

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

December 12, 1941

CIRCULAR NO. 3591*Superseded by
order # 40-54,
dated Feb. 9, 1954.*TO ALL UNITED STATES ATTORNEYS:Re: Involuntary Servitude,
Slavery, and Peonage

A survey of the Department files on alleged peonage violations discloses numerous instances of "prosecution declined" by United States Attorneys, the chief reason stated as being the absence of the element of debt. It is apparent that these determinations were reached after considering the facts at hand only in accordance with the case law under Section 444, Title 18, U.S. Code, which holds that debt is the "basal element of peonage." It is further disclosed that only in a negligible number of instances was consideration given these complaints in the light of:

- (a) Section 443, Title 18, U.S. Code, which punishes for causing persons to be held in involuntary servitude, regardless of the existence of a debt.
- (b) Section 51, Title 18, U.S. Code, which punishes for conspiracy to deprive citizens of rights secured to them by the Constitution, particularly the right to be free from slavery and involuntary servitude.
- (c) Section 52 Title 18, U.S. Code, which punishes persons vested with official authority who aid or cause others to suffer deprivation of rights secured to them by the Constitution, particularly the right to be free from slavery and compulsory servitude.
- (d) Section 88, Title 18, U.S. Code, the general conspiracy statute, which may be employed in combination with Section 443 or Section 52.

It is the purpose of these instructions to direct the attention of the United States Attorneys to the possibilities of successful prosecutions stemming from alleged peonage complaints which have heretofore been considered inadequate to invoke federal jurisdiction. It is requested that the spelling out of peonage under Section 444 be deferred in favor of building the cases around the issue of involuntary servitude and slavery under Sections 443, 51 and 52, disregarding entirely the element of debt. If, however, it is found that a claimed debt is the basis of the intimidation to compel one to the service of another, a separate count under Section 444 should be included in the

indictment. Evidence of such debt, of course, may likewise be employed as an additional circumstance to prove intimidation under the counts based on Sections 443, 51, and 52. In any event the Government should henceforth emphasize and depend upon the issue of involuntary servitude and slavery in lieu of peonage (debt plus involuntary service) in prosecuting this type of case.

The United States Attorneys are instructed, therefore, to consider such complaints in accordance with the following statutes and authorize prosecutions where any one or more of the following conditions exist, regardless of the existence of debt real or claimed:

(a) Section 443, Title 18, U.S. Code

carrying or enticing of any person from one place to another in order that he may be held in slavery or involuntary servitude;

causing another by force, fraud or intimidation to enter and remain in another's employment;

causing one to be held by threats, as well as held by force, and whether such threats are of prosecution, arrest or imprisonment or by threats of bodily harm;

holding another by threats of prosecution, even under a valid law; the validity of the law not justifying its use for the criminal purpose of causing compulsory service by intimidation;

deliberately causing one who has deserted his employment to be arrested with the intent of producing on the mind of the servant or employee a condition which leaves him no choice but to return to his employment or suffer prosecution and incarceration;

where one does not stay in his employment of his own free will but only in accordance with the will of his master or employer, involuntary service exists. -- "service" does not necessarily mean labor, i.e., a man may be in that state if he is held to be made to work but escapes before he has begun such work;

by falsely accusing another of crime and carrying him before a magistrate in order that he may be convicted and put to hard labor, in consequence of which such person is convicted and put to hard labor, the false accuser at the time having the purpose or design to hire such person or to enable some other person to hire him.

(b) Section 51, Title 18, U.S. Code

If two or more persons conspire or combine to do any of the acts outlined above, they are guilty of a conspiracy to deprive the person, if he is a citizen of the United States, of the free exercise or enjoyment of the right and privilege secured to him by the Constitution of the United States to be free from involuntary servitude, and are indictable accordingly.

(c) Section 52, Title 18, U.S. Code

This section is applicable to public officers, judges, sheriffs, local constabulary, etc., who act under color and in the name of their authority in perpetrating any of the acts listed above in violation of a person's rights to be free from involuntary servitude and slavery as secured to him by the Thirteenth Amendment to the Constitution.

For a discussion of the applicability of this Section to colorably official action, see Circular No. 3356, Supp. 1.

In the matter of control by one over the person of another, the circumstances under which each person is placed must be determined, i.e., the subservience of the will of one to the other. Open force, threats or intimidation need not be used to cause a person to go involuntarily from one place to another to work and to remain at such work; nor does evidence of kind treatment show an absence of involuntary servitude.

In the United States one cannot sell himself as a peon or slave -- the law is fixed and established to protect the weak-minded, the poor, the miserable. Men will sometimes sell themselves for a meal of victuals or contract with another who acts as surety on his bond to work out the amount of the bond upon his release from jail. Any such sale or contract is positively null and void and the procuring and causing of such contract to be made violates these statutes.

It is not necessary that the defendants be themselves charged with holding a person in a condition of compulsory servitude, a showing of aiding in holding or returning one to that condition is sufficient.

Procedure

1. The United States Attorneys should contact local law enforcement officials by letter, circular, conference, or any other means found effective for seeking state wide cooperation, and advise them that the practices outlined above will be prosecuted by the Federal Government.

2. In those states where legislatures have enacted criminal statutes to enforce labor contracts, United States Attorneys from the various districts therein should promptly notify the local magistrates, sheriffs, and other law enforcement officers, that such laws are repugnant to the provisions of the Thirteenth Amendment to the Constitution of the United States and that action to enforce such statutes may subject the local officials to federal prosecution.

Experience has shown that where United States Attorneys have pointed out to state and local officials that certain state statutes and local ordinances affecting the rights of persons conflicted with the provisions of the federal Constitution, the local authorities have readily ceased their active enforcement and in many instances have thereupon sought the outright repeal of the statutes or ordinances.

3. In the interest of consistency and uniformity in the method of investigation, the Federal Bureau of Investigation has been requested to direct all original complaints in this field to the Civil Rights Section of the Criminal Division of the Department for clearance and instruction before embarking upon a formal investigation. No investigation or prosecution of these cases should be commenced through the offices of the various United States Attorneys without Departmental sanction. Because of the importance of unified and consistent prosecution policy in these cases, it is further requested that no indictments under these statutes be sought without obtaining authority from the Department.

4. To assure emphasis upon the issue of involuntary servitude and slavery in considering these cases on the one hand and to minimize the necessity of relying upon the element of debt to fix jurisdiction on the other, the Federal Bureau of Investigation has been requested to change the title on its reports from "Peonage" to read "Involuntary Servitude and Slavery." Henceforth, Peonage will be considered as secondary to involuntary servitude and slavery investigations.

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