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U.S. Commission on Civil Rights
1331 Pennsylvania Ave N.W.
Suite 1150
Washington D.C. 20425
Via email to: reentry@usccr.gov J R Y

Re: SPLC Comments Regarding Collateral Consequences of Incarceration

Dear Commissioners:

Thank you for the opportunity to provide comments to the United States Commission on Civil Rights about the barriers to reentry and the collateral consequences that accompany criminal convictions. The Southern Poverty Law Center (SPLC) has worked to protect the promise of civil rights in the Deep South for over four decades. Since our founding in 1971, SPLC has sought justice for people of color, the poor, the wrongly incarcerated, and the most marginalized in the southern states. We use litigation, education, and other forms of advocacy to fight and bigotry. SPLC's work is focused in Alabama, Florida, Georgia, Louisiana, and Mississippi. We regularly represent individuals who are incarcerated and work in close coalition with other incarcerated people to advance justice reinvestment and other reforms in the criminal justice system.

SPLC offers the following comments regarding reentry barriers and collateral consequences in the Deep South states in which it works. Section I provides an overview of incarceration in Southern states. Section II examines the multiple legal barriers to reentry that men and women in the South confront upon release from jail, prison, probation, or parole. Section III contains reflections from some of the formerly incarcerated men and women with whom SPLC has encountered in the struggle for criminal justice reform.

I. Incarceration in the Deep South

The modern history of the Deep South is inextricably entwined with government control over black and brown people, and in the case of incarceration, particularly men. From slavery, through the convict leasing system, through Jim Crow, the states of the Deep South exerted extensive power over black and brown people. In the present day, "New Jim Crow" laws act to ensnare the black and brown in the criminal justice system at a rate wildly disproportionate to whites, the system has operated to subjugate people of color to state control. More than half of the prison population in Alabama, Florida, Georgia, Louisiana and Mississippi are black. Since

1980, the country's prison population has quadrupled, with the South accounting for nearly half of that increase.

statutory restrictions for people who have been convicted of crimes.¹¹ More than half of people admitted to Louisiana's prisons in 2015 failed probation or parole. In part, due to collateral consequences associated with the criminal justice system.¹² In 2017, SPLC expended significant efforts to support legislators in overhauling Louisiana's prison system. This legislative package was signed by the governor last week and is anticipated to result in a prison population reduction of ten percent over the next years and an acceleration of individuals in reentry.

Mississippi

Although recent legislative reforms have led to a fifteen percent reduction in Mississippi's prison population, nearly 30,000 people are still incarcerated in Mississippi prisons and about 40,000 additional people in Mississippi are under supervision by the criminal justice system, either on parole or probation.¹³ As a result of Mississippi's high prison population and felony disenfranchisement laws, nearly ten percent of Mississippi's total population and sixteen percent of the black population is denied access to the ballot box because of a felony conviction.¹⁴

Florida

Florida has the third largest prison system in the country, housing over 100,000 people in its state federal, and youth detention facilities.¹⁵ Its incarceration rate per resident has doubled in the last ten years, and it currently incarcerates 960 people per 100,000 residents.¹⁶ Florida has harsh sentencing laws that have increased the length of time Floridians are required to serve. Most notably, Florida's "10-20-Life" law requires judges to issue a minimum sentence of ten years for certain offenses, with some circumstances triggering a minimum of twenty years and a maximum sentence of life.¹⁷ In 1999 when the law was enacted, around 150 people were serving 10-20-Life sentences. By 2014, that number reached nearly 10,000. Florida imposes a lifetime voting ban on anyone with a felony conviction. As a result, over ten percent of adults in Florida cannot vote.¹⁸

Alabama

¹¹ See *supra* note 2.

¹² *Mississippi Profile*, PRISONPOLICY INITIATIVE, <https://www.prisonpolicy.org/profiles/MS.html> (last visited June 14, 2017).

¹³ *Id.*

¹⁴ *State-by-State Data*, SENTENCING PROJECT, <http://www.sentencingproject.org/facts/#map?dataset= SIR> (Last visited June 14, 2017).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ LAUREN GALIK, THE HIGH COST OF INCARCERATION IN FLORIDA: RECOMMENDATIONS FOR REFORM, REASON FOUNDATION 11 (2015), https://www.splcenter.org/sites/default/files/the_high_cost_of_incarceration_in_florida_recommendations_for_reform_reason.pdf

¹⁸ See K.K. Rebecca Lai & Jasmine C. Leahy, *Why 10% of Florida Adults Can't Vote: How Felony Convictions Affect Access to the Ballot*, N.Y. TIMES (Oct. 6, 2016),

Alabama has the fourth highest incarceration rate of any state in the country. Alabama currently locks up 49,000 people and an additional 61,000 people are on parole or probation.¹⁹ The number of people held in jail awaiting trial has nearly doubled in the last twenty years.²⁰ Alabama has 842 collateral consequence laws that create resource barriers for people who have been convicted of a crime.²¹ These include laws prohibiting employment in healthcare and education professions and many that automatically triggered by a misdemeanor conviction.²³

Georgia

Georgia currently incarcerates 103,000 people.²⁴ With over 40,000 people in jail, Georgia has the second highest rate of jail incarceration.²⁵ Georgia leads the country with the highest rate of people in the criminal justice system, which includes people who are incarcerated, civilly committed, on parole, or on probation. That is largely due to its rate of probation, which is more than double every other state's rate of probation.²⁶ Georgia's probation rate may be attributable to its extensive use of private misdemeanor probation companies.²⁷ In 2012, 648 courts assigned over 250,000 cases to private probation companies,²⁸ where misdemeanor offenders are required to pay for the probation services on top of their court costs.²⁹ That year probation companies collected \$98.6 million in fines, court costs, and restitution.³⁰ In some cases, if probationers cannot pay for the services, their probation may be revoked, which can land them back in jail.³²

II. Legal Barriers to Reentry in the Deep South

With nearly 1.3 million people in the criminal justice system in these five states, communities in Louisiana, Mississippi, Florida, Alabama, and Georgia are states that are disproportionately impacted by mass incarceration compared to the rest of the nation. Ninety percent of those who are presently incarcerated (around 360,000) return to their communities one day, and

¹⁹ Peter Wagner & Alison Walsh, *The State of Incarceration: The Global Context 2016*, PRISON POLICY INITIATIVE (June 16, 2016), <https://www.prisonpolicy.org/global/2016.html>

²⁰ *Alabama Profile*, PRISON POLICY INITIATIVE, <https://www.prisonpolicy.org/profiles/AL.html> (last visited June 14, 2017).

²¹ *Pre-trial policies have driven recent jail growth in Alabama*, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/graphs/AL_Convicted_Status_197813.html

establish a stable environment to start an employment search, rebuild relationships, and transition back to society.

Employment and Licensing Restrictions

Louisiana, Mississippi, Florida, Alabama, and Georgia collectively have 3781 laws on their books restricting employment, occupational licensing, and business licensing opportunities for people convicted of a crime.⁴² These include 305 laws that require applicants to pass a criminal background check before giving an offer for a position.⁴³ They also include prohibitions to take licensing exams, suspension or revocation of previous licenses and certifications, and requirements to report a criminal record to specific agencies. These constraints affect the ability of formerly incarcerated people to work in above minimum wage jobs as an engineer, architect, veterinarian, educator, tattoo artist, real estate agent, interior designer, masseuse, construction contractor, mortician and in a vast range of health care positions among many others.⁴⁴ Many of these restrictions are permanent and automatically triggered with even a misdemeanor conviction.

Fees, Fines, and Debt

In addition to the restrictions to basic services and employment, and the burdensome and sometimes nonexistent expungement procedures, formerly incarcerated people often face crushing debt upon release. Public fees and fines are a common and debilitating form of debt. These include traffic violation payments, motor vehicle licensing support, court fees, restitution for victims, and other expenses. Many of these fees continue to accrue while someone is in prison but has no income to make a payment. These debts are further governed by separate government agencies or courts, which formerly incarcerated persons may be required to visit in person during business hours to pay off a debt or ask for help. Finally, debt from the inability to pay civil citations may force someone who doesn't have a criminal record into the criminal justice system.

People who are incarcerated are disproportionately poorer than incarcerated people when they go into prison.⁴⁵ As described above, having a criminal record makes it much harder for individuals to find employment. The inability to pay debts already owed, compounded by

⁴² The number was calculated using the search function of the National Inventory of Collateral Consequences, JUSTICECENTER: THE COUNCIL OF STATE GOVERNMENTS, <https://niccc.csgjusticecenter.org/search> (last visited June 14, 2017), and selecting Alabama, Florida, Georgia, Louisiana, Mississippi under the heading "Jurisdiction" and employment, occupational and professional license and certification, and business license and other property rights under the heading "Categories."

⁴³ The number was calculated using the search function of the National Inventory of Collateral Consequences, JUSTICECENTER: THE COUNCIL OF STATE GOVERNMENTS, <https://niccc.csgjusticecenter.org/search> (last visited June 14, 2017), and selecting Alabama, Florida, Georgia, Louisiana, Mississippi under the heading "Jurisdiction" and Background Check under the heading "Types."

⁴⁴ The number was calculated using the search function of the National Inventory of Collateral Consequences, JUSTICECENTER: THE COUNCIL OF STATE GOVERNMENTS, <https://niccc.csgjusticecenter.org/search> (last visited June

fees exacerbated by barriers to employment, can drive individuals to recidivate and return to the criminal justice system.

III. Experiences of those Formerly Incarcerated in the Deep South

“I’ll see you when you come back.” – Corrections Officer to Mark Walters, New Orleans, L.A.

Mark Walters grew up in the Lower Ninth Ward of New Orleans, Louisiana. He currently works for the Micah Project, a faith-based New Orleans organization dedicated to the issues of mass incarceration and reentry that works in coalition with SPLC and other groups as part of Louisianans for Prison Alternatives. He has been incarcerated twice, most recently for violating the terms of his probation. Mr. Walters was sentenced to anger management for one year, which he had to attend once a week and cost \$25 a class (\$1,300 a year). He was also required to complete eight hours of community service three times per week. He underwent drug testing twice a month, which cost \$10 for each test (\$240 a year) and he was required to pay monthly probation fees. At this time, Mr. Walters was working as a window installer, making \$10 per window. He also owed child support. Between the fees for classes, tests, probation, and child support, and periodic appointments with probation officers and community service three times a week, Mr. Walters had trouble keeping his job and making ends meet.

Seven months into probation he started to selling cocaine, which enabled him to pay off his fees and gave him more flexibility to attend probation meetings. But on the last day of his probation,

Even when Mr. King did find work, his court-mandated payment plan for the court fees and restitution he owed automatically deducted an average of \$183 every two weeks from his wages. “Some paychecks I only made \$180 or \$150 so there were some weeks where I made only \$30 for two weeks of work after the fees were taken out.” During this time, the court suspended his driver’s license because he failed to make payments while he was incarcerated. In Birmingham, public transportation ends at 9:00pm and there is no Sunday service. Mr. King struggled to get to

Sincerely,



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