

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Javon Sanders — PETITIONER
(Your Name)

vs.

Wendy Kelley et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Javon Sanders[#]
(Your Name)

2501 State Farm Rd.
(Address)

Tulsa, AR 74168
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Does The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population Equate To Modern Day Slavery?
- II. Does The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population That Are Challenging Their Conviction And Sentences Violate The "Duly Convicted" Provision Of The Thirteenth Amendment?
- III. Does The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population Violate The International Covenant On Civil And Political Rights (ICCPR), The Standard Minimum Rules For The Treatment Of Prisoners, And The Law Of Nations?
- IV. Does The Failure Of The Arkansas Department Of Correction To Allow Its Inmates To Competitively Bid Their Services Violate The Sherman Act?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

- (1) Benny Magness, Chairman of the Arkansas Board of Correction.
- (2) W.H. Byers, Member of the Arkansas Board of Correction.
- (3) Buddy Chadick, Member of the Arkansas Board of Correction.
- (4) Bobby Glover, Member of the Arkansas Board of Correction.
- (5) Tyrone Broomfield, Member of the Arkansas Board of Correction.
- (6) John Felts, Member of the Arkansas Board of Correction.
- (7) Whitney Gass, Member of the Arkansas Board of Correction.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 21, 2018.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states in pertinent part: No person shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Thirteenth Amendment to the United States Constitution states in Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Title 15 United States Code Section 1 states the following: Trusts, etc., in restraint of trade illegal; penalty- Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

STATEMENT OF THE CASE

The Thirteenth Amendment abolished slavery in the states, except as punishment for crime after one has been "duly convicted." The four issues in this case are (1) whether the failure of the Arkansas Department of Correction to pay equitable remuneration to its inmate population equates to modern day slavery; (2) whether the failure to pay equitable remuneration to the inmate population that is challenging their convictions and sentences violates the "duly convicted" provision of the Thirteenth Amendment; (3) whether the failure to pay equitable remuneration violates the International Covenant On Civil And Political Rights (ICCPR), The Standard Minimum Rules For The Treatment Of Prisoners, and The Law Of Nations and (4) whether the failure of the Arkansas Department of Correction to allow its inmates to competitively bid their services violates the Sherman Act.

The Sherman Act prohibits restraint of trade or commerce among the States in contractual dealings, yet the Arkansas Department of Correction

Statement Of The Case, cont'd

does precisely this by maintaining an illegal price scheme that requires prisoners at the institutions of the ADC to work for no equitable remuneration to produce food and dairy products at its facilities. The end result is that it undermines and prohibits the competitive bidding for sales of food and dairy products to the ADC by private corporations that can only compete on a competitive basis for securing the needs of the state prison population. By using cheap, unpaid inmate labor, the ADC is acting surreptitiously and continually to pursue illegal price fixing activities in violation of the Sherman Anti-Trust Act, (15 U.S.C. Sections 1, 2, 15 and 16)

This Court has never had the occasion to rule on whether the Sherman Act applies to the correctional setting, but it has important ramifications for thousands of prisoners in the ADC who labor under such conditions but receive no compensation for their services.

Statement Of The Case, cont'd

Likewise, as to the Thirteenth Amendment, although prohibiting slavery and involuntary servitude, it explicitly exempts forced labor that is imposed as punishment for crime whereof the party shall have been duly convicted. It is this provision that Petitioner believes he falls outside of because he contends that he has not been duly convicted and has challenged his conviction and sentences as unlawful and wrongful. This Court has never addressed this matter and it is has important ramifications for Petitioner and prisoners in the ADC who are attacking their convictions and sentences.

This case raises important questions pursuant to the International Covenant On Civil And Political Rights (ICCPR), The Standard Minimum Rules For The Treatment Of Prisoners, and The Law of Nations.

A. The District Court Proceedings

Petitioner filed suit in the United States District Court for the Eastern District of Arkansas seeking (1) equitable remuneration for labor performed by ADC inmates at union scale or otherwise; (2) equitable remuneration due to Petitioner falling outside of the Thirteenth Amendment's "duly convicted" exception and (3) a challenge under the Sherman Anti-Trust Act for failure to allow Petitioner and others like him to competitively bid their services to outside private corporations to supply food and dairy products to the ADC. He also sought class action status and the appointment of class counsel.

The magistrate recommended that the complaint be dismissed because equitable remuneration was at the "grace of the state," the Sherman Act allegations were rejected because Petitioner had allegedly failed to show how he was denied the opportunity to competitively bid his services. The claims under the ICCPR, The Standard Minimum Rules For The

Treatment Of Prisoners and the Law Of Nations were also denied. The Court did not rule on the 13th Amendment duly convicted exception.

Petitioner filed timely objections to this recommendation, (Appendix C) The district court accepted the recommendations and dismissed the case. Petitioner did not have his 13th Amendment claims addressed at this point,

Petitioner then filed a Motion For Reconsideration specifically addressing this point. The court denied the motion, saying the 13th Amendment claims were Heck barred.

B. The Court Of Appeals' Decision

Petitioner timely filed a Notice of Appeal from this ruling. On August 21, 2018, the Eighth Circuit summarily affirmed the district court, (Appendix A) Even though the appeals court granted time in which to file for rehearing and rehearing en banc,

Petitioner was unable to meet the deadline
due to time constraints.

This petition followed,

REASONS FOR GRANTING THE PETITION

I. The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population Equates To Modern Day Slavery

"One of the greatest obstacles to the achievement of liberation is that oppressive reality absorbs those within it and thereby acts to submerge human beings' consciousness. Functionally, oppression is domesticating." (Pedagogy Of The Oppressed, Paulo Freire)

The mass of prisoners have become domesticated by the rules and regulations that purport to govern them, but actually are implemented to carry out the results of their enslavement. One of the means of enslavement is forcing ADC inmates to perform work without equitable remuneration, many times backbreaking labor in intense heat or cold. It is this labor that keeps the "prison industrial complex" functioning

and as a result, the prisoner becomes domesticated.

The ADC's use of prison slave labor harkens back to the antebellum South and the use of convict lease labor utilizing freed slaves that fell into the trap of so called "Black Codes", laws that were designed to criminalize conduct for ex-slaves in order to insure a fresh and ready supply of convict labor to lease out to private individuals and companies. These prison slaves were worked under brutal and dehumanizing conditions, often literally worked to death.

The state's largest prison unit, Cummins, was once a plantation that utilized convict lease labor. The stories about living conditions at Cummins are legion, and it sparked at least 3 lawsuits over such conditions, including prison labor. (See Holt vs. Sarver, 309 F.Supp. 362, E.D.Ark. 1970)

However, in recent years, there has been a surge of prisoner initiated strikes, work stoppages, fasts, and other revolutionary activity to protest the use of either unpaid inmate labor or labor at slave

wages, (See Prison Legal News, Prisoner Labor Focus of Controversy in Texas, Alabama, October 2017, pg. 58-59)

These prisoners, Petitioner included, have awakened from their lethargy and shaken off the shackles of state induced domestication and seek to be compensated accordingly, at union scale or otherwise.

What Petitioner would point out to this Court is that each unit of the Arkansas Department of Correction produces \$250,000 to \$500,000 net worth of prison labor per month by way of the many domesticating jobs that maintain the facilities; from inmate porters, painters, plumbers, cooks, line servers, gardeners, dish washers, tutors, etc. Petitioner, and others like him, should receive compensation for services performed at union scale or otherwise.

This petition gives this Court the momentous opportunity to recognize the value of inmate labor and to restructure the prison system based first and foremost on the recognition that prisoners are humans, and based on that fact, Incarcerated Lives Matter.

The struggle begins with men's recognition that they have been destroyed, The "inmate worker" through neglect of confronting his value - has destroyed himself by engaging in work that deprives him of his vocation to be more fully human, and instead keeps him in the category of a domesticated dependant, (Appendix D)

II. The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population That Are Challenging Their Convictions And Sentences Violates The "Duly Convicted" Provision Of The Thirteenth Amendment

Enacted in 1865, Section 1 of the Thirteenth Amendment to the United States Constitution provides that neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction. (See U.S. vs. Ah Sou, 138 F. 975, C.C.A. 9th Cir. 1905) Shortly after its passage, this Court held that the Thirteenth Amendment is not a

mere prohibition of state laws establishing or upholding slavery but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States. (Civil Rights Cases, 109 U.S. 3, 1883)

While suits attacking the badges and incidents of slavery must be based on a statute enacted by Congress under Section 2 of the Thirteenth Amendment, suits attacking compulsory labor arise directly under the prohibition of Section 1, which is undoubtedly self-executing without any ancillary legislation, and by its own unaided force and effect abolished slavery and established universal freedom. (Id., Civil Rights Cases)

Although passed in response to the scourge of American slavery, Section 1 of the Thirteenth Amendment is not a declaration in favor of a particular people but extends to reach every race and every individual. (See Hodges vs. U.S., 203 U.S. 1, 1906) (Overruled in part on other

grounds by Jones vs. Alfred Mayer Co., 392 U.S. 409, 1 Empl. Prac. Dec. (CCH), 1968). It equally forbade Mexican peonage or the Chinese coolie trade when they amount to slavery or involuntary servitude. (See Slaughter-House Cases, 83 U.S. 36, 1872) Thus, the Thirteenth Amendment denounces a status or condition irrespective of the manner or authority by which it is created. (Clyatt vs. U.S., 197 U.S. 207, 1905)

Involuntary servitude is not limited to chattel slavery-like conditions as Section 1 of the Thirteenth Amendment was intended to prohibit all forms of involuntary labor and maintain a system of completely free and voluntary labor throughout the United States, not solely to abolish chattel slavery. (See Pollock vs. Williams, 322 U.S. 4, 1944) Defined as a condition of servitude in which the victim is forced by the use or threat of physical restraint to work, or by the use or threat of coercion through law or the legal process, involuntary servitude is akin to African slavery, although without some of the latter's incidents,

covering situations where an employee is physically restrained by guards or where servitude is created by a credible threat of imprisonment, (See U.S. vs. Lozano, 489 U.S. 931, 1988)

By its express language, Section 1 of the Thirteenth Amendment creates an exception to the prohibition of involuntary servitude to exempt punishment for a crime of which a party has been duly convicted so that involuntary servitude may be required. (C.J.S., Constitutional Law, Section 708, citing Quark vs. Solano, 928 F.2d 947, 10th Cir. 1991) Prisoners lack a constitutional right to choose whether to work (Mushlin, Rights of Prisoners Section 8:4, 4th ed.) and there are few exceptions to the rule that prisoners may be forced to work. (Armstrong, Slavery Revisited in Penal Plantation Labor, 35 Seattle U.L.Rev. 869, Spring 2012) However, the punishment for crime exception to the prohibition of slavery and involuntary servitude may not apply in certain situations, such as when a person has not committed an offense considered a crime, has not yet been convicted of a crime, or

has not been duly convicted of a crime. (Mushlin, Rights of Prisoners, Section 8:4)

Many courts have addressed application of Section 1 of the Thirteenth Amendment, prohibiting slavery and involuntary servitude, to labor required as punishment for crime. Exemption of punishment for crime from application of the slavery and involuntary servitude prohibition has been discussed by courts with regard to which offenses are considered punishable crimes, including coverage of crime in the generic sense (City of Fort Lauderdale vs. Long, 222 So. 2d 6, Fla. 1969), violation of a penal law, (Fallis vs. U.S., 263 F. Supp. 780, M.D. Pa. 1967) a felony, (Howerton vs. Mississippi County, Arkansas, 361 F. Supp. 356, E.D. Ark. 1973) a misdemeanor, (Id.) a municipal offense, (Loeb vs. Jennings, 67 S.E. 101, 1910) a contempt of legislature offense, (Groppi vs. Froehlich, 311 F. Supp. 765, W.D. Wis. 1970) [applying Wisconsin law] a contempt of court offense (Flannagan vs. Jepson, 158 N.W. 641, 1916 - finding that the Thirteenth Amendment exception

for punishment for crime does not apply to contempt citations) and a deportation or exclusion offense.

(Petition of Brooks, 5 F.2d 238, D. Mass. 1925 - Thirteenth Amendment exception for punishment for crime does not apply here.)

Since a party must be duly convicted of a crime to allow for an exception to application of Section 1 of the Thirteenth Amendment's prohibition of slavery or involuntary servitude due to punishment for crime, courts have examined the duly convicted requirement, (Patrick vs. Staples, 780 F. Supp. 1528, N.D. Ind. 1991), right to a jury trial (Flannagan vs. Jepson, 158 N.W. 641, 1916), the right to assistance of counsel (United States vs. Morgan, 222 F.2d 693, 2d Cir. 1955 - Imprisonment of a defendant based on a conviction in a case where the defendant has not enjoyed the fundamental right to assistance of counsel guaranteed by the Sixth Amendment violates Section 1 of the Thirteenth Amendment forbidding

involuntary servitude, because a conviction in a case where the defendant has not enjoyed that fundamental right is void, and no punishment for crime can be valid unless after a valid trial or a valid plea of guilty).

Petitioner has attempted to challenge his conviction and sentence as wrongful and further he asserts that he never saw an attorney until he went for sentencing. Given that he did not have the effective assistance of counsel, he was not "duly convicted" in the sense of how it is used in this statute, and pursuant to Section 1 of the Thirteenth Amendment, he falls outside of the exception involving involuntary servitude for punishment for crime.

This Court has never had the occasion to define when someone is "duly convicted" for purposes of the statute. The lower federal courts are all over the place on this question, so this Court should grant review, to clear up a circuit split.

III. The Failure Of The Arkansas Department Of Correction To Pay Equitable Remuneration To Its Inmate Population Violates The International Covenant On Civil And Political Rights (ICCPR), The Standard Minimum Rules For The Treatment Of Prisoners, And The Law Of Nations

Article 7 of the International Covenant On Civil And Political Rights states that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment...."

Article 8 of the International Covenant On Civil And Political Rights states that "No one shall be required to perform forced or compulsory labor." (exception for lawful order of court. This exception is understood to mean when a sentencing court specifically sentences a defendant to hard labor).

Article 9 of the International Covenant On

Civil And Political Rights states that "Everyone has the right to liberty and security of person."

The Standard Minimum Rules For The Treatment Of Prisoners, paragraph 76, states: "There shall be a system of equitable remuneration for the work of persons." (<http://www.unhcr.ch/html/memo3/b/n/comp.34.html>)

These covenants apply to the Petitioner by reason of the fact that the United States has ratified these treaties. (Breard vs. Greene, 523 U.S. 371, 1998; United States vs. Baldwin, 120 U.S. 678, 1887)

The district court cited Sosa vs. Alvarez-Machain, 542 U.S. 692, 2004, for the proposition that the Universal Declaration of Human Rights does not provide a private right of action in federal courts.

However, the statement in Sosa is not the law. It is dicta. The issue decided in Sosa was whether the doctrine of limited immunity applied to an illegal abduction by federal officials. The issues were whether the facts show a valid constitutional claim

and whether the precedent for the claim is clear or the constitutional injury is obvious. Any reference to the Universal Declaration of Human Rights was only dictum.

This Court in Central Virginia Community College vs. Katz, 546 U.S. 356, 2006 said that dicta was not binding on the Court. The case of Sosa is not controlling.

The United Nations International Covenant On Civil and Political Rights (hereafter ICCPR) became the law of the United States on September 8, 1992, (see ICCPR, December 19, 1996, 999 U.N.T.S., 171) It applies to all people in the United States, (Id, Article 2) The ICCPR is an international obligation of the United States and constitutes the law of the land.

Customary international law is comprised of the customs and usages of the nations of the world and is part of the law of the United States, (The Paquete Habana, 175 U.S. 677, 1900) The United

States does apply the international customary law of human rights, (Filartiga vs. Pena Irala, 630 F.2d 876, 2d Cir. 1980)

Federal law establishes, and international law provides for, substantive rights to individuals and places limits on a state's treatment of its citizens, (Abebe-Jira vs. Negewo, 72 F.3d 844, 11th Cir. 1996)

In this case, Petitioner has alleged that his rights were violated under Articles 7, 8, & 9 of the ICCPR. Article 7 prohibits degrading treatment of prisoners; Article 8 prohibits compulsory labor; and Article 9 provides for the security of the person. The United States has ratified the ICCPR, and it is a treaty and the law of the land.

The Standard Minimum Rules For The Treatment Of Prisoners was adopted by the United Nations Congress on the Punishment of Crime and Treatment of Offenders, (Adopted on August 30, 1955, UNDOC, A.CONF/611-annex I; E.S.C. res 663c, found on University of Minnesota website Human Rights Library.) It requires a system

of equitable remuneration of the work of prisoners.

The Court can also apply the canon of statutory construction to this case. The canon is derived from Chief Justice Marshall's statement that:

an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights, or to affect neutral commerce, further than is warranted by the law of nations as understood in this country,

(Murray vs. The Schooner Charming Betsy, 6 U.S. [2 Cranch] 1804) The Charming Betsy canon is not an inviolable rule of general application, but a principle of interpretation that bears on a limited range of cases. The purpose of the Charming Betsy canon is to avert the negative "foreign policy implications" of violating the law of nations. (Wernberger vs. Rossi, 456 U.S. 25, 1982) Secondly, "[t]he Charming Betsy canon comes into play only where Congress's intent is ambiguous. (United States vs. Yousef, 32 F.3d 56, 2d Cir. 2003) Congress's intent in regards

to whether these treaties apply to the equitable remuneration of prison labor in the ADC is ambiguous and this canon applies here.

The Standard Minimum Rules for the Treatment of Prisoners set forth model prison regulations for the treatment of prisoners. These Rules were drafted in 1933 by the International Penal and Penitentiary Commission and were approved by the Assembly of the League of Nations in 1934. The United States voted in favor of approving the Rules in 1934. (See Richard B. Lillich, Invoking International Human Rights Law In Domestic Courts, 54 U.Cm.L.Rev. 241, 1985) The Rules demonstrate the international concern for the recognition and protection of prisoner's rights. (See Douglas Besharov and Gerhard Mueller, The Demands of the Inmates of Attica State Prison and the United Nations Standard Minimum Rules For The Treatment of Prisoners: A Comparison, 21 Buff. L.Rev. 839, 1972) Further, the

Rules describe the "minimum conditions which are accepted as suitable by the United Nations (and) inject the humanitarian spirit of the Universal Declaration of Human Rights into the correctional system without compromising public safety or prison security." (Id. at 840, quoting Implementation of the Standard Minimum Rules for the Treatment of Prisoners, Working Paper, U.N. Doc. ST/SCA/SD/CG.2/WP.3 at 8, 1968)

Several U.S. states have adopted the Rules in one form or another. Connecticut, South Carolina, Ohio, Pennsylvania, Illinois, and Minnesota have adopted the rules. For the most part, domestic courts have pointed to the Standard Minimum Rules as evidence of customary international law, (Lareau vs. Manson, 507 F.Supp. 1171, 1189 n.9, D.Conn. 1980; Sterling vs. Cupp, 625 P.2d 123, Or. 1981- citing the Standard Minimum Rules as among those "contemporary expressions of the concern with minimizing needlessly harsh, degrading, or dehumanizing treatment of prisoners.")

Particularly applicable here is paragraph 76 of the Rules: "There shall be a system of equitable remuneration of the work of persons." (<http://www.unchr.ch/html/memo3/b/n/comp.34.html>) Given that the Rules are customary international law and apply to the law of nations, particularly applicable to Petitioner and the United States courts, failure to pay equitable remuneration violates these Rules.

The district court's reliance on Hrbell vs. Farmer 787 F.2d 414, 8th Cir. 1986 for the premise that there "is no constitutional right to prison wages" is misplaced. This case is factually distinguishable from Hrbell. In Hrbell, the Plaintiff sought return of deducted prison wages to cover legal costs as a result of his criminal conviction. He made a property claim for wages that the State paid its inmates. Here, the State pays no equitable remuneration to its inmate population and Petitioner seeks the establishment of such pursuant to the ICCPR, the Standard Minimum

Rules For The Treatment Of Prisoners, the customary international law and the law of nations.

This is a case of first impression in this Circuit. In the few cases where challenges to prison wages have been filed in the 8th Circuit, (1) none have argued the "duly convicted" exception to the Thirteenth Amendment; (2) none have argued that any of these laws, treaties, or Rules apply to the equitable remuneration of prisoners for labor performed and (3) none have argued a violation of the Sherman Act. (see Holtus, Sarver, 300 F.Supp. 825; 309 F.Supp. 362; McMaster vs. State of Minnesota, 819 F.Supp. 1429, U.S.D.C., D. Minn.; 30 F.3d 976, 8th Cir. 1994) The time for this Court to visit these issues is the present.

In 2016 and 2017, 17 states saw prisoner uprisings, including at Lee Correctional Institution in South Carolina that claimed 7 lives. A month after events at Lee Correctional, 4 different factions at a prison in Missouri signed a truce and took action

against the prison. They staged a sit-down protest, which then escalated to hot-wiring a forklift and using it to break into a prison factory the size of 2 football fields. There they destroyed the machines they're normally forced to work on. They issued a public statement that said "we are calling on all Gs to join us as one around the Nation on August 21, Stage more sit ins. Make peace for this....." In Angola (a former slave barracks turned notorious prison in Louisiana), prisoners also engaged in a massive strike.

Prisoners in Texas issued a call for outside support on Juneteenth, which falls on June 19, in order to "put pressure on the prison system" leading up to Juneteenth, a national abolitionist holiday. The call was reminiscent of the Free Alabama Movement's requests for outside demonstrations at McDonalds in March of 2015.

Events in Missouri, Angola, Texas and other locations parallel the momentum building that was seen preceding the history-making strike on

September 9, 2016 around the country. Starting in March of that year, there were multiple uprisings at Holman Correctional in Alabama, and an April strike in Texas. These events underscored a call for national action which resulted in the largest prison strike in history and the first to be nationally organized. (See Appendix E) Those efforts continue at the time of this writing through the IWW's Incarcerated Worker Organizing Committee (IWOC). (See Appendix F)

This Court should visit these issues and undo decades of prison slavery on human rights grounds.

IV. The Failure Of The Arkansas Department Of Corrections To Allow Its Inmates To Competitively Bid Their Services Violates The Sherman Act

The Arkansas Department of Correction is maintaining an illegal price scheme by requiring prisoners like Petitioner to work for no equitable remuneration to produce food and dairy products at its facilities. As a result of these practices, it is undermining and prohibiting the competitive bidding for sales of food and dairy products to the ADC by private corporations that can only compete on a competitive basis for securing the needs of the state prison population.

The practices of the Respondents at the Arkansas Department of Correction are acting surreptitiously and continually to pursue illegal price fixing activities in violation of the Sherman Anti-Trust Act (15 U.S.C. Sections 1, 2, 15, 22, 26) by

(a) paying no equitable remuneration to inmates to produce food and dairy products and (b) by preventing private individuals or corporations from competing or cooperating to produce food or dairy products for the prison population in the state prison system; (c) by refusing to sell products of private individuals or corporations in the state prison system; (d) by cancelling, cutting back or eliminating entirely the orders of private individuals or corporations by selling at low prices due to the failure to provide equitable remuneration of prisoners and (e) by attempting to prevent private or corporate enterprises from selling food or dairy products to the ADC to be used by state prisoners.

In furtherance thereof, the Respondents have confided in and conspired with each other to (a) establish prices for food and dairy products that prohibit private individuals and corporations from competing with the ADC by (b) using prison labor that fails to provide equitable remuneration for prisoners, and on information and belief, the price contract plan embodies a scheme to prohibit any

competition in the entire interstate market,

As a result of anti-competitive practices by the Respondents (a) Petitioner has not been paid equitable remuneration for his labor; (b) Petitioner does not obtain food and dairy products of a higher quality from competitive companies and (c) Petitioner has been illegally restrained or forbidden from selling his labor to the ADC at a reasonable rate.

The illegal and very substantial restrictions and burdens on interstate trade and commerce alleged above has caused injury to Petitioner by causing him to be paid no equitable remuneration for their labor and has resulted in a substantial lessening of competition by private and corporate interests in the State and the United States. This also applies to all 15,000+ inmates who are similarly situated, minus those in work release.

The activities of the Respondents constitute participating in a contract, combination or conspiracy

to fix prices in restriction of trade, and an attempt to monopolize in interstate commerce, causing antitrust injury to the Petitioner who is not being paid equitable remuneration for his labor. This also applies to all 15,000+ inmates who are similarly situated, minus those in work release.

The judiciary's evolving understanding of the Sherman Act has dramatically affected the scope of antitrust law in the United States. This Court first purported to strictly construe the Act's prohibition of "every contract, in restraint of trade," noting that "no exception or limitation can be added without placing in the act that which has been omitted by Congress." (United States vs. Trans-Mo. Freight Ass'n, 166 U.S. 290, 1897) This Court later set aside the statute's plain meaning. (See Chicago Bd. of Trade vs. United States, 246 U.S. 231, 1918) It seized upon the statute's use of common-law language to derive a common-law "rule of reason" prohibiting only those agreements

that "unreasonably" restrained trade. (Standard Oil Co. of N.J. vs. United States, 221 U.S. at 51)

In view of the intended design of the Sherman Act as a charter of economic liberty, it has a generality and adaptability comparable to that found to be desirable in constitutional provisions. It does not go into detailed definitions that might either work injury to legitimate enterprise or, through particularization, defeat its purposes by providing loopholes for escape. Rather, the Sherman Act is necessarily broad in its text and interpretation in order to allow the courts to evaluate the nature and character of new and changing patterns of product distribution that have been tried since the passage of the Sherman Act. (See Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices Section 7) Since the Sherman Act does not go into detailed definitions, and makes only broad prohibitions, each case demands a close scrutiny of its own facts. (Id.)

A major source of violations under the Sherman Act is that of price fixing, both vertical (Atlantic Richfield Co. vs. USA Petroleum Co., 495 U.S. 328) to which this Court has applied the rule of reason, and horizontal (F.T.C. vs. Superior Court Trial Lawyers Ass'n, 493 U.S. 411) a per se violation, although in a limited number of cases the rule of reason has been applied, (NCAA vs. Board of Regents of University of Oklahoma, 468 U.S. 85, 1984)

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal; [15 U.S.C. 1]

Section 2. Every person who shall monopolize, or attempt to monopolize, or conspire or combine with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor; [15 U.S.C. 2]

Section 4, The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act, [15 U.S.C. 4]

This Court has repeatedly declared the principles to be applied in determining relief in a suit brought under Section 4 of the Sherman Act to "prevent and restrain" violations of the Act. The primary objective in such a case is to assure, so far as may be practicable, that the wrongdoers shall not again violate the statute. The acts proscribed by the judgment must be charted with sufficient definiteness to provide a true guide to future conduct. But the courts recognize that illegal restraints and monopolizations of trade may be achieved in many ways. The prohibitions of the judgment are therefore not to be confined to the precise conduct held to have been unlawful, and should embrace means used by the defendants

in achieving their illegal ends, (See Local 167 vs. United States, 29 U.S. 293)

Where a violation of the Sherman Act has been found, the court is "bound to frame its decree so as to suppress the unlawful practices and to take such reasonable measures as would preclude their renewal." (See Ethyl Gasoline Corp. vs. United States, 309 U.S. 436) Likewise the court should suppress, in the absence of persuasive countervailing reasons, "the means by which the unlawful restraint was achieved." (ibid) Merely to prohibit the precise scheme used by the defendants to effect an illegal restraint of trade is ineffectual to prevent future restraints and therefore insufficient. (See United States vs. Trans-Missouri Freight Assn, 166 U.S. 290)

This Court should visit these issues, because it never has ruled as to whether the Sherman Act applies in the correctional setting and whether the failure of a DOC to allow inmates to competitively bid their services constitutes illegal restraint of trade as defined in the Act.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jarvon Sanders

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