No. 25-457

IN THE
Supreme Court of the United States

TOPAZ JOHNSON, IAN HENDERSON,

Petitioners,

v.

HIGH DESERT STATE PRISON; SYLVA, Sergeant; BRIAN KIBLER, Warden,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF PUBLIC JUSTICE AND RIGHTS BEHIND BARS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

Jaqueline Aranda Osorno
Counsel of Record
Mariam Elbakr
PUBLIC JUSTICE
1620 L St. NW, Ste. 630
Washington, DC 20036
(202) 470-1061
jaosorno@publicjustice.net
melbakr@publicjustice.net

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

RULES

INTEREST OF THE *AMICI CURIAE*[1]

Amici are nonprofit organizations with significant experience representing the interests of incarcerated people in state and federal courts. *Amici* file this brief to provide the Court with an on-the-ground view of the financial challenges incarcerated people confront daily. *Amici* provide this perspective to help explain why the issue presented by Petitioners is worthy of this Court's consideration.

Public Justice Public Justice is a nonprofit legal advocacy organization that specializes in socially significant civil-rights litigation. The organization maintains a Debtors' Prison Project, which uses strategic litigation to combat the criminalization of poverty and compel governments and their for-profit partners to abandon predatory fine and fee collection practices; and an Access to Justice Project, which pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of people whose civil rights have been violated to seek redress for their injuries in the civil court system.

Rights Behind Bars (RBB) is a nonprofit legal organization dedicated to representing incarcerated plaintiffs. RBB often identifies uncounseled, indigent,

---

[1] Pursuant to Sup. Ct. R. 37.6 of this Court, *Amici* affirm that no party or counsel representing a party has authored this brief in whole or in part, and no party or counsel other than *Amici*, its members and its counsel party has made a monetary contribution intended to fund the preparation or submission of this brief. Pursuant to Sup. Ct. R. 37.2, *Amici* notes that not all counsel of record for the parties received timely notice of *Amici*'s intention to file an *amicus* brief. Counsel for *Amici* provided notice to counsel for Respondent on November 6, 2025, eight days prior to the deadline to file the brief. Counsel for Respondent indicated that they had no objection to the late notice.

and incarcerated plaintiffs and offers to represent them in the federal courts of appeals.

SUMMARY OF ARGUMENT

Prison has its own economy. In that economy, the unemployment rate is 42%, wages are cents per hour, private companies have a monopoly on food, telecom, and healthcare services, and necessities are five times more expensive than average. For incarcerated people who are crushed by the weight of these costs, the value of each dollar is far greater.

This case concerns one such cost—the filing fee incarcerated litigants must pay if proceeding In Forma Pauperis ("IFP"). As Petitioners explain, while typical plaintiffs filing jointly can split the $350 filing fee, the Ninth Circuit sanctioned a regime in which "IFP prisoner-plaintiffs—the most impoverished litigants" must *each* pay $350—"double, quadruple, or more what wealthier prisoners pay." Pet.6–7.

But incarcerated plaintiffs proceeding IFP can seldom afford to pay a $350 filing fee. For an incarcerated person, the difference between $175 and $350 can be over 1,000 hours of work. That difference means skipping calls to loved ones for weeks. It means delaying necessary medical care, going hungry, and missing payments on outstanding legal debt.

Those who can least afford to pay court filing fees should not have to choose between meeting their basic needs and vindicating their rights. *Amici* urge the court to grant Petitioners' request for writ of certiorari.

ARGUMENT

Of the two million people incarcerated in America, approximately 80% are poor. *See* Lauren-Brooke

Eisen, *Charging Inmates Perpetuates Mass Incarceration*, Brennan Ctr., 4 (2015), https://perma.cc/B68S-YETT; Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2025*, Prison Pol'y Initiative (Mar. 11, 2025), https://perma.cc/Z6JQ-7U2C. Indeed, incarcerated people are concentrated at the lowest end of the national income distribution. Reuben Jonathan Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 Mich. J. Race & L. 291, 298 (2016). A 2018 study highlights just how low, finding that "[t]wo years prior to the year they entered prison, 56 percent of individuals have essentially no annual earnings (less than $500), the share earning between $500 and $15,000 is 30 percent, and average earnings (among those who worked) was $12,780." Adam Looney & Nicholas Turner, *Work and Opportunity Before and After Incarceration*, The Brookings Inst., 8 (Mar. 14, 2018), https://perma.cc/CM3B-7827. These statistics reveal a bleak reality: the American carceral system overwhelmingly impacts people who are at the margins of our economy.

Incarceration exacerbates that poverty in significant ways. Most obviously, incarcerated people are often precluded from earning wages, and when they are permitted to work, they must do so for cents on the hour. But being incarcerated does not just limit access to financial means; it also extracts the little money people already have. As explained below, both *getting* incarcerated and *being* incarcerated are expensive. Given this financial reality, incarcerated people seeking to vindicate their rights must often choose between meeting their basic needs and

shouldering the costs associated with accessing the civil legal system.

I. Getting Incarcerated Is Expensive.

Starting from a place of poverty, people face a cascading pile of bills long before they step through the gates of prison. Over the past several decades, every step of the criminal legal system has been monetized. Eisen, *supra*, at 1. As soon as someone is arrested, the jail can charge them a booking fee. *Id.* at 3. In Kentucky, for example, that booking fee is anywhere between $10 and $70. *Id.* If that person is jailed for more than a couple of days, they may also have to pay a per-diem "room and board" fee. *Id.* In Michigan, this "reimbursement" to the state costs up to $60 a day. Mich. Comp. Laws Ann. § 801.83; Sarah Lehr, *The Vast Majority of States Allow People to be Charged for Time Behind Bars*, NPR (Mar. 4, 2022), https://perma.cc/5WAN-ZKZB.

Because those who are arrested are largely indigent, they will receive a public defender. In 42 states and the District of Columbia, defendants are charged fees for this service. *See* Marea Beeman et. al., *At What Cost? Findings from an Examination into the Imposition of Public Defense System Fees*, Nat'l Legal Aid & Def. Association, 1 (July 2022), https://perma.cc/QNP8-XVUD. In Iowa, for example, the rate for court appointed counsel is up to $76 an hour, and people are typically charged up to $1,000, with more complex cases reaching into the tens of thousands of dollars. *Id.* at 51.

II. The Costs Continue Accumulating in Prison.

By the time a criminal sentence begins, most people already have hundreds, if not thousands, of dollars in

criminal system debt. But it doesn't end there. Almost every transaction within the prison system comes at a premium. Governments are increasingly forcing incarcerated people and their families to bankroll the costs of incarceration. *Justice-Involved Individuals and the Consumer Financial Marketplace*, U.S. Consumer Fin. Prot. Bureau, 14 (Jan. 2022), https://perma.cc/H7Q4-ACZZ. And when prisons fail to provide edible food, basic necessities, adequate healthcare, and access to loved ones, incarcerated people have no choice but to spend what little they have to get through each day.

(1) Food. The largest spending category in prison commissaries is food. Stephen Raher, *The Company Store: A Deeper Look at Prison Commissaries*, Prison Pol'y Initiative (May 2018), https://perma.cc/4MUS-U2AQ. The food provided in prison is largely inadequate in both quantity and quality. Anna VanCleave, *Prison Banking*, 112 Cal. L. Rev. 1699, 1748 (2024). "Across the country, prisoners complain of hunger, sometimes intense enough that it drives them to eat toothpaste and toilet paper." Christine S. Scott-Hayward, *Why is Prison Food Still So Bad?*, 56 No. 5 Crim. L. Bull. 8 (2020). The Nevada Department of Corrections, for example, is known for serving portions so small they resemble "a child's meal, constituting a small ice cream scoop of eggs, a slice of toast, and a tablespoon of peanut butter for breakfast." VanCleave, *supra*, at 1760. The danger of prison food portions cannot be overstated; incarcerated people have died of malnutrition. Elissa Underwood Marek, *Establishing a Right to Food for "Justice"-Impacted People: An Abolitionist Strategy to Build Community, Sustainability, and Small*

Business in the United States, 52 Fordham Urb. L. J. 339, 340 (2024).

Quantity aside, the quality of prison food has been described as "a hidden public-health crisis." Joe Fassler & Claire Brown, *Prison Food Is Making U.S. Inmates Disproportionately Sick*, The Atlantic (Dec. 27, 2017), https://perma.cc/9UGS-WAMJ. Maggots and rotten potatoes are a "standard feature of the punishment prisoners receive behind bars." *Id.* A Center for Disease Control and Prevention ("CDC") study found that incarcerated people are 6.4 times more likely to get food poisoning than people who are not incarcerated. *Id.* Aramark, one of the biggest private prison food contractors in the country, is known for serving rotten food and providing incarcerated people with less than the nutritionally recommended servings to cut costs and increase profits. *See* Amanda Chan & Anna Nathanson, *"Not for Human Consumption": Prison Food's Absent Regulatory Regime*, 29 Wm. & Mary Bill Rts. J. 1009, 1017 (2021); *Captive Labor: Exploitation of Incarcerated Workers*, Am. Civ. Liberties Union, 75 (2022), https://perma.cc/5MGD-2SJX. When the food provided leaves you hungry and sick, additional food is not an option; it's a necessity.

Those who are hungry have only one place to go—the commissary. Prison comprises a "captive market that offers purchasers no alternative spending options." VanCleave, *supra*, at 1748. Prisons and private companies take advantage by adding significant markups to the items for sale. *Id.* A national study found that items in commissaries are up to 5 times more expensive than in stores. *"Locked In, Priced Out": Markups and Kickbacks in Prison*

Commissaries, Prison Legal News (Jan. 15, 2025), https://perma.cc/MN7M-9MTV. A packet of instant ramen, one of the most popular food items sold in commissaries, costs $0.20 in Walmart but costs as much as $0.65 in commissaries around the country. Florian Zandt, *How Overpriced Are Basic Necessities in Prison?*, Statista (Aug. 9, 2024), https://perma.cc/96MX-349R. The average incarcerated person spends close to half their annual commissary budget—more than $270—on "Ready Food." Stephen Raher, *The Company Store and the Literally Captive Market: Consumer Law in Prisons and Jails*, 17 Hastings Race & Poverty L. J. 3, 18 (2020); Raher, *A Deeper Look at Prison Commissaries*, *supra*.

(2) Basic Necessities. When first incarcerated, people are commonly provided with the bare minimum to meet their basic needs, such as two sets of used clothing, a blanket, soap, travel-size toothpaste, a toothbrush, and a single roll of toilet paper. But contrary to popular belief, even these items may not be free. VanCleave, *supra*, at 1747–48. The items that prisons provide vary widely by correctional system, with some prisons making people pay for their own soap, toilet paper, and even drinking water. *Id.*; Erica Bryant, *Working for Pennies Just to Buy Overpriced Soap in Prison*, Vera Institute (Apr. 30, 2021), https://perma.cc/Z54D-KRC9. In many states, incarcerated people only receive free basics if they qualify as "indigent." But the amount to qualify is so low that people often receive nothing. Kyra Goins, *Soap or Toothpaste: How Prison Commissary Systems Force Inmates to Choose Between Basic Necessities*, The Univ. of N.C. Sch. L. Blog (May 4, 2025),

https://perma.cc/CJ6Y-W4M6. While the public might assume that prisons provide all necessities at no cost;

> Consider: If your only bathing option is a shared shower area, aren't shower sandals a necessity? Is using more than one roll of toilet paper a week really a luxury (especially during periods of intestinal distress)? Or what if you have a chronic medical condition that requires ongoing use of over-the-counter remedies (*e.g.*, antacid tablets, vitamins, hemorrhoid ointment, antihistamine, or eye drops)? All of these items are typically only available in the commissary, and only for those who can afford to pay.

Raher, *A Deeper Look at Prison Commissaries*, *supra*.

Like food, these items come at a premium. A person who is incarcerated in California must pay $4.65 for a tube of Colgate toothpaste, $3.40 for deodorant, and 95 cents for one bar of soap. Ethan Corey, *CDCR Combined Commissary Lists*, 1 (Feb. 27, 2024), https://perma.cc/W5RM-D5GT. Someone who is incarcerated in Virginia must pay $6.60 for one box of tampons, making menstrual products unaffordable for many. Goins, *Soap or Toothpaste,* https://perma.cc/CJ6Y-W4M6.

(3) Communications with Loved Ones. All people have a basic need for human connection. When you have not heard the voice of the people you love for weeks, months, or even years, finding ways to communicate is a necessity. Yet prisons have moved toward eliminating free in-person visits and limiting incoming mail to postcards only. Martin Kaste, *Jails Are Embracing Video-Only Visits, But Some Experts Say Screens Aren't Enough*, NPR (Dec. 20, 2023), https://perma.cc/Q87J-DDZZ; Leah Sakala, *Postcard-*

Only Mail Policies in Jail, Prison Pol'y Initiative (Feb. 7, 2013), https://perma.cc/X8NZ-E2FX. Faced with these restrictions, incarcerated people and their families have no choice but to give their money to the telecom providers who now have near-exclusive control over when and how people behind bars can stay in touch with their loved ones.

Prisons and the prison telecommunications industry perpetrate "arguably the worst price-gouging that people behind bars and their loved ones face." Peter Wagner & Wanda Bertram, *State of Phone Justice 2022*, Prison Pol'y Initiative (Dec. 2022), https://perma.cc/4GK8-934U. Though the Federal Communications Commission ("FCC") capped costs for phone calls in 2022, it recently voted to allow prison telecom companies to increase the charge by up to 83%. Rebecca Crosby & Noel Sims, *Inmates Will Pay Up To 83% More for Phone Calls, Thanks to New FCC Rule*, Popular Information (Nov. 3, 2025), https://perma.cc/AF8F-4JHB. Under the new regulations, caps on phone calls will increase to range between $0.10 to $0.18 per minute (depending on the size of the facility), and caps for video calls $0.18 to $0.41 per minute. *Id.* The price for other communication services, when available, is completely unregulated. For example, the two companies that dominate the market for state incarceration e-messaging systems, Securus/JPay and GTL, charge as much as $0.50 for an inbound or outbound message that is subject to a character limit. *See* Mike Wessler, *The Rapid and Unregulated*

Growth of E-Messaging in Prisons, Prison Pol'y Initiative (Mar. 2023), https://perma.cc/ED49-5YV2.

4) Healthcare. Although jails and prisons have a constitutional obligation to provide minimally adequate health care, that care often comes at a cost. In most states, prisons charge medical co-pays for doctors' visits, psychiatrist consultations, and dentist appointments. Emily Widra, *New Research Links Medical Copays to Reduced Healthcare Access in Prisons*, Prison Pol'y Initiative (Aug. 29, 2024), https://perma.cc/4AYY-AA75. Prisons even charge co-pays for "something as simple as an over-the-counter pain reliever for headaches." VanCleave, *supra*, at 1748. Co-pays can range anywhere from $1 to $100. Abigail Elmer, *Healthcare While Incarcerated: An Argument Against Co-pays*, 27 Annals Health L. Advance Directive 147, 147 (2018). Like all other items sold in the commissary, the prices of over-the-counter medications are inflated. In Tennessee, omeprazole, a medicine used to treat "severe gastric reflux," costs $8. *"Locked In, Priced Out", supra*. Medical devices, like wheelchairs, can cost incarcerated people thousands of dollars. Anna Anderson, *Medical Debt Behind Bars: The Punishing Impact of Copays, Fees, and Other Carceral Medical Debt*, Nat'l Consumer L. Ctr., 18 (Sept. 2024), https://perma.cc/NPQ7-V52B. These costs add up. In Nevada, for example, people leave prison with an average of $4,500 in medical debt. *Id.* at 12.

(5) Other Miscellaneous Costs. Incarcerated people face a myriad of other costs. *See* VanCleave, *supra*, at 1748. Prisons may impose administrative fees for the management of people's money. *Id.* They often impose fines for "disciplinary infractions," no

matter how small, *id.* at 1752, and even fees associated with performing research or preparing legal filings. *See* Tommaso Bardelli et al., *Limited By Design: The Policy Framework of Legal Access in Prison*, ITHAKA S+R, 12–15, (May 29, 2025), https://perma.cc/3UM8-GATJ. In 35 states, incarcerated people must pay to print or copy documents, charging $0.10 per page on average. *Id.*; *see e.g.*, Appl. to Proceed IFP, ECF No. 2 at 3 (showing "library copies" and "legal copy" transactions on Plaintiff Kevin Jones's trust account).

These costs add up. In the words of an incarcerated person:

> Every single thing in here, you've got to pay for….They've got a little ID they make us wear. If you break it or lose it, $5. If your shirt's not tucked in, $20. You spit on the sidewalk, $20. You walk on the grass, $20. That's how they do it in here: They give you money and figure out how to take it back from you.

Beth Schwartzapfel, *Prison Money Diaries: What People Really Make (and Spend) Behind Bars*, Marshall Proj. (Aug. 4, 2022), https://perma.cc/CS5W-99DN.

III. In Prison, the Work Opportunities are Scarce and the Wages Abysmally Low.

The average incarcerated person cannot keep up with these costs. Many incarcerated people cannot work for pay. Though prisons rely on labor to maintain daily operations, that labor is "usually mandatory and often unpaid." Leah Wang, *The State Prison Experience: Too Much Drudgery, Not Enough*

Opportunity, Prison Pol'y Initiative (Sept. 2, 2022), https://perma.cc/GH9Y-TSEH.

When incarcerated people can secure paid work, the wages are significantly below market rate. The average hourly wage for non-industry jobs ranges from $0.13 to $0.52 per hour, while the average wage for industry jobs ranges from $0.30 to $1.30. *Captive Labor*, *supra*, at 10–11. In six states—Alabama, Arkansas, Georgia, Mississippi, Florida, South Carolina, and Texas, people are not paid for the vast majority of jobs. *Id.* at 10.

Virtually none of that money is saved; as soon as it is earned it is either garnished or goes down the commissary drain. Wang, *The State Prison Experience*, *supra*.; *see* VanCleave, *supra*, at 1755; *see supra* Section I and II. In California, for example, the Department of Corrections and Rehabilitation (CDCR) automatically collects half of any money deposited into an incarcerated person's trust account, including prison wages, to pay court-ordered restitution. *Restitution Payment Instructions*, Cal. Dep't Corr. and Rehab., https://perma.cc/J5E8-KJV9; *see e.g.*, Trust Account Statement of Kevin Jones, ECF No. 7 at 1 (showing 50% garnishment of all deposits). Accounts can also be garnished to pay for other fees, child support, student loans, and unpaid federal income tax. Wang, *The State Prison Experience*, *supra*; *Captive Labor*, *supra*, at 58–60.

The contrast between the price gouging incarcerated people experience and the cents per hour they are allowed to earn is stark. It can take an incarcerated person more than 10 hours of labor to afford toothpaste and another 10 to afford deodorant. Florian Zandt, *supra*. In West Virginia, where

incarcerated people are paid 4 cents per hour for their work, a $5 medical co-pay is equivalent to a $1,093 co-pay for a minimum wage earner in the same state. Elmer, *supra*, at 152. In Arkansas, incarcerated people must pay $3 for medical treatment and medication even though they are not provided with any paid job opportunities. *Captive Labor*, *supra*, at 75.

IV. The Economic Reality of Being Incarcerated Makes the Filing Fee an Insurmountable Barrier to Litigation.

This economic reality should inform the Court's decision to grant Petitioners' request for a writ of certiorari. Assuming no other expenses, it would take an incarcerated person making $0.13 per hour 2,692 hours of work to afford the full $350 fee. Even at the higher average wage of $0.52 per hour, it would take 673 hours. And the grim reality is that no incarcerated person can work 653 hours without simultaneously needing to spend most of that $350 on the basic necessities of life.

Reversing the majority rule would be hugely consequential for incarcerated people seeking to proceed IFP, who would otherwise have to work hundreds, if not thousands, of hours to gain access to the courts.

CONCLUSION

For the reasons discussed above, *Amici* urge the Court to grant Petitioners' request for a writ of certiorari.

Respectfully submitted,

Jaqueline Aranda Osorno
Counsel of Record
Mariam Elbakr
PUBLIC JUSTICE
1620 L St. NW, Ste. 630
Washington, DC 20036
(202) 470-1061
jaosorno@publicjustice.net
melbakr@publicjustice.net

Counsel for Amici Curiae

November 14, 2025