No. 21-2846

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

WILLIAM BURRELL, JR., et al.,

Plaintiffs-Appellants,

v.

LACKAWANNA RECYCLING CENTER, INC., et al.,

Defendants-Appellees.

On Appeal from the United States District Court
for the Middle District of Pennsylvania
Case No. 3:14-cv-01891 (Mariani, J.)

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AND THE AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

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Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amici curiae* state that they are non-profit 501(c)(3) organizations. *Amici curiae* have no corporate parents and are not owned in whole or in part by any publicly held corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TABLE OF AUTHORITIES – cont'd

Page(s)

STATUTES, LEGISLATIVE MATERIALS, AND CONSTITUTIONAL PROVISIONS

TABLE OF AUTHORITIES – cont'd

Page(s)

OTHER AUTHORITIES

INTEREST OF *AMICI CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. The American Civil Liberties Union ("ACLU") of Pennsylvania is the Pennsylvania state affiliate of the American Civil Liberties Union, a nonprofit, nonpartisan membership organization founded in 1920 to protect and advance civil liberties throughout the United States. The principal mission of the ACLU of Pennsylvania is to protect and defend civil rights and liberties in the Commonwealth of Pennsylvania, and it has litigated cases involving contempt and detention in civil and criminal proceedings throughout Pennsylvania. CAC and the ACLU of Pennsylvania have a strong interest in ensuring that the Constitution applies as robustly as its text and history require and accordingly have an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In renouncing our nation's greatest disgrace, the Reconstruction Framers amended the Constitution to declare that "[n]either slavery nor involuntary

[1] *Amici* state that no counsel for a party authored this brief in whole or in part, and no person other than *amici* or their counsel made a monetary contribution to the brief's preparation or submission. A motion for leave to file accompanies this brief.

servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States." U.S. Const. amend. XIII, § 1. While "[t]he primary purpose of the Amendment was to abolish the institution of African slavery as it had existed in the United States at the time of the Civil War," "the Amendment was not limited to that purpose." *United States v. Kozminski*, 487 U.S. 931, 942 (1988). Rather, "the phrase 'involuntary servitude' was intended to extend 'to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.'" *Id.* (quoting *Butler v. Perry*, 240 U.S. 328, 332 (1916)).

Over a century later, Lackawanna County has instituted a system of forced labor for child-support debtors that directly subverts the Thirteenth Amendment's promise. Under an arrangement between the County, its Solid Waste Management Authority, and a private company known as the Lackawanna Recycling Center Inc., debtors who are civilly detained at the Lackawanna County Prison for failure to pay child support are forced to work in abominable conditions in the Recycling Center in order to earn their freedom. For just five dollars per day—approximately sixty-two-and-a-half cents per hour—they separate trash and recyclables on conveyor belts, frequently breaking out in skin rashes, suffering wounds from sharp pieces of glass, and vomiting from the stench of their abhorrent working conditions.

This, the district court concluded, did not violate Appellants' Thirteenth Amendment rights because the conscripted laborers in fact carried "the keys to the prison": they could pay a portion of their arrears set by state court order to purge themselves of civil contempt and walk free. App. 57, 60 (Mem. Op.). The court reached this conclusion only by disregarding Appellants' well-pleaded allegations that at the time that they were forced to work in the Recycling Center, they did not have the necessary funds to pay the court-ordered "purge" amounts. *Id.*

This decision flies in the face of the text and history of the Thirteenth Amendment. Indeed, the arrangement in Lackawanna County closely resembles a system of forced labor that the Supreme Court has affirmatively held violates the Thirteenth Amendment and that the Thirty-Ninth Congress expressly prohibited by statute: peonage.

Peonage, defined as "compulsory service to secure the payment of a debt," *Clyatt v. United States*, 197 U.S. 207, 216 (1905), was a system that developed in the New Mexico territory under Spanish rule. *See generally Jaremillo v. Romero*, 1 N.M. 190 (1857) (discussing the origins of peonage in New Mexico). As Spanish colonists invaded Native land, they converted the communal landholding scheme into a system of modified feudalism. *See* Andrés Reséndez, *North American Peonage*, 7 J. Civil War Era 597, 597-98 (2017). That system ultimately gave way to debt bondage, particularly as other systems of forced labor were outlawed, and

before long, Indigenous peoples were forced into labor for colonists under brutal conditions just to gain access to their own land and resources. *Id.*

Just as peonage filled a void left by outlawed forms of coerced labor in the American Southwest, it reared its head again following the abolition of chattel slavery. The "Black Codes," designed "to deny Black people practically every aspect of freedom enjoyed by white people," David H. Gans, *We Do Not Want to Be Hunted*, 11 Colum. J. Race & L. 239, 270 (2021), implemented a system of strict vagrancy laws that required Black people to be under contract at all times and that, in many ways, resembled the New Mexico system of peonage.

But in 1867, Congress passed the Anti-Peonage Act of 1867, ch. 187, 14 Stat. 546 (codified at 42 U.S.C. § 1994 and 18 U.S.C. § 1581). Although the Anti-Peonage Act would eventually be used to challenge laws and practices that grew out of the Black Codes and explicitly or practically targeted Black people, the Act responded primarily to a report by Special Agent J.K. Graves to the Commissioner of Indian Affairs of the Department of the Interior (the "Graves Report"), which detailed an ongoing system of peonage and "Indian slavery" in the American Southwest—including, perhaps most troubling of all, American military enforcement of those systems.

The Anti-Peonage Act was one of the first times that Congress exercised its enforcement power under Section 2 of the Thirteenth Amendment. Broad in both

its articulated scope and operation, the Anti-Peonage Act "raised both a shield and a sword against forced labor because of debt," *Pollock v. Williams*, 322 U.S. 4, 8 (1944), declaring null and void all laws that maintain "the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise," 42 U.S.C. § 1994, and imposing penalties against any person who helps perpetuate the system of peonage, either by holding a person in peonage, arresting a person for purposes of enforcing peonage, or returning a person to a condition of peonage, 18 U.S.C. § 1581.

In a series of cases applying the Anti-Peonage Act, the Supreme Court repeatedly recognized that peonage is a form of involuntary servitude that violates the Thirteenth Amendment, and those cases should inform this Court's consideration of Appellants' claim that the peonage system at issue here also violates the Thirteenth Amendment. The Anti-Peonage Act first came before the Supreme Court as a sword in 1905 in a case called *Clyatt v. United States*. The Court upheld the constitutionality of the Act under the Thirteenth Amendment, declaring that peonage constituted a form of involuntary servitude, and an employer could be convicted for holding a person in a condition of peonage. *Clyatt*, 197 U.S. at 215. In a series of cases thereafter, the Act was used again as a sword to prosecute those who perpetuated peonage in various forms, including criminal suretyship, *see United States v. Reynolds*, 235 U.S. 133 (1914), and as a shield to protect those who were

convicted under state laws that sanctioned peonage practices, particularly those targeted at Black Americans, *see Bailey v. Alabama*, 219 U.S. 219 (1911); *Taylor v. Georgia*, 315 U.S. 25 (1942); *Pollock*, 322 U.S. 4. These cases illustrate the Supreme Court's commitment—more than half a century after the Thirteenth Amendment was passed—to ending practices that conscripted debtors into labor to secure the repayment of their debts.

Without considering these precedents, no less the history of peonage and the passage of the Thirteenth Amendment, the district court dismissed Appellants' claims under the Thirteenth Amendment and the Trafficking Victims Protection Act (TVPA), a law enacted pursuant to the Thirteenth Amendment to outlaw an even *broader* array of scenarios of forced labor. In the district court's view, Appellants had a "choice" to pay the "purge amount" set by state court orders rather than work in the Recycling Center. This reasoning not only disregards Appellants' allegations that they lacked the funds to pay the "purge amounts" at the time they were ordered to work in the Recycling Center—allegations that must be credited on a motion to dismiss, *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)—but it also defies logic: no individual who could pay his way to freedom would choose to work in the dangerous conditions of the Recycling Center for just five dollars per day.

Moreover, the district court misunderstood the well-established principle that "peonage, however created, is compulsory service[]—involuntary servitude. *The*

peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced." *Clyatt*, 197 U.S. at 215 (emphasis added). In none of its seminal peonage cases did the Supreme Court even consider the *ability* of a specific debtor to pay his arrears; rather, what mattered for purposes of the Court's analysis in each case was that service was "comp[elled] to secure the payment of a debt." *Id.* at 216. In other words, peonage existed whenever a debtor was forced by physical power or the threat of legal sanction to work unless and until he repaid his debt.

This Court should follow these precedents, along with the text and history of the Thirteenth Amendment, and reverse the judgment of the court below.

ARGUMENT

I. The Text and History of the Thirteenth Amendment and Anti-Peonage Act Plainly Bar the Practice of Compelling Debtors to Work for Little or No Pay Until They Repay Their Debts.

A. Although President Lincoln's Emancipation Proclamation ended the practice of slavery in the rebel states in 1863, it did not address the issue of slavery at a national level. Thus, as soon as the Thirty-Eighth Congress convened in December 1863, plans to amend the Constitution to eradicate slavery permanently "began to circulate." Eric Foner, *The Second Founding* 28 (2019).

The resolution that ultimately became the Thirteenth Amendment was introduced in January 1864, Cong. Globe, 38th Cong., 1st Sess. 145 (1864), and

further refined in the Senate Judiciary Committee, which used the Northwest Ordinance of 1787 as a blueprint, Foner, *supra*, at 29-30. The use of the Northwest Ordinance was noteworthy because the Ordinance included a separate prohibition against involuntary servitude and had previously been interpreted to prohibit forms of compulsory labor other than chattel slavery. *See Bailey*, 219 U.S. at 240-41; Cong. Globe, 38th Cong., 1st Sess. 1483-90 (1864); *see also* Northwest Ordinance of 1787 art. IV ("There shall be neither slavery *nor involuntary servitude* in the said territory, otherwise than in the punishment of crimes." (emphasis added)); *In re Clark*, 1 Blackf. 122 (Ind. 1821) (holding that the Northwest Ordinance barred specific performance of a personal service contract). In April 1864, the full Senate passed the resolution modeled on that Ordinance, Cong. Globe, 38th Cong., 1st Sess. 1490 (1864), and the House eventually followed suit in January 1865, Cong. Globe, 38th Cong., 2d Sess. 531 (1865).

Debates in the full Congress over the Thirteenth Amendment in fact "focused little on whether the time had come for the economic institution of chattel slavery to end," as it "was apparent that the legal institution of slavery would end with the North's imminent military victory in the Civil War." William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. Davis L. Rev. 1311, 1323 (2007). Yet the depravity of slavery and the need for its official abolition was an important argument progressive

Republicans deployed to assuage Democrats' concerns that the Amendment would lead to federal government overreach. For instance, Republican Senator Henry Wilson, an outspoken opponent of slavery, declared that the Thirteenth Amendment would "obliterate the last lingering vestiges of the slave system; its chattelizing, degrading, and bloody codes; its dark, malignant, barbarizing spirit . . . from the face of the nation it has scarred with moral desolation, from the bosom of the country it has reddened with the blood and strewn with the graves of patriotism." Cong. Globe, 38th Cong., 1st Sess. 1324 (1864). Other supporters of the Amendment emphasized the need for a "clear, brief, and *comprehensive* clause" that would cover situations extending beyond the institution of chattel slavery. *Id.* at 1489 (Sen. Howard) (emphasis added).

The Amendment passed Congress, and by the end of 1865, Georgia became the twenty-seventh of the thirty-six states then in the union to ratify the Amendment. On December 6, 1865, for the first time, our nation's charter declared that "[n]either 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," U.S. Const. amend. XIII, § 1, and gave Congress the "power to enforce this article by appropriate legislation," *id.* § 2.

The text of the Thirteenth Amendment is "self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of

circumstances." *Civil Rights Cases*, 109 U.S. 3, 20 (1883). The Amendment is also uniquely powerful in that it does not merely restrict the states or the federal government; rather, it restricts all persons within the United States' jurisdiction from perpetuating or engaging in the banned practices of slavery or involuntary servitude. The second section goes even further, "cloth[ing] 'Congress with power to pass *all laws necessary and proper for abolishing all badges and incidents of slavery in the United States*." *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 439 (1968) (quoting *Civil Rights Cases*, 109 U.S. at 20). Together, these two sections were adopted to eradicate all "those forms of compulsory labor akin to African slavery which, in practical operation, would tend to produce like undesirable results." *Butler*, 240 U.S. at 332; *see Kozminski*, 487 U.S. at 944 (holding that the phrase "involuntary servitude" sweeps broader than "slavery" to include all forms of labor compelled by "physical or legal coercion"); *Slaughter-House Cases*, 83 U.S. 36, 69 (1872) ("The word servitude is of larger meaning than slavery.").

B. Although the Framers of the Thirteenth Amendment intended its ban on involuntary servitude to sweep broadly, the practice of peonage continued even after the Amendment became law, particularly in the American Southwest. Peonage took root in Mexico and the American Southwest when Spanish conquerors "injected into the Aztec culture a system of land grants to European settlers known as the *encomienda*." Robert L. Misner & John H. Clough, *Arrestees as Informants: A*

Thirteenth Amendment Analysis, 29 Stan. L. Rev. 713, 721 (1977). Under the encomienda system, much like in a system of serfdom, Spanish colonists were allotted villages, and with each allotment came the right to exact personal services from Indigenous peoples already living in the district that was *encomendado*, or entrusted. *Id.* at 721 n.36. In 1720, the *encomienda* system was abolished, but the system of serfdom was so entrenched by that point that as a practical matter, little changed for those who were indentured, and they found themselves trapped in an endless cycle of debt bondage. *Id.* at 721.

Before long, peonage became "an entrenched social custom in New Mexico," and it quickly spread across the American Southwest. *Id.* at 722. In some instances, entire families found themselves living under the control of a creditor, as debts could be passed on from generation to generation under the peonage system. *See* Reséndez, *supra*, at 603. Indeed, because creditors offered some forms of protection, including from the violence and brutalities of other European colonists, *see id.* at 601-03, the system incentivized some impoverished people, particularly Indigenous peoples who had been displaced from their land, to seek out debt to gain the stability and protection of a creditor for their families, *id.*

Just as Appellees here rely on Appellants' purported ability to pay off their arrears or sit in jail rather than work in the Recycling Center, the so-called "voluntary" aspect of peonage was used by some to justify the brutal system. *See,*

e.g., Cong. Globe, 39th Cong., 2d Sess. 1572 (1867) (Sen. Doolittle) (stating that "the first thing the laborer desired to do was to get in debt to his master, and get in debt as much as he could, and go and live with him"); *id.* at 1571 (Sen. Davis) ("to the extent that [peonage] is voluntary there is no necessity and no power on the part of Congress to interfere with it"). But Congress, through enactment of the Anti-Peonage Act, and the Supreme Court, through a series of cases enforcing that Act, plainly rejected the idea that peonage in any form could be considered voluntary. *See, e.g.*, *Clyatt*, 197 U.S. at 215 ("Peonage is sometimes classified as voluntary or involuntary; but this implies simply a difference in the mode of origin, but none in the character of the servitude. . . . [P]eonage, however created, is compulsory service—involuntary servitude."); *Bailey*, 219 U.S. at 243 (same).

C. Although Congress passed the Anti-Peonage Act pursuant to its authority under Section 2 of the Thirteenth Amendment, it began investigating the need for such a law before the Thirteenth Amendment was even ratified. On March 3, 1865, Congress established a Joint Special Committee to examine the "Conditions of the Indian Tribes." *See* Joint Special Committee, *Condition of the Indian Tribes*, S. Rep. No. 39-156 (1867). That Committee presented its report to Congress in January 1867, marking the first time that many members of Congress learned about the system of peonage as it existed in the American Southwest.

Debates on the Anti-Peonage Act began promptly thereafter, largely catalyzed by a series of letters from the Commissioner of Indian Affairs and a report from Special Agent J.K. Graves, who served under the Commissioner. Senator Sumner read the letters aloud in session, and they described a

> system . . . of continual imprisonment or service for debt, or in that of practical enslavement of captive Indians, [which] 'is the universally recognized mode of securing labor and assistance.' . . . The arguments to sustain the system are the same as those formerly used in behalf of slavery. In spite of the stringent orders of the Government the system continues, and nearly every Federal officer held peons in service. The superintendent of Indian Affairs had half a dozen. The practice of Federal officers sustained it.

Cong. Globe, 39th Cong., 2d Sess. 240 (1867) (Sen. Sumner reading from the Graves Report). Many members of Congress were appalled that the federal government, and even its armed forces, had contributed to this inhumane system.

In debates, members of Congress emphasized the cycle of debt that the system relied upon. For example, Senator Charles Buckalew of Pennsylvania explained:

> In practice, this is not a system of service for the payment of a debt, in view of which the servitude commences . . . . [T]he almost invariable fact is that the peon continues accumulating debt, and as that debt is formed while he is subject to a master the terms of it are always exceedingly unfavorable to him, and for a very nominal consideration he is continued in this system of service during his whole lifetime.

Id. at 1572. Much like the system in Lackawanna County—in which debtors have no meaningful choice regarding whether to work in the Recycling Center because refusing to do so will keep them trapped in prison and unable to work to repay their

debts—the peonage system that prompted the passage of the Anti-Peonage Act left no real opportunity for indentured debtors to escape.

Ultimately, the Act passed both Houses. As enacted in March 1867, it declared "[t]hat the holding of any person to service or labor under the system known as peonage is hereby declared to be unlawful." Anti-Peonage Act § 1. It also rendered "null and void" any state or territorial laws to the contrary, Anti-Peonage Act § 1, and provided that "any person or persons who shall obstruct or attempt to obstruct, or in any way interfere with, or prevent the enforcement of this act, shall be liable to the pains and penalties hereby provided," *id.* § 2.

D. The Anti-Peonage Act, along with other Reconstruction-era laws, eventually became a tool for responding to the Black Codes and their progeny, laws that many Southern states enacted in the wake of the Thirteenth Amendment's ratification to target formerly enslaved people for punishment and criminalize their conduct. Most notably, a system of strict vagrancy laws that required Black people to be under contract at all times enforced a form of "practical slavery," Letter from Major Gen. O.O. Howard to Sec'y of War E.M. Stanton (Dec. 21, 1866), *reprinted in* S. Exec. Doc. No. 39-6, at 3 (1867), allowing "police to stop, arrest and harass whomever they pleased," Gans, *supra*, at 271.

For instance, Mississippi passed a law that declared that "if any freedman . . . convicted of any of the misdemeanors provided [in its Black Codes]" should fail to

pay a fine imposed, "such person shall be hired out by the sheriff or other officer, at public outcry, to any white person who will pay said fine and all costs, and take said convict for the shortest time." An Act to Punish Certain Offences Therin Named, and for Other Purposes § 5 (Miss. Nov. 29, 1865), *reprinted in* Edward McPherson, *A Handbook of Politics for 1868*, at 82 (1868). Other states adopted similar laws, *see, e.g.*, *Florida Acts and Resolutions* 20-22 (1865) (anyone who does not pay a fine should be hired "at public outcry to any person who will take him or her for the shortest time and pay the fine"), effectively creating a new system of peonage for formerly enslaved people.

Many of the early twentieth-century Supreme Court cases enforcing the Anti-Peonage Act and the Thirteenth Amendment involved state laws that evolved out of the Black Codes and sought to conscript debtors into labor through methods ultimately held invalid by the Court. Peonage in the South was a "predominantly [B]lack institution," N. Gordon Carper, *Slavery Revisited: Peonage in the South*, 37 Phylon 85, 87 (1st Qtr. 1976), and the first major peonage case to reach the Supreme Court, *Clyatt v. United States*, received significant publicity in the Progressive Era, as journalists attempted to bring to light the ways in which "man hunters" like S.M. Clyatt were commissioned to arrest Black workers and return them to conditions of peonage that proliferated across the southern United States, *see id.* at 87-89.

II. In a Series of Cases in the First Half of the Twentieth Century, the Supreme Court Upheld the Constitutionality of the Anti-Peonage Act and Its Use to End Forced Labor Practices.

In the first half of the twentieth century, the Supreme Court upheld the Anti-Peonage Act as "both a shield and a sword against forced labor." *Pollock*, 322 U.S. at 8. That is, it affirmed prosecutions under the Act of defendants who subjected debtors to peonage, and it also held unconstitutional state laws that it concluded enforced systems of peonage. Importantly, in none of these cases did the Supreme Court ever consider the *ability* of a specific debtor to pay his arrears. Instead, what mattered was that the labor was "comp[elled] to secure the payment of a debt." *Clyatt*, 197 U.S. at 216. In determining whether a particular labor arrangement constituted involuntary servitude, the Court consistently examined how the labor arrangement operated in the real world, not the label it was given or its purported goals.

A. As noted above, the Court first addressed the Anti-Peonage Act as a sword in *Clyatt* in a challenge brought by Florida defendants prosecuted for arresting Black workers and returning them to peonage. *Id.* at 214. To determine whether the Anti-Peonage Act was a proper exercise of Congress's enforcement authority under Section 2 of the Thirteenth Amendment, the Court had to determine whether peonage was a form of involuntary servitude. *Id.* at 215. The Court began by defining peonage as "a status or condition of compulsory service, based upon the

indebtedness of the peon to the master," emphasizing that "[t]he basal fact is indebtedness." *Id.* The Court then explained that whether someone entered into peonage voluntarily or not was a distinction without legal difference, as that "implies simply a difference in the mode of origin, but none in the character of the servitude." *Id.* What distinguishes peonage from "the voluntary performance of labor" in repayment of a debt is the fact that the free laborer, though potentially subject to liability for damages for breach of contract, "can elect at any time" to break that contract, "and no law or force compels performance or a continuance of the service." *Id.* at 215-16.

By contrast, peonage, the Court explained, remains involuntary servitude even though the debtor can theoretically escape compulsory service by paying his debts. "The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced." *Id.* at 215. In upholding the Anti-Peonage Act, the Court made clear that it is the inability to walk away from labor, even labor that is unquestionably owed by some debt or agreement, that renders it involuntary servitude. And that is true of Lackawanna County's system here: as a practical matter, civil contemnors cannot walk away from their work in the Recycling Center as long as they remain in debt.

The Court again considered the scope of the Anti-Peonage Act in 1914 in *United States v. Reynolds*. In that case, individuals who had been convicted under

the Anti-Peonage Act argued that their actions were justified under the Alabama laws providing for a criminal surety system. 235 U.S. at 140-41. Under this system, defendants sentenced to pay a fine could contract to work for someone who would, in turn, pay the defendant's fine to the state. *Id.* at 139-40. But defendants were not free to walk away from the labor they contracted to perform; rather, their labor was enforced "under threats of arrest and imprisonment." *Id.* at 140. If defendants refused to perform labor, they could be convicted and fined, and enter into yet another surety contract, starting the process all over again. *Id.*

In holding that this system was prohibited by the Anti-Peonage Act, the Court explained that the Act has a broad reach: "to strike down all laws, regulations, and usages in the states and territories which attempted to maintain and enforce, *directly or indirectly*, the voluntary or involuntary service or labor of any persons as peons, in the liquidation of any debt or obligation." *Id.* at 143 (emphasis added). The Court emphasized that it must therefore look to "the substance of things, and through the mere form which they have taken" to determine whether something constitutes involuntary servitude. *Id.* at 145. And when it did so, the Court concluded that the surety system had the key feature of peonage: "[the] labor is performed under the constant coercion and threat of another possible arrest and prosecution." *Id.* at 146. In other words, the debtor was never free to walk away from the labor he owed absent payment of the debt. Indeed, because the debtor could be convicted and fined for

failing to perform services under the surety contract, the debtor was "kept chained to an everturning wheel of servitude." *Id.* at 146-47. For these reasons, Alabama's criminal surety laws did not protect the sureties from their convictions under the Anti-Peonage Act. *Id.* at 143, 150.

B. The Court first upheld the Anti-Peonage Act as a "shield" against state laws designed to enforce peonage in *Bailey v. Alabama* in 1911. The Court there considered whether an Alabama law purporting to prohibit laborers from fraudulently taking money from an employer and, without repaying the money, refusing to perform the agreed upon labor, amounted to a system of peonage. *Bailey*, 219 U.S. at 227. Alabama insisted that this law was aimed at penalizing fraud, not the mere failure to perform services, pointing to the requirement that the defendant act with the intent to take money without upholding their end of the deal. *Id.* at 233-34. But the law extended well beyond instances of actual fraud because it included an evidentiary rule providing that failure to perform services under such a contract was *prima facie* evidence of fraud. *Id.* at 227. The Court thus held that the law created a system of peonage because "the mere breach of a contract for personal service, coupled with the mere failure to pay a debt which was to be liquidated in the course of such service, is made sufficient to warrant a conviction." *Id.* at 234.

In so holding, the Court looked beyond the statute's purported aim of punishing fraud to "its natural and inevitable effect" which was "to expose to

conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt." *Id.* at 238. When a debtor's only options are to repay a debt, labor, or be imprisoned, that is peonage prohibited by the Thirteenth Amendment, no matter what it is labeled.

The Court twice reiterated this point in cases involving remarkably similar state statutes. First, in *Taylor v. Georgia*, the Court addressed a Georgia law that criminalized entering into a contract with the intent to take money without performing the service contracted for, and also made failure to perform services without repaying any money received "presumptive evidence" of intent to defraud. 315 U.S. at 27. Again, the Court focused on the real-world effects of Georgia's statutory scheme. By authorizing a jury to convict someone based solely on evidence that they entered into an agreement, received some money, did not return the money, and "failed or refused to perform" the agreed-upon labor, the "necessary consequence" of the statute was that "one who has received an advance on a contract for services which he is unable to repay is bound by the threat of penal sanction to remain at his employment until the debt has been discharged." *Id.* at 29. The fact that the statute was purportedly aimed at penalizing "a presumed initial fraud rather than a subsequent breach" of contract made no difference. *Id.* Because its effect was to coerce debtors to perform labor, the statute violated the Thirteenth Amendment.

The Court once again took up a state statute criminalizing failure to perform labor in *Pollock v. Williams* in 1944. In that case, Florida did not even try to argue that it was constitutional to make failure to perform services prima facie evidence of fraud. *Pollock*, 322 U.S. at 7. Instead, it argued that its evidentiary rule "had played no part in this case" because the defendant at issue pleaded guilty. *Id.* But the Court disagreed: given that there were no facts in the record to support the proposition that Pollock had acted fraudulently, the Court could not "doubt that the presumption provision had a coercive effect in producing the plea of guilty." *Id.* at 15.

In holding that the entire Florida statute was unconstitutional, the Court explained that the "undoubted aim of the Thirteenth Amendment as implemented by the Antipeonage Act was not merely to end slavery but to maintain a system of *completely free and voluntary labor* throughout the United States." *Id.* at 17 (emphasis added). To do so, laborers must have the ability to walk away from work, even work owed under contract, because "the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers." *Id.* at 18. And when "the master can compel and the laborer cannot escape the obligation to go on, there is no power below to redress and no incentive above to relieve a harsh overlordship or unwholesome conditions of work." *Id.*

The Court concluded that "Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service."

Id. Therefore, even as a state pursues legitimate goals, such as punishing actual fraud, it cannot do so in a way that "directly or indirectly command[s] involuntary servitude." *Id.* at 24.

III. The Decision of the Court Below Ignored Binding Supreme Court Precedent and the Text and History of the Thirteenth Amendment.

The system of mandatory work for child support debtors in the Lackawanna County Recycling Center is remarkably similar to the system of peonage that the Reconstruction Framers outlawed over a century ago through the Thirteenth Amendment. Much like the Indigenous peoples held in debt bondage in the American Southwest and Black Americans held under service contracts to repay fines imposed by the Black Codes, child support debtors in Lackawanna County have no real choice but to work in abominable conditions until they pay off their debts. The cycle of indebtedness created by the County's policy traps them: if they refuse to work in the Recycling Center, they cannot earn work-release, and if they cannot earn work-release, they must continue to sit in jail, not earning a dime and unable to amass the necessary funds to purge themselves of the civil contempt orders that landed them there in the first place. The same vicious cycle sustained the system of peonage: "Former slaves and other poor citizens became indebted to merchants and plantation owners for living and working expenses. Unable to repay their debts, they became trapped in a cycle of work-without-pay." Jamal Greene & Jennifer Mason McAward, *The Thirteenth Amendment*, Nat'l Const. Ctr. (last visited Dec.

15, 2021), https://bit.ly/3Eg3yp4; *see* Cong. Globe, 39th Cong., 2d Sess. 1572 (1867) (Sen. Buckalew) ("[T]he almost invariable fact is that the peon continues accumulating debt, and as that debt is formed while he is subject to a master the terms of it are always exceedingly unfavorable to him, and for a very nominal consideration he is continued in this system of service during his whole lifetime.").

The district court failed to take account of this history, which plainly demonstrates that Appellees have created and perpetuated a system of modern-day peonage, in violation of the Thirteenth Amendment and even broader statutes—like the Anti-Peonage Act and the TVPA—enacted pursuant to it.[2] Instead, the district court refused to credit the Appellants' well-pleaded allegations that they did not have the funds to pay the "purge amounts" set by state court orders that would set them free. This alone is reversible error: a court must "accept all factual allegations as true and construe the complaint in the light most favorable to the plaintiff" on a "Rule 12(b)(6) motion to dismiss." *Curry v. Yachera*, 835 F.3d 373, 377 (3d Cir. 2016). That error became even more egregious when the court chose to credit those

[2] The TVPA—like the Anti-Peonage Act—was authorized by Section 2 of the Thirteenth Amendment and was passed to further eradicate peonage, involuntary servitude, and a broad array of forced labor practices. *See* Pub. L. No. 106-386, 114 Stat. 1464 (2000); *see also* H.R. Rep. No. 106-939, at 101 (2000) (Conf. Rep.), *as reprinted in* 2000 U.S.C.C.A.N. 1380, 1393 (TVPA enacted to provide the "tools to combat severe forms of worker exploitation that do not rise to the level of involuntary servitude as defined in *Kozminski*"); 22 U.S.C. § 7101(b)(13) ("Involuntary servitude statutes are intended to reach cases in which persons are held in a condition of servitude through [even] nonviolent coercion.").

exact same allegations for purposes of its Fair Labor Standards Act analysis, holding that the plaintiffs were not entitled to minimum wage because they in fact *plausibly alleged* that their work in the Recycling Center was not "freely contracted and voluntary." App. 78 (Mem. Op.).

The district court seemed to take the position that the plaintiffs' allegations could not be credited in the context of their Thirteenth Amendment and TVPA claims because doing so would require it to second-guess the accuracy of state court orders setting purge amounts that each plaintiff was capable of paying, in violation of the *Rooker-Feldman* doctrine. But that is a gross misreading of the *Rooker-Feldman* doctrine, especially given the Supreme Court's admonition that its "cases since *Feldman* have tended to emphasize the narrowness of the *Rooker-Feldman* rule." *Lance v. Dennis*, 546 U.S. 459, 464 (2006). Indeed, the *Rooker-Feldman* doctrine merely "bars a losing party in state court 'from seeking what in substance would be appellate review of the state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights.'" *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 287 (2005) (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1005-06 (1994)). Plaintiffs-Appellants in this case do not seek review or alteration of the state court purge orders; they simply seek a change to the Appellees' policy of forcing them, as

debtors, to work in inhumane conditions in order to earn their freedom. *See* Appellants' Br. at 15-20.

Moreover, as discussed above, the Supreme Court has made clear that the *ability* of a person held in peonage to actually repay a debt is irrelevant to the question of whether the practice constitutes peonage, in violation of the Thirteenth Amendment and statutes enacted to enforce it. Time and again, the Supreme Court has declared that "peonage, however created, is compulsory service[]—involuntary servitude. *The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced*." *Clyatt*, 197 U.S. at 215 (emphasis added); *see Bailey*, 219 U.S. at 243 (same).

Thus, it ultimately does not even matter if Appellants—contrary to their well-pleaded allegations that the district court refused to credit—in fact had sufficient funds to pay their arrears but for some unfathomable reason chose instead to expose themselves to the hazardous and vomit-inducing conditions of the Recycling Center for essentially no pay. What matters for purposes of the Thirteenth Amendment is that a debtor is forced to work *until* he or she repays the debt: "[the] labor is performed under the constant coercion and threat of another possible arrest and prosecution," *Reynolds*, 235 U.S. at 146. Such is the case here: Appellants will continue to sit in prison unless and until they work in the Recycling Center in order

to earn work release to repay their continuously accumulating debts. That is peonage, and it violates the Thirteenth Amendment.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment of the district court.

Respectfully submitted,

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January 13, 2022

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In accordance with Fed. R. App. P. 32(g), I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because it contains 6,415 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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