DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED February 13, 2026 4:43 PM CASE NUMBER: 2022CV30421
Plaintiffs: HAROLD MORTIS, on his own behalf and on behalf of those similarly situated **v.** **Defendants:** JARED POLIS, in his official capacity as the Governor of Colorado; MOSES "ANDRE" STANCIL, in his official capacity as the Executive Director of the Colorado Department of Corrections; and COLORADO DEPARTMENT OF CORRECTIONS, an agency of the State of Colorado	**Δ COURT USE ONLY Δ** Case No.: 2022CV30421 Division: 209
FINDINGS OF FACT AND CONCLUSIONS OF LAW	

This matter came before the Court from October 7-16, 2025. The Court having considered the evidence, the proposed findings of fact and conclusions of law, and applicable legal authority, makes the following findings of fact and conclusions of law[1] and issues the following order:

[1] The Parties provided this Court with proposed findings of fact and conclusions of law. The Court has incorporated some of the Parties' proposed findings of fact and conclusions of law, in whole or in part, but only after careful consideration and adoption.

I. PROCEDURAL BACKGROUND

1. On February 15, 2022, Plaintiffs filed their Class Action Complaint pursuant to C.R.S. §§13-1-124, 13-17.5-102.3, the Colorado Constitution, and C.R.C.P. 23(b)(2). They asserted claims against Jared Polis, in his official capacity as the Governor of Colorado, Dean Williams, in his official capacity as the Executive Director of the Colorado Department of Corrections, and the Colorado Department of Corrections ("CDOC") alleging C.R.S. §§ 17-20-115, -117, and AR 850-03 are facially unconstitutional. Plaintiffs also alleged CDOC's policies and practices of compulsory labor were unconstitutional as applied under Article II, Section 26 of the Colorado Constitution. Plaintiffs requested declaratory and injunctive relief.

2. On April 29, 2022, Plaintiffs filed their First Amended Class Action Complaint. In addition to the claims brought in the Class Action Complaint, Plaintiffs alleged C.R.S. § 17-29-103 was both facially unconstitutional and unconstitutional as applied under Article II, Section 26 of the Colorado Constitution. Plaintiffs sought the same declaratory and injunctive relief.

3. On May 27, 2022, Defendants moved to dismiss the First Amended Class Action Complaint. In their motion, Defendants argued the loss of privileges and the withholding of earned time as a consequence for declining work do not amount to involuntary servitude. Defendants further asserted Colorado voters did not intend to abolish CDOC's work requirement, and, as such, Plaintiffs failed to state a claim upon

which relief could be granted. On these grounds, Defendants argued the claims should be dismissed.

4. On October 27, 2022, the Court granted in part and denied in part, Defendants' motion to dismiss. The Court dismissed Claims 1 through 4, concluding the challenged statutes and regulations are not facially unconstitutional. The Court denied the motion to dismiss Count 5, allowing the Class to proceed on its as applied challenge to CDOC policies and practices alleged to amount to involuntary servitude. In its ruling, the Court found the loss of certain "privileges"—including television, radio, entertainment systems, access to snacks, phone calls, permission to keep certain property, and visitation with family—as well as the loss of earned time, for failure to work do not independently constitute involuntary servitude. The Court found allegations of the use or threat of (1) confinement in one's own cell for up to twenty-one hours a day, (2) threatened use and actual use of force, or (3) solitary confinement or "the hole" may sufficiently allege involuntary servitude. Finally, the Court found it may consider other types of coercion and the vulnerabilities of Plaintiffs in determining whether they are compelled to work involuntarily.

5. On July 10, 2024, Plaintiffs moved for Class Certification, arguing the proposed class meets the requirements of C.R.C.P. 23(a) and (b)(2) and requesting the Court certify the following class: "All people incarcerated by the state of Colorado who

are now, or will in the future be, subjected to the mandatory work policies and practices of the Colorado Department of Corrections."

6. On December 17, 2024, the Court certified the class as proposed, and appointed Plaintiffs Richard Lilgerose and Harold Mortis as the class representatives. Among other findings and conclusions of law, the Court ruled "while the proposed class here has suffered some variation in the individual harm they have allegedly suffered to date, the class all suffers the same threat of harm as a result of CDOC's policies and practices including that of frequently transferring prisoners between facilities."

7. Both Plaintiffs and Defendants moved for summary judgment. Plaintiffs argued the undisputed material facts demonstrated CDOC requires all incarcerated people to work and enforces this requirement through legal coercion and the threat of legal sanctions by way of Code of Penal Discipline ("COPD") charges and punishment. Plaintiffs requested the Court declare CDOC's enforcement of its mandatory work requirement through the COPD process constitutes involuntary servitude. Defendants argued CDOC merely provides incentives to work, and withholds privileges from individuals who refuse, contending there were no disputed material facts to support the claim CDOC subjects incarcerated persons to involuntary servitude.

8. The Court denied the Parties' cross motions for summary judgment. Denying Defendants' motion, the Court found material questions of fact remained, including: (1) whether CDOC's "temporary" placement of inmates in removal from

population ("RFP") as a tool to facilitate interfacility transfers for failure to work constitutes involuntary servitude; (2) whether CDOC's use of restrictive housing ("RH") and RFP to sanction failure to work ("FTW")—in instances where additional COPD violations are related to or stem from the FTW—constitutes involuntary servitude; and (3) whether in specific facilities, the Restricted Privileges ("RP") sanction (which is an admitted consequence for FTW) results in conditions that amount to involuntary servitude.

9. On August 26, 2025, the Court granted the Plaintiffs' Unopposed Motion for Voluntary Removal of Richard Lilgerose as Named Plaintiff and Class Representative.

10. The matter proceeded to a six-day trial beginning on October 7, 2025, and concluding on October 16, 2025. The Parties rested on October 13, 2025, and presented their closing arguments on October 16, 2025. The Parties and the Court attended a site visit to the Cañon City Correctional Complex on October 15, 2025. The trial record includes live and remote testimony of witnesses and admitted exhibits.

11. The following witnesses testified: Harold Mortis, Nadia Reed, Timothy West, David Turner, Casey Lowe, Jeremy Brandt, David Lisac, Adrienne Sanchez, Brian Fischer, Terry Kupers, and Siobhan Burtlow.

12. Based on the foregoing evidence and governing law, the Court finds and decides as follows:

II. FINDINGS OF FACT

13. The facts and subsequent controversy in this matter center on the CDOC's policies and practices regarding inmates who refuse mandatory work assignments. The parties dispute whether CDOC's implementation of the statutory work requirement, as applied to the Class, violates Article II, Section 26 of the Colorado Constitution following the repeal of the "penal exception"—a provision previously mirrored in the Thirteenth Amendment to the U.S. Constitution. Having considered the evidence, the Court finds the following facts have been proven beyond a reasonable doubt:

A. The Parties

14. Plaintiff Harold Mortis is the named plaintiff and the Class representative.

15. The Class, certified pursuant to C.R.C.P. 23, is defined as: "all people incarcerated by the State of Colorado who are now, or will in the future be, subjected to mandatory work policies and practices of the Colorado Department of Corrections."

16. Defendant CDOC is the agency charged with operating Colorado's state prisons. Governor Jared Polis and CDOC Executive Director Moses "Andre" Stancil are named as Defendants in their official capacities.

B. Witness Testimony

17. Harold Mortis is a thirty-five-year-old incarcerated person in CDOC and is the named plaintiff and class representative in this case. Mortis is currently incarcerated in Sterling Correctional Facility and has been housed in Bent County, Fremont, and

Buena Vista Correctional Facilities since entering CDOC in 2018. While at Fremont Correctional Facility, Mortis worked in the kitchen "dish pit," which he described as hard work performed in a crowded, confined space. Although his usual shift was seven hours, he was sometimes ordered to stay longer or work double shifts. CDOC threatened Mortis with COPD charges, RP, and being taken to "the hole" for refusing to work.

18. Mortis suffers from asthma and became increasingly concerned for his health while working in the kitchen during the COVID-19 pandemic. The threatened loss of earned time and additional sanctions caused him to choose between his health concerns and suffering those consequences if he refused to work.

19. In late 2020, Mortis failed to report to work three times and was terminated from his food service position. He was told he may be removed from his incentive unit because holding a job was a requirement for that placement. However, Mortis was never actually removed from the incentive unit for FTW, never received a COPD violation, never lost his privileges for FTW, was never physically harmed for FTW, and was never placed in RH for FTW.

20. Mortis testified he witnessed inmates being confined to their cells up to twenty-three hours per day for refusing to work and saw others removed from population at three different facilities in response to their FTW.

21. Mortis is personally aware violence occurs in prison. He noted higher custody levels, which result from increased classification points, render an individual

more susceptible to danger and violence. Higher custody facilities are more restrictive in terms of movement and duration of times locked down in one's cell. Mortis currently lives in an incentive unit, and has since 2019, which in his opinion is the best housing placement within CDOC. The Court found Mortis's testimony to be credible but did not consider his testimony that he felt like a slave, was a victim of involuntary servitude, or anything else that was essentially the legal determinations this Court must make.

22. Nadia Reed is a thirty-five-year-old transgender woman currently incarcerated in Arkansas Valley Correctional Facility. She has also been housed at Fremont, Buena Vista, Limon, Sterling, and Centennial Correctional Facilities since entering CDOC in 2011. Reed testified about her experiences working in the kitchen and refusing to work within CDOC.

23. In 2019, Reed declined to work for two days in one month at Centennial, and she was placed on RP status for sixty days as a result. While on RP, she was confined to her cell for twenty-three hours a day during the first thirty days on RP and was completely isolated from other incarcerated people during the one single hour she was allowed out of her cell for recreation and to shower. Additionally, she could not talk to her loved ones. She described this isolation on the initial thirty days of RP as "very depressing," "very isolating," and she engaged in self-harm. She was then required to work for thirty days in the kitchen in order to get off RP status. During that second thirty-day period, she was confined to her cell at all times unless she was working.

24. In June 2020, Reed received two COPD write-ups for a single refusal to work incident: Class II (19): Failure to work ("FTW") and Class II (14): Advocating or Creating a Facility Disruption. Reed had completed her assigned shift in the kitchen that day, but when she was ordered to stay longer to complete additional work, she refused. Consequently, Reed was "cuffed up," "shackled," and removed from the general population, and strip searched for refusing to work.

25. Because two other incarcerated individuals simultaneously refused to complete additional work at the same time, she was charged with and found guilty of both COPD charges and sanctioned with fourteen days of Housing Restriction Sanction ("HRS"), which she served in RH. While in RH, she spent twenty-three hours per day confined to her cell. She testified this time in RH was "very depressing" and there was "no one to talk to."

26. As a result of the second incident, Reed's classification points increased by ten points, moving her from medium custody to close custody because of the two FTW-related COPDs. Reed testified she was sexually assaulted when she was moved to close custody following the reclassification stemming from her FTW. The Court finds Reed's testimony to be credible and notes CDOC did not provide any testimony contradicting Reed's account that, during the first incident, she was first subjected to RP for FTW, which in her case resulted in twenty-three hours of confinement, and on the second occasion was subjected to RH for FTW (and a second charge, Advocating or Creating a

Facility Disruption, for the exact same conduct). The Court further finds CDOC did not provide any testimony establishing Reed's COPD charge for Advocating or Creating a Facility Disruption was anything other than a second COPD charge for FTW with no additional misbehavior. The Court further finds there was no credible evidence Reed was a security risk or an imminent threat to the safety of others.

27. The Court further finds that as it relates to Reed, both incidents that resulted in her being confined to her cell for twenty-three hours a day for extended periods were consistent with CDOC policies. In other words, they were not anomalous situations where CDOC personnel failed to follow policy, but rather were instances in which the policies themselves allowed for Reed to be subjected to isolation in her cell for twenty-three hours a day as a sanction for FTW.

28. Timothy West is a forty-three-year-old individual currently incarcerated at Fremont Correctional Facility. He has also been housed in Colorado State Penitentiary ("CSP"), Crowley County, Sterling, Bent County, and Buena Vista Correctional Facilities since entering CDOC in 2014.

29. In 2023, while living in an incentive unit, West was charged with Class II (19), FTW, after a misunderstanding in which he reported to work at his normal time but was told he was late because of a schedule change that was not communicated to him. West, despite being willing to work that day, was cuffed up "like an arrest," removed from population, and placed in RH for eight days pending a facility reassignment. He

described RH as "twenty-three-hour lockdown," where he lacked hygiene items like a toothbrush or toothpaste for the first three days, and he was only allowed out of his cell for an hour to exercise in a "cage," which he also called a "kennel" or "dog run."

30. Following eight days in RH, West was transferred out of the incentive unit at CSP to facilities where he felt his life was in danger due to gang activity. West further described violence and gang activity in prisons, explaining how transfers to certain facilities and reassignment to higher security units create serious safety risks, which he faced following the FTW charge. West testified his FTW charge led to spending about three months in RH units and a second COPD for Disobeying a Lawful Order ("DLO") for refusing housing in unsafe facilities. The Court finds West's testimony to be credible but notes there was no evidence corroborating his claims the facility to which he was transferred was dangerous or unsafe in any way.

31. David Turner is a twenty-five-year-old individual who is currently incarcerated at Buena Vista Correctional Facility; he has also been housed at Four Mile Correctional Center since entering CDOC to serve his sentence in 2023. Turner testified he injured himself while working in the kitchen at Four Mile Correctional Facility and attempted to declare a medical emergency to seek treatment. CDOC staff threatened him with RP, also known as "orange pants" due to the specific color of pants inmates wear while on RP for missing work. When Turner subsequently missed work, he was placed on RP status for forty-three days, during which he was confined to his cell for about

twenty hours a day. Turner was only allowed out of his cell to use the restroom, attend chow, shower, or access the yard/recreation. If Turner left his cell for any other reason, CDOC staff would threaten him with a COPD charge for DLO.

32. Turner experienced increased anxiety and depression while isolated on RP status, and noted it was unpleasant to leave his cell even when permitted to do so. Turner felt he was treated "less than human" and feared the consequences of missing work in the future. He felt as though he was being "tortured" and "going crazy" due to the isolation of RP. He felt "forced" to work in CDOC due to his experience and the threat of these consequences, specifically fearing being placed back in RP status and suffering this "torture" in the future.

33. While there was some disagreement as to the amount of time Turner was afforded to eat meals, the Court holds the testimony stating Turner was able to leave his cell, eat his meal, and be back in his cell in twenty minutes is not credible. The Court holds Turner was out of his cell for approximately one and one half hours per day total for meals, one hour a day for recreation, and one hour a day to use the bathroom and shower. The Court further holds it to be highly relevant Turner was able to take unlimited bathroom and shower breaks and was allowed daily recreation outside of his cell. The Court holds Turner was confined to his cell for approximately twenty hours a day, but those twenty hours were not consecutive.

34. Casey Lowe is a thirty-one-year-old individual who is currently incarcerated at Four Mile Correctional Center and has been since entering CDOC in 2023. He was also housed at Arrowhead Correctional Facility during a previous sentence. In 2020, Lowe was threatened with a COPD charge for refusing an order to work, in that case shoveling snow early in the morning after he had already completed his shift of shoveling snow earlier the previous night. He was also personally aware of other inmates being threatened with COPD charges and related consequences for FTW.

35. In 2023, Lowe was required to work in the kitchen for five to six months (for seven-hour shifts five days per week) until he was terminated for missing a few shifts and placed on RP status. The testimony and evidence regarding Lowe and Turner were consistent regarding their experiences of RP status and the consequences of FTW.

36. While on RP, CDOC required Lowe to stay in his cell for twenty or more hours per day, allowing him out for chow, showering, bathroom access, and about an hour of yard time each day. Lowe testified he was placed on RP status for a little over thirty days and was required to work in maintenance to terminate his RP status. While the cell doors at Four Mile are not physically locked, leaving the cell without permission while on RP status risked the threat of a COPD charge for DLO.

37. Lowe felt "depressed," "powerless," "hopeless," and dehumanized while confined on RP status, and he feared the consequences of missing work again. Lowe experienced suicidal thoughts and increased depression, and explained it was

"emotionally distressing" to be confined on RP status for twenty hours per day. Lowe felt forced to work and feared suffering these consequences for FTW. He described the experience as "horrible" and testified he would work as ordered to avoid suffering such consequences.

38. When Lowe was placed back in the kitchen, his shift conflicted with his college classes, and he was forced to choose between attending classes or being placed back on RP status if he missed work. At the time of trial, Lowe attends college classes, does not have a work assignment, and has not been put back on RP. The Court finds Lowe's testimony to be credible, except the Court holds both Lowe and Turner underestimated the amount of time they were out of their cells for meals. The Court further finds Lowe's fears of being placed on RP for not working while taking college classes have not panned out and is not consistent with CDOC policy.

39. Jeremy Brandt is currently the Assistant Director of Offender Services at CDOC but has been employed by CDOC in various positions for twenty-five years, including: manager of offender services, program manager, maintenance supervisor, case manager, and corrections officer. Brandt testified to his knowledge of the statutory requirement for incarcerated people to work in Colorado and explained CDOC's policies for implementing the work requirement and the various tools CDOC uses to enforce it. Specifically, Brandt explained the policies permitting the consequences CDOC uses to compel people to work, including COPDs, Immediate Accountability Resolutions

("IARs"), loss of earned time and good time, and the effect of lost time on an incarcerated individual's parole eligibility date, RP status, changes to classification and custody levels, RFP, HRS, and RH. He further explained how CDOC informs incarcerated individuals of the work requirement and the potential consequences for failing to comply. Brandt explained CDOC's use of incentive units, how good time and earned time credits impact an inmate's parole eligibility date and mandatory release date, and how facilities implement RP status. Brandt confirmed that the consequences the incarcerated witnesses who testified at trial described conform with CDOC policy.

40. David Lisac currently works for CDOC as a Deputy Director of Prison Operations, a role that involves oversight of five different facilities, their wardens, emergency management, offender services, and time and release. Lisac has worked for CDOC for twenty-one years and started as a corrections officer. Lisac previously served as the associate warden at CSP, where he was responsible for all facility operations, including security, housing, and conditions of confinement, and he oversaw four different managers over various disciplines. Lisac has also worked as a backup COPD hearings officer and training coordinator for hearings and disciplinary officers. Lisac testified about the COPD process generally, how disciplinary officers decide what COPD charges to bring, how CDOC responds to FTW as a disciplinary issue, and about whether COPD charges for specific individuals, including Reed, were appropriate based on the underlying conduct. Lisac also testified about CDOC's safety and security protocols,

including staff training and the use of RFP, RH, and physical restraints. Lisac explained that CDOC has not changed its policies in response to Amendment A and testified CDOC has not conducted any audits or studies to determine whether its policies and practices comply with the amendment.

41. Lisac, consistent with the other CDOC witnesses, confirmed the consequences the inmate witnesses described—including Reed and West being subjected to twenty-three hour per day confinement following their FTW offenses—were consistent and compliant with CDOC policies.

42. Adrienne Sanchez is currently the Director of Policy and Legislative Affairs at CDOC. In that position, she oversees CDOC's legal affairs, strategic policy and planning, compliance, incarcerated persons records, and CORA and CCJRA requests. CDOC has employed Sanchez in various positions for twenty years, including Associate Director of Legal Services, Public Information Officer, Policy Analyst, and ADA Coordinator. Sanchez explained how CDOC creates and enforces Administrative Regulations ("ARs") and Implementation Adjustments ("IAs"). Sanchez detailed how incarcerated people are informed and reminded of CDOC's policies, including the mandatory work requirement. Sanchez confirmed CDOC did not modify its policies or trainings after the passage of Amendment A. Sanchez walked the Court through the requirements of RH and various IAs that are applicable at different facilities within

CDOC. She further testified about CDOC's interpretation of Amendment A, and why CDOC did not implement changes to policy and training following its passage.

43. Brian Fisher testified as an expert in the field of correctional management and policy. Fisher was the former Commissioner of the New York State Department of Correctional Services and Community Supervision. He was also the warden at Sing Sing Correctional Facility in New York State and has taught courses in correctional management and policy. Fisher testified, in his opinion, Colorado's administration of the work requirement was inappropriate because it focused solely on using disciplinary consequences to force compliance, which is counterproductive to the goal of rehabilitation and encouraging good work habits.

44. Terry Kupers, MD, MSP, is an expert in prison conditions and their psychological effects, including the effects of confinement and isolation, disciplinary sanctions, and other consequences on inmates. Kupers is a psychiatrist who has focused his career on community mental health and forensic psychiatry. Kupers has taught college classes in general psychiatry and in doctoral programs and has published two books on the impact of isolation on people in prison. Kupers discussed the dangers of prison and how inmates dread higher custody levels because of the higher risk of violence and the increased restriction of movement. He discussed the psychological impact of incarceration whereby inmates essentially have very little control over their environment and how prisoners tend to become compliant because of the inherent coercive nature of

prison. Kupers describes prisoners as being a very vulnerable population because they literally relinquish self-determination when they are booked into prison.

45. Kupers testified solitary confinement, the hole, administrative segregation, and restricted housing are synonymous. He testified while solitary confinement has been officially defined as confinement in a cell for twenty-two hours a day, incarcerated individuals experience confinement on a spectrum of more or less severe isolation. For the purposes of his testimony, Kupers defined solitary confinement as being in a cell alone for most of the day, every day, being self-fed, having limited out-of-cell activity—usually alone in a very small space—and being relatively idle while not participating in most of the ordinary programs of the prison.

46. Kupers opined forced work under the threat of additional confinement, even if not for twenty-two hours a day, is coercive because incarcerated individuals are aware of the damaging effects of isolation and fear it. Kupers additionally testified the various sanctions available in CDOC, including loss of good time and earned time, compound each other and add to the coercive nature of the entire work program. Kupers testified the work requirement and threat of consequences in CDOC is coercive because it causes incarcerated individuals to work against their own self-interest in terms of their physical and mental health in order to avoid punishment. Kupers testified the work program within CDOC is not rehabilitative and is inconsistent with the aims or mission of CDOC. The Court denies CDOC's request the Court disregard Kupers' opinions because they were

formed in part by declarations inmates signed. The Court is not considering Kupers' opinions based on the individual circumstances of those declarations, which obviously only reflect a small amount of the CDOC population. The Court does consider his general opinions stated above to the extent they were consistent with the inmate testimony the Court heard, which relate to the psychological impact on prisoners generally when they are subjected to prolonged confinement without interaction with other members of the incarcerated population. The Court further holds confinement to one's cell for anything more than twenty-two hours a day is by its very nature coercive and has serious consequences on the well-being of the inmates.

47. Kupers noted Colorado generally does not keep inmates in solitary confinement for more than fifteen days because it recognizes it as a human rights violation and that it constitutes torture. The Court notes, however, based on Kupers's testimony, solitary confinement for any period is extremely harmful to inmates. Inmates are extraordinarily fearful of being put in solitary confinement, and the fact FTW can result in solitary confinement, even if only in rare circumstances, compels inmates to conform to CDOC's demands to work.

48. Siobhan Burtlow has worked with CDOC for just over thirty years. Her current position is one of the Deputy Directors of Prison Operations, a role she shares with Lisac. Burtlow was the warden of Fremont from December 2019 to June 2024. She testified about the general operations of Fremont, including Fremont's RH and RP living

units, during the period when Mortis's failure to work incident occurred. She testified the RH unit at Fremont contains sixty-three single-person cells, that the RP unit has sixteen two-bed cells, and that in her time as warden of Fremont, neither RH nor RP was ever full. She explained inmates in the RP unit at Fremont are "confined in their cells similarly to general population, which is during count times and overnight," and "are permitted outside of their cells outside of those count times or overnight in their pod the remainder of . . . the daytime." She further testified RH "is used when an offender has demonstrated dangerous, disruptive, or potentially violent behavior and needs to be removed for investigative purposes or when a Code of Penal Discipline finding renders sanctions for restricted housing." Inmates at Fremont are generally not in their cells for more than twenty hours a day unless they choose to or the entire facility is on lockdown. Burtlow also explained that Fremont has two kitchen work shifts that last approximately six hours each, and that approximately forty to fifty inmates work in the kitchen each shift, supervised by five to seven staff members. Burtlow testified inmates were generally not asked to work multiple shifts in a row for safety and security reasons so the facility knows "who is where when," and during the COVID-19 pandemic, inmates working different shifts lived in different housing units that would not mix.

C. CDOC Operations and Policies

49. CDOC houses approximately 18,000 inmates across twenty-one facilities at any given time

50. CDOC's ARs govern various facility operations and processes.

51. ARs are broad in scope to accommodate different facility levels and operational needs.

52. Individual facilities can create and submit "IAs" to "fill in the blanks" in the ARs to apply CDOC's policies at that specific facility.

53. Several ARs are relevant to this case, including AR 150-01 (the COPD), AR 600-01 (Offender Classification), AR 600-05 (Restriction of Offenders' Privileges in Correctional Facilities), AR 650-03 (Restrictive Housing), AR 650-01 (Incentive Living Program), AR 850-03 (Offender Assignment and Pay), and AR 850-07 (Offender Reception and Orientation).

D. Classification

54. When inmates first enter CDOC's custody, they are processed through the Denver Reception and Diagnostic Center. There, they undergo mental health, medical, and educational evaluations, as well as a classification process. The overall goal of the classification process is to place inmates at the lowest custody level possible consistent with safety and security by assessing an inmate's risk level to determine the most appropriate placement. The initial classification determines an inmate's custody level, which in turn informs which facilities the inmate may be housed in.

55. Inmates can receive the following custody classifications, from highest to lowest: close custody, medium custody, minimum restricted custody, and minimum

custody. The lower the inmate's custody level, the more freedom of movement they possess within the facility as compared to higher custody levels.

56. Inmates are reclassified at least six months after their initial classification, and then at least annually thereafter. When reclassifying an inmate, CDOC considers the following categories: (1) the type of the most serious disciplinary report the inmate received in the past twelve months, (2) the frequency of disciplinary reports in the past twelve months, (3) program compliance in the past six months, (4) work evaluations for the past six months, and (5) the inmate's current age.

57. An inmate's custody classification rating must be reevaluated if (1) the inmate receives a COPD conviction (or its reversal or expungement) and (2) the scored custody would be higher than the inmate's current custody level and the resulting classification would require facility reassignment.

58. CDOC has five security level designations for facilities: Levels I through V. Level I minimum security facilities typically do not have a fence, and feature dormitory-style living, where two inmates share a cell and have keys to their cell, with shared restroom facilities and a common living space. Level II minimum restricted facilities are similar to Level I minimum facilities except they are fenced in. Level III medium facilities have two fences and a mix of wet and dry cells, where wet cells contain a toilet and sink, and dry cells do not. Medium classification inmates constitute the largest percentage of CDOC's population and are generally housed at Level III facilities.

Level IV close custody facilities have two fences and a more controlled environment. Level V facilities are maximum security facilities and are only used temporarily while CDOC is assessing custody levels and are similar to Level IV but even more restricted.

59. Inmates are transferred between CDOC facilities frequently and for many different reasons. In fact, all but one inmate who testified at trial had been housed in multiple facilities.

60. Inmates can move between facilities with the same custody level or to facilities with higher or lower custody levels if their custody level changes. Facilities have different layouts of housing units, common areas, and yards based on when the facility was built and the classification level of inmates housed there. CDOC facilities contain housing "units," which are the internal enclosures in which the inmates live. Depending on a facility's physical plant, housing units may be divided into several "pods," or they may be traditional three-tiered housing units. Cells are the inmates' individual rooms in the housing unit or pod. Inmates typically eat meals in a dining hall with other inmates, referred to as "chow."

61. In addition to the standard housing units, CDOC provides several incentive living units, which are goal-oriented and based on incentives aimed at rewarding "positive program participation and offender behavior through quality of life privileges and responsibilities." Participation in CDOC's Incentive Living Program is voluntary, and inmates may request assignment to the program or be referred by the inmate's living

unit supervisor or assigned case manager. To be eligible for the Incentive Living Program, the inmate must, among other things, be "currently program compliant; demonstrating active participation in their treatment plan and/or educational or work assignment for three months prior to placement" and "have not had any Class II COPD convictions for one year." Inmates in the Incentive Living Program have access to additional privileges, including additional pod and recreation time, additional pod equipment, extended purchase capabilities for the canteen, thicker mattresses, laptops, larger day room TVs, vending machines, and musical instruments. Inmates in an incentive unit can also donate funds to purchase DVD or video game consoles and certain games and movies for the unit. The Incentive Living Program AR provides "[f]acility service is essential to the spirit of the program." Accordingly, inmates "assigned to the Incentive Living Program may be utilized to perform essential facility need tasks during a lock down." Such tasks include food service, laundry, and custodial services. Inmates applying to the Incentive Living Program acknowledge the criteria for assignment, including being currently employed and program compliant, and they acknowledge "[i]n the event of a facility lockdown, offenders assigned to the Incentive Living Program may be assigned to work a facility need assignments." Failure to do so "will result in removal from the Incentive Living Program." In facilities other than CSP (which otherwise houses only close custody status inmates), an inmate removed from an incentive living unit would be transferred to a general population unit within the same facility.

62. Most CDOC facilities have an RH unit. RH units serve multiple functions:

> [They] may be utilized to house inmates who have been removed from population, are serving disciplinary sanctions, are pending reclassification to a higher custody leave [sic], are pending in or out of state transfer, are pending protective custody review, or, with written permission from the Warden or designee, a special population in emergency or unusual circumstances, designated pods within a unit.

63. RH is "effectively a place where [CDOC] can remove individuals from the general population to a secure environment and take a pause while [CDOC] figure[s] out the next steps." Inmates cannot be kept in RH for more than fifteen days absent specific written approval from the director of prisons. RH is the most secure environment in CDOC. Inmates being placed in RH—for any reason—are strip-searched before being placed in an RH cell. They are confined to their cell for at least twenty-two hours per day and receive meals in their cells. Inmates in RH receive a minimum of one hour of exercise per day outside their cells, seven days a week, "unless security or safety considerations dictate otherwise." They are allowed to shower at least three times a week. In practice, according to the evidence presented at trial, RH appears to result in confinement in the cell for twenty-three hours a day, with the remaining hour being spent either in an exercise cage or showering.

64. RH is referred to as "the hole" by inmates and CDOC personnel.

65. RH is what CDOC uses in place of what is generally known as "solitary confinement" or "administrative segregation." Solitary confinement within CDOC was a long-term housing placement where, for an indefinite period, offenders were locked in

their cell for twenty-three hours per day and only allowed out for one hour for showers and recreation. CDOC stopped using solitary confinement in 2015 because it recognized the harmful effects of long-term isolation on inmates, though CDOC basically concedes that RH is the same as solitary confinement—it is just limited in duration.

66. CDOC uses RFP as a tool to remove inmates from their assigned living unit to be placed in RH. Inmates may be removed from the general population and temporarily placed in RH when "the continued housing of an offender within general population would pose an imminent and substantial threat to the security of the institution, other offenders, employees, contract workers, volunteers, or to themselves, or for investigative purposes."

67. Only a shift commander can authorize RFP. The duty officer and the classification chairperson review RFP decisions, and both can reverse an RFP decision if the removal was improper. An inmate's placement in RH is reviewed initially within one business day of the placement, and the status of all inmates assigned to RH "will be reviewed by the internal classification committee every seven days until released." CDOC claims it does not use RH units to house inmates who commit only lower-level COPD violations because they need those units available to house violent, dangerous, or disruptive individuals.

68. In fact, CDOC officials testified that RH is not an available sanction for FTW because RH is to address "imminent safety/security issues" and because FTW "does not contain any threat to safety" it is not an appropriate sanction for FTW.

69. Unfortunately, in practice RH is, in fact, employed as a repercussion for FTW.

E. Work is Mandatory in Colorado Prisons

70. CDOC relies on inmates to staff basic facility services, including food service, janitorial work, housekeeping, and other essential community infrastructure functions.

71. C.R.S. § 17-20-117 states: "Every inmate shall participate in the work most suitable to the inmate's capacity and that promotes the inmate's successful rehabilitation, reentry, and reintegration into the community."

72. C.R.S. § 17-20-115 states:

> All persons convicted of any crime and confined in any state correctional facilities under the laws of this state, except such as are precluded by the terms of the judgment of conviction, shall participate in a rehabilitation and work program that promotes the person's successful rehabilitation, reentry, and reintegration into the community, under such rules and regulations as may be prescribed by the department.

73. C.R.S. § 17-29-103(1) states, in part: "[t]he executive director may establish an intensive labor work program at all facilities, utilizing the physical labor of able-bodied offenders, which will be directed toward the reclamation and maintenance of land and resources . . . ."

74. The CDOC implements C.R.S. § 17-29-103 through an intensive labor program called "ILP." The ILP includes grounds maintenance of facilities and food service in the kitchens. An individual may be assigned to the intensive labor program for a period of at least thirty days.

F. Amendment A

75. Amendment A proposed amending Section 26 of the Colorado Constitution to read as follows: "Section 26. Slavery prohibited. There shall never be in this state either slavery or involuntary servitude. ~~except as punishment for a crime, whereof the party shall have been duly convicted.~~"

76. The ballot title asked voters the following: "[s]hall there be an amendment to the Colorado constitution that prohibits slavery and involuntary servitude as punishment for a crime and thereby prohibits slavery and involuntary servitude in all circumstances?"

77. The text of the measure, which was referred to the voters, stated that although Colorado's Constitution had long prohibited involuntary servitude, which it defined as "the coerced service of one individual for the benefit of another," the prohibition had never been applied when involuntary servitude was imposed upon an individual as punishment for a crime for which the individual had been duly convicted. The text further stated that "[t]he state should not have the power to compel individuals to labor against their will."

78. The text of the measure also stated:

> The state recognizes that allowing individuals convicted of a crime to perform work incident to such convictions, including labor at penal institutions or pursuant to work-release programs, assists in such individuals' rehabilitations, teaches practical and interpersonal skills that may be useful upon their reintegration with society, and contributes to healthier and safer penal environments.

79. The text further stated, "[b]ecause work provides myriad individual and collective benefits, the purpose of this proposed constitutional amendment is not to withdraw legitimate opportunities to work for individuals who have been convicted of a crime, but instead to merely prohibit compulsory labor from such individuals."

80. On November 6, 2018, Colorado voters passed Amendment A.

81. After the passage of Amendment A, CDOC did not make any changes to its policies and practices. In addition, CDOC did not audit, review, or investigate its policies or practices for compliance with Colorado's constitutional prohibition against involuntary servitude. The rationale offered at trial was that CDOC does not—and prior to Amendment A, did not—impose work as a punishment for a crime, and therefore the Amendment had no effect.

82. Specifically, CDOC representatives testified, "we were compliant with the spirit of the intended change to the constitution," because:

> Our work policies are meant to have individuals be engaged in work for rehabilitative purposes. And individuals in the state of Colorado are sentenced to prison and that that sentence to imprisonment and loss of liberty is the punishment and that our job programs are not the sentence for the crime.

83. In support of CDOC's interpretation, CDOC directs the Court to the "against" arguments found in the ballot information booklet, which argued that Amendment A was redundant. However, the voters of Colorado did not accept that argument when they voted in favor of Amendment A. The Court presumes the voters intended Amendment A to have some impact, or they would have accepted the "against" argument and declined to amend the Colorado Constitution.

84. When questioned by the Court, the same CDOC representative testified because the consequences suffered for FTW were not punishments for the crime for which the inmates were convicted, but rather sanctions for FTW, CDOC was compliant with the prohibition on involuntary servitude.

85. The Court holds under such interpretation, there would be no limitations on the appropriate punishment for failure to work.

86. The Court further notes that even if the Court agreed with CDOC that Amendment A was redundant, it would not change the fundamental question before the Court: whether CDOC's policies and procedures allow for involuntary servitude in violation of the Constitution and specifically Amendment A.

G. CDOC's Enforcement of the Work Policy

87. CDOC enforces its work requirement through policies and practices, including written ARs. Those ARs apply to all facilities within CDOC, and every facility, including all facility staff, must follow the ARs. Wardens at individual facilities must

enforce the ARs consistent with their written terms. It is important to CDOC that policy is consistent across facilities, particularly because inmates can be transferred between facilities during their incarceration. All inmates must comply with those ARs.

88. AR 850-03 governs offender work assignments, pay, and programming and states: "All eligible offenders are required to work unless assigned to an approved education or training program to promote successful rehabilitation, reentry, and reintegration into the community."

89. Inmates may not opt out of work under AR 850-03 or CDOC's practices. Work is mandatory, and Class Members are constantly informed of the potential consequences of refusing to work or attend assigned programs, including, but not limited to, restricted privileges, loss of other privileges, delayed parole hearing dates, and ineligibility for earned time.

90. Work is required in CDOC, and there are several available consequences for the failure or refusal to work.

91. Wardens in CDOC prisons may implement ARs through IAs, which are specific to individual facilities. IAs must be consistent with ARs but may be more specific; they do not create or change CDOC policy but instead may "fill in the blanks." CDOC headquarters must approve IAs, and IAs must be updated when an applicable AR changes. The wardens at each facility oversee the updates to the IAs for their facility, which can generally be done annually.

92. CDOC policy and practice authorize the use and threat of various consequences and sanctions for FTW. CDOC official Brandt described these consequences as "tools in the tool bag" to enforce the work requirement. These tools include COPD disciplinary sanctions, RP, RH, and RFP.

93. The purpose of these tools, and the consequences for FTW, is to compel inmates to work.

94. Any inmate could be subjected to any of the tools used to compel labor in CDOC, especially given that inmates often move between facilities. The fact that every consequence is not imposed each time an inmate refuses to work is immaterial to the Court. The relevant question is whether CDOC policies sanction certain consequences and whether the threat of these consequences results in involuntary servitude.

a. COPD Process

95. The COPD is the disciplinary process within CDOC set forth in AR 150-01. It establishes penalties that can be imposed to enforce the work requirement in CDOC and is one of the tools used to compel labor.

96. COPD convictions involve a legal process. Notice of a COPD charge is provided along with a due process hearing.

97. All inmates in CDOC's custody are subject to the COPD. Multiple COPD charges can be assessed arising from a single incident. All inmates can face COPD charges for refusals to work.

98. CDOC classifies COPD violations as Class I or Class II offenses.

99. From December 1, 2018, through May 1, 2023, CDOC held 1,072 COPD hearings for FTW.

100. FTW is a Class II (B) COPD charge. The sanctions for FTW include loss of up to thirty days of good time, placement on Loss of Privileges for up to thirty days, and placement on HRS for up to fifteen days. While RH is listed as "N/A" as a sanction for FTW, in practice, RH may be imposed.

101. In fact, CDOC represented to this Court on numerous instances that RH is not an available sanction for FTW. Motion to Dismiss at 5 ("Restrictive Housing is *not* an available sanction for failure to work" (emphasis in original)); Response to Motion for Class Certification at 6 ("Restrictive Housing is not an available sanction for failure to work standing alone"); Motion for Summary Judgment at 8 ("RFP is not a sanction available to be imposed for a failure-to-work COPD violation standing alone"). However, the reality is different. The inclusion of the language "standing alone" is because CDOC can use RH for FTW if the FTW is charged in conjunction with a second COPD violation arising from the inmate's refusal to work.

102. For instance, Creating or Advocating a Facility Disruption is a Class II (A) COPD charge that may be charged for refusing to work, or what CDOC terms a "work stoppage." Therefore, even if an inmate merely declines to work and does not encourage others or otherwise disrupt the facility, they may be charged with FTW and Creating or

Advocating a Facility Disruption—solely for declining to work—if other inmates make the same choice. In addition to the same available sanctions for FTW, up to fifteen days of RH is an authorized sanction for Creating or Advocating a Facility Disruption.

103. Similarly, DLO is a Class II (A) COPD charge that an inmate may face if a CDOC staff member orders the inmate to perform a task, and the person refuses, including an order to perform work. For instance, if an inmate does not show up for work and is subsequently ordered to work, the inmate can be charged with FTW and DLO. In addition to the same sanctions for FTW, up to fifteen days of RH is an authorized sanction for DLO.

104. Reed is an example of an inmate who suffered the consequences of a "double write-up" for FTW. Staff charged her with both FTW and Creating or Advocating a Facility Disruption arising from one instance where she refused to work longer than her scheduled shift. Lisac agreed that records indicated all Reed did was refuse to work, and she did not tell anyone else to stop working. Staff sanctioned Reed with fourteen days of HRS for the two COPDs after she was found guilty. Consistent with the policy, Reed served that time in RH under conditions that included being in her cell for at least twenty-three hours a day, only being out of her cell to "exercise" in an exercise cage.

105. In addition, Reed testified that at the time she refused to work, she was cuffed and placed in shackles by approximately eight to ten CDOC officers and brought

to an intake cell where she was strip-searched, including an inspection of her mouth, testicles, and buttocks. This is consistent with CDOC policy that all inmates placed in RH are cuffed, shackled, and strip searched.

106. Following the strip-search, Reed was then taken to RH, where she remained for fourteen days.

107. Although CDOC characterized the reason Reed was removed from population as "to contain or prevent a facility disruption," the incident report refers only to the fact that she and two other individuals were refusing to work at the same time. The RFP form states as its justification simply, "work stoppage." Reed testified she did not tell the other two inmates not to work, and she was not attempting to influence them to stop working; no evidence was presented to contradict her testimony.

108. Similarly, West received a COPD conviction for FTW. Staff imposed a sanction of "Eight days RH (restrictive housing). Credit was given for eight days' time served on RFP from 1/3/23 to 1/11/23." CDOC officials testified it was necessary to place West in RH pending transfer because he was in a high security prison but offered no satisfactory explanation as to why he could not have stayed in the incentive unit pending transfer, or why it required eight days to transfer him to another facility, given that RH is not an authorized sanction for FTW.

109. RFP occurs when an individual is temporarily removed from the general population and is placed into RH or moved to a more secure facility.

110. An inmate may be removed from population and placed in RH pending investigation of a COPD charge.

111. CDOC's immediate response to a refusal to work can include RFP. CDOC policy authorizes RFP in response to FTW, and CDOC employees admitted that RFP does, in fact, occur for FTW offenses.

112. Although placement in RFP is subject to several levels of review, CDOC policy permits a person to remain in RFP while that review is pending, which can take up to three working days (up to five days if the timeframe includes a weekend). Further, the policy allows RFP confinement for up to ten days. Consequently, even if a decision is ultimately made by a higher-level official that the RFP was improper, an incarcerated person could spend five or even ten days in RH before they are released back to the general population.

113. Despite CDOC's admission the reason to put an inmate in RH is to address "imminent safety/security issues," CDOC policies allow and CDOC does use RH to address FTW despite there being no evidence of "imminent safety/security" issues.

b. Restricted Privileges

114. RP is one of the tools that CDOC uses to compel inmates to work.

115. Currently, seven CDOC facilities use RP status as a consequence for work refusal.

116. Restrictions while on RP can include withholding or confiscating items such as televisions, radios, and electronics, as well as denying access to the canteen. They can also include restrictions on the time an incarcerated person is allowed out of their cell.

117. Individuals on RP wear bright colors, typically orange pants, to be identifiable and allow staff to ensure they are not inappropriately mingling with the general population.

118. CDOC policy states people on RP status must be allowed to attend recreation a minimum of five days per week but does not specify a minimum amount of recreation time. Likewise, CDOC policy requires inmates on RP status be allowed out-of-cell time seven days per week but does not specify a minimum amount of such time.

119. The Court holds the evidence presented regarding RP does not support the Class's argument the RP system is implemented systemwide in a way that constitutes anything akin to RH. While RP appears to differ from facility to facility, the evidence did not support a finding CDOC generally implements its policy in a manner resulting in that outcome.

120. Nevertheless, the uncontested testimony of Reed was while on RP for failing to work, she was confined to her cell for twenty-three hours a day and only allowed to leave for one hour a day for recreation and to bathe. The Court, therefore,

concludes that CDOC's policy for RP could potentially result in an inmate being confined to the cell for up to twenty-three hours a day.

121. The remaining evidence presented showed most inmates were allowed more substantial time out of their cells while in RP status. In the lower-security prisons, while inmates were supposed to stay in their cells for everything but meals and recreation, they were allowed to freely move between their cells, restrooms, and showers which affords the inmates substantially more freedom than RH.

122. The Court, however, holds while the practice related to RP is generally not implemented in a way that equates RP to RH, the policy permits RP to be akin to RH, which Reed's testimony confirms. In short, while RP may generally consist of taking privileges away, when it rises to the level of an inmate—such as in Reed's case—being confined to her cell for more than twenty-two hours a day for thirty days, it poses the exact same issues as RH, which according to CDOC is not an available punishment for FTW.

c. Classification

123. Proper classification evaluates the best place to safely and securely house incarcerated people.

124. Changes to classification and custody level, which may result in facility transfer, can be a consequence of FTW.

125. Inmates in CDOC custody are classified, for safety and security purposes, using a point system based on factors including criminal history among other factors. CDOC looks at the classification score and assigns each person a custody level and, based on that level, to a particular facility. The goal is for higher-risk inmates to be housed in a higher custody level, and lower-risk inmates in a lower custody level. If someone has a history of violence and/or recent institutional violence, that person will generally be housed in a higher custody level.

126. There are several levels of facilities: minimum, minimum restricted, medium, close, and then "status" facilities.

127. The higher the security level of the facility, the more the inmates' movements are restricted. In close custody, an incarcerated person might only be out of their cell for about six hours a day, as opposed to medium custody, where an incarcerated person is out of their cell for the majority of the day, from 6:00 a.m. until 9:00 p.m.

128. Higher-level facilities have a higher risk of violence than lower-level facilities. There is a higher risk of suffering bodily injury and even death in higher custody levels.

129. After the initial classification, CDOC reevaluates classification scores after six months, and then at least annually thereafter, although it can happen more often.

130. A COPD conviction, including for FTW, can change an inmate's classification score. A single COPD conviction for FTW can result in up to a five-point

difference in a classification score, and additional COPDs—including for FTW related offenses—could increase it further.

131. Even if someone does not receive a COPD, a refusal to work can cause their classification score to increase by four points. This, in turn, can increase an inmate's custody level, meaning the type of facility in which they must be housed. In other words, it would be consistent with CDOC policy to designate a person to close custody (who was not previously in close custody) as a result of a FTW COPD if their classification score increased to a score reflecting close custody per policy.

132. For instance, Reed's classification score increased by ten points as a result of the two COPDs she received after a single refusal to work incident, where she refused to work extra time after finishing her shift in the kitchen.

133. West's classification score increased by five points from the single FTW COPD charge he was convicted of as a result of a single failure to work incident.

134. The testimony supports a finding the fear of increased classification and custody—as a result of refusal to work, or the threat of such refusal—while not constituting involuntary servitude compels inmates to work.

d. Parole Eligibility

135. Finally, refusing to work can also impact an inmate's prison release date because it can affect time awards or eligibility for release. There are two forms of time awards: good time and earned time. Good time is calculated when an inmate first enters

CDOC custody and has their initial parole eligibility date calculated. That calculation is based on the charge and could range from fifteen to fifty percent of the sentence.

136. If an inmate loses good time, their parole eligibility date is delayed, assuming they are not yet parole eligible. FTW can push an inmate's parole eligibility date thirty days further out. Good time does not, however, affect the mandatory release date.

137. Earned time is something inmates earn through programming and work compliance. Earned time can move both the parole eligibility date and the mandatory release date closer in time. If an inmate does not receive earned time, neither their parole eligibility nor mandatory release dates move any closer.

138. The parties do not agree whether CDOC policy authorizes the loss of earned time as a sanction for FTW or whether FTW merely prevents inmates from earning it. The Court holds regardless of whether it results in losing earned time or the inability to earn more good time, it is one of the many tools in CDOC's toolbox that compels inmates to work.

139. The Court recognizes inmates are an incredibly vulnerable population. They worry about their physical safety, their mental health, and their release date, and they are justifiably terrified of confinement in "the hole."

III. CONCLUSIONS OF LAW

A. The Applicable Standard of Proof for As-Applied Challenges

140. The Class's remaining claim is an as-applied challenge to CDOC's implementation of the statutory work requirement and its accompanying Administrative Regulation. A legal question before the Court is whether a challenger must prove CDOC's implementation of these laws is unconstitutional "beyond a reasonable doubt"—the same high bar required for facial challenges—or whether a lesser burden applies.

141. The "beyond a reasonable doubt" standard for facial challenges is "rooted in the doctrine of separation of powers," as courts must "'respect[] the roles of the legislature and the executive in the enactment of laws.'" *Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314, 322 (Colo. 2020) (quoting *City of Greenwood Vill. v. Petitioners for the Proposed City of Centennial*, 3 P.3d 427, 440 (Colo. 2000)). Declaring a legislative act void in all circumstances is one of the "gravest duties" of the judiciary. *City of Greenwood Vill.*, 3 P.3d at 440. However, the concerns for extreme deference that drive the "beyond a reasonable doubt" standard are significantly diminished in an as-applied challenge to specific administrative practices. As Plaintiffs argue, the reasoning set forth in *Sanger v. Dennis*, 148 P.3d 404 (Colo. App. 2006), and the concurrence in *United Air Lines, Inc. v. City & County of Denver*, 973 P.2d 647 (Colo. App. 1998) (Briggs, J., concurring), supports the application of a standard of proof lower than "beyond a reasonable doubt."

142. In *United Air Lines*, Judge Briggs in his concurrence critiqued the "familiar litany" of the beyond a reasonable doubt standard, noting it "subtly mutates" constitutional analysis by conflating a "heightened burden of persuasion as an evidentiary burden of proof." 973 P.2d at 655–57. Judge Briggs argued because a constitutional challenge is a matter of "legal analysis" the imposition of a criminal-law evidentiary burden is neither needed nor useful. *Id.* at 657–59.

143. Beyond these separation-of-powers concerns, the standard of proof must also satisfy the requirements of procedural due process. *Santosky v. Kramer*, 455 U.S. 745, 755 (1982). The function of a standard of proof is to "'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" *Addington v. Texas*, 441 U.S. 418, 423 (1979) (quoting *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring)). In any given proceeding, the minimum standard reflects a societal judgment about how "to allocate the risk of error between the litigants." *Id*.

144. While a preponderance standard is appropriate for typical civil disputes where litigants "share the risk of error in roughly equal fashion," society has a greater concern where "particularly important" individual interests are at stake. *See id.* at 423-24. The United States Supreme Court has mandated a standard of proof that "'reflects the value society places on individual liberty'" and ensures the risk of error is not unfairly stacked against the individual *Id.* at 425 (quoting *Tippett v. Maryland*, 436 F.2d 1153,

1166 (4th Cir. 1971) (Sobeloff, J., concurring in part and dissenting in part)). In the context of a facial challenge, the "beyond a reasonable doubt" standard places almost the entire risk of error on the challenger. However, in this as-applied challenge—where the Class faces the "grievous loss" of physical isolation and involuntary servitude—due process demands a more equitable calibration. To require the Class to meet the "beyond a reasonable doubt" standard here would be to improperly shift the risk of error onto the individuals whose liberty is most vulnerable, effectively shielding the State's conduct behind an evidentiary wall reserved for legislative acts. *Cf. Santosky*, 455 U.S. at 766. Because the "social cost" of erroneously allowing unconstitutional compulsion to continue is so high, the Court should apply a standard that allows for a more even distribution of the risk of error between the participants.

145. The Court finds these due process and separation-of-powers critiques particularly salient in the context of an as-applied challenge. Unlike a facial challenge, which targets the core legislative intent of a co-equal branch, an as-applied challenge targets the executive branch's execution of the law. The Court acknowledges a lack of uniformity among the divisions of the Colorado Court of Appeals regarding this standard. In *Sanger*, a division of the Court of Appeals held while a facial challenge requires showing invalidity beyond a reasonable doubt, "the same is not true of an 'as applied' challenge." 148 P.3d at 411.

146. This Court finds *Sanger* persuasive in its conclusion a lower standard is appropriate. However, the Court must clarify a persistent misinterpretation of *Sanger*. In *People ex rel. J.C.S.*, 169 P.3d 240, 255 (Colo. App. 2007) (Taubman, J., dissenting), the dissent stated a party in an as-applied challenge must show a "reasonable probability" of unconstitutionality, citing *Sanger*. This Court respectfully notes such language conflates the procedural posture of *Sanger* with the ultimate burden of proof. The *Sanger* court utilized the "reasonable probability" language only because it was reviewing the trial court's grant of a preliminary injunction, which inherently requires a showing of a "reasonable probability of success on the merits." 148 P.3d at 410-11. The Court holds *Sanger* did not intend to establish "reasonable probability" as the final evidentiary standard for all as-applied challenges; rather, it established only the negative—that the "beyond a reasonable doubt" standard does not apply. To adopt "reasonable probability" as the final burden on the merits would be to permanently apply a preliminary standard to a final judgment, which this Court declines to do.

147. Conversely, in *Campaign Integrity Watchdog, LLC v. Griswold*, 568 P.3d 48, 55 (Colo. App. 2025), a division explicitly held "[i]n both facial and as-applied challenges, the challenging party must prove that a statute is unconstitutional beyond a reasonable doubt." Notably, the *Campaign Integrity Watchdog* court provided no independent reasoning for extending this heightened burden to as-applied challenges,

effectively ignoring the separation-of-powers nuances raised in *Sanger* and the *United Airlines* concurrence.

148. The distinction between facial and as-applied challenges is not a mere formalistic hurdle. As the United States Supreme Court noted in *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 331 (2010), the distinction "is not so well defined that it has some automatic effect or that it must always control the pleadings and disposition in every case." Rather, the distinction matters primarily as to the remedy appropriate if a constitutional violation is found. While the substantive legal tests used are "invariant," the posture of the challenge bears directly on the showing plaintiffs must make to prevail. *Isaacson v. Horne*, 716 F.3d 1213, 1230 (9th Cir. 2013). Facial and as-applied challenges differ specifically in "*the extent to which* the invalidity of a statute need be demonstrated." *Brooklyn Legal Servs. Corp. v. Legal Servs. Corp.*, 462 F.3d 219, 228 (2d Cir. 2006) (emphasis in original). Where, as here, the Class seeks to demonstrate unconstitutionality within a specific administrative context, the "extent" of proof required is logically tied to the developed factual record, not an abstract theory of legislative overreach. *See Fusaro v. Howard*, 19 F.4th 357, 368 (4th Cir. 2021).

149. The standard of proof for as-applied challenges varies across U.S. jurisdictions. Federal courts generally apply the preponderance of the evidence standard to as-applied constitutional challenges. In *United States v. Ochoa Moreno*, No. 4:24-CR-00141-SMR-HCA-1, 2025 WL 3497996, at *2 (S.D. Iowa Dec. 5, 2025), the court held

the preponderance standard applied to an as-applied challenge, noting this standard aligned with the burden imposed in other constitutional challenges. The Third Circuit has clarified in an as-applied challenge, a plaintiff need only show that the law's application to a particular person under particular circumstances deprived them of a constitutional right—a burden "less demanding" than for bringing a facial challenge. *Mazo v. New Jersey Sec'y of State*, 54 F.4th 124, 134 n. 6 (3d Cir. 2022). As the Fourth Circuit noted, these challenges are based on a "developed factual record," which justifies a standard evidentiary burden rather than a "near certitude" requirement. *See Fusaro*, 19 F.4th at 368.

150. Some states, such as Wisconsin, maintain the beyond a reasonable doubt standard for both, though notably, Wisconsin does not extend the presumption of constitutionality to the state's application of those statutes. *Soc'y Ins. v. Lab. & Indus. Review Comm'n*, 786 N.W.2d 385, 395 (Wis. 2010) ("we do not presume that the State applies statutes in a constitutional manner"). Other jurisdictions, such as Ohio, explicitly differentiate the two, requiring "clear and convincing evidence" for as-applied defects—a standard more rigorous than a preponderance of the evidence but less demanding than the "near certitude" of reasonable doubt. *State ex rel. Ohio Cong. of Parents & Tchrs. v. State Bd. of Educ.*, 857 N.E.2d 1148, 1156 (Ohio 2006).

151. This Court concludes a lesser standard than "beyond a reasonable doubt" should apply to this challenge to unconstitutional practices as applied to the Class.

Whether the appropriate lesser standard is "clear and convincing evidence" or a "preponderance of the evidence," this Court finds the Class has met its burden.

152. Even if the "beyond a reasonable doubt" standard were required—as *No Laporte Gravel Corp. v. Bd. of Cty. Comm'rs of Larimer Cty.*, 507 P.3d 1053, 1062-63 (Colo. App. 2022), and *Campaign Integrity Watchdog* suggest—the Court finds the Class has met that heightened burden. The evidence presented regarding the availability of certain punitive sanctions for refusal to work leaves the Court firmly convinced the CDOC's policies, as applied to the Class, constitute involuntary servitude in violation of Article II, Section 26.

153. Indeed, as a matter of legal and factual finality, the Court finds the evidence the Plaintiff Class presented is so compelling it satisfies even the most rigorous "beyond a reasonable doubt" standard. Accordingly, the Court will grant relief, as the constitutional violation has been established under any potentially applicable standard of proof.

B. Whether Isolated Incidents and Policies Allowing for Coercive Conduct Establish Systemic, Widespread, or Continuing Practice

154. The Court next addresses whether the Class has established a systemic, widespread, or continuing practice sufficient to warrant class-wide injunctive relief. Defendants contend the evidence presented—specifically regarding the use of RH or other severe sanctions for failure to work—represents only "isolated" incidents rather

than a general policy or custom. The Court rejects this characterization as both a matter of law and a matter of fact.

155. As a matter of law, in as-applied constitutional challenges involving prison conditions, isolated examples of harm combined with a formal policy that permits or facilitates coercive conduct are sufficient to establish a class-wide practice. Federal and Colorado courts have consistently held class members need not demonstrate every individual has suffered an actual, identical injury; rather, "demonstrating that all class members are *subject* to the same harm will suffice." *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (emphasis in original). In the context of involuntary servitude, the "harm" is the use or threat of physical or legal coercion to compel labor. *United States v. Kozminski*, 487 U.S. 931, 952 (1988). Therefore, the relevant inquiry is not how frequently a specific sanction is imposed, but whether CDOC's policies expose the entire Class to the risk of such sanctions.

156. This "exposure to risk" theory is well-established in prison litigation. As the Ninth Circuit explained in *Parsons v. Ryan*, 754 F.3d 657, 676 (9th Cir. 2014), statewide policies and practices that "expose all inmates" to a risk of constitutional injury satisfy the requirements for class wide relief, even if the specific tools of coercion vary across facilities. Here, every Class Member labors under the shadow of CDOC's mandatory work requirements and the ARs, IAs, and policies that authorize punitive consequences for non-compliance. The Court finds "there is always a threat any prisoner

may land at a facility with stricter sanctions," making the risk generally applicable to the Class as a whole. Order On Class Certification at 24.

157. As a matter of fact, the Court finds the evidence of a widespread practice to be compelling. While Defendants argue the instances of RH or reclassification are rare, they stipulated to over 10,000 incidents of FTW resulting in IAR sanctions and over 1,000 COPD hearings within a four-year period. These figures indicate the machinery of coercion is not isolated but is a pervasive and actively operationalized feature of CDOC's labor management. By consistently applying these policies, CDOC ensures the threat of punishment remains a credible and ever-present driver of inmate labor.

158. Furthermore, the Court gives little weight to Defendants' argument the testimony of five Class Members is insufficient to prove a widespread practice. Prior to trial, Defendants moved *in limine* to limit the number of Class Member witnesses, arguing that additional testimony regarding sanctions would be cumulative and a "waste of time." Def. MIL (Sept. 5, 2025) at 5-7. Plaintiffs complied with this request by presenting a limited, representative set of witnesses to illustrate the forms of coercion authorized by policy. Defendants cannot now rely on a narrowed evidentiary record—which they themselves requested—to claim the practice is not widespread. Representative testimony is a standard and accepted method of proving the operation of a centralized policy. *See United States v. Alzanki*, 54 F.3d 994, 1007 (1st Cir. 1995) (noting

that evidence of a defendant's acts against third parties is relevant to the reasonableness of the victim's fear).

159. Finally, the Court rejects the defense that certain reversals of sanctions (such as the 2019 Fremont incident) prove the absence of a widespread practice. To the contrary, the fact such sanctions are even initiated under the color of CDOC policy reinforces the Class's argument they are subject to an ongoing threat of unconstitutional coercion. Whether a sanction is eventually reversed by a committee does not negate the initial coercive effect of the threat used to compel labor.

160. Further, as set forth above, the uncontested testimony was the policies themselves allow for inmates to be placed in what for all intents and purposes is administrative segregation (also known as RH, RP in at least one facility, solitary confinement, or "the hole") for FTW. While it may be the exception versus the rule, the problem lies in the uncontested availability of that sanction for failure to work.

161. The Court notes not only was the testimony uncontested that CDOC's policies allow for inmates to be placed in a cell for twenty-three hours a day as a sanction of FTW, but the testimony was also uncontested that every inmate that is processed for RH is strip searched and that shackles are also often used. Finally, the Court notes the testimony was uncontested regarding the profound psychological impact of solitary confinement on inmates.

162. Because the Class labors under a centralized, system-wide policy of mandatory work backed by a credible threat of punitive sanctions, including solitary confinement, the Court concludes the Class has established a widespread practice that affects the Class generally. Under the absolute prohibition of Article II, Section 26 of the Colorado Constitution, this systemic exposure to the threat of involuntary servitude warrants class-wide relief.

C. The Court Considers Coercive Factors Cumulatively Under the Totality of the Circumstances

163. The Court must determine whether CDOC's disciplinary and administrative framework constitutes "law or legal process" used to compel labor under the framework of *Kozminski*. Defendants urge a restrictive interpretation of this standard, arguing "legal coercion" is limited to systems involving criminal prosecution or the literal addition of prison time. Relying on *Alzanki*, 54 F.3d at 1000, and *United States v. Shackney*, 333 F.2d 475, 486 (2d Cir. 1964), Defendants contend unless the Class is threatened with "imprisonment or worse," the consequences of the work requirement are merely "painful choices" rather than unconstitutional compulsion. Under this theory, individual sanctions—such as the loss of privileges, reclassification, or the threat to parole eligibility—are viewed as isolated administrative tools that do not independently satisfy the high bar of involuntary servitude.

164. The Court rejects this atomized approach. The *Kozminski* inquiry is inherently contextual; it requires the Court to evaluate whether the "master" has created a

situation where the "servant" reasonably believes they have no way to avoid continued service because of the use or threat of physical or legal coercion. 487 U.S. at 952. While the *Kozminski* Court limited the definition of compulsion to physical or legal means, it explicitly held the "vulnerabilities of the victim" and the "circumstances" of the environment are relevant factors in determining whether that coercion actually "compelled the victim to serve." *Id.* This contextual analysis is vital here because *Kozminski* identifies a "careful distinction" between the legal authority to hold a person and the "conditions in which they [are] subsequently held." *Id.* at 947. While *Kozminski* provides the "objective content" for what constitutes involuntary servitude—the "compulsion of services by the use or threatened use of physical or legal coercion," *id.* at 948—the application of that standard must account for Colorado's unique constitutional landscape. Following the 2018 amendment to Article II, Section 26, the State no longer possesses a "penal exception" to justify the use of such coercion. Consequently, the "precise definition" of involuntary servitude found in *Kozminski*—compulsion via the "awful machinery" of legal or physical sanctions—now applies with full force to the administrative extraction of labor within CDOC. *Id.* at 941, 950. In this environment, the threat of isolation in RH or the equivalent functions as both a "physical restraint" and a "legal sanction" designed to subdue the will of the individual. *Id.* at 952-53.

165. Consistent with this Court's prior ruling on the Motion to Dismiss, a showing of physical restraint, injury, or legal sanctions is a necessary condition to

demonstrate involuntary servitude. In that Order, this Court determined the withholding of discretionary earned time and the denial of privileges do not, in isolation, constitute unconstitutional compulsion because they do not "lengthen" a predetermined sentence or infringe upon a vested liberty interest. *See* Order on MTD at 13-14. Similarly, in its Summary Judgment Order, this Court held the COPD process in of itself does not equate to legal coercion under *Kozminski*. However, *Kozminski* and its progeny clarify the Court may consider these types of administrative pressures as part of the broader "circumstances" in determining whether a plaintiff felt they had a choice whether or not to work. The legal benchmark for evaluating the severity of these threats is found in Justice O'Connor's concurrence in *McKune v. Lile*, 536 U.S. 24 (2002). There, Justice O'Connor clarified "minor" changes in prison living conditions—such as the canteen or visitation restriction—may not rise to the level of compulsion. However, the penalties at issue here, specifically the twenty-three-hour isolation of RH (and in the case of Reed, the twenty-three-hour isolation of RP), constitute the "grave" or "more significant" penalties that cross the threshold into unconstitutional compulsion. *Id.* at 50–51 (O'Connor, J., concurring).

166. The Court finds the imposition of RH, and at times RP, specifically satisfies this threshold of physical coercion**.** In a correctional environment—where the state maintains total control over the victim's physical reality—the distinction between administrative consequences and imprisonment is often a distinction of form rather than

substance. When administrative sanctions result in an inmate being isolated for up to twenty-three hours a day in their cell or removed from population (and put into RH or an equivalent) pending transfer to a more restrictive environment for failing to work, they move far beyond the realm of "minor" penalties. As the Second Circuit noted in *McGarry v. Pallito*, 687 F.3d 505, 511-12 (2d Cir. 2012), being subjected to solitary confinement may be enough to compel labor, particularly where an inmate is threatened with "the hole" and subjected to twenty-two hour-per-day administrative confinement. Indeed, this form of physical sequestration is precisely the type of extreme condition *Kozminski* contemplated as crossing the line from mere persuasion to unconstitutional compulsion.

167. Critically, CDOC's own regulations ostensibly prohibit the use of RH or RP as a direct sanction for a single FTW violation. The Court finds this prohibition is a tacit admission by CDOC that such extreme isolation is an unconstitutionally coercive response to labor refusal. However, the evidence reveals a policy that enables utilizing "procedural stacking" and temporary placement to bypass this protection. By charging a Class member with a second COPD violation—such as Advocating or Creating a Facility Disruption for a non-coordinated but simultaneous refusal to work, as seen in the case of Reed—CDOC creates a pathway to impose RH for what is, in substance, a labor dispute. This policy that allows for the bootstrapping an FTW violation into a multi-conviction disciplinary record to justify physical isolation is a transparent loophole. For the 2018

amendment to have any meaning, the Court cannot allow the State to achieve via administrative stacking what it is constitutionally forbidden from doing directly.

168. Similarly, allowing a policy by which an inmate can be held in RH or an equivalent for eight days pending transfer or up to five days pending investigation is equally untenable.

169. Finally, under the framework set forth in *Kozminski*, the Court is permitted to consider other threats—such as the cumulative loss of privileges or the negative impact on an inmate's progression through the system—in the aggregate, alongside the unique vulnerabilities of the incarcerated Class. While these penalties do not independently satisfy the *Kozminski* standard or create a liberty interest under the MTD Order, they provide further support and context for a coercive atmosphere. Federal precedent supports weighing the cumulative impact of coercive circumstances as "aggregate evidence" to determine involuntary servitude. *A.M. ex rel. Youngers v. New Mexico Dep't of Health*, 108 F.Supp.3d 963, 1013 (D.N.M. 2015). In *United States v. Kaufman*, 546 F.3d 1242, 1256 (10th Cir. 2008), the Tenth Circuit explained while certain acts alone might not constitute coercion, when combined with other circumstances—such as the perceived threat of forceful restraint and the vulnerability of the victims—involuntary servitude is established.

170. Analogous Colorado caselaw regarding the voluntariness of statements in the criminal context supports a cumulative analysis. In deciding whether a person's

actions were the involuntary product of "coercion," Colorado courts consider "the totality of the circumstances." *People v. Zadran*, 314 P.3d 830, 833 (Colo. 2013). In this setting, "[g]overnment coercion may include physical as well as psychological coercion," and the ultimate test of voluntariness is "'whether the individual's will has been overborne.'" *People v. Humphrey*, 132 P.3d 352, 360–61 (Colo. 2006) (quoting *People v. Miranda-Olivas*, 41 P.3d 658, 661 (Colo. 2001)).

171. The Court, therefore, finds it appropriate to consider the entirety of the CDOC's disciplinary scheme as further evidence of an environment where physical coercion is utilized to extract labor. The "threat" of involuntary servitude is found in the pervasive risk created by a policy that permits the compounding of sanctions, culminating in physical isolation. By creating a framework where failure to work triggers a sequence of restrictions that culminate in a more restrictive "custody level" and physical isolation, CDOC has established a system of compulsion that overrides the voluntariness of the Class's labor. Under the absolute prohibition of Article II, Section 26 of the Colorado Constitution, the Court concludes the use of RH, RFP, and RP when they result in isolation in one's cell for twenty-two hours or more for extended periods of time (exceeding two days—three if over a weekend) as a sanction for work refusal (whether that sanction results from RP, RH because of a related failure to work offense, or because the inmate is RFP pending transfer) satisfies the standard for involuntary servitude.

172. Plaintiff and the Class seek declaratory relief from this Court. Declaratory relief is appropriate to resolve "constitutional questions." *Native Am. Rts. Fund, Inc. v. City of Boulder*, 97 P.3d 283, 287 (Colo. App. 2004). Under C.R.C.P. 57(a), district courts have the power to "declare rights, status, and other legal relations." Additionally, "[f]urther relief based on a declaratory judgment or decree may be granted whenever necessary or proper." C.R.C.P. 57(h); C.R.S. § 13-51-112.

173. The Court finds that declaratory relief is warranted.

174. Plaintiff and the Class also seek injunctive and equitable relief. A party seeking permanent injunctive relief must demonstrate that "(1) the party has achieved actual success on the merits; (2) irreparable harm will result unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause to the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest." *Langlois v. Bd. of Cty. Comm'rs of Cty. of El Paso*, 78 P.3d 1154, 1158 (Colo. App. 2003). Whether to grant injunctive relief is in the trial court's discretion. *Markwell v. Cooke*, 482 P.3d 422, 426 (Colo. 2021). Injunctive relief may restrain a party from particular conduct and may mandate performance of actions to achieve compliance with the law. *E.g., Solano v. Newman*, 559 P.3d 259, 271 (Colo. App. 2024).

175. The Court has found and concluded that Plaintiff proved his claims on the merits beyond a reasonable doubt, so factor (1) is met. The Court concludes (2), (3), and

(4) are not in dispute and have been established. Defendants did not argue that these factors were unmet at trial, and the Court finds they have been met.

176. The Court concludes it is appropriate to grant declaratory and injunctive relief immediately as stated below

V. ORDER

177. WHEREFORE, the Court finds and Orders as follows:

The Court grants declaratory relief pursuant to C.R.C.P. 57 and Colorado law. The Court enters a declaratory judgment that Defendants are in violation of the prohibition against involuntary servitude under Section 26, Article II, of the Colorado Constitution. The Court further declares as follows:

1. Plaintiff and the Class have a constitutional right to be free from slavery and involuntary servitude without exception, pursuant to Section 26, Article II.

2. Section 26, Article II prohibits slavery and involuntary servitude in all circumstances, including within Colorado prisons and as applied to those convicted of crimes.

3. CDOC implements policies which as applied compel and coerce work from Plaintiff and the Class, constituting involuntary servitude in violation of Section 26, Article II.

4. CDOC's unconstitutional coercive policies include: the threat and use of segregation and isolation, including through Removal from Population, Restrictive Housing, Housing Restriction Sanction, Restricted Privileges, and any other sanction that results in isolation in a cell for more than twenty-two hours a day for more than two days (three if over a weekend) for failure to work.

The Court orders the following injunctive relief now to enjoin and restrain

Defendants' unconstitutional conduct.

The Court orders the following injunctive relief: Defendants must: (1) cease threat and use of segregation and isolation, including through Removal from Population, Restrictive Housing, Housing Restriction Sanction, Restricted Privileges, and any other sanction that results in isolation in a cell for more than twenty-two hours a day for more than two days (three if over the weekend) for failure to work; (2) cease the policy that allows for "procedural stacking" or "double charging" inmates for a refusal to work. Defendants are specifically enjoined from charging or sanctioning inmates for a second, derivative offense (such as "Disobeying a Lawful Order" or "Advocating or Creating a Facility Disruption") when such charge arises out of, or is part and parcel of, the initial refusal to work; and (3) cease the practice of using segregation and isolation, including through Removal from Population, Restrictive Housing, Housing Restriction Sanction, Restricted Privileges, and any other sanction that results in isolation in a cell for more than twenty-two hours a day under the auspice of temporary placement pending transfer or temporary placement pending investigation where that placement lasts more than two days (three if over the weekend) for failure to work.

The above-described injunction is hereby stayed for twenty-eight days to provide Defendants an opportunity to appeal this Order. Should the Defendants appeal this matter, they may file a motion to stay pursuant to C.R.C.P. 62(c).

DATED: February 13, 2026.

BY THE COURT:

Sarah B. Wallace
District Court Judge