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In Defense of Reentry: A Response to Shreya Subramani's Productive Separations

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IN DEFENSE OF REENTRY: A RESPONSE TO SHREYA SUBRAMANI’S PRODUCTIVE SEPARATIONS

Kelly Orians & Thomas Frampton***

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INTRODUCTION

Shreya Subramani’s Essay offers an incisive, critical, and sobering appraisal of the “reentry space” in New Orleans, Louisiana.¹ She complicates our understanding of the boundaries between carceral spaces and the free market, and she recognizes (and indicts) the ways in which even “cutting edge” criminal justice reform efforts are both limited and extractive in important respects.

But our experience as legal practitioners in Louisiana makes us wary of embracing her critiques fully. One of us is the co-director of The First 72+, a holistic reentry services organization in New Orleans (largely led by formerly incarcerated people);² the other is a former public defender in Orleans Parish, who has enthusiastically pleaded

* Co-Director of The First 72+. Thank you to the many currently and formerly incarcerated people, and their families, who have trusted me to share their stories and experiences. Thank you to my team at The First 72+ for their ongoing commitment to reimagining safety and justice in our community. And many thanks to the staff of the *Fordham Urban Law Journal* for their assistance and support with publishing this work.

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1. Shreya Subramani, *Productive Separations: Emergent Governance of Reentry Labor*, 47 *FORDHAM URB. L.J.* 941 (2020).

2. FIRST 72+, <https://www.first72plus.org/> [<https://perma.cc/Z2HK-XSZR>] (last visited Mar. 16, 2020).

countless clients guilty so that they might participate in the Reentry Court that Subramani describes. We are thus both deeply implicated in the “proliferating network” that is the focus of the Essay, and our perspective should be treated with due skepticism.

That said, working in a jurisdiction that is just beginning to reconsider its addiction to mass incarceration, our firm conviction is that such experiments (however flawed) are desperately needed. While it is essential to remain cognizant of the “problematic deferral of racial justice [in] such reformist programs,”³ the extent to which projects like Reentry Court genuinely constitute an “emergent frontier of neoliberal racial capitalism”⁴ is overstated. It is not that we are sanguine about the promises of Reentry Court and kindred liberal projects promising racial equality through decarceration. But critical assessments of reform efforts must recognize the horrors of the status quo (and the local political realities that limit more ambitious reform efforts). Such context is essential in evaluating the work and impact of such programs, and the ways in which individuals and groups committed to dismantling the racialized carceral state should engage with them.

Consider, for instance, the sorry state of “rehabilitation” in Louisiana prisons in recent decades and the extraordinary opposition to the modest reforms currently underway.⁵ One current feature of Louisiana prison life, the Department of Corrections (DOC) “transitional work program” — through which local sheriffs and the DOC assign inmates to private employers, while keeping the vast majority of their wages — bears an uncanny resemblance to forms of convict-lease arrangements from previous centuries.⁶ In part due to its profitability, recent efforts to reduce the statewide prison population have faced fierce and blunt opposition. One prominent sheriff convened a press conference where he expressed dismay at the

3. Subramani, *supra* note 1, at 941.

4. *Id.* at 948.

5. For statistics on the modest reductions in Louisiana’s prison population since 2013, see LA. DEP’T OF PUB. SAFETY & CORR., POPULATION TRENDS — RAW DATA 1989–PRESENT (2019), <https://s32082.pcdn.co/wp-content/uploads/2019/11/1-Population-Trends.pdf> [<https://perma.cc/8J25-ZH6Q>]; Lea Skene, *Louisiana Once Again Has Nation’s Highest Imprisonment Rate after Oklahoma Briefly Rose to Top*, ADVOCATE (Dec. 25, 2019, 2:02 PM), https://www.theadvocate.com/baton_rouge/news/article_4dcdfe1c-213a-11ea-8314-933ce786be2c.html [<https://perma.cc/LPM2-NGJ5>].

6. See generally DOUGLAS BLACKMON, SLAVERY BY ANOTHER NAME (2008); Mark T. Carleton, *The Politics of the Convict Lease System in Louisiana: 1868–1901*, 8 LA. HIST.: J. LA. HIST. ASS’N 5, 5 (1967).

early release of the “good ones” because “we use [them] every day to wash cars, to change the oil in our cars, to cook in the kitchen, to do all that where we save money.”⁷ The reforms at issue ultimately resulted in the early release of just ten nonviolent offenders, whose labor netted \$140,000 annually for that particular sheriff.⁸ And when the current governor released a campaign pledge to make Louisiana’s incarceration rate the 49th highest in the nation (rather than 50th), he was attacked as promising to release thousands of “thugs” onto Louisiana streets.⁹

It is within this context that we hope to situate Subramani’s critique of the “reentry space.” In Part I, we discuss the reentry process as it currently exists for the vast majority of those returning home from Louisiana prisons, and contrast it with the reentry process for those affiliated with the Reentry Court (or otherwise connected with an organization like The First 72+). The purpose here is to underscore the obstacles faced by formerly incarcerated people, even under the most ideal circumstances, and the opportunities for improvement. In Part II, we take up Subramani’s invitation to reimagine how we “evaluate reform” in this particular moment of (admittedly modest) decarceration. In so doing, we hope to sidestep a simplistic framing of our larger engagement with Subramani’s work as one of radical critique versus liberal reform. If we are serious about mass decarceration and tackling racial capitalism, we need to think deeply and creatively about how we measure success, and what it means to fully support individuals returning home from prison and the communities to which they return. In that regard, Subramani’s skepticism of how projects like the Reentry Court evaluate their own contribution is refreshing and essential.

7. Stacey Cameron, *Sheriff’s Controversial Remarks About “Good” Inmates Partly Motivated by Money*, KSLA NEWS 12 (Oct. 19, 2017, 2:40 PM), <https://www.ksla.com/story/36635591/sheriffs-controversial-remarks-about-good-inmates-partly-motivated-by-money/> [https://perma.cc/JGK9-DT5R?type=image].

8. *Id.*; see also Julia O’Donoghue, *As Prison Population Drops, Louisiana Sheriffs Ask for More Money*, NOLA.COM (Apr. 18, 2019, 12:35 PM), https://www.nola.com/news/article_ce3f6329-d9fe-55f4-a295-97db50afe4ff.html [https://perma.cc/W2DU-C8DZ] (noting complaints of Louisiana Sheriffs Association that “good candidates” for profit-generating work release have been harder to find under recent reforms).

9. Will Sentell, *Campaigns Trade Allegations on John Bel Edwards’ Absence from Event at Southern University*, ADVOCATE (Nov. 21, 2015, 3:20 PM), https://www.theadvocate.com/baton_rouge/news/politics/elections/article_0be0a602-212a-5f40-b3ab-04ceee54f2ec.html [https://perma.cc/ZF3B-JNLC].

I. COMING HOME

A. The Existing Process

In 2010, one of the authors called the Louisiana State Penitentiary (“Angola”) to ask for details on when her client — a beneficiary of the Supreme Court’s recent decision in *Graham v. Florida*¹⁰ — was going to be released. The prison official put the phone down on her desk and could be heard, genuinely confused, asking her co-workers: “How do we process a release?” At that time, few people ever left Angola.¹¹ A decade later, employees of The First 72+ make calls to this office multiple times a month to inquire about a client’s release, and hundreds more calls to other prison facilities across the state.¹² The process is accelerating: in 2017, Louisiana passed the Justice Reinvestment Initiative (JRI),¹³ which led to the early release of

10. 560 U.S. 48, 74 (2010) (holding the Eighth Amendment prohibits imposition of life without parole sentence for juveniles for non-homicide offenses).

11. See, e.g., Elizabeth Johnson, *Life in Louisiana: People Aging in Prison Seek a Second Chance*, S. POVERTY L. CTR. (Mar. 5, 2018), <https://www.splcenter.org/news/2018/03/05/life-louisiana-people-aging-prison-look-for-second-chance> [https://perma.cc/H2AH-LDX7?type=image]; Gordon Russell et al., *Louisiana Leads Nation in Locking Up People for Life; Often, Jurors Couldn’t Even Agree on Guilt*, NOLA.COM (Apr. 21, 2018, 11:00 PM), https://www.nola.com/news/article_175540ba-e44d-5ea0-a734-970600159c77.html [https://perma.cc/X4XN-346N]; see also LA. JUSTICE REINVESTMENT TASK FORCE, REPORT AND RECOMMENDATIONS (2017), https://www.lasc.org/documents/LA_Task_Force_Report_2017_FINAL.pdf [https://perma.cc/VCR7-PCP9] (discussing how people are being detained past their release date).

12. See Victoria Law, *Louisiana Continues to Imprison People Past Their Release Dates*, APPEAL (Feb. 18, 2020), https://theappeal.org/louisiana-continues-to-imprison-people-past-their-release-dates/?fbclid=IwAR1Tlf97eN8Zyb_iK4JyjpmQauBeELN7WHWEHNvIHWAdCIY3z1eWw3uYgSw [https://perma.cc/GS64-8XT6]; Richard A. Webster & Emily Lane, *Louisiana Routinely Jails People Weeks, Months, Years after Their Release Dates*, NOLA.COM (Feb. 21, 2019, 9:24 PM), https://www.nola.com/news/article_988818dd-2971-51c8-82d5-096eef5ffba5.html [https://perma.cc/S7WB-LZ93]. Even when someone is past-due for release, extraordinary efforts are still needed to get the DOC to physically release the person. See, e.g., Amended Complaint, *Hicks v. La. Dep’t of Pub. Safety & Corr.*, No. 19-cv-00108-SDD-RLB (M.D. La. May 15, 2019); Second Amended Complaint, *Grant v. Gusman*, No. 17-cv-2797-NJB-DEK (E.D. La. Apr. 10, 2018); Petition for Negligence, False Imprisonment, and Violation of Constitutional Rights, *McNeal v. La. Dep’t of Pub. Safety & Corr.*, No. 670633 (La. 19th Jud. D., June 6, 2018).

13. The JRI is a package of ten bills that was signed by Governor John Bel Edwards in June of 2017. See *Louisiana’s 2017 Criminal Justice Reforms: The Most Incarcerated State Changes Course*, PEW CHARITABLE TR. (Mar. 1, 2018), <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/louisianas-2017-criminal-justice-reforms> [https://perma.cc/JU7C-HC8U]; see also Rebekah Allen,

thousands of people on the day it was signed into law;¹⁴ in time, JRI is predicted to decrease Louisiana's population of incarcerated people by 10% while redirecting over \$184 million into anti-recidivism programming and support for victims of crime.¹⁵ Notably, this era of reform was ushered in, in part, through the advocacy and political organizing of incarcerated people inside Angola.¹⁶

But Louisiana's prisons (and the "archipelago of rural parish jails"¹⁷ where many state prisoners are housed at discount rates through contracts with the state's Department of Corrections)¹⁸ typically offer little to prepare those individuals to return home.¹⁹

Gov. Edwards Signs Criminal Justice Overhaul into Law, in What Some Laud as Historic Achievement, ADVOCATE (June 15, 2017, 3:45 PM), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_168c6d6e-5089-11e7-a0d6-7f67135f59a4.html [https://perma.cc/82K3-46BA].

14. See Grace Toohey, *Almost 2,000 Louisiana Prisoners Released; What Comes Next?*, ADVOCATE (Nov. 1, 2017, 7:07 PM), https://www.theadvocate.com/baton_rouge/news/crime_police/article_14364936-bf51-11e7-b43a-cb597328a645.html [https://perma.cc/ZM3P-UFLP].

15. *Building Better Lives*, LA. DEP'T PUB. SAFETY & CORRECTIONS, <https://doc.louisiana.gov/about-the-dpsc/justice-reform/> [https://perma.cc/ZA3T-6GYQ] (last visited Mar. 20, 2020); *Gov. Edwards Releases Louisiana's Justice Reinvestment Reforms 2019 Annual Performance Report*, KATC NEWS (July 19, 2019, 4:53 PM), <https://www.katc.com/news/covering-louisiana/gov-edwards-releases-louisianas-justice-reinvestment-reforms-2019-annual-performance-report> [https://perma.cc/2H4N-QHGG]; Grace Toohey, *Louisiana Sees Large Drops in Prison Population a Year After Historic Criminal Justice Reforms*, ADVOCATE (June 2018, 8:47 AM), https://www.theadvocate.com/baton_rouge/news/crime_police/article_a5c01e10-7ad9-11e8-856e-ebf326bf26bc.html [https://perma.cc/VJ75-G2YY].

16. *Our History*, VOICE EXPERIENCED, <https://www.vote-nola.org/our-history.html> [https://perma.cc/4GYY-GUSW] (last visited Mar. 16, 2020).

17. Bryn Stole, *Louisiana Trying to Transform 'Lock and Feed' Local Jails into Places of Rehabilitation*, NOLA.COM (Feb. 1, 2020, 7:00 AM), https://www.nola.com/news/courts/article_089db1e0-4483-11ea-9dfc-8b85a5f08579.html [https://perma.cc/Q5ZH-QPX7].

18. See Cindy Chang, *Louisiana Is the World's Prison Capital*, NOLA.COM (May 13, 2012, 3:00 PM), https://www.nola.com/news/crime_police/article_8feef59a-1196-5988-9128-1e8e7c9aefda.html [https://perma.cc/E3M3-9V7F]. According to data compiled and published by the Louisiana Department of Corrections, 52.7% of people in the custody of the Louisiana Department of Corrections are held in parish prisons (16,741 people), compared to 47.3% that are held in state facilities (15,015 people). JAMES M. LE BLANC, LA. DEP'T OF PUB. SAFETY & CORR., FACT SHEET 22 (2019), <https://s32082.pcdn.co/wp-content/uploads/2019/11/2-Demographics.pdf> [https://perma.cc/6W7T-MES3].

19. See LA. DEP'T OF PUB. SAFETY & CORR., RECIDIVISM IN ADULT CORRECTIONS (2019), <https://s32082.pcdn.co/wp-content/uploads/2019/11/3-Admissions-Releases->

The lack of adequate medical care — and mental health care, in particular — is a recurring problem.²⁰ As in carceral facilities across the country, educational opportunities and vocational training in Louisiana prisons are almost non-existent.²¹ The privileged few who are deemed suitable for “work release” — a cohort that excludes anyone who has “demonstrated an overt-aggressive pattern of homosexual behavior”²² — may earn some wages when they are leased to private employers (but DOC claims the majority of their earnings). And while private prisons make up only a small percentage of carceral facilities in Louisiana, there is reason to believe that conditions there are even worse.²³

After months, years, or decades of such treatment, the formerly incarcerated person finds themselves walking through a prison’s gates. Authorities provide such individuals “gate money” (either a \$10 check or a \$20 “JPay Release Card”),²⁴ their prison-issued clothes, a pillowcase to carry home any personal belongings, and maybe a bus pass.²⁵

In the next 72 hours, the formerly incarcerated person will face an extraordinary set of hurdles. Those released on parole have to register within three days at their local Probation & Parole Office, where they will begin paying \$65 per month to be “supervised.” But physically getting to such an office may be difficult (and presents

Recidivism-Corrected.pdf [https://perma.cc/BSP8-GVNC] [hereinafter RECIDIVISM IN ADULT CORRECTIONS] (providing data from the Department on recidivism rates).

20. Connor Sheets, *What Happens When Sheriffs Release Violent Offenders to Avoid Paying Their Medical Bills*, PROPUBLICA (Dec. 31, 2019, 6:00 AM), <https://www.propublica.org/article/what-happens-when-sheriffs-release-violent-offenders-to-avoid-paying-their-medical-bills> [https://perma.cc/57PJ-S2P2]; Paul Tullis, *When Mental Illness Becomes a Jail Sentence*, ATLANTIC (Dec. 9, 2019), <https://www.theatlantic.com/politics/archive/2019/12/when-mental-illness-becomes-jail-sentence/603154/> [https://perma.cc/MK5M-Q6A7].

21. RACHEL BARKOW, PRISONERS OF POLITICS: BREAKING THE CYCLE OF MASS INCARCERATION 63–65 (2019).

22. JAMES M. LE BLANC, LA. DEP’T OF PUB. SAFETY & CORR., CORRECTIONS SERVICES, STANDARD OPERATING PROCEDURES FOR TRANSITIONAL WORK PROGRAMS 13 (2018).

23. SHANE BAUER, AMERICAN PRISON: A REPORTER’S UNDERCOVER JOURNEY INTO THE BUSINESS OF PUNISHMENT 39–40 (2019).

24. Mia Armstrong & Nicole Lewis, *What Gate Money Can (And Cannot) Buy*, MARSHALL PROJECT (Sept. 10, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/09/10/what-gate-money-can-and-cannot-buy> [https://perma.cc/Z39D-GFL7].

25. Those released from a state-run facility receive a bus pass, but individuals incarcerated in a parish-run prison at the time of release do not. If no one can pick such individuals up, they will eventually get a ride to Baton Rouge, and from there, they are on their own.

additional legal risks). Many formerly incarcerated individuals leave prison with suspended driver's licenses due to old traffic tickets, lapses in insurance coverage, or child-support debt. Some lack any form of identification whatsoever, which complicates efforts to cash the \$10 check or land gainful employment.²⁶ But to get such identification from the nearest Office of Motor Vehicles office, one must present a birth certificate, social security card, and verification of current address (for example, a utility bill).²⁷ These documents can be difficult to keep track of while incarcerated; those returning home to New Orleans face additional challenges after the devastation of Hurricane Katrina.

Satisfying other basic and immediate needs — like food²⁸ — can be equally difficult. Until recently, Louisiana denied those convicted of drug offenses eligibility for food stamps within one year of their release from prison.²⁹ But even with expanded eligibility rules, it still

26. See Juleyka Lantigua-Williams, *The Elusiveness of an Official ID After Prison*, ATLANTIC (Aug. 11, 2016), <https://www.theatlantic.com/politics/archive/2016/08/the-elusiveness-of-an-official-id-after-prison/495197/> [<https://perma.cc/BZ3U-P2GW>]. In 2003, Louisiana lawmakers enacted Louisiana Revised Statute Section 15:827.1, which ordered the Department of Corrections to develop a “Reentry Preparation Program.” By law people are to be released with some form of photo identification. LA. STAT. ANN. § 15:827.1(B)(6) (2013). But it was not until 2016 when the Department of Corrections, on its own initiative, developed a memorandum of agreement (MOA) with the Office of Motor Vehicles (OMV) to begin issuing valid state identification cards. LA. DEP’T OF PUB. SAFETY & CORR., PUB. SAFETY SERVS., LA. DEP’T OF PUB. SAFETY & CORR., CORR. SERVS., 2015 MEMORANDUM OF UNDERSTANDING BETWEEN PUBLIC SAFETY SERVICES AND CORRECTIONS SERVICES (2015); see *Reentry Initiatives & Transitional Work Programs*, LA. DEP’T PUB. SAFETY & CORRECTIONS, <https://doc.louisiana.gov/offender-programs-resources/transition-reentry/> [<https://perma.cc/R3RK-A3EX>] (last visited Mar. 16, 2020) (describing DOC policies and procedures for reentry). But the program currently only helps people released from DOC facilities. See LA. COMM’N. ON LAW ENF’T & ADMIN. OF CRIM. JUSTICE STATISTICAL ANALYSIS CTR., 2017 STATUS OF STATE AND LOCAL CORRECTIONS FACILITIES AND PROGRAM REPORT 38 (Apr. 1, 2018), http://lcle.la.gov/programs/uploads/2017_Status_of_State_and_Local_Corrections_Facilities_and_Program_Report.pdf [<https://perma.cc/4BAR-LD6R>] (summarizing the results of a legislative audit showing the gradual implementation of standardized release procedures for people coming from parish prisons).

27. LA. DEP’T OF PUB. SAFETY, OFF. OF MOTOR VEHICLES, IDENTIFICATION REQUIREMENTS, <https://expresslane.dps.louisiana.gov/CDLForms/Identification%20requirements.pdf> [<https://perma.cc/7E9L-44WU>] (last visited Mar. 16, 2020).

28. Emily Lane, *Coming Home: The First 72+ Provides Those Freed from Prison with Lodging, Hope*, NOLA.COM (Aug. 9, 2018, 3:27 PM), https://www.nola.com/archive/article_3259ecfc-e243-5147-b06d-d444340cba19.html [<https://perma.cc/3VCT-F35A>].

29. H.B. 681, 2017 Gen. Assemb., Reg. Sess. (La. 2017); see also Jeanie Donovan, *Food Assistance for Returning Citizens Is a No-Brainer*, LA. BUDGET PROJECT (Apr.

takes up to 30 days for a formerly incarcerated person to receive a food stamp card.³⁰ Under federal law, most formerly incarcerated people should be entitled to “expedited benefits” within seven days of applying;³¹ but most Department of Children and Family Services (DCFS) offices in Louisiana do not seem to be following that mandate. The foregoing presupposes that the formerly incarcerated person has the wherewithal to apply for benefits: applying requires either transportation to a nearby DCFS office for an in-person interview, or computer literacy skills, a computer, an email address, and a phone (for a mandatory over-the-phone follow-up interview) to complete the multi-step application process.³²

Finding gainful employment poses a particular challenge. According to a 2018 study, “formerly incarcerated people are unemployed at a rate of over 27%,” a level that surpasses the national unemployment rate during the Great Depression.³³ There is strong evidence that formerly incarcerated people are “active” in the labor market (i.e., working or looking for work) at rates higher than non-formerly incarcerated people, but employers simply won’t hire them.³⁴ Unemployment rates are particularly high for formerly incarcerated black men (35.2%) and formerly incarcerated black women (43.6%).³⁵

If a formerly incarcerated person succeeds at landing a job — a task complicated by many employers’ (entirely lawful) reluctance to

30, <https://www.labudget.org/2017/04/food-assistance-for-returning-citizens-is-a-no-brainer/> [https://perma.cc/UF8T-C6N8]. (2017),

30. ELIZABETH WOLKOMIR, CTR. ON BUDGET & POLICY PRIORITIES, HOW SNAP CAN BETTER SERVE THE FORMERLY INCARCERATED 7 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/3-6-18fa.pdf> [https://perma.cc/325H-39KR].

31. 7 C.F.R. § 274.2(b) (2010).

32. See *Louisiana CAFÉ Self-Service Portal*, DEP’T CHILD. & FAM. SERVS., <https://sspweb.ie.dcf.la.gov/selfservice/> [https://perma.cc/P9MK-B4SP] (last visited Mar. 16, 2020).

33. Lucius Couloute & Daniel Kopf, *Out of Prison & Out of Work: Unemployment Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (July 2018), <https://www.prisonpolicy.org/reports/outofwork.html> [https://perma.cc/39YK-PW3W].

34. *Id.* (noting that, in the 25–44-year-old age group, 93.3% of formerly incarcerated people are active in the labor marker, whereas 83.8% of their general population peers are).

35. *Id.*

hire such individuals,³⁶ and conspicuous gaps in the applicants' employment histories — their paychecks often fall short of what they expected. Consumer debt, outstanding court fees,³⁷ healthcare debt, child-support debt,³⁸ and tax debt can all lead to garnishments. Many individuals struggle for years to build credit histories.³⁹ Having paid their moral debt to society, those returning home rarely encounter a clean economic slate.

The list of obstacles goes on and on (and has been written about extensively⁴⁰) — from difficulties accessing education,⁴¹ health care (including mental health care),⁴² and housing⁴³ — but also includes

36. Kelly Elizabeth Orians, *"I'll Say I'm Home, I Won't Say I'm Free": Persistent Barriers to Housing, Employment, and Financial Security for Formerly Incarcerated People in Low-Income Communities of Color*, 25 NAT'L BLACK L.J. 23, 42–43 (2016).

37. See, e.g., Chandra Bozelko & Ryan Lo, *You've Served Your Time. Now Here's Your Bill.*, HUFFINGTON POST (Sept. 16, 2018), https://www.huffpost.com/entry/opinion-prison-strike-labor-criminal-justice_n_5b9bf1a1e4b013b0977a7d74 [<https://perma.cc/X6U8-7ZH5>]; Juleyka Lantigua-Williams, *How Prison Debt Ensnarers Offenders*, ATLANTIC (June 2, 2016), <https://www.theatlantic.com/politics/archive/2016/06/how-prison-debt-ensnarers-offenders/484826/> [<https://perma.cc/A4Z6-HHUE>]. Even conservative pundits agree. See, e.g., Scott Peyton, *Excessive Fines and Fees Are Hindering Reentry in Louisiana*, RIGHT ON CRIME (Feb. 28, 2019), <http://rightoncrime.com/2019/02/excessive-fines-and-fees-are-hindering-reentry-in-louisiana/> [<https://perma.cc/P3RN-CTH4>].

38. See Eli Hager, *For Men in Prison, Child Support Becomes a Crushing Debt*, MARSHALL PROJECT (Oct. 18, 2015), <https://www.themarshallproject.org/2015/10/18/for-men-in-prison-child-support-becomes-a-crushing-debt> [<https://perma.cc/L82H-8N5B>].

39. Taja-Nia Y. Henderson, Note, *New Frontiers in Fair Lending: Confronting Lending Discrimination Against Ex-Offenders*, 80 N.Y.U. L. REV. 1237, 1238 (2005).

40. See generally SHADD MARUNA, MAKING GOOD: HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES (2007); ANTHONY C. THOMPSON, RELEASING PRISONERS, REDEEMING COMMUNITIES: REENTRY, RACE, AND POLITICS (2008).

41. See, e.g., *Fact Sheet for Corrections Leaders: Expanding Access to Postsecondary Education in Prison*, VERA INST. JUST. (Jan. 2017), <https://www.vera.org/downloads/publications/postsecondary-education-in-prison-factsheet-for-corrections-leaders.pdf> [<https://perma.cc/2GJG-U8AY>] (detailing the barriers against people in prison accessing Pell Grants to pursue post-secondary education while incarcerated); Lucius Couloute, *Getting Back on Course: Educational Exclusion and Attainment among Formerly Incarcerated People*, PRISON POLY INITIATIVE (2018), <https://www.prisonpolicy.org/reports/education.html> [<https://perma.cc/L8WU-KJWQ>] (showing that improvements in prison education, like access to GED tutoring and testing, fail to meet the needs of formerly incarcerated people when they attempt to rejoin the labor market, and that because of their prior felony convictions, they are excluded from educational programs upon release).

42. See, e.g., Matt Sledge, *Once Serving a Federal Life Sentence, New Orleans Woman Now Helps Other Former Inmates Get Healthy*, NOLA.COM (Nov. 30, 2019, 6:45 PM), https://www.nola.com/news/courts/article_9ad1e9ee-0fd3-11ea-b3e6-0f7517054cd8.ht

another destabilizing force that has received inadequate scholarly attention: “ghost warrants.” Many formerly incarcerated people return home only to learn that old traffic tickets or missed court dates have led to arrest warrants, sometimes decades old.⁴⁴ Oftentimes these warrants will be discovered at inopportune times — while driving to work or during a background check to receive public housing, employment clearance, or while applying for a driver’s license.⁴⁵ The ensuing arrests lead to days or weeks of incarceration, but the mere existence of the warrant operates as de facto waiver of those individuals’ Fourth Amendment rights: under *Utah v. Strieff*, evidence discovered during an unconstitutional seizure is admissible if, prior to the discovery of evidence, the officer learns that the detainee has a valid arrest warrant.⁴⁶

In short, the “reentry space” exists (to the limited extent it does) largely because non-profits, criminal system actors, and formerly incarcerated people themselves have recognized that reducing the numbers of incarcerated people is simply not enough: significant

ml [<https://perma.cc/388N-NBGB>] (discussing the Formerly Incarcerated Transition Clinic in New Orleans); Rob Waters, *For Ex-Inmates, Support Program Gives Them a Second Chance to Avoid Addiction, Improve Health Care*, WASH. POST (Dec. 23, 2019, 8:30 AM), https://www.washingtonpost.com/health/for-ex-inmates-support-program-gives-them-a-second-chance-to-avoid-addiction-improve-health-care/2019/12/20/eafad752-16bb-11ea-9110-3b34ce1d92b1_story.html [<https://perma.cc/42M9-DZT8>] (discussing the Formerly Incarcerated Transition Program in San Francisco).

43. Jack Duran, *Finding Housing Is Hard — But for People Leaving Prison and Jail, It’s Almost Impossible*, VERA INST. JUST. (Aug. 30, 2018), <https://www.vera.org/blog/finding-housing-is-hard-but-for-people-leaving-prison-and-jail-its-almost-impossible> [<https://perma.cc/9AD8-G8M2>]; Lola Fadulu, *Next Arena for Criminal Justice Reform: A Roof Over Their Heads*, N.Y. TIMES (Sept. 3, 2019), <https://www.nytimes.com/2019/09/03/us/politics/criminal-justice-reform-housing.html> [perma.cc/UB4S-R26F].

44. See, e.g., Eli Hager, *They’re Haunted by ‘Ghost Warrants’ Years After Their Arrests*, MARSHALL PROJECT (April 29, 2019, 6:00 AM), <https://www.themarshallproject.org/2019/04/29/they-re-haunted-by-ghost-warrants-years-after-their-arrests> [<https://perma.cc/QF2C-3EU9>]; Emily Lane, *Defunct ‘Ghost Warrants’ Keep Freed People Tethered to Justice System: Report*, NOLA.COM (Apr. 30, 2019, 3:01 PM), https://www.nola.com/news/crime_police/article_b5525e74-20fe-5d0b-ad5d-12780ca638df.html [<https://perma.cc/WSU5-8YKE>].

45. Heather Nolan, *New Orleans Man Claims He Was Jailed Past Sentence; Judge Says Lawsuit Can Proceed*, NOLA.COM (Aug. 15, 2018, 8:41 PM), https://www.nola.com/news/crime_police/article_b761e6c4-b3d7-5249-9491-18eeacefb7fc.html [<https://perma.cc/Y3Q7-SKVR>] (describing Rodney Grant’s experience, when he was arrested on a 15-year-old warrant while trying to access a driver’s license).

46. 136 S. Ct. 2056, 2058 (2016).

reforms are needed when people come home from prison. Ensuring stable and successful lives for formerly incarcerated people as they navigate the complicated realities of the “free world” requires more than a bus ticket home.

B. An Alternative Approach

The experience of a Louisiana prisoner sentenced through Reentry Court is significantly different than most other prisoners, both while he⁴⁷ is incarcerated and after he is released. As Subramani notes, those in the program receive vocational training (usually participants leave with certifications in two areas) and tutoring to complete a GED before they “graduate.”⁴⁸ They also receive a host of other programming unavailable to other prisoners at Angola and around the state (for example, drug treatment, therapy, and entrepreneurship classes). The program is largely led and overseen by a select group of “lifers” at Angola, a cadre of prisoners selected by prison authorities who serve as mentors while the participants serve their shorter (usually two-year) stints. In a correctional system that houses over 40,000 people (and now releases over 15,000 annually), just over 200 people now participate in the program.⁴⁹

For all of the privileges that Reentry Court participants receive vis-à-vis other Louisiana prisoners, there are some important ways in which the program is problematic, too. Nearly all of the participants enrolled in the program through plea bargains, and many of those agreements allow prosecutors to file “habitual offender” sentencing enhancements should the prisoner fail to complete the program (or, more likely, get kicked out of the program by prison authorities for

47. It is worth noting that the participants in Reentry Court are overwhelmingly male, and only able-bodied participants are allowed. See BERNETTE J. JOHNSON ET AL., LA. JUDICIAL COLL., JUSTICE REINVESTMENT INITIATIVE: INCARCERATION AND ALTERNATIVES 7 (2018), <https://lajudicialcollege.org/wp-content/uploads/2017/03/4-JRI-Incarceration-and-Alternatives.pdf> [https://perma.cc/DRY4-PA65] (noting that in the 22nd JDC Reentry Program, “67 males are in post release (probation) phase; 6 females”).

48. Subramani, *supra* note 1, at 950.

49. See Rebekah Allen, *Criminal Justice Advocates Eye Angola’s Reentry Program as Gold Standard for Prisoner Rehabilitation*, ADVOCATE (May 26, 2017, 3:02 PM), https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_3e1f3d78-424e-11e7-8815-23ee3c5d043a.html [https://perma.cc/MJ3T-UG2M]; Bryn Stole, *Louisiana Trying to Transform ‘Lock and Feed’ Local Jails into Places of Rehabilitation*, NOLA.COM (Feb. 1, 2020, 7:00 AM), https://www.nola.com/news/courts/article_089db1e0-4483-11ea-9dfc-8b85a5f08579.html [https://perma.cc/938T-TNVL].

some form of “misconduct”). Some individuals face decades in prison if and when this occurs. The use of Angola “lifers” to run parts of the program raises additional potential concerns. The vast majority of these individuals offer mentorship and guidance from a valuable perspective that the “free people” on staff could never offer, to the benefit of both mentor and mentee. But Angola prison has a long and sordid history of brutality associated with “khakibacks,” armed convict-guards who traditionally had a “brutalizing effect on the morale of the institution.”⁵⁰ Some Reentry Court participants bristle at having other incarcerated men wield such authority over their day-to-day lives.

Reentry Court participants are assigned a case manager to assist with navigating the road home while incarcerated, and this case manager continues working with them after their release. As Subramani notes, a central focus of this relationship is ensuring formerly incarcerated people find employment, and that they stay employed, when they leave prison.⁵¹ But case managers also provide a wide range of additional services that the typical formerly incarcerated person does not receive (particularly in Orleans Parish, where case managers are directly impacted individuals working for a nonprofit like The First 72+, rather than employees of the court, prison, or the Probation and Parole Office). Sometimes this literally begins when they leave the prison gates: case managers will physically bring their clients home from Angola to New Orleans. But more often it means helping clients as they encounter all the other obstacles that one faces when returning from prison: getting a driver’s license reinstated, clearing up old warrants, rebuilding credit, finding housing, repairing strained relationships with friends and families, or maybe even starting a small business. Ironically, many of the First 72+’s clients find themselves better equipped to navigate many of these obstacles than friends and family members who struggle with similar issues despite not having been personally incarcerated; the organization is now expanding services to meet the needs of non-incarcerated family members, as well.

For individual and organizations committed to racial justice and repairing the harm wrought by mass incarceration, choosing to participate in such programs is complicated, for all of the reasons

50. See MARK T. CARLETON, *POLITICS AND PUNISHMENT: THE HISTORY OF THE LOUISIANA STATE PENAL SYSTEM* 142 (1971).

51. Subramani, *supra* note 1, at 950.

Subramani incisively addresses.⁵² Participants in Reentry Court are “on the ‘continuum’ of state-imposed punishments,”⁵³ and an organization’s decision to partner with courts and prisons necessarily implicates those entities in the criminal process. But the trade-offs of such interventions have to be assessed in context: we have to appreciate where Louisiana has been in recent years, and where we want to go.

II. EVALUATING REFORM: AN ARGUMENT FOR FULL REINTEGRATION

So then, what does success look like in the reentry space? One way to measure the efficacy of programs like Reentry Court is to account for “any carceral disruption where [a participant is] taken out of the workforce for whatever period of time.”⁵⁴ Although this framing undoubtedly speaks to the priorities of many of the employers whose buy-in is essential to Reentry Court’s success, it is problematic for a host of reasons, as Subramani notes.⁵⁵

But even if the metric artificially and misleadingly “reproduces the boundary between the market and carcerality,” there is at least something fundamentally worthwhile in thinking about reentry in *relational* terms.⁵⁶ Specifically, if we are serious about ending mass incarceration, we need to think about a project nearly unprecedented in human history: the reintegration of many hundreds of thousands of people from prisons to their former communities.⁵⁷ Rather than focusing on recidivism metrics that evaluate the formerly incarcerated person solely in *individual* terms — has he been caught reoffending, and if so, when and how often? — consider evaluating reentry as a community project. Focusing on disruptions to the formerly incarcerated person’s efforts to sell their labor for a wage is a limited and incomplete way at getting at this idea. But, at the same time, a metric focused on employment recognizes, albeit implicitly, the ways in which reentry is a collective challenge that involves more than just atomized, formerly incarcerated actors.

52. *Id.* at 965–69.

53. *Samson v. California*, 547 U.S. 843, 850 (2006).

54. Subramani, *supra* note 1, at 960.

55. *Id.* at 965–69.

56. *Id.* at 962.

57. The closest precedent is probably the closure of Soviet prisons in the 1950s. See STEPHEN COHEN, *THE VICTIMS RETURN: SURVIVORS OF THE GULAG AFTER STALIN* (2012).

Louisiana's recent history underscores the necessity of such a broader vision when thinking about successfully ending mass incarceration. As previously discussed, JRI triggered the early release of thousands of people from the Louisiana prison system; some of the savings from JRI funded the Reentry Court initiative discussed by Subramani.⁵⁸ Focusing on these released individuals' recidivism rates presents a misleading picture, however, because their former prison cells are not sitting empty. In recent years, Immigration and Customs Enforcement (ICE) has opened up at least three new detention centers in Louisiana within pre-existing carceral facilities, doubling their capacity to house people seeking asylum in the state.⁵⁹ In 2016, a year before JRI was signed into law, there were 36,533 people living in Louisiana's prisons and jails.⁶⁰ In recent months, the population of prisoners in Louisiana's jails and prisons dropped to 31,756,⁶¹ but an additional 8000 individuals are now held in immigration detention.⁶² For all of its (deserved) plaudits, JRI has

58. See Subramani, *supra* note 1, at 945–46; *Building Better Lives*, *supra* note 15.

59. See, e.g., Noah Lanard, *ICE Just Quietly Opened Three New Detention Centers, Flouting Congress' Limits*, MOTHER JONES (July 9, 2019), <https://www.motherjones.com/politics/2019/07/ice-just-quietly-opened-three-new-detention-centers-flouting-congress-limits/> [<https://perma.cc/X3S6-C6QU>] (noting the number of contracted facilities in Louisiana; quietly opening up three new facilities which increased capacity from 4000 to 8000); Noah Lanard, *Louisiana Decided to Curb Mass Incarceration. Then ICE Showed Up.*, MOTHER JONES, (May 1, 2019), <https://www.motherjones.com/politics/2019/05/louisiana-decided-to-curb-mass-incarceration-then-ice-showed-up/> [<https://perma.cc/2QWT-BK92>]; Nomaan Merchant, *Louisiana Becomes New Hub in Immigrant Detention Under Trump*, ASSOCIATED PRESS (Oct. 9, 2019, 10:12 AM), <https://apnews.com/c72d49a100224cb5854ec8baea095044> [<https://perma.cc/SB8J-SBQ5>]; Jim Mustian & Max Muth, *Louisiana Illegal Immigrants Face Skyrocketing Deportations, Rising Uncertainty Under Trump Administration*, ADVOCATE (Aug. 12, 2017, 8:00 PM), https://www.theadvocate.com/baton_rouge/news/politics/article_93180a42-7d1a-11e7-86f0-630976a90d45.html [<https://perma.cc/2NMN-6KQ4>]; Bryn Stole, *As Fewer Inmates Fill Louisiana Jails, Wardens Turn to Immigration Officials to Fill Bunks, Budgets*, NOLA.COM (May 9, 2019, 10:44 AM), https://www.nola.com/news/article_0b819a1f-d24b-5107-bbdd-7b29af9a3c3f.html [<https://perma.cc/3GVT-HNM9>]; Bryn Stole, *In North Louisiana, Sheriff and Private Prison Operator Trade Prisoners for ICE Detainees*, NOLA.COM, (Oct. 21, 2019, 12:15 PM), https://www.nola.com/news/article_9927b374-f388-11e9-8eca-43ec3c782d9f.html [<https://perma.cc/LVM9-HCCF>]; Charles Watson, *Louisiana the New Go-To Spot for ICE Detainees*, FOX NEWS (Nov. 7, 2019), <https://www.foxnews.com/us/louisiana-ice-detainees-immigration-customs-enforcement> [<https://perma.cc/2FX2-TAVK>].

60. See LA. DEP'T OF PUB. SAFETY & CORR., *supra* note 5.

61. See LE BLANC, *supra* note 18.

62. See Watson, *supra* note 59. Many of these individuals are detained in jails administered at the parish level and private prisons; local sheriffs and private

failed to reduce the number of people living in prisons and jails in Louisiana.⁶³

Traditional measures of recidivism paint an incomplete picture of the challenges of “reentry,” even if we put aside the crisis in immigration detention. As we were first sitting with Subramani’s piece, we learned that a young man who was close to one of us (and Subramani) had been shot and killed by a business partner. In many ways, our friend A.J. was a reentry success story: he was the owner of two small businesses, a strategy he pursued to stabilize his income after frequent lay-offs and job changes. He had been home from prison for almost five years, a significant milestone,⁶⁴ and he was making progress in some harder-to-measure ways, as well: A.J. was focused on providing for his young children, and while balancing tricky interpersonal relationships, was slowly overcoming the trauma inflicted during several years of incarceration as a young teenager.

Yet, as we turned to the mundane and banal tasks of helping plan for A.J.’s funeral (which was delayed while negotiating whether his incarcerated brother could attend under armed escort), the inadequacies and shortcomings of how we support formerly incarcerated persons became almost overwhelming. A.J. and people like him should have a stable and sustainable job, if they want one, to be sure; better still if we can support them in developing their own entrepreneurial pathways to building wealth. But they and their families also need and deserve so much more. They need safe communities, stable housing, educational opportunities, doctors and therapists, and help repairing the interpersonal relationships strained under the weight of incarceration. None of the foregoing is currently measured in how we evaluate reform in the reentry space. But we need to be thinking in these terms if we are serious about safely and

companies, eager to make up for lost revenue from the declining DOC prisoner population, have signed contracts with federal immigration authorities. *See* Merchant, *supra* note 59.

63. The extent to which the labor of these detainees can be exploited in the same way as ordinary prisoners is now the subject of litigation. *See, e.g.*, Barrientos v. Corecivic, Inc., 332 F. Supp. 3d 1305 (M.D. Ga. 2018); Jonathon Booth, *Ending Forced Labor in ICE Detention Centers: A New Approach*, 34 GEO. IMMIGR. L. REV. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3543801; Madison Pauly, *A Judge Says Thousands of Detainees May Sue a Prison Company for Using Them as a “Captive Labor Force”*, MOTHER JONES (Dec. 5, 2019), <https://www.motherjones.com/crime-justice/2019/12/immigration-detainee-geo-forced-labor-lawsuit/> [<https://perma.cc/X6RN-R24H>] (California).

64. The Louisiana Department of Corrections stops tracking recidivism after five years. *See, e.g.*, RECIDIVISM IN ADULT CORRECTIONS, *supra* note 19, at 1.

justly bringing home the hundreds of thousands of people currently locked behind bars.