 17-20-117, which says that every able-bodied inmate shall be put to and kept at work. Even though I filed grievances mentioning that the Colorado Constitution was amended to say there shall be no slavery or involuntary servitude, and that CDOC cannot be using threats, intimidation, or force to make us work, I was denied any relief.... **I strongly feel that CDOC is treating us like slaves.**

Nadia Reed testifies:

What CDOC is doing to us is modern day slavery. CDOC put my safety and security at risk in order to get me to comply with its work policy. CDOC's actions to compel my labor caused me physical and mental harm that will haunt me for the rest of my life.

Corey Myers testifies:

There is no choice but to work in CDOC or face severe punishments. This is dehumanizing and **it feels like slavery.**

Charles Garrison testifies:

CDOC's forced labor policy **feels like slavery.** Our Colorado Constitution, which was changed by the majority of voters, no longer allows for slavery or involuntary servitude in Colorado prisons. **The forced labor and what we are experiencing feels like slavery and involuntary servitude** in violation of the Colorado Constitution.

Casey Lowe testifies:

I feel like I'm **working as a slave for CDOC.**

David Turner testifies:

I feel like a slave being forced to work against my will by CDOC. Everybody does. What they have done to me and do to others all the time – confining me for 22 hours per day and threatening me with more confinement – makes us feel like **they see us as less than human and like slaves who have to work on demand or suffer severe consequences.**

Domenic Aguilar testifies:

And it feels like a secondary way of being punished when we are already being punished with prison time. **We are treated like property of the state instead of like human beings.**

Kenneth Naranjo testifies:

I feel that CDOC forces labor by coercing us with these severe punishments if we attempt to choose not to work. The way CDOC forces us to work under threat of these punishments **feels like slavery.**

Mario Ortega testifies:

What CODC is doing to us is modern day slavery. They make us work against our will, it is forced on us and if you try not to work, they use these consequences to get you back to work.

Timothy West testifies:

As long as you are forced to work against your will, you are enslaved. I am forced to work against my will in CDOC, which I have been explicitly told many times over. Everybody experiences it and works under these threats.

The fact that these incarcerated individuals, and many others in the CDOC, subjectively view their coerced work assignments as slavery, increases the psychological harm of the policies and practices related to incarcerated people being required to work in the Colorado Department of Corrections. The people identified above not only believe they are being subjected to "modern day slavery," they also provide poignant bases for that opinion.

The experience of these individuals, who feel that they are being subjected to involuntary servitude or being treated "like slaves," is not only evidence of coercion, it is also evidence that the work requirement is causing harm, contrary to the rehabilitative goals of CDOC. Full and effective participation in rehabilitation programs requires a certain level of mental health. But people in prison who believe they are being treated as slaves will have a much worse prognosis in terms of mental health and substance abuse and will be much more likely to fail at rehabilitation, not only because coercive

labor and harsh punishments directly affect mental health, but also on account of their perception they are being treated as slaves.

As a general matter, even outside of prison where work is not involuntary, dissatisfaction with one's work tends to cause psychiatric symptoms, disorders and disabilities, very often a combination of depression and/or anxiety or an exacerbation of other varieties of mental disorder.¹³ There is a large amount of clinical research supporting this conclusion.¹⁴ To illustrate the point, consider a middle-aged man who comes to see me at my office in the community for psychiatric treatment. He is depressed. He is in a very good marriage and has teen-age children who are all thriving. But he is very unhappy at work, and he thinks that is what makes him depressed. I ask him to tell me more about his unhappiness at work. He tells me that he is holding a very low-level job, low in terms of the level of skills required of workers, much below his education and skill level, and low in terms of paycheck. We explore his work situation, his psychological reactions to the unhappy work situation, and steps he might take to heal himself of the depression. This man's story exemplifies a well-known phenomenon: People are prone to depression and other emotional difficulties when their working conditions are unsatisfactory, they are not permitted choices about their work situation, and their remuneration is insufficient.

Switching to the situation in Colorado prisons, the coercive conditions such as CDOC's work requirement and harsh punishment for failure to work can cause serious harm, including

¹³ Kupers, T., "Men at work and out of work," *Psychiatric Annals*, 26:1, 1996.

¹⁴ Specor, P.E., "Job satisfaction: Application, assessment, causes, and consequences, Thousand Oaks, CA: Sage Publishers, 1997; Faragher, E.B., M. Cass & C.I. Cooper, "The relationship between job satisfaction and health: A meta-analysis, *Occupational and Environmental Medicine*, 62, pp. 105-112, 2005; Lee, M. S-M, M-B Lee, S-C Liao & F-T Chiang, "Relationship between mental health and job satisfaction among employees in a medical center department of laboratory medicine," *Journal of the Formosan Medical Association*. 2009, 108 (2): 146-154; Aazami, S, K. Shamsuddin, S. Akmal & A. Golnaz, The relationship between job satisfaction and psychological/physical health among Malaysian working women, *Malays J Med Sci*. 2015 Jul-Aug; 22(4): 40-46.

depression, anxiety and a slew of other mental health ramifications. The testimony of Mr. Lilgerose and others cited above provides a powerful example of these harms. In addition, the sense of having no choice about whether or not to work and about the working conditions tends to exacerbate mental illness.¹⁵ That may mean mild depression and anxiety in relatively stable workers, but it is very likely to lead to major depression, even suicide, in others, and to make worse any mental illness they are already suffering from. Mr. Lilgerose's explanation of how coerced work worsens the symptoms of his PTSD is merely one poignant example of the phenomenon.

It is well-known that people are prone to depression and other emotional difficulties when their working conditions are unsatisfactory, they are not permitted choices about their work, and their remuneration is insufficient. The psychiatric harm of the coerced work and punishments impair rehabilitation all the more. Ultimately, treating people "like slaves" is not only coercive, it harms people and is contrary to the rehabilitative goals of CDOC and the normalization culture change sought by Former Director Williams.

D. Conclusion

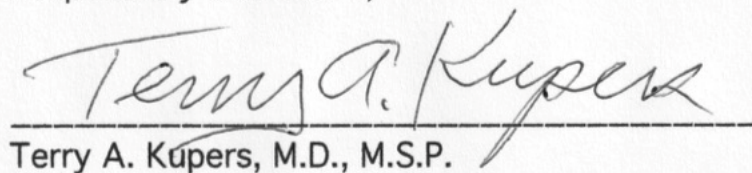
The Colorado Department of Corrections' policies and practices requiring incarcerated people to work are highly coercive and compel the involuntary labor of people incarcerated in that system. In particular, the threat and use of punishments such as COPD charges, loss of earned time, negative effects on eligibility for parole and halfway house, increased custody and classification, restricted housing and isolation, RP

¹⁵ Spence Laschinger, H.K. & D.S. Havens, "The effect of workplace empowerment and staff nurses' occupational mental health and work effectiveness, *Journal of Nursing Administration*, 27, 1997, pp. 42-50; and Ganster, D.C., "Worker control and well-being: A review of research in the workplace. In: Sauter, S.I., J. Hurrell & C.L. Cooper, Editors, *Job Control and Worker Health*, pp. 3-23, NY: John Wiley & Sons, 1989. See also, Sennet, R. & J. Cobb, *The hidden injuries of class*, NY: Vintage, 1972.

status, and other punitive measures, are coercive, and these conditions are also harmful to incarcerated people and contrary to the rehabilitative purposes of incarceration in CDOC.

I started out this report discussing the baseline coercion ever-present in prison, and it is important to return to that fundamental point. Forcing people in prison to work is inherently coercive to begin with, given the conditions of confinement, the vulnerability of incarcerated persons, and the prison's control and authority over every aspect of an incarcerated person's life and well-being. Put simply, requiring work in prison constitutes involuntary servitude and replicates the condition of slavery -- and incarcerated people who feel treated "like slaves" cannot experience this as rehabilitative. CDOC punishments for declining work only increase the coercive power of these policies to a point where it is obviously coercing people to labor against their individual will or voluntary choice. Compelling incarcerated people to work at a job not of their choosing, and punishing them, including with sanctions identified above, for failure to work, is not effective toward any goal of rehabilitation. As I have explained throughout this report, the CDOC's work requirement and punishments for not working have very detrimental effects on the incarcerated people's physical and mental health and prospects for rehabilitation. To a reasonable degree of medical certainty, it is clear that the required work and harsh punishments for not working practiced by the Colorado Department of Corrections are coercive and compel people to work against their will, while jeopardizing their health and well-being and compromising their prospects for rehabilitation.

Respectfully submitted,



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