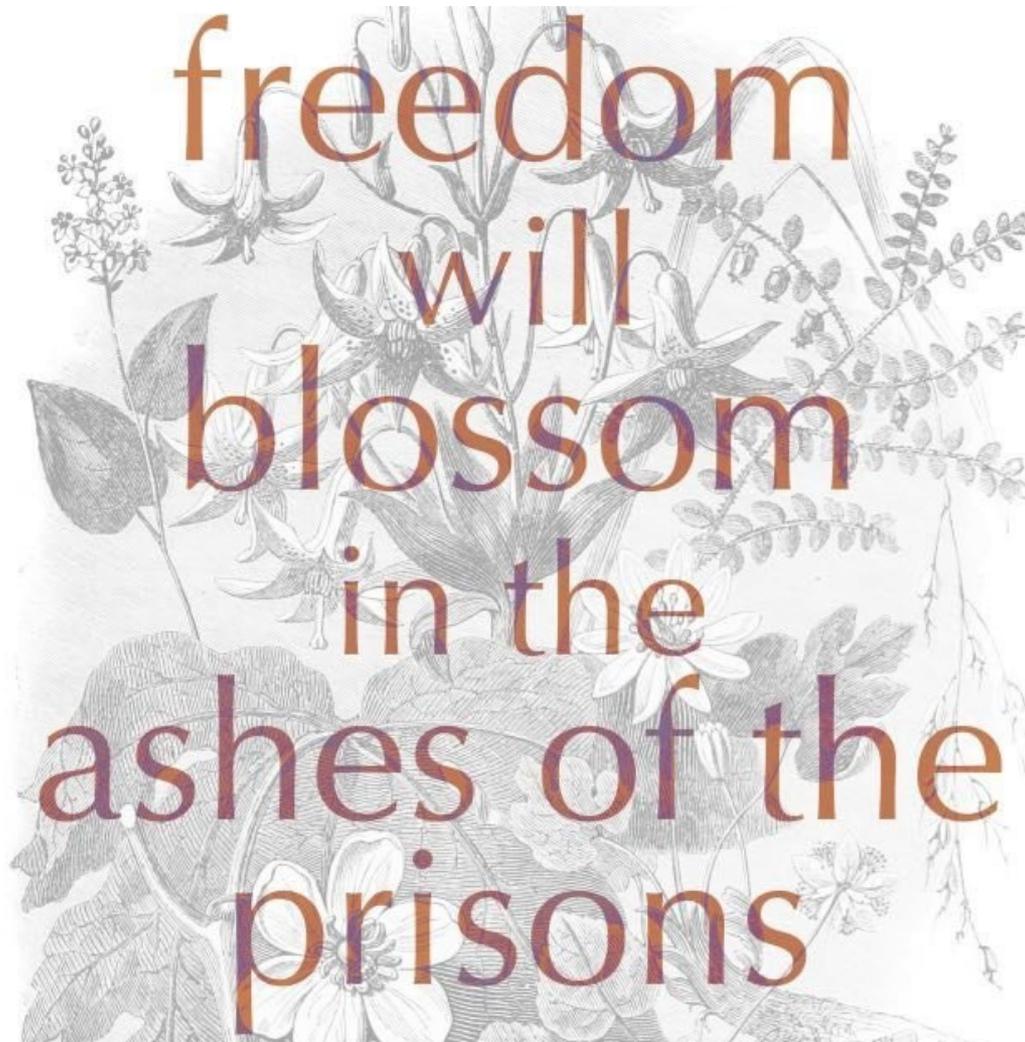


# Solidarity in Anti-Slavery Struggles



A presentation in support of the September 9<sup>th</sup> prisoner's strike  
By Phoenix IWOC, & the Central Arizona National Lawyers Guild

*“First, we are not calling for a work-strike. A strike by definition is temporary until resolutions are reached between slave and master so that we will continue the process of being exploited. We are not organizing a simple strike. We are going to stop working. Period. Some groups and individuals may, at some point start working again, but a lot of us, including myself, will not.”*

**- Joshua “Zero” Cartrette, an Oregon anarchist prison rebel**



# Prison Abolition, and Reform

*Prison abolition should not be looked at as merely an all or nothing approach.*

*We are trying to create a world without prisons, but in the meantime that includes reducing the impact of prisons, and challenging their policies in a political sense. We are building a movement, and seeking change, pending a world without prisons.*

prisons are  
for burning

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# September 9<sup>th</sup>: National Prison Strike

- 45<sup>th</sup> Anniversary of the Attica Prison Rebellion
- Organized by a coalition of groups taking on issues of labor injustice, racial injustice, environmental injustice, prisoner rights, etc, and prisoners themselves
- The strike was originally called for by the Free Alabama Movement (F.A.M.)
- Strikes are taking place in more than 20 states, the largest prison strike in US history

**THIS IS A CALL  
TO END SLAVERY  
IN AMERICA**



A detailed botanical illustration in a light, faded style serves as the background. It features various plants, including a large lily-like flower in the center, smaller flowers, and leafy branches. The overall aesthetic is that of a classic scientific or artistic botanical plate.

**Incarcerated Workers  
Organizing Committee**

freedom  
will  
blossom  
in the  
ashes of the  
prisons

# General IWOC Purpose

The mission behind IWOC is to further the revolutionary goals of incarcerated people and society as a whole through emancipation from the prison system, to build class solidarity by connecting the struggles of people in prisons, jails, and migrant and juvenile detention centers in a local and global sense, and strategically support prisoner struggles while incorporating an analysis of white supremacy, patriarchy, prison culture, and capitalism. We seek to amplify the voices of working class people in prison, especially those engaging in collectarchy, prison culture, and capitalism. We seek to amplify the voices of working class people in prison, especially those engaging in collective action against their conditions.

# Phoenix IWOC

- Phoenix IWOC formed in April, 2016 as part of a call for support for the Texas Prisoner's strike, and the Mayday strike in Alabama by F.A.M.
- Hosted informational events, letter writing events, including in support of the Ely, NV hunger strike, and built and maintained correspondence with prison rebels
- Members have helped contribute to IWOC's national effort in the Western and Southwestern US regions

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# **National Lawyers**

# **Guild**

ashes of the

prisons



# General NLG Purpose

Our aim is to bring together all those who recognize the importance of safeguarding and extending the rights of workers, women, LGBTQ people, farmers, people with disabilities and people of color, upon whom the welfare of the entire nation depends; who seek actively to eliminate racism; who work to maintain and protect our civil rights and liberties in the face of persistent attacks upon them; and who look upon the law as an instrument for the protection of the people, rather than for their repression.

The National Lawyers Guild is proud to support IWOC's Call to Action, and we hope you will join us in lending your support to incarcerated organizers.

As part of our **2015 Resolution Supporting the Abolition of Prisons**, the NLG is committed to working towards a world in which prisons are obsolete. This work includes supporting the rights and organizing of prisoners, including calls to support their strategies and demands.

Please join us in supporting the Call to Action Against Slavery in America.

# NLG Committees

**Amicus Committee**

**Animal Rights Activism Committee**

**Anti-Racism Committee**

**Anti-Sexism Committee**

**Committee for Democratic Communications**

**Disability Rights Committee**

**Drug Policy Committee**

**Environmental Justice Committee**

**Housing Committee**

**International Committee**

**Labor and Employment Committee**

**Legal Worker Caucus**

**Mass Defense Committee**

**Mass Incarceration Committee**

**Military Law Task Force**

**National Immigration Project**

**National Police Accountability Project**

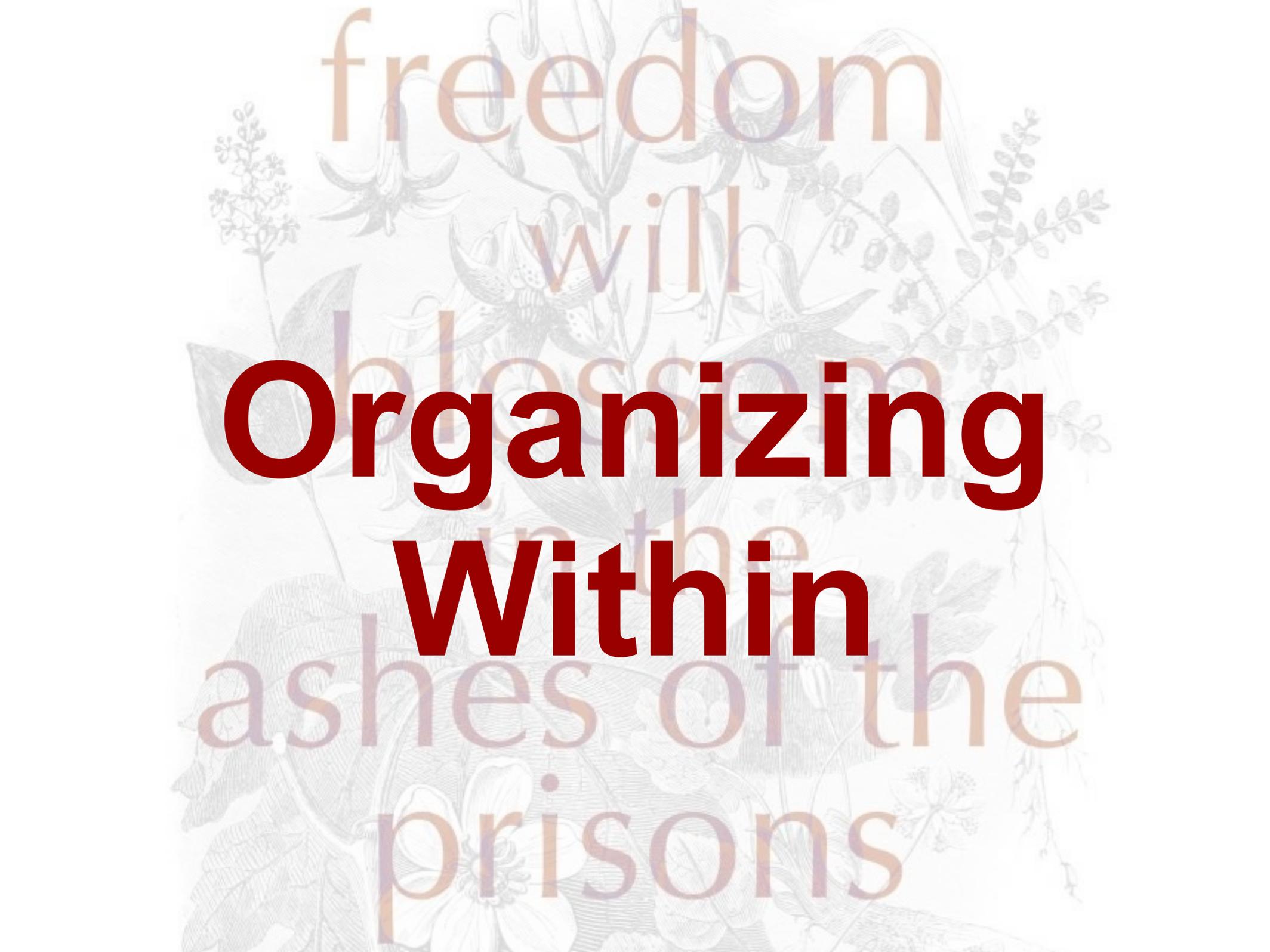
**Next Generation Committee**

**Political Prisoner Support Committee**

**Prison Law Project**

**Queer Caucus**

**The United People of Color Caucus (TUPOCC)**

A detailed botanical illustration in a light, faded style serves as the background. It features various plants, including a large leafy plant on the left, a central plant with a large, textured flower, and several smaller plants with delicate flowers and leaves on the right. The overall aesthetic is that of a classic scientific or artistic botanical drawing.

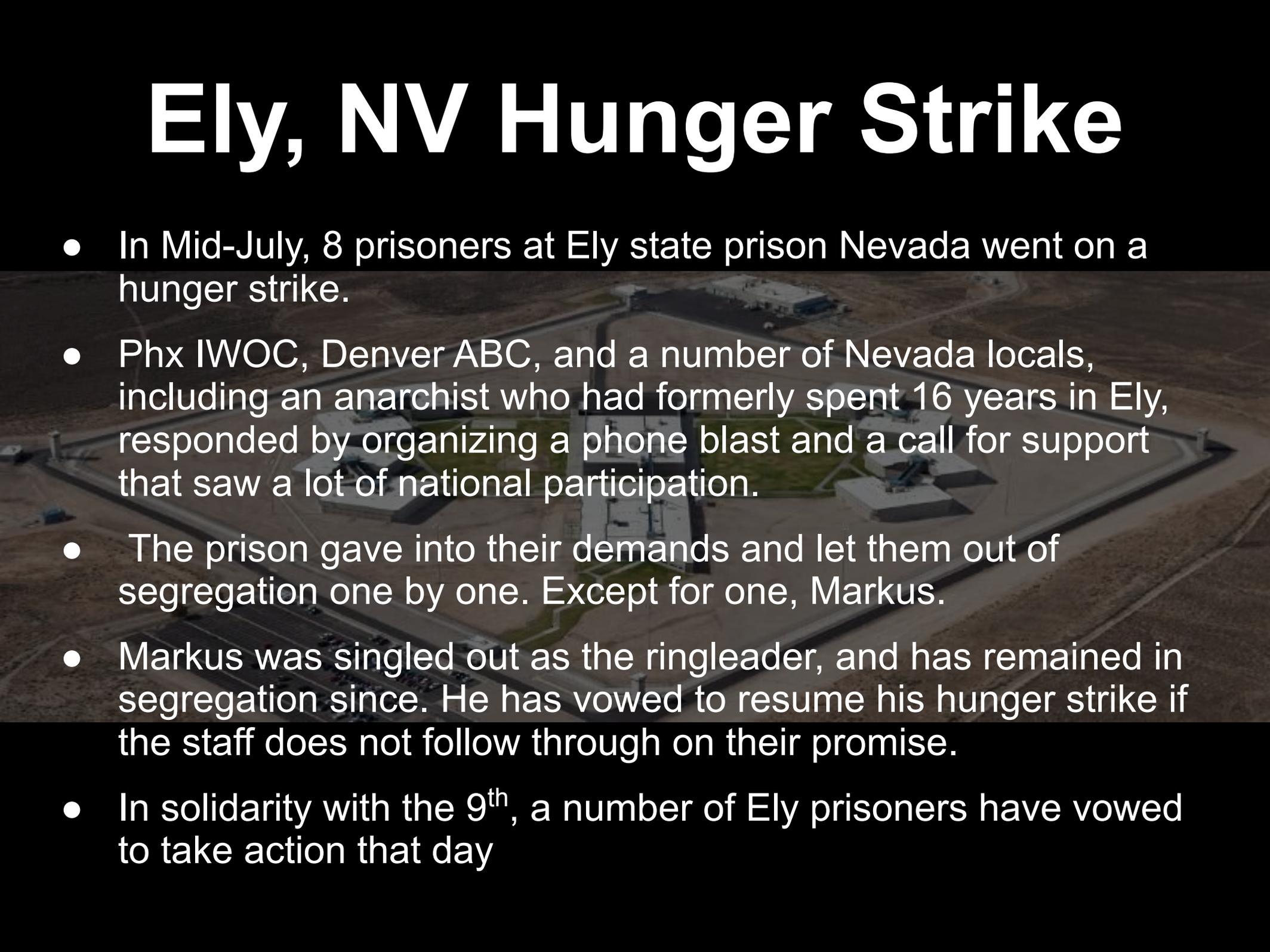
**Organizing  
Within**

freedom  
will  
blossom  
in the  
ashes of the  
prisons

# September 9th, 2016: A Call to End Slavery in America



# Ely, NV Hunger Strike



- In Mid-July, 8 prisoners at Ely state prison Nevada went on a hunger strike.
- Phx IWOC, Denver ABC, and a number of Nevada locals, including an anarchist who had formerly spent 16 years in Ely, responded by organizing a phone blast and a call for support that saw a lot of national participation.
- The prison gave into their demands and let them out of segregation one by one. Except for one, Markus.
- Markus was singled out as the ringleader, and has remained in segregation since. He has vowed to resume his hunger strike if the staff does not follow through on their promise.
- In solidarity with the 9<sup>th</sup>, a number of Ely prisoners have vowed to take action that day

# Unrest Grips the Florida Prison System

On the night of September 7th, 400 inmates seized control of 4 dorms at Holmes Correctional institution in Florida's panhandle region, the site of ongoing unrest over the past few weeks. The riot was quelled after a day, but unrest gripped the state's prison system on September 9th, with Mayo and Gulf Correctional Institution's reporting major disturbances, as well as strikes and other forms of unrest in nearly every other prison in Florida.

# Elsewhere Behind the Wire....

Strikes hit 24 States, and at least 40 institutions...

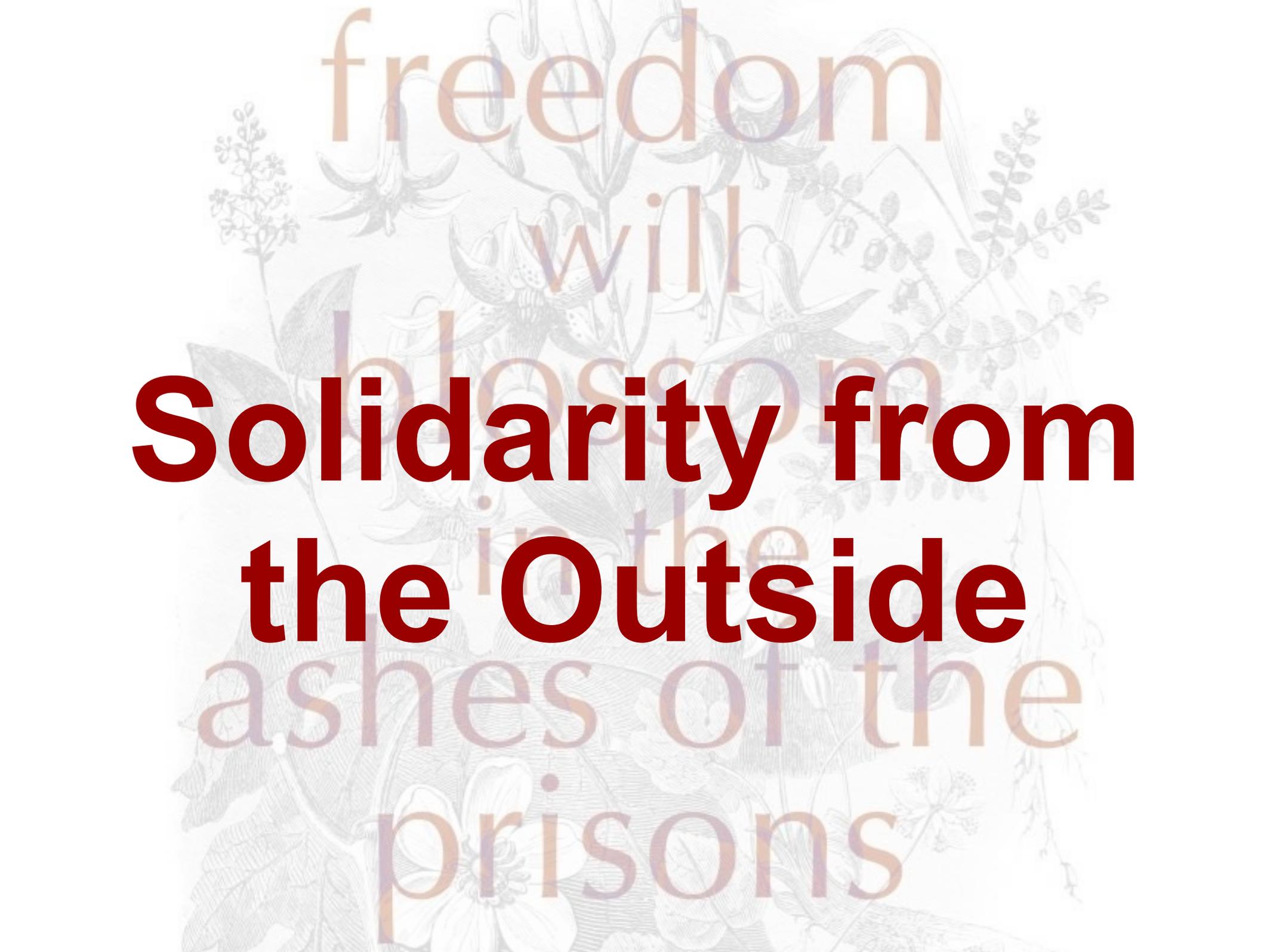
- Holman prison in Alabama went on strike, completely shutting down inmate labor in the prison
- Central CA Women's prison in Chowchilla completely shut down by the strike
- Inmates in Virginia refused to work, including women's prisoners at Fluvanna Prison in Troy, VA. List of demands released.



# Behind the Wire, continued...

- Women's prisoners at an unnamed facility in Kansas began a strike
- South Carolina prisoners strike, list of demands released
- Chelsea Manning begins a hunger strike from military prison, in Leavenworth, KS



A detailed botanical illustration in a light, faded style serves as the background. It features various plants, including a large lily-like flower with prominent stamens, a cluster of small flowers on a stem, and several leafy branches. The overall aesthetic is that of a classic scientific or artistic botanical plate.

**Solidarity from  
the Outside**

ashes of the  
prisons

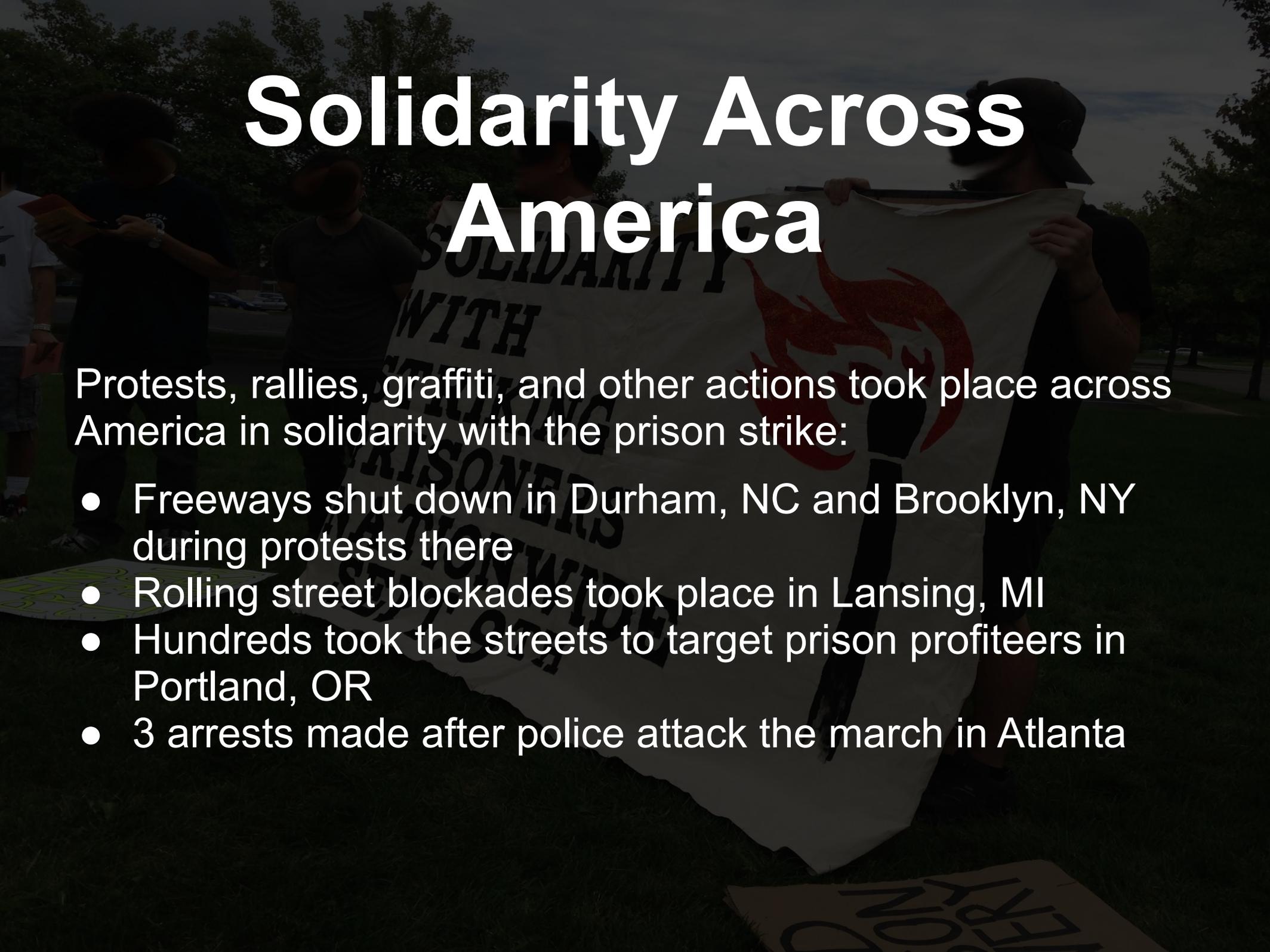
# Means of Supporting Prisoners

For those of us on the outside, we can play a role in amplifying the voices of prison rebels on the inside who are struggling against their conditions. *Examples include:*

- **Transcribing, publishing, and distributing the writing of prisoners**
- **Responding to calls of solidarity**
- **Maintaining correspondence to build strong links from the inside to the outside**

We have many methods of intervention, ranging from consciousness raising and awareness spreading, to phone blasts, to street demonstrations, and targeted interventions against prison profiteers

# Solidarity Across America

A group of people is gathered outdoors, holding a large white banner. The banner features a red flame graphic and the text "SOLIDARITY WITH PRISONERS". The background is dark and shows other people and trees.

Protests, rallies, graffiti, and other actions took place across America in solidarity with the prison strike:

- Freeways shut down in Durham, NC and Brooklyn, NY during protests there
- Rolling street blockades took place in Lansing, MI
- Hundreds took the streets to target prison profiteers in Portland, OR
- 3 arrests made after police attack the march in Atlanta

# Solidarity around the World

- Solidarity Demonstrations took place in Malmo, Sweden, Brisbane, Australia, and Athens, Greece
- Protests at the US Consulates in Melbourne, Australia, and Leipzig, Germany



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# **Local Solidarity Efforts**



# Rallies at ASPC Lewis and Perryville

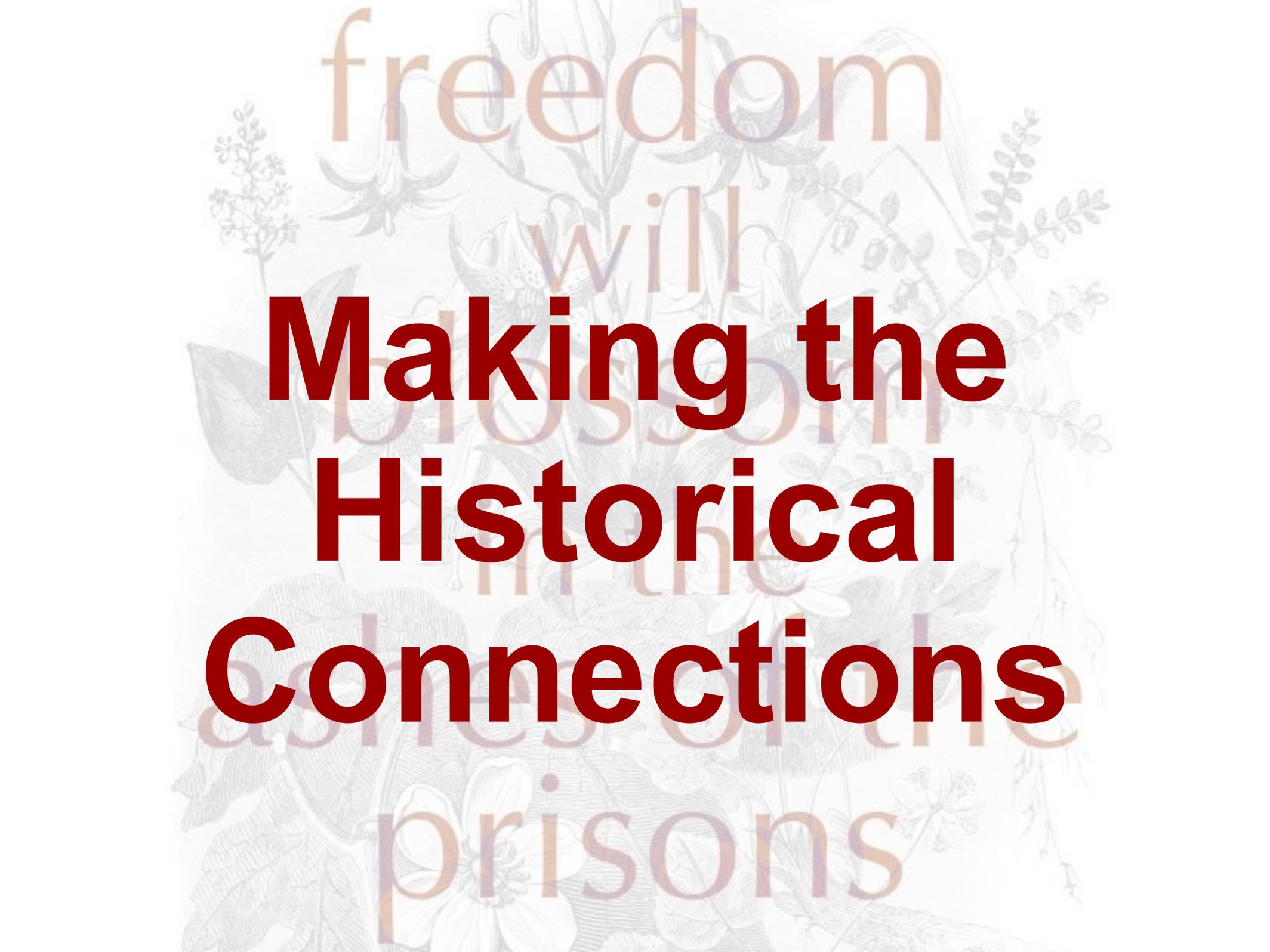
Phoenix IWOC, and assorted allies, took part in a rally at ASPC Lewis. Police had blocked the entrance with checkpoints to prevent access to the prison, however, we were able to use a frontage road for a short while to demonstrate solidarity.



# Rally at ASPC Perryville



After police ushered us away from Lewis, we regrouped at Perryville where we demonstrated and made noise for the inmates in the yard who cheered us on and made noise of their own

The background features a detailed botanical illustration in a light, muted color palette. It includes various plants with leaves, stems, and flowers, some resembling orchids or similar species. The illustration is layered behind the text.

freedom  
will  
**Making the  
Historical  
Connections**  
prisons

# 13th Amendment

## **Amendment XIII**

### **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.

### **Section 2.**

Congress shall have power to enforce this article by appropriate legislation.

# Views of “Punishment”

## The Intent Approach:

Punishment requires intent.

## The Realist Approach:

Punishment is rooted in a prisoner's experience, such as his prison conditions, and not the mental state of any one official.

## The Formalist Approach:

Punishment means only the prison sentence.

# Prisons, Punishment, Public

The courts defer to prison administrators because the prison, by definition, operates in an entirely different sphere than the free world that the rest of us inhabit. As the philosopher Michel Foucault described in his landmark work *Discipline and Punish*, the modern prison has supplanted the public square as the site of collective punishment, but the locus of that punishment has not changed—it remains the body of the criminal.<sup>23</sup> In lieu of inflicting physical pain as retribution for wrongs, we segregate the criminal from public view and access to particular rights of the free.<sup>24</sup> Foucault called this “”<sup>25</sup> Included among these suspended rights are most of rights of free workers, in part because the notion of providing them to convicted criminals offends popular sensibilities.

Raja Raghunath, *A Promise the Nation Cannot Keep: What Prevents the Application of the Thirteenth Amendment in Prison?*, 18 *Wm. & Mary Bill Rts. J.* 395, 400–01 (2009)

# Prisons, Punishment, Public

Today's courts rely heavily upon the doctrine of prison deference to defeat prisoner claims, irrespective of whether the inmate rights at issue have actually been violated.<sup>38</sup> In an earlier era, this was referred to by one observer as a “hands-off” doctrine,” which, until approximately the late 1960s and early 1970s, compelled “a majority of state and federal courts [to] follow[] a policy of declining jurisdiction over most litigation involving prisons.”<sup>39</sup> The modern federal courts often locate the source of their deference in the separation of powers envisioned in the Constitution, noting that the branches of government that are tasked by that document with implementing our system of punishment are the legislature and the executive.<sup>40</sup> As Foucault has pointed out, the roots of this deference actually extend farther back in history than the American Revolution, to the first institutions of penitentiary confinement.<sup>41</sup> Even the first Western jailers, in the sixteenth and seventeenth centuries, demanded a degree of autonomy from the judicial apparatus that created the need for their very profession.<sup>42</sup>

# 8th Amendment

Deliberate Indifference

State Action /  
Prosecutorial Discretion

OR

Individual Right of Action

# 13th Amendment

Affirmative Obligation on the  
State to Eradicate Slavery

What is Slavery?

What are the exceptions to the  
abolition of slavery?

# Limits on 8th Amendment Claims

Wilson v. Seiter, 501 U.S. 294 (1991).

A majority opinion authored by Justice Scalia sharply proscribed the circumstances under which the Court would so expand the meaning of punishment.<sup>226</sup>

# 5th Amendment Indictment/Due Process

Under the rule of the Indictment Clause cases exemplified by *Wong Wing*, the discretion that shifted to the Executive allowed the Attorney General to “establish a disciplinary regimen or take punitive action because of the needs of the institution,” but not to “punish individual prisoners for their crimes.”<sup>261</sup>

The “punitive element connected with the crime,” namely “the loss of freedom for some period of time,” remained “the only element still controlled by the sentencing judge.”<sup>262</sup>

Therefore, <sup>433</sup> the United States Court of Appeals for the Ninth Circuit concluded that “[w]ithin this system punishments can be distinguished, for the purpose of applying the indictment clause, only in terms of the length of time during which a prisoner is deprived of his freedom.

# Due Process Claims

The Court made explicit in *Hewitt* what was implicit in *Greenholtz*. In evaluating the claims of inmates who had been confined to administrative segregation, it first rejected the inmates' claim of a right to remain in the general population as protected by the Due Process Clause on the authority of *Meachum*, *Montanye*, and *Vitek*. The Due Process Clause standing alone confers no liberty interest in freedom from state action taken “ ‘within the sentence imposed.’ ” 459 U.S., at 468, 103 S.Ct., at 869. It then concluded that the transfer to less amenable quarters for nonpunitive reasons was “ordinarily contemplated by a prison sentence.” *Ibid.* Examination of the possibility that the State had created a liberty interest by virtue of its prison regulations followed. Instead of looking to whether the State created an interest of “real substance” comparable to the good time credit scheme of *Wolff*, the Court asked whether the State had gone beyond issuing mere procedural guidelines and had used “language of an unmistakably mandatory character” such that the incursion on liberty would not occur “absent specified substantive predicates.” *Id.*, at 471–472, 103 S.Ct., at 871. Finding such mandatory directives in the regulations before it, the Court decided that the State had created a protected liberty interest. It nevertheless, held, as it had in *Greenholtz*, that the full panoply of procedures conferred in *Wolff* were unnecessary to safeguard the inmates' interest and, if imposed, would undermine the prison's management objectives.

# 13th Amendment Claims: Private Prisons

Since the private prison boom, courts have had varied attitudes toward the status of these new prisons and the Thirteenth Amendment. While no case addressing this precise issue has ever come before the Supreme Court, a number of federal appellate courts have had the opportunity to address Thirteenth Amendment arguments in relation to private prisoners. Nevertheless, the typical response is to entirely dismiss the issue. Relying on the notion, supported by Slaughter-House Cases and the Civil Rights Cases, that the Thirteenth Amendment is relegated to history, a federal court \*238 is more likely to move on to potential Fourteenth Amendment, Eighth Amendment, or statutory claims. Since the private prison boom, courts have had varied attitudes toward the status of these new prisons and the Thirteenth Amendment. While no case addressing this precise issue has ever come before the Supreme Court, a number of federal appellate courts have had the opportunity to address Thirteenth Amendment arguments in relation to private prisoners. Nevertheless, the typical response is to entirely dismiss the issue. Relying on the notion, supported by Slaughter-House Cases and the Civil Rights Cases, that the Thirteenth Amendment is relegated to history, a federal court \*238 is more likely to move on to potential Fourteenth Amendment, Eighth Amendment, or statutory claims

# 13th Amendment Claims: Private Prisons

In *Richardson v. McKnight*, a prisoner in a Tennessee private prison sued his guards for an §1983 violations. The guards responded that they were immune from such lawsuits under the doctrine of “qualified immunity,” as they were acting under color of state law.<sup>230</sup> The Court rejected this argument, however, stating that history does not reveal a ‘firmly rooted’ tradition of immunity applicable to privately employed prison guards.

# 13th Amendment and Criminal Liability: United States v. Kozminski

The defendants were criminally prosecuted for keeping “two mentally retarded men” as unpaid laborers on their farm, “in poor health, in squalid conditions, and in relative isolation from the rest of society.”

In addition to holding the men in these conditions, the government also argued that the Kozminski’s used those same conditions “to cause the victims to believe they had no alternative but to work on the farm.” involuntary servitude for the purposes of criminal liability under the Thirteenth Amendment as “a condition of servitude in which the victim is forced to work for the defendant by the use or threat of physical restraint or physical injury, or by the use or threat of coercion through law or the legal process.

# 13th Amendment and Criminal Liability

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both. If death results from the violation of this section, or if the violation includes kidnapping or an attempt to kidnap, aggravated sexual abuse or the attempt to commit aggravated sexual abuse, or an attempt to kill, the defendant shall be fined under this title or imprisoned for any term of years or life, or both.

Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be subject to the penalties described above.

# Who is a Worker?

## Market vs. Non-market Worker Analysis

Vanskike v. Peters reveals this dynamic. There, the Seventh Circuit decided that prison inmates could not demand the minimum wage for their work as janitors, kitchen aides, and garment workers in an Illinois prison.

The penal context of their labor rendered it non-market work; this non-market character rendered the relationship noneconomic; and absent an economic relationship to the prison, inmates could not be employees, bearers of labor rights.

# Prison Labor

In the present day, “well over 600,000, and probably close to a million, inmates are working full time in jails and prisons throughout the United States.”

In the federal system alone, which saw its inmate population increase more than 650% from 1980 to 2005, UNICOR, the trade name for Federal Prison Industries, Inc., employs almost 20,000 of this total, and is the thirty-ninth largest federal contractor.

In Colorado, the state correctional industries employ “approximately 1,500 inmates at sixteen DOC facilities located throughout Colorado,” in activities as diverse as “dog adoption and training,” the production of “high quality office furnishings,” “forms printing and distribution,” “wild land firefighting and reclamation,” and horse wrangling. Neither the federal nor Colorado courts sentence criminals to hard labor; instead, the prison systems in both jurisdictions promulgate a general work requirement for all able-bodied inmates.

# Hard Labor

Despite this conflation of the penalties of incarceration and forced labor by courts and legislators through the nineteenth century, it still remained the case—at least in the federal system—that “[h]ard labor was a distinct penalty expressly authorized for specific crimes and penitentiary confinement, while not included in the penalty clauses of particular offenses, was ordered by the sentencing judge as part of the punishment.”<sup>100</sup> Since before this time, hard labor punishment without incarceration was also an available penalty in the United States military,<sup>101</sup> and remains one today.<sup>102</sup> However, by the turn of the twentieth century, “hard labor had become primarily a disciplinary measure used in nearly all institutions regardless of the sentence, instead of a punishment for specific crimes . . . .”<sup>103</sup> In 1909, “[a]s part of its revision and recodification of the penal code . . . Congress eliminated hard labor from the punishment clause of each section,”<sup>104</sup> but made sure to note that “[t]he omission of the words ‘hard labor’ from the provisions prescribing the punishment in the various sections of this Act, shall not be construed as depriving the court of the power to impose hard labor as a part of the punishment, in any case where such power now exists.”<sup>105</sup> It is only since 1948 that “the [federal] district courts have not been permitted to impose the punishment of hard labor. . . . [I]t is available to prison administrators as one part of the ‘individualized system of discipline, care, and treatment’ . . . .”<sup>106</sup>

# 13th Amendment and Prison Labor

“[C]ourts have rarely taken the thirteenth amendment inside the prison gates,” preferring instead to “uniformly reject[] claims that the prison-labor system imposes involuntary servitude in violation of the thirteenth amendment.” In one instance, the United States Court of Appeals for the Fifth Circuit relied upon what it viewed as the “precise and literal wording of the Thirteenth Amendment,” as well as “the unwavering line of authority which applies the Thirteenth Amendment precisely as it is written,” in rejecting a prisoner's challenge to forced labor without compensation in the Texas prison system. In another, the Seventh Circuit held that forced labor “imposed as an incident to a conviction of crime” was “punishment for crime excepted from the prohibition of the Thirteenth Amendment,” although the dissenting judge on the panel pointed out in his portion of the opinion that this holding was not supported by a plain reading of the amendment.

# 13th Amendment and Prison Labor

“The version of the amendment that ultimately prevailed” was written by the Senate Judiciary Committee using “language that closely paralleled the slavery provision in the [Northwest] Ordinance [of 1787],”<sup>157</sup> which prohibited slavery “in areas north of the Ohio River.”<sup>158</sup> This prohibition was reputedly drafted in its earliest \*420 form by Thomas Jefferson.<sup>159</sup> One observer has argued that it represented “the first known use of the punishment clause in federal efforts to abolish slavery, and it became a template for subsequent efforts.”<sup>160</sup>

The narrower language originally proposed in the House of Representatives for the Thirteenth Amendment “would have allowed only indentured servitude of prisoners, but not slavery,”<sup>164</sup> but “the drafters of the Thirteenth Amendment spent little time discussing alternative wordings.”<sup>165</sup> There are no records of the debates within the Senate Judiciary Committee regarding the amendment.<sup>166</sup> Instead, “[t]he focus of the original debate about the thirteenth amendment was not on its punishment clause but on its central prohibition and its second section on enforcement.”

# Post-13th Amendment Slavery

In the early years of Reconstruction, following the Civil War, “the southern states came to rely heavily on convict-lease systems to handle their prisoners, and those systems led to a dark history of savagery that matched the worst abuses of slavery.”<sup>176</sup> \*422 In convict leasing, inmates were leased to private parties to engage in compelled labor for those parties' economic benefit, a variant on the practice of forced labor as punishment that was not itself new.<sup>177</sup> But “the southern leasing systems that arose after 1865 were unprecedented in the number of prisoners involved, in the heavy use of black prisoners and in the unfettered control given to the leasing parties.”<sup>178</sup>

# Post-13th Amendment Slavery

In 1867, John Kasson, a Republican Congressman from Iowa, sought to pass legislation clarifying that

the true intent and meaning of said amendment prohibits slavery or involuntary servitude forever in all forms, except in direct execution of a sentence imposing a definite penalty according to law, which penalty cannot, without violation of the Constitution, impose any other servitude than that of imprisonment or other restraint of freedom under the immediate control of officers of the law and according to the usual course thereof, to the exclusion of all unofficial control of the person so held in servitude.<sup>t</sup>

here must be a direct condemnation into that condition under the control of the officers of the law, like the sentence of a man to hard labor in the State prison in the regular and ordinary course of law, and that is the only kind of involuntary servitude known to the Constitution and the law.<sup>182</sup>

The resolution passed the House,<sup>183</sup> but was postponed indefinitely by the Senate Judiciary Committee because it “[thought] the whole subject [was] covered by the civil rights bill.”

# Post-13th Amendment Slavery

While abolitionists and proponents saw the proposed Thirteenth Amendment as a positive ban on all forms of slavery and involuntary servitude,<sup>195</sup> its opponents expressed concern that the amendment was an improper and overreaching exercise of the power to amend the Constitution, particularly at a time when the Civil War was still being fought.<sup>196</sup> Among the Republicans, there was a faction that “urged that the amendment strictly be limited to enslaved blacks, and . . . adamantly resisted any broader interpretation . . . .”<sup>197</sup>

The abolitionists who advocated a broader reading of the amendment comprised the faction that is “generally recognized as having carried the day,”<sup>201</sup> **but the dissenters' narrow reading of the Thirteenth Amendment ultimately succeeded in defining the scope of the amendment's application for decades to come, after the Supreme Court's 1883 decision in the Civil Rights Cases.**<sup>202</sup> In that decision, the Court read Section 2 of the amendment to only “clothe[] Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States . . . .”<sup>203</sup> In the eyes of many modern observers, the Court thereby restricted all future federal legislation passed under Section 2 to that which “only end[ed] practices directly related to institutional slavery, including impediments to black court testimony and property ownership,”<sup>204</sup> and “reduced the amendment to its least common denominator: the abolition of mid-nineteenth century southern racial chattel slavery.”

# Post-13th Amendment Slavery

Realizing that the recently freed slaves often had no homes and could not find a job, many Southern states passed vagrancy laws providing for the arrest and imprisonment of “[r]ogues and vagabonds, idle or dissolute persons, common night walkers, [p]ersons who neglect their calling,’ [and] ‘all able-bodied male persons over eighteen . . . who are without means of support.”<sup>96</sup> While race was not specifically mentioned, this definition was meant to apply to (and was enforced against) African-Americans.<sup>97</sup> A large number of African-Americans were consequently punished for their poverty, only to be leased out to white landowners and subjected to a condition essentially similar to the one they had endured under slavery

Ryan S. Marion, Prisoners for Sale: Making the Thirteenth Amendment Case Against State Private Prison Contracts, 18 Wm. & Mary Bill Rts. J. 213, 225 (2009)

# Arizona Hard Labor Law A.R.S. 31-251

## 31-251. Hard labor required of prisoners: labor classification: definition

- A. The director has the authority to require that each able-bodied prisoner under commitment to the state department of corrections engage in hard labor for not less than forty hours per week, except that not more than twenty hours per week of participation in an educational, training or treatment program may be substituted for an equivalent number of hours of hard labor as prescribed by the director of the state department of corrections. The director may require retention of earnings for the purposes authorized by section 31-254.
- B. The director shall establish a prisoner labor classification system to insure that:
1. A prisoner receives work assignments commensurate and compatible with the condition and limitations of his physical and mental health.
  2. No prisoner participates in a work assignment that threatens the safety or security of the public, the correctional institution or the prisoner.
  3. Each prisoner is generally assessed for skills related to the construction and maintenance of prison facilities.
  4. Each prisoner who does not present a risk to the public and who is not limited by his physical or mental health may be assigned to a work crew.
- C. Each prisoner committed to the department shall be classified pursuant to the prisoner labor classification system established by the director. The director or his designee shall review and approve each classification of a prisoner that results in exempting the prisoner from engaging in the hard labor requirements of subsection A of this section.
- D. In this article, "hard labor" means compulsory physical activity for the attainment of some object other than recreation or amusement but does not include physical activity that is not within the ability of an individual prisoner.
- E. Notwithstanding any other law, no prisoner given a work assignment or required to perform any labor by the state department of corrections shall be considered an employee or to be employed by the state or the state department of corrections, regardless of whether the prisoner is compensated or not, nor shall an employee-employer relationship exist between the prisoner and the state department of corrections or the state for any purpose and none of the rights or privileges otherwise accorded to employees by law shall accrue to such prisoners.

# Hale v. State of Arizona 993 F.2d 1387

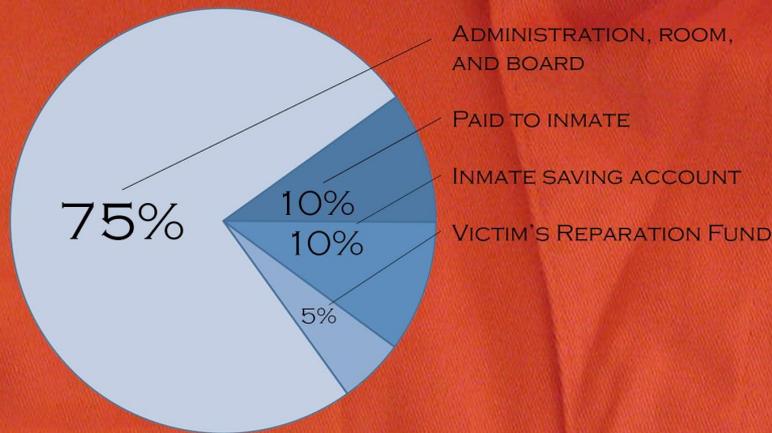
However, we are influenced by the fact that no other circuit has construed the relationship between a prison and a prisoner with a hard-time obligation who works on a program structured by the prison as an employment relationship within the FLSA. See *Vanskike*; *Alexander v. SARA, Inc.*, 559 F.Supp. 42 (M.D.La.) (labor in plasmapheresis program run by outside company belonged to institution), *aff'd*, 721 F.2d 149 (5th Cir.1983); *Sims v. Parke Davis & Co.*, 334 F.Supp. 774 (E.D.Mich.) (work assignments up to prison), *aff'd*, 453 F.2d 1259 (6th Cir.1971), cert. denied, 405 U.S. 978, 92 S.Ct. 1196, 31 L.Ed.2d 254 (1972); *Hudgins v. Hart*, 323 F.Supp. 898 (E.D.La.1971) (prisoner worked at plasma treatment center pursuant to sentence to hard labor); see also *Watson* (distinguishing *Alexander*, *Hudgins*, and *Young v. Cutter Biological*, 694 F.Supp. 651 (D.Ariz.1988), *aff'd sub nom. Gilbreath v. Cutter Biological*, 931 F.2d 1320 (9th Cir.1991) because of hard-time obligation and holding that prisoner on work release program was employee of outside company for whom work was performed). This follows because, as the Fifth Circuit put it in *Watson*, "the 'hard time' inmates' labor d[oes] indeed 'belong to the institution' and c[an] be disposed of legitimately within the discretion of the correction facility or agency." 909 F.2d at 1555.

# Hale v. State of Arizona 993 F.2d 1387

Ashurst-Sumners has since been amended, most substantively in 1979 when Congress excepted goods made by prisoners in pilot projects who are paid the prevailing wage in the locality, less 80% for taxes, room and board, family support payments and victim compensation. Justice System Improvement Act of 1979, § 827(a), 93 Stat. 1215 (1979) (codified as amended at 18 U.S.C. § 1761(c) (1992)).<sup>17</sup> Therefore, legislation dealing with the distribution of prisoner-made goods in commerce, and in competition with similar products produced by others, has been in place throughout the history of the FLSA. This suggests that Congress did not intend its general concern with unfair competition in the FLSA to require payment of minimum wages to prisoners working for prison programs, as its more specific concern with unfair competition on account of prison-made goods had been dealt with in the Ashurst-Sumners Act. Rather, the fact that Ashurst-Sumners precludes--and prescribes a remedy in the form of criminal sanctions for--introduction of low-cost prison goods into the channels of commerce to protect private business from competition in the product market indicates that Congress's concern with unfair competition in the FLSA will not be subverted by declining to apply its minimum wage standards to convict labor in prison-structured programs.<sup>18</sup>

# PRISON LABOR IN THE UNITED STATES

## WHERE DOES THE MONEY GO



## HOURLY INMATE WAGES

**\$1.15**

**\$0.40**

**\$0.23**

**OUTSIDE EMPLOYERS**

**\$0.12**

**IN PRISON LABOR**

## COMPANIES THAT HAVE USED PRISON LABOR



**Nintendo**



**MOTOROLA**

**MARY KAY**

