

The 3 Branches of the United States Government

You are representing the 3 Branches of Government of the United States.

The Indictment: You are charged with creating, feeding, and perpetrating the system of mass incarceration in the United States. America incarcerates 2 million people at any given time, 0.6% of the population. This is a higher rate of people locked up than any other nation in the world. You are additionally charged with entrenching legacies of slavery, control, and racial hierarchy in the United States. Mass incarceration is a racial justice issue. You are charged with ongoing, relentless abuses of civil and human rights that maintain the racist systems that America was founded on.

GUILTY FACTS:

- The United States has the highest rate of incarceration of any nation on Earth: We represent 4 percent of the planet's population but 22 percent of its imprisoned. In the early 1970s, our prisons held fewer than 300,000 people; since then, that number has grown to more than 2.2 million, with 4.5 million more on probation or parole. Because of mandatory sentencing and "three strikes" laws, I've found myself representing clients sentenced to life without parole for stealing a bicycle or for simple possession of marijuana.
- The U.S. doesn't have one "criminal justice system;" instead, there are thousands of federal, state, local, and tribal systems. Together, these systems hold **almost 2 million people** in 1,566 state prisons, 102 federal prisons, 2,850 local jails, 1,510 juvenile correctional facilities, 186 immigration detention facilities, and 82 Indian country jails, as well as in military prisons, civil commitment centers, state psychiatric hospitals, and prisons in the U.S. territories. The various government agencies involved in the criminal legal system collect a lot of data, but very little is designed to help policymakers or the public understand what's going on. It is difficult to reform or take down the system when it is so large and disconnected.
- Prosecutors and judges working for the government continue to punish people harshly for nothing more than drug possession. Drug offenses still account for the incarceration of almost 400,000 people, and drug convictions remain a defining feature of the federal prison system.
- Congress and the president should invest in alternatives to prison if they want to meaningfully reduce the federal prison population. Indeed, cutting admissions in half for drug trafficking offenses would reduce the federal prison population by 17 percent. The United States COULD model its justice system after the justice system in Norway, Germany, or the NYC-based restorative justice program Common Justice – all of which base justice on restoration, restitution, and support – addressing the root causes of violence – rather than incarceration. Instead, the US prison population has continued to grow year after year due to a lack of government policy change.
- The safest communities are not the ones that have the most police, the most prisons, or the highest percentage of people on electronic monitors under constant surveillance and control. No, what creates safety in our communities are good schools, plentiful jobs, quality health care, and a thriving social fabric. However, the government and its agencies have continued to pour money and energy into policing, prisons, and an unjust system rather than investing in schools, health care, and strong

communities! The legacies of slavery such as redlining in housing, healthcare disparities, and educational inequities have created a system where we do not support people's wellbeing, but instead criminalize and police communities of color in particular. This is backwards, and the government's spending and priorities need to flip upside down.

Possible defenses:

- Obama named criminal justice reform as a main policy priority, as have other presidents and governors. Members of Congress have introduced bipartisan bills in the Senate and the House that would reform the federal sentencing system, increase opportunities to earn time off of sentences, and invest in treatment and reentry services. And many political candidates decry the number of incarcerated people who have been convicted of low-level, nonviolent drug crimes, arguing that our nation would be better served by investments in public health initiatives and preventive policies such as education and job creation. The government could do so much more to end mass incarceration if voters voted these candidates into office and kept up the pressure!
- The government serves the people; it cannot change what citizens do not fight for.
- You have to move slowly and carefully or you could destabilize the whole system. People need to have patience with the democratic process, no matter how much suffering the system causes!

Sources:

<https://www.prisonpolicy.org/reports/pie2022.html>

<https://apps.urban.org/features/reducing-federal-mass-incarceration/>

<https://www.newyorker.com/news/the-new-yorker-interview/ten-years-after-the-new-jim-crow>

<https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html> (The 1619 Project)

The Prison Industry

You are representing the Prison Industry (aka the Prison Industrial Complex, or PIC).

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GUILTY FACTS:

- According to many activists including Angela Davis (the famous civil rights figure), prisons are obsolete (no longer needed). There are much better ways to restore justice when harms occur. The existence of private prisons provides an incentive to keep them filled – no matter how inhumane mass incarceration may be. Perhaps one day our nation will look back on this practice of putting human beings in cages – with as much shame and horror as we view the practice of slavery, or the practice of cutting off limbs and hands of thieves. Until then, private prisons will continue to make money off of this practice; and the government will continue to have external reasons to invest money in the prison system.
- Caging people and then stripping them of basic civil and human rights upon their release isn't productive. In fact, it's more likely to encourage criminal behavior in the future and make it more difficult for people to survive on the outside without resorting back to crime. It's likely to traumatize people in ways that will be harmful to themselves, to their families, and to their communities. Private prisons are motivated to keep people locked up and encourage the government to pass laws that will get MORE people locked up - since they make more money, the more people they incarcerate.
- Private prisons and the companies that support them make the rich people who own them very, very rich. There is a very large range of corporate interests that make an enormous amount of money off of our prison system—everything from private health-care providers to Taser-gun manufacturers to companies that are now creating these electronic monitors, G.P.S. tracking systems for people when they are released from prison or jail. Why are we allowing certain people's wealth to be valued over the rights, wellbeing, and freedom of so many others?
- A step in the right direction would be massive investments in education, drug treatment, health care, and job creation, in trauma support in the communities that have been devastated by the war on drugs and mass incarceration. The safest communities are not the ones that have the most police, the most prisons, or the highest percentage of people on electronic monitors under constant surveillance and

control. No, what creates safety in our communities are good schools, plentiful jobs, quality health care, and a thriving social fabric. The energy and money invested in private prisons should be invested in education, health care, and job creation through other means.

Possible defenses:

- “A huge number of prisons—70%, in fact—are located in rural communities and go a long way in bolstering the economies of these communities, where there may not be many job opportunities. The fact is that prisons are a big source of income for many citizens living around them.”* - 1
- “After decades of growth, the private-prison industry is [actually, itself,] under threat... California has [begun] to phase out private-prison contracts. Banks, city pension funds and universities have announced their intention to divest [*take money away from private prisons*]. Most Democratic presidential hopefuls want to dismantle the industry. Wary that the public mood is turning, private-prison firms are [already] diversifying into parole services, electronic monitoring, mental-health care and halfway houses. However, although private prisons have indeed profited from America’s obsession with incarceration, they did not cause it. The case for their abolition is much weaker than it might seem.”* - 4
- If private prisons stopped existing, what would we do with all of the prison buildings?

Sources:

- 1: <https://www.prisonpolicy.org/reports/pie2022.html>
- 2: <https://apps.urban.org/features/reducing-federal-mass-incarceration/>
- 3: <https://www.newyorker.com/news/the-new-yorker-interview/ten-years-after-the-new-jim-crow>
- 4: <https://www.economist.com/united-states/2019/10/19/in-defence-of-americas-prison-industrial-complex>

Law Enforcement

You are representing Law Enforcement.

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GUILTY FACTS:

- "95% of those who are arrested and swept into the criminal-justice system every year have been convicted of nonviolent crimes. And the largest category of arrests are drug arrests. That was true in 2010, and it's true today. The war on drugs has been a primary vehicle for sweeping people into a criminal-justice system, branding them criminals and felons, and then relegating them to a permanent second-class status for life."* -2. If law enforcement, most notably police, stopped making so many arrests for nonviolent crimes including drug arrests, the problem of mass incarceration would not be at nearly the scale it now exists. The enormous prison population begins with police arrests!
- Police brutality, in particular towards Black and brown communities, is a well-known problem within law enforcement. There are endless stories of police misconduct, in particular in communities of color. Many of the worst features of mass incarceration — such as racial disparities in prisons — can be traced back to policing. Research shows that police disproportionately target Black and other marginalized people in stops, arrests, and use of force. Mass incarceration would be less of a racial justice issue if police would not target communities of color disproportionately!
- Police are misused to respond to problems unrelated to public safety, like mental health crises and homelessness. Sometimes people who simply have mental health needs, or who are homeless, end up targeted, arrested, and in prison when they really needed support, treatment, and help!
- Policing criminal law violations costs taxpayers over \$63 billion each year. All of this money should go towards better schools, health care, mental health services, housing, and public services that actually support people — rather than criminalizing and policing people! That \$63 billion going towards law enforcement could be much better spent in ways that would actually DECREASE crime since people would have more options, better support, and more humane, safer communities.

Possible defenses:

- Many police departments are already trying to change their practices through police reform measures including body cameras, community policing, and mental health training.
- Police are doing the job they were trained for. How can you point the finger at police when they are trained in such a way that they are told to make all of these arrests, use force when necessary, and target certain neighborhoods? Police are just doing the job they were hired to do.
- Many police officers have diverse reasons for joining the police force that may or may not be related to personal bias. Sometimes, someone becomes a police officer because they disagree with mass incarceration and want to protect their community. We cannot blame all of law enforcement when some police are trying to fight the system.

Sources:

1: <https://www.prisonpolicy.org/reports/pie2022.html>

2: <https://apps.urban.org/features/reducing-federal-mass-incarceration/>

3:

<https://www.prisonpolicy.org/policing.html#:~:text=Many%20of%20the%20worst%20features,arrests%2C%20and%20use%20of%20force.>

The System of White Supremacy

You are representing the Legislatures of the United States (the Legislative Branch).

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GUILTY FACTS:

- People of color are dramatically overrepresented in the nation's prisons and jails. These racial disparities are particularly stark for Black Americans, who make up 38% of the incarcerated population despite representing only 12% of U.S residents. These disparities are caused by the legacies of slavery which have led to greater poverty and therefore an inability to post bail among communities of color, as well as increased harsher policing in Black communities.
- The specific forms of repression and control may have changed over time, but the underlying pattern established during slavery has remained the same. Modern-day policing, surveillance, and mass criminalization... have histories rooted in white fear and supremacy. Nothing has proved more threatening to our democracy, or more devastating to Black communities, than white fear of Black freedom dreams. Mass incarceration is a method of controlling vast parts of the Black community; since once one has a felony record, one can no longer vote, secure a job, or secure housing nearly as easily.
- Central to understanding the practice of mass incarceration and excessive punishment is the legacy of slavery. The 13th Amendment is credited with ending slavery, but it stopped short of that: It made an exception for those convicted of crimes. After emancipation from slavery, black people, once seen as less than fully human "slaves," were seen as less than fully human "criminals." The provisional governor of South Carolina declared in 1865 that they had to be "restrained from theft, idleness, vagrancy and crime." Laws governing slavery were replaced with Black Codes governing free black people — making the criminal-justice system central to new strategies of racial control.
- Late in the 20th century, amid protests over civil rights and inequality, a new politics of fear and anger emerged. Nixon's war on drugs, mandatory minimum sentences, three-strikes laws, children tried as adults, "broken windows" policing — these policies were not as expressly racialized as Jim Crow, but their implementation has been essentially the same. It is black and brown people who are disproportionately targeted, stopped, suspected, incarcerated and shot by the police.
- Hundreds of years after the arrival of enslaved Africans, a presumption of danger and criminality still follows black people everywhere. New language has emerged for the noncrimes that have replaced the

Black Codes: driving while black, sleeping while black, sitting in a coffee shop while black. All reflect incidents in which African-Americans were mistreated, assaulted or arrested for conduct that would be ignored if they were white. In schools, black kids are suspended and expelled at rates that vastly exceed the punishment of white children for the same behavior.

- Inside courtrooms, the problem gets worse. Racial disparities in sentencing are found in almost every crime category. Children as young as 13, almost all black, are sentenced to life imprisonment for nonhomicide offenses. Black defendants are 22 times more likely to receive the death penalty for crimes whose victims are white, rather than black — a type of bias the Supreme Court has declared “inevitable.” The smog created by our history of racial injustice is suffocating and toxic.

Possible defenses:

- Imprisonment rates have also risen disproportionately quickly for women and youth over the past decades. This suggests that poverty may be to blame for rising incarceration rates for certain groups of people; as women experience a wage gap with men and therefore cannot easily post bail. Although poverty is a legacy of slavery, poor white people and women are contributing to the rising percentage of imprisoned US citizens. This could suggest blame for the system of capitalism which prizes money above all else. White supremacy cannot be disconnected from its base motives, power and money – which are the driving factors of capitalism.

Sources:

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<https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html> (The 1619 Project)

<https://pulitzercenter.app.box.com/s/ibpxrtax423mxb9jnnj4i8pfd6gju4e6>

US Citizens

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GUILTY FACTS:

- As the citizens of a democracy, it is your job to vote in leaders and fight for policies and laws that you believe in. If our government - which is “by the people and for the people” – has built, maintained, and grown the system of mass incarceration– it has done so as the ultimate representatives of the people in the United States! You should be voting in politicians and leaders who vow to dismantle the prison system, and demanding change from our elected representatives.
- Ultimately, it is the citizens’ responsibility to fight for, create, and test better systems and visions of justice. Whether through elections, community organizing, or activism, if citizens in the United States are not able to organize around a better vision of what justice could look like – how do we expect to take down the big systems that exist, or create anything better? People and systems will not change if we do not have a positive vision and practiced model of a more equitable justice system to move towards, together.
- Organizers, activists, and prison abolitionists have been fighting for prison abolition, transformative justice, and creating models of restorative justice and better justice systems for decades. Prison abolitionists, community organizers, and activists have done the work at grassroots and national levels, but have not received enough continued support and buy-in from citizens to bring this work to higher levels. If US citizens do not join the movement for justice and follow our organizers, activists, and visionaries, who will?
- US citizens uphold not only the government and law enforcement by voting for leaders and policies that expand policing and prisons time and again – US citizens also collectively uphold white supremacy through consuming biased media, buying from companies that support racist leaders and policies, and upholding the system of capitalism by buying into the belief that power and money are more important than collective equality and wellbeing. When was the last time you supported capitalism by buying from Amazon, racist policies by buying from Chick-Fil-A or Home Depot, or rule by the rich by going on Twitter? It’s hard to place the blame outside of ourselves when we participate in systems that keep us stuck. We’ve got to look inward, imagine something better together, and build towards it with our choices, work, votes, and dollars.

Possible defenses:

- Prison abolitionists, community organizers, and activists ARE United States citizens! They have been developing models of alternative, more equitable justice systems for decades. Angela Davis' book, "Are Prisons Obsolete?" is one example of the work of a US citizen activist that seeks to dismantle mass incarceration and grow a better justice system. Organizers in New York City have created and practiced a city-wide restorative justice program called Common Justice, outlined by Danielle Sered in the book "Until We Reckon", that provides alternatives to prison for perpetrators of crime – led by survivors. All of these visions, projects, and efforts are led by US citizen abolitionists.

- It is difficult to combat a whole system that you live inside of (white supremacy, capitalism, etc.) when the majority of the power and money in the US are held by an uber-wealthy 1% of its citizens (CEOs, executives such as Jeff Bezos and Elon Musk, etc.). Most US citizens are just trying to survive and have a decent life!

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The System of Capitalism

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GUILTY FACTS:

- The system of capitalism is the economic system – the way money and resources move – in the United States. In capitalism, there are a few hyper wealthy people who have a vast amount of money and resources – while 99% of the population has very little power or money in comparison. A few people are wealthy, while a large number of people are poor. Under our current system of capitalism, the way it works today in the U.S., the people at the top often profit off of the work, labor, and, sometimes, suffering, of the majority of the population.
- Poverty plays a central role in mass incarceration. People in prison and jail are disproportionately poor compared to the overall U.S. population. The criminal justice system punishes poverty, beginning with the high price of money bail: The median felony bail bond amount (\$10,000) is the equivalent of 8 months' income for the typical detained defendant. As a result, people with low incomes are more likely to face the **harms of pretrial detention**. Poverty is not only **a predictor** of incarceration; it is also frequently the outcome, as a criminal record and time spent in prison **destroys wealth**, creates debt, and **decimates job opportunities**.
- It might seem strange to accuse a whole system of a crime. But a system is made up of people who choose to keep it going. Capitalism is a system that values profits (money) over people. If you make money, you thrive. If you don't make money, you fail. Nothing but money matters under capitalism. If prisons make money, but exploit people and cause suffering, the people suffering don't matter – under the system of capitalism, money wins out.
- Capitalism causes people and governments to prioritize whatever makes money. Prisons can be very profitable. Private prisons promise to protect the rich people from the poor people, and make money off of their incarceration in the meantime.
- Sure, capitalism may encourage people to start businesses and work hard, which can be empowering. But it also locks people into cycles of debt, where they sometimes will do anything possible to make money just to survive. This can result in young mothers stealing diapers from grocery stores, teenagers selling drugs, or employees stealing from corporate cash registers – all of which can lead to jail time – all because many people are forced between a rock and a hard place just to make enough money to survive.

Possible defenses:

- Only people can be charged with crimes. The system of capitalism is not a person! So how do we indict it?
- The system of capitalism could also STOP mass incarceration if there were a profit motive for keeping people OUT of prison!
- The system of capitalism doesn't force anyone to do anything – the people and governments living under capitalism could always make more ethical choices!
- It is difficult to combat a whole system that you live inside of when the majority of the power and money in the US are held by an uber-wealthy 1% of its citizens (CEOs, executives such as Jeff Bezos and Elon Musk, etc.). Instead of going for the system of capitalism, we should go for the 1% making money off of private prisons!

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<https://www.nytimes.com/interactive/2019/08/14/magazine/prison-industrial-complex-slavery-racism.html> (The 1619 Project)

https://www.zinnedproject.org/wp-content/uploads/2019/03/APCE_climate-crisis-trial-activity.pdf
(Zinn Education Project)