

**FEEDING THE FIRE:
THE FEEDBACK LOOP CREATED BY
MASS INCARCERATION AND CLIMATE CHANGE
AND WHY ABOLITION IS THE ONLY WAY
TO A STABLE CLIMATE***

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*Possible futures pour like loud blues from too-small
headphones.*

I know mine is not murdered.

Let me say it again: I know my future is not murdered.

A wrench heavies through, tumors hours into years.

*Divorced from peers, entire legs become teeth, then
clamshells, then solid crystal.*

I see people freeze, then melt, then freeze.

*I would like to ask for home's number, take her to dinner
sometime.*

*Sixty each pull-ups, chin-ups, and push-ups premeditate
a glistening out there.*

-Freeland: An Erasure, Leigh Sugar¹

*With climate change and record-breaking heat every day
and heat domes and heat waves . . . we sit around here
and talk about, 'Are we going to be alive in five years?'*²

INTRODUCTION

During July 2023, the average global temperature rose 1.5 degrees Celsius above pre-industrial temperatures for the first time.^{3,4,5} The 1.5-degree threshold is a tipping point, beyond which lie much more frequent and severe climate events including cases of extreme heat, flooding, and drought.⁶ These threats are not distributed equally, but

1. This poem is an erasure of letters received from Justin Rovillos Monson between 2014-2017 while serving a sentence in the Michigan Department of Corrections. Leigh Sugar, *Freeland: An Erasure*, in *POETRY* (Feb. 2021), <https://www.poetryfoundation.org/poetrymagazine/poems/155224/freeland-an-erasure>.

² Anonymous Prisoner at the Hobby Unit prison in Marlin, Texas²

3. Rachel Ramirez, *July Hit a Crucial Warming Threshold that Scientists Have Warned the World Should Stay Under*, CNN (Aug. 8, 2023, 4:00 AM), <https://www.cnn.com/2023/08/08/world/july-climate-record-paris-agreement/index.html>.

4. The significance of 1.5 degrees is based on the 2015 Paris agreement. *The Paris Agreement*, U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, <https://unfccc.int/process-and-meetings/the-paris-agreement> (last visited Jan. 11, 2024).

5. The summer of 2024 was even hotter, breaking the record for the hottest day ever recorded twice over. Derrick Bryson Taylor, *Planet Sets Record for Hottest Day Twice in a Row*, N.Y. TIMES (July 24, 2024), <https://www.nytimes.com/2024/07/24/climate/hottest-day-earth-record.html>.

6. Ramirez, *supra* note 3.

instead follow familiar patterns along race and class discrimination.⁷ Those with less resources will find themselves unable to afford to leave highly dangerous environments, while those with the financial capability to seek housing in areas that are climate resilient will do so.⁸

The U.S. prison population is a critical example of a vulnerable community reflecting class and race discrimination with impoverished and Black populations being vastly overrepresented in these communities.⁹ Prison populations have no control over their risk for natural disaster due to their incarcerated status. Already these populations are left behind during hurricanes and flooding while free populations evacuate.¹⁰ In 2024, the year prior to this publication, over five hundred men were left in flooded cells at Mountain View Correctional Institute in North Carolina without lights, running water, or any outside contact for five days in the wake of Hurricane Helene.¹¹ Although cases of extreme heat or cold have been recognized as unconstitutional conditions of confinement,¹² many prisons in areas of high heat still do not have air

7. EPA Report Shows Disproportionate Impacts of Climate Change on Socially Vulnerable Populations in the United States, EPA (Sept. 2, 2021), <https://www.epa.gov/newsreleases/epa-report-shows-disproportionate-impacts-climate-change-socially-vulnerable>.

8. Chloe Reichel, *Why People Choose to Stay in Areas Vulnerable to Natural Disasters*, JOURNALIST'S RESOURCE (June 18, 2018), <https://journalistsresource.org/environment/relocation-climate-change-flooding-research/> (describing personal, cultural, and economic reasons why residents of dangerous areas may resist relocation).

9. Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2024*, PRISON POL'Y INITIATIVE (Mar. 14, 2024), <https://www.prisonpolicy.org/reports/pie2024.html>.

10. For example, prisoners in Orleans Parish Prison were left in flooded prisons during Hurricane Katrina in 2005. Hannah Hauptman, *Prisons and Floods in the United States*, 2017 CHI. J. HIST. 99, 99. See also Gary K. Farlow, *When You Sit in the Path of a Hurricane—And Can't Move*, PRISON JOURNALISM PROJECT (Feb. 15, 2023), <https://prisonjournalismproject.org/2023/02/15/how-do-you-prepare-for-hurricane-prison/>.

11. Schuyler Mitchell, *Hurricane-Struck North Carolina Prisoners Were Locked in Cells With Their Own Feces for Nearly a Week*, INTERCEPT (Oct. 4, 2024, 12:56 PM), <https://theintercept.com/2024/10/04/hurricane-helene-north-carolina-mountain-view-prison/>.

12. See *Wilson v. Seiter*, 501 U.S. 294, 304 (1991); *Ball v. LeBlanc*, 792 F.3d 584, 596 (5th Cir. 2015); *Chandler v. Crosby*, 379 F.3d 1278, 1294 (11th Cir. 2004); *Walker v. Schult*, 717 F.3d 119, 128 (2d Cir. 2013); *Graves v. Arpaio*, 623 F.3d 1043, 1049 (9th Cir. 2010); *Vasquez v. Frank*, 209 Fed. App'x 538, 541 (7th Cir. 2006).

conditioning.¹³ Furthermore, as temperatures rise, these conditions will only worsen.¹⁴

On the other side of this cycle, mass incarceration contributes in many ways to climate change. Examples include the construction and maintenance of prison facilities, the consumption of goods within the prison, and the use of incarcerated work forces as low-cost labor to create unsustainable economic growth. This creates a feedback loop where rising temperatures create unconstitutional prison conditions while the production and maintenance of prison systems contribute to climate change.¹⁵ As described herein, solutions aimed at designing climate resilient prisons are likely to further contribute to climate change, making unconstitutional prison conditions inescapable; this is especially true if the rate of incarceration continues to rise as expected. This paper will draw from abolitionist theory to explore the relationship between the carceral state and climate change; and ultimately argue that mass incarceration cannot exist alongside a future with a clean planet.

Part I of this paper will discuss the ways in which prison systems contribute to climate change, both directly through the construction and maintenance of facilities, and indirectly through the exploitation of prison populations as both low-cost laborers and a captive class of consumers. Part II of this paper will discuss the other half of this phenomenon by addressing how rising temperatures contribute to unconstitutional conditions of confinement. This section will also explain how present constitutional doctrine fails to address the resulting increased risk of climate-related illness and death. Part III will examine and respond to

13. Alexi Jones, *Cruel and Unusual Punishment: When States Don't Provide Air Conditioning in Prison*, PRISON POLICY INITIATIVE (June 18, 2019), <https://www.prisonpolicy.org/blog/2019/06/18/air-conditioning/>.

14. Alleen Brown, *Boiling Behind Bars*, INTERCEPT (Feb. 12, 2022), <https://theintercept.com/2022/02/12/prisons-texas-heat-air-conditioning-climate-crisis/> [hereinafter Brown, *Boiling Behind Bars*] (“Texas is ground zero in the fight over air conditioning in prisons With the climate crisis raising temperatures across the nation, the battle being waged in Texas will spread.”).

15. A feedback loop is used in climate science to describe a system in which one change triggers further changes that leads to a cycle of warming. *Climate Feedback Loops Project*, ALL OF WORLD SCIENTISTS, https://scientistswarning.forestry.oregonstate.edu/climate_feedbacks (last visited Oct. 22, 2024). This paper argues that prisons act as such a loop in that the maintenance and construction of prisons creates green house gas emissions which accelerate global warming, leading to worse prison conditions due to heat and natural disasters. In turn, solutions other than prison abolition will require further prison construction and maintenance and creating more emissions—completing the feedback loop.

proposals grounded in the status quo and explain why these solutions fail to address the feedback loop of prisons and climate. Finally, Part IV will argue for prison abolition as a solution to the problems discussed and include actionable steps towards the abolition of prisons.

While there are many definitions of prison abolition, in this article, “prison abolition” means either the complete end of any imprisonment or the end of mass incarceration and the dramatic reduction of prison populations.¹⁶ Furthermore, abolition will be presented as a roadmap of actionable steps that addresses the feedback loop of prisons and climate. These steps include *moratorium*—the end of new prison construction; *decarceration*—getting people out of prison and reducing incarceration rates; and *excarceration*—creating alternatives to incarceration.¹⁷

Throughout this note, I have incorporated words and poetry from people who are incarcerated. These voices are too often missing from scholarly writing on the carceral state. Because I cannot personally bring this perspective forward, I decided to use this space to amplify their voices. It has been said that it is easier to imagine the end of the world than it is the end of capitalism; in her book discussing capitalist incentives for incarceration, Jackie Wang suggests the same thing to be true of prisons.¹⁸ Both systems are equally ingrained into our world to a point where their existence is thought to be inevitable. Wang describes abolition as “a mode of thinking that does not capitulate to the realism of the Present[.]”¹⁹ I want to suggest that the incarcerated voices included in this note are from people living that state of paradox. Their bodies are forced into subjection by the realities of the Present, but their voices imagine worlds beyond this reality. This paper presents abolition as an

16. There is debate even within the abolitionist community on the scope of abolition. See Rachel E. Barkow, *Promise or Peril?: The Political Path of Prison Abolition in America*, 58 WAKE FOREST L. REV. 245, 265 (2023). An estimated 40% of the prison population is “unnecessarily incarcerated.” Thomas Ward Frampton, *The Dangerous Few: Taking Seriously Prison Abolition and Its Skeptics*, 136 HARV. L. REV. 2013, 2019 (2022). Furthermore, some have argued that prison populations could be reduced by as much as 90% with no danger to public safety. *Id.* Because such a reduction would have a dramatic effect on the issues discussed in this paper, we need not reach the question of whether forcible confinement has any role to play in a post-mass incarceration world. Nonetheless, it’s worth noting that even assuming there is a dangerous population and that population could be defined, the current system of incarceration is not at all effective at dealing with it. See *id.*

17. John Washington, *What is Prison Abolition?*, NATION (July 31, 2018), <https://www.thenation.com/article/archive/what-is-prison-abolition/>.

18. JACKIE WANG, CARCERAL CAPITALISM, 297–98 (2018).

19. *Id.*

alternative way forward, with practical steps for dismantling prison systems. The voices that frame this paper remind us of the human realities impacted by the systems we create.

I. THE PRISON SYSTEM'S CONTRIBUTION TO CLIMATE CHANGE

Abolitionist thought asks “who gains from and who pays for, who benefits from and who suffers from” the systems we create.²⁰ Similarly to other systems of oppression such as slavery, policing, and natural resource overextraction, prisons create profit for a wealthy white elite, while racialized minorities, poor communities, indigenous cultures, and the surrounding environment all suffer.²¹ A central tenant of prison abolition is that the current carceral system “can be traced back to slavery and the racial capitalist regime it relied on and sustained.”²² Similarly, environmental injustice²³ can be traced back to exploitation of land and people. From the colonial seizure of native lands and genocide of indigenous people, to plantation wealth built on the labor of enslaved peoples, to the extraction of oil and coal by workforces of poor Black and white laborers, racial capitalism has simultaneously exploited both natural resources and people.²⁴

The operation of prison systems perpetuates this exploitation of land and people by contributing to global emissions and furthers climate disaster through (A) the construction and maintenance of prison facilities, (B) the consumption of goods within prison populations, and (C) the use of incarcerated workers as low-cost labor. The effect U.S. prison systems have on the climate crisis is the first step in the feedback loop whereby the operation of prison systems furthers climate disaster.

20. *Id.*

21. Allegra M. McLeod, *Abolition and Environmental Justice*, 69 UCLA L. R. 1536, 1562 (2023).

22. Dorothy E. Roberts, *Abolition Constitutionalism*, 133 HARVARD L. REV. 1, 7 (2019).

23. “Environmental injustice is experienced through heightened exposure to pollution and corresponding health risks, limited access to adequate environmental services, and loss of land and resource rights.” *Environmental Justice Factsheet*, U. MICH. CENTER SUSTAINABLE SYSTEMS, <https://css.umich.edu/publications/factsheets/sustainability-indicators/environmental-justice-factsheet> (last visited Jan. 1, 2025).

24. See Nik Heynen, *Toward an Abolition Ecology*, ABOLITION J. (Dec. 29, 2016), <https://abolitionjournal.org/toward-an-abolition-ecology/>.

A. *Fossil Fuel Emissions and other Pollutants Created in Building and Maintaining Prison Facilities*

The high rate of incarceration in the U.S. makes the issue of fossil fuel emissions especially significant. Only three countries in the world have a higher incarceration rate than the U.S.²⁵ Every U.S. state has incarceration rates that outpace most nations—even more democratic-leaning states such as New York and Massachusetts.²⁶ Furthermore, rollbacks of criminal legal reform and the end of slowdowns in court proceedings caused by the 2020 COVID-19 pandemic have led to a recent rise in prison populations.²⁷ At least 19 states and the Federal Bureau of Prisons are expected to continue to incarcerate more people in the coming years.²⁸

As incarcerated populations grow, so does demand for construction and maintenance of prisons. Commercial and residential emissions, including fossil fuels burned for heating and cooling buildings, accounted for 13% of U.S. greenhouse gas emissions in 2021.²⁹ When emissions from electricity use are included, commercial and residential emissions accounted for 31% of greenhouse gas emissions.³⁰ Prisons in particular consume more energy and natural resources than other commercial businesses including schools, hospitals, and shopping malls.³¹ Unlike other commercial buildings, prisons are typically built with materials that are not easily insulated in the name of safety and security constraints.³² Prisons also have a continuous need for heat,

25. Emily Widra, *States of Incarceration: The Global Context 2024*, PRISON POL'Y INITIATIVE (June 2024), <https://www.prisonpolicy.org/global/2024.html> (In previous years the U.S. has had the highest incarceration rate of all countries. However, political turmoil in El Salvador has resulted in a dramatic increase in incarceration.).

26. *Id.*

27. Wendy Sawyer, *Why Did Prison and Jail Populations Grow in 2022—And What Comes Next?*, PRISON POL'Y INITIATIVE (Dec. 19, 2023), https://www.prisonpolicy.org/blog/2023/12/19/bjs_update_2022/.

28. *Id.*

29. *Sources of Greenhouse Gas Emissions*, EPA, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Feb. 28, 2024).

30. *Id.*

31. FRANCIS T. CULLEN, CHERYL LERO JONSON, & MARY K. STOHR, *THE AMERICAN PRISON: IMAGINING A DIFFERENT FUTURE* 193 (2017).

32. Yvonne Jewkes & Dominique Moran, *The Paradox of the 'Green' Prison: Sustaining the Environment or Sustaining the Penal Complex?*, 19 *THEORETICAL CRIMINOLOGY* 451, 456 (2015); *HANDBOOK FOR ENERGY CONSERVATION IN CORRECTIONAL FACILITIES* 8 (1981) [hereinafter *HANDBOOK FOR ENERGY CONSERVATION*].

ventilation, air conditioning, and security systems, as well as self-sustaining operations including laundry, cooking, and administrative systems—all of which require large amounts of electricity.³³ Even in hospitals, the closest energy consumers to prisons, only parts of the facility remain in 24/7 usage. Prisons, on the other hand, have increased energy needs throughout the day, all days of the year.

The maintenance of prison buildings alone presents challenges to energy efficiency. As facilities age, building materials degrade, leading to energy inefficiency.³⁴ Older buildings are unlikely to be climate-resilient.³⁵ Increases to humidity caused by climate change can accelerate degradation of building materials such as stone, fabric materials, and limestone.³⁶ These conditions can lead to building collapse, especially in coastal areas.³⁷ In North Carolina, at least eight correctional facilities are on the coast and thus face risk of degradation and collapse.³⁸ However, newer buildings also have unique problems. Newer prison construction, adopted during the rise of mass incarceration in the 1970s and 80s, used more metal construction which creates higher heat indices and more rapid heating in these facilities when compared with concrete-based facilities.³⁹

Aside from the building itself, activities within a prison facility often produce large amounts of water and air pollution. Environmental concerns arise when prisons are built on, or themselves become, sources of toxic waste.⁴⁰ The maintenance of these facilities presents environmental concerns and potential hazards in “heating and cooling, wastewater treatment, hazardous waste and trash disposal, asbestos

33. HANDBOOK FOR ENERGY CONSERVATION *supra* note 32, at 4–5.

34. N. Cavalagi, A. Kita, V.L. Castaldo, A.L. Pisello, & F. Ubertini, *Hierarchical Environmental Risk Mapping of Material Degradation in Historic Masonry Buildings: An Integrated Approach Considering Climate Change and Structural Damage*, 215 CONSTR. & BLDG. MATERIALS 998, 999 (2019).

35. Laurie L. Levenson, *Climate Change and the Threat to U.S. Jails and Prisons*, 33 VILL. ENVTL. L.J. 143, 147–50 (2022).

36. Cavalagli, Kita, Castaldo, Pisello, & Ubertini, *supra* note 34, at 999.

37. Levenson, *supra* note 35, at 147–50.

38. *Id.* at 148–49.

39. Joseph Torey Nalbone, *Evaluation of Building and Occupant Response to Temperature and Humidity: Non-Traditional Heat Stress Considerations* 69–70 (Dec. 2004) (unpublished Ph.D. dissertation, Texas A&M University), <https://oaktrust.library.tamu.edu/handle/1969.1/1504>.

40. Candice Bernd, Maureen Nandini Mitra, & Zoe Loftus-Farren, *America’s Toxic Prisons: The Environmental Injustices of Mass Incarceration*, TRUTHOUT (June 1, 2017), <https://truthout.org/articles/america-s-toxic-prisons-the-environmental-injustices-of-mass-incarceration/>.

management, drinking water supply, pesticide use, vehicle maintenance and power production.”⁴¹ Journalists at *Truthout* and *Earth Island Journal* collected data from the EPA that showed state and federal agencies brought 1,149 informal enforcement actions and 78 formal actions against prisons, jails, and detention centers under the Safe Drinking Water Act over a five-year period.⁴²

There are multiple examples of prisons creating water pollution by discharging contaminated water into nearby rivers and wetlands and air pollution from on-site prison labor industrial activity, power generation, and prison-related traffic.⁴³ For example, wastewater from the California Men’s Colony state prison (CMC) has been polluting a state-designated marine protected estuary for over two decades.⁴⁴ Despite facing penalties due to water quality violations as early as 2004, the facility has a long history of documented sewage spills and clean water violations.⁴⁵ In fact, a 2023 Administrative Order has required the facility to undergo assessments followed by policy and infrastructure changes to address over 6,000 gallons of sewer overflows and violations of permit effluent limits for multiple toxic pollutants.⁴⁶

As well as producing waste, prisons are often built on or near toxic waste sites. According to a 2010 dataset, over five hundred facilities in the United States were located within three miles of a Superfund cleanup site.⁴⁷ At one of these facilities, SCI Fayette in Pennsylvania, more than 80% of inmates suffered from exposure to coal ash causing respiratory, throat, sinus, gastrointestinal, and skin conditions.⁴⁸

41. *Id.*

42. *Id.* This data is incomplete. About 83% of facilities were not included in the report. Data may be missing due to (1) lack of infraction history, (2) incomplete data sets, or (3) pending actions not yet reported. Undetected or unreported violations would also not be included.

43. *Id.*

44. *Id.*

45. *Id.*

46. Andrew Gillies, *CA Department of Corrections Accepts Agreement Over Clean Water Act Violations in SLO County*, NEWS CHANNEL 3–12 (Sept. 19, 2023), <https://keyt.com/news/2023/09/19/ca-department-of-corrections-accepts-agreement-over-clean-water-act-violations-in-slo-county/>.

47. Candice Bernd, Maureen Nandini Mitra, & Zoe Loftus-Farren, *America’s Toxic Prisons: The Environmental Injustices of Mass Incarceration*, TRUTHOUT (June 1, 2017), <https://truthout.org/articles/america-s-toxic-prisons-the-environmental-injustices-of-mass-incarceration/>.

48. *Investigation Reveals Environmental Dangers in America’s Toxic Prisons*, EQUAL JUST. INITIATIVE (June 16, 2017), <https://eji.org/news/investigation-reveals-environmental-dangers-in-toxic-prisons/>.

Therefore, when more waste is created, it is often the residents of the prison who suffer most.

These concerns will only increase as prisons continue to grow and resources become more scarce. The large, 24/7 living spaces within prisons create financial and energy strains for heating and cooling.⁴⁹ The energy required to adequately heat and cool these spaces will become increasingly more difficult to meet as the world's oil supply decreases.⁵⁰ Decommissioning prisons would force the U.S. to incarcerate less people and would use fewer resources in the construction and maintenance of prison buildings.⁵¹

B. *Prisons Create a Captive Class of Consumers*

*between fourth and fifth grade, I wasted 250,000
gallons of water, flushing urinals in the
boys bathroom, chewed up
a forest of wood in the
pencil sharpener,
ticonderogas
down to
the nubs
all to
believe at forty-
five, with a criminal
history of wasting resources,
the most precious of which is time,
that it's out of my system and somehow this life
sentence is for being a victim before I created one.*

- Michael McCoy⁵²

While consumer choice for more sustainable and environmentally friendly products has been proposed as one way to address climate

49. MICHAEL LYNCH, *BIG PRISONS, BIG DREAMS: CRIME AND THE FAILURE OF AMERICA'S PENAL SYSTEM* 212 (2007).

50. *Id.*

51. CULLEN, *supra* note 31, at 193.

52. Micheal McCoy, *The Conservationist*, PRISON JOURNALISM PROJECT (Feb. 8, 2024), <https://prisonjournalismproject.org/2024/02/08/concrete-poem-waste-conservationist/> (Micheal McCoy is incarcerated in North Carolina).

change, there is no free market in prison. Incarcerated populations may not choose their beds, their clothing, their food, or what items are available at the prison commissary. Instead, prisons and private commissary operators hold legal monopolies and profit from incarcerated spending within prisons.⁵³ Prisons thus create a captive class of consumers. Rather than engaging in fair labor practices and trade, people within prisons are forced into exploitative labor practices and markets. Furthermore, items sold in prison commissionaires are subject to high price markups even for basic necessities such as hygiene products and food.⁵⁴ The cost of these items places an economic strain on incarcerated people and their families, most of whom are low income, while the correctional institutions and private companies selling the items profit.⁵⁵ This provides yet another example of how systems of incarceration perpetuate racial capitalism. Private institutions—who rely on the continued exploitation of incarcerated people—profit, while racial minorities—who represent a disproportionate portion of the prison population—suffer.

Additionally, there is a high degree of waste within prisons. Prisons typically use single-use disposable food and drink containers, often made with non-recyclable materials such as Styrofoam.⁵⁶ Food waste is also a large problem. California, for example, estimates that between 0.5 to 1.2 pounds per inmate is generated in food waste each day.⁵⁷ Although these issues can be mitigated through programs such as composting, we should be careful not to fall into “greenwashing”⁵⁸. The

53. Stephen Raher, *The Company Store: A Deeper Look at Prison Commissaries*, PRISON POL’Y INITIATIVE (May 2018), <https://www.prisonpolicy.org/reports/commissary.html>; Elizabeth Weill-Greenberg & Ethan Corey, *Locked In, Priced Out: How Prison Commissary Price-Gouging Preys on the Incarcerated*, APPEAL (Apr. 17, 2024), <https://theappeal.org/locked-in-priced-out-how-much-prison-commissary-prices/>.

54. Ahmed Jallow, *Burden of High Prices Behind Bars in NC*, WUNC (Jan. 5, 2024, 9:51 AM), <https://www.wunc.org/news/2024-01-05/burden-of-high-prices-behind-bars-in-nc>.

55. *Id.*

56. Ryan M. Moser, *How Prisons and Jails Can Go Green*, PRISON JOURNALISM PROJECT (Feb. 20, 2023) <https://prisonjournalismproject.org/2023/02/20/how-prisons-and-jails-can-go-green/>.

57. *Id.*

58. The United Nations has defined greenwashing as tactics that “promote[] false solutions to the climate crisis that distract from and delay concrete and credible action.” One way in which greenwashing manifests is by “[e]mphasizing a single environmental attribute while ignoring other impacts.” *Greenwashing – the deceptive tactics behind environmental*

issue of consumption within prisons is a result of creating a captive class of consumers exploited by legal monopolies. This requires more than can be addressed by worm bins or reducing plastic use in prisons.⁵⁹

A closer look at prison commissaries may be helpful in illustrating how exploitation and waste exist within prisons. Food and beverages make up the majority of prison commissary sales, followed by hygiene items.⁶⁰ Incarcerated people spend their money not on luxury items, but on basic necessities that are either not provided or not sufficient to meet their needs.⁶¹ There are regular reports of prisons serving spoiled and rotten food or providing small portions, forcing incarcerated populations to turn to the processed foods offered at commissaries to supplement their diet.⁶² Despite the necessity of these items, they are often sold for significantly more than they are available for outside of the prison.⁶³ Even when the prices in commissaries are comparable to free-world retail, people in prisons may have trouble affording these items on meager prison “wages”, especially individuals that do not have support systems outside the prison that are able to subsidize their earnings.⁶⁴ It is important to remember that even when prices are low, prison commissaries are still profiting. The prison commissary does not incur costs such as advertising and price competition that retailers in a free-world market incur.⁶⁵ Furthermore, prisons and private companies are increasingly profiting from electronic sales.⁶⁶ Companies such as GTL contract with prisons to provide “free” tablets to each member of the incarcerated population.⁶⁷ Though the tablet is free, most of its uses are

claims, UNITED NATIONS, <https://www.un.org/en/climatechange/science/climate-issues/greenwashing> (last visited Jan. 27, 2025).

59. Although these improvements have their benefits, they fall short of addresses the larger issue and may distract from meaningful change. See Jewkes & Moran, *supra* note 32.

60. Raher, *supra* note 53.

61. *Id.*

62. Elizabeth Weill-Greenberg & Ethan Corey, *Locked In, Priced Out: Commissary Database*, APPEAL, <https://theappeal.org/commissary-database/> (last visited Apr. 14, 2025).

63. Weill-Greenberg & Corey, *supra* note 53.

64. Raher, *supra* note 53.

65. *Id.*

66. *Id.*

67. Mack Finkel & Wanda Bertram, *More States are Signing Harmful “Free Prison Tablet” Contracts*, PRISON POL’Y INITIATIVE (Mar. 7, 2019), <https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/>.

costly.⁶⁸ Pricing for communication, games, music, and other digital content is either based on usage or on a subscription basis, resulting in continuous fees charged to their users.⁶⁹

High commissary prices can also be a barrier to attempts to stay cool within the prison environment. Within North Carolina, four prison facilities have no air conditioning and another twenty have only partial air conditioning.⁷⁰ According to the NC Department of Adult Corrections, 23% of beds in all prisons do not have air conditioning.⁷¹ However, the price to stay cool is often steep; items such as towels, cold water, and ice are unaffordable for many living in Southern prisons.⁷² In North Carolina, the average prison work program pays between \$0.40 to \$1.00.⁷³ A single bottle of water can cost anywhere between \$0.24 to \$1.90 depending on the facility and the size of the bottle, with the median price being \$0.38.⁷⁴ This means that buying a single bottle of water may cost most or all of a day's worth of work. In other states, fans may be sold for around \$30-\$40 dollars, a price that typically takes over a month or more of work to afford.⁷⁵ In North Carolina, a journalist housed in FCI Butner Medium I, in Butner, NC, reported prison staff confiscating fans during cell searches.⁷⁶ Fans are no longer sold in North Carolina prisons, so the inmates cannot buy new ones.⁷⁷ Instead, inmates must rely on staff following the Department of Adult Correction's Heat Stress Management Plan which states that facilities without air conditioning "should possess

68. Stephen Raheer, *The Wireless Prison: How Colorado's Tablet Computer Program Misses Opportunities and Monetizes the Poor*, PRISON POL'Y INITIATIVE (July 6, 2017), <https://www.prisonpolicy.org/blog/2017/07/06/tablets/>.

69. *Id.*

70. *Prison System Air Conditioning Upgrades*, NC DEP'T ADULT CORR., <https://www.dac.nc.gov/divisions-and-sections/support-services/prison-system-air-conditioning-upgrades> (last visited Apr. 14, 2025).

71. *Id.*

72. Gary K. Farlow, *The Consequence of Sweltering Prisons in the Carolinas*, PRISON JOURNALISM PROJECT (May 15, 2024), <https://prisonjournalismproject.org/2024/05/15/extreme-heat-nc-sc-prisons-deadly/>.

73. With approval from the Secretary, assignments requiring special skills or training may pay as much as \$3.00. *State and Federal Prison Wage Policies and Sourcing Information*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/reports/wage_policies.html (last visited Aug. 8, 2024).

74. Weill-Greenberg & Corey, *supra* note 53.

75. *Id.*

76. Prison Journalism Project Contributors & Aala Abdullahi, *How We Survived Extreme Heat in Prison*, MARSHALL PROJECT (Sept. 19, 2024, 6:00 AM), <https://www.themarshallproject.org/2024/09/19/prison-journalists-how-to-survive-extreme-heat> (quoting Ryan Green, 33, currently incarcerated in North Carolina).

77. *Id.*

fans” and “should make ice water available at least once per day.”⁷⁸ However, with high staff vacancies at prisons and an especially vulnerable incarcerated population, such measures may be inadequate to protect against heat-related illness and injury.⁷⁹ When inadequate protection is provided by the facility, inmates are forced into a coercive market just to maintain a minimum level of comfort and prevent heat-related injury.

C. *Use of Incarcerated Workers as Low-Cost Labor*

When Ruthie Wilson Gilmore and I sat down for a conversation, we spoke about how the PIC [(Prison Industrial Complex)] not only exploits the labor of imprisoned folx (mainly via reproductive labor of the prison), but also extracts value from us. I came to this conclusion because I knew that our labor wasn't the only or even major source of value the PIC was after. The PIC extracts our lives, our life time. Ruthie helped me to see each person as a territory that the PIC extracts value from via a time-space hole that imprisonment creates. Incarceration creates a mechanism through which money/capital can flow through a person and into the pockets of the PIC. This all sounds abstract. I know. But since coming to SCI Dallas, I clearly and concretely see how extraction, not exploitation, is the big game the PIC is using. And we need to get hip.

- Letter from Stevie Wilson while incarcerated in The State Correctional Institution—Dallas in Pennsylvania⁸⁰

78. 2024 *Heat Stress Management Plan*, NC DEPT. ADULT CORR. <https://www.dac.nc.gov/news/press-releases/2024/06/26/state-prisons-prepared-extreme-temperatures>.

79. Lisa Philip, *Thousands of NC Prisoners Don't Have AC. And Scientists Predict Summers Here Could Get Hotter.*, WUNC (Dec. 9, 2018), <https://www.wunc.org/news/2018-12-09/thousands-of-nc-prisoners-dont-have-ac-and-scientists-predict-summer-here-could-get-hotter>.

80. Stevie Wilson, *Thoughts on Extraction*, DREAMING FREEDOM, PRACTICING ABOLITION (Apr. 11, 2023), <https://abolitioniststudy.wordpress.com/category/letters-from-dallas/>.

The use of incarcerated workers as low-cost labor contributes to climate change by reducing the cost of labor for highly exploitative industrial activities. First, incarcerated workers in state facilities do not have the same rights to safety as non-incarcerated workers. Therefore, incarcerated labor can be used to continue resource extraction in environments where ordinarily the dangers would be too high to continue to employ workers—at least at the same cost. Second, incarcerated labor has been used to clean up environmental disasters, such as oil spills and wildfires, thus sheltering the companies responsible for this damage from the true cost of their mistakes. Finally, lowering the cost of labor generally allows companies to devote more money and labor to mining natural resources. Incarcerated workers produce billions of dollars of goods and services, but are paid, on average, between \$0.13 and \$0.52 an hour.⁸¹ Exploitative labor practices shelter manufacturers from paying the true cost of producing the goods they profit from, therefore allowing these companies to produce more goods and use more natural resources.

The use of incarcerated labor to prepare for and respond to natural disasters presents a great irony. Prison populations are being used for low to no-cost labor to respond to and protect the greater public from dangers to which the inmates themselves are most vulnerable. For example, in Florida and Texas, unpaid incarcerated labor has been used to prepare for and clean up after hurricanes.⁸² In at least thirteen states, including North Carolina, incarcerated firefighters fight wildfires, often for little or no pay.⁸³ Furthermore, incarcerated workers are rarely protected from dangerous or hazardous conditions. The Occupational Health and Safety Administration (“OSHA”), as well as many state-level health and safety workplace statutes, does not cover incarcerated labor in state facilities.⁸⁴ Research in California has shown that incarcerated firefighters are more likely to be injured than professional firefighters.⁸⁵ Incarcerated labor

81. *Captive Labor: Exploitation of Incarcerated Workers*, ACLU (2022), <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers>.

82. *Id.* at 30.

83. *Id.* at 30–31. Federal prisons, however, must comply with OSHA standards because the Federal Bureau of Prisons is part of the Department of Justice, an Executive Branch Agency. Occupational Safety and Health Admin., Opinion Letter on Clarification on Whether an Employer with Multiple Facilities Needs a Separate ECP for Each Facility (Dec. 13, 2011).

84. *Id.* at 61.

85. *Id.* at 63.

also risks exposing workers to heat-related injury and death when working outside or inside buildings without air conditioning. In fact, incarcerated firefighters in California have fallen ill and died from heat exposure during routine training.⁸⁶ This is yet another way in which rising temperatures increase the risk to prison populations. Furthermore, incarcerated labor is often obtained by force or coercion, such as by the need to pay for basic necessities, the threat of disciplinary action, being the only alternative to being confined in cells, or the promise of a reduced sentence.⁸⁷ The result of this system is that incarcerated workers are used to fight natural disasters but rarely benefit from the public safety that they ensure.

Using incarcerated labor to respond to climate disaster also insulates highly polluting industries from the cost of their mistakes. One example is the use of incarcerated labor to clean up BP's oil spill in the Gulf of Mexico in 2010.⁸⁸ BP saved money by using inmate labor because the company did not have to pay inmates minimum wage, was not required to provide inmates with proper protective equipment, and secured government-funded compensation for hiring "local labor."⁸⁹ Furthermore, while there were non-incarcerated workers that were willing to work, they did not get jobs on the clean-up because incarcerated workers were used instead at a lower wage.⁹⁰ Use of incarcerated workers exacerbates conditions of poverty in the communities where these workforces are used, as it prevents local workers from being hired at a full wage.

Incarcerated labor is also used to sustain highly polluting industries such as oil and gas. Incarcerated workers in the Gulf Coast and Deep South have been used to operate offshore drilling rigs.⁹¹ Thus incarcerated labor is used to perpetuate pollution that contributes to climate change in the areas most vulnerable to climate disaster.⁹² In

86. *Id.* at 64.

87. *Id.* at 47-48.

88. Abe Louise Young, *BP Hires Prison Labor to Clean Up Spill While Coastal Residents Struggle*, *NATION* (July 21, 2010), <https://www.thenation.com/article/archive/bp-hires-prison-labor-clean-spill-while-coastal-residents-struggle/>.

89. *Id.*

90. *Id.*

91. Carly Berlin, *How Louisiana's Oil and Gas Industry Uses Prison Labor*, *SCALAWAG* (Mar. 24, 2020), <https://scalawagmagazine.org/2020/03/powerlines-prison-labor-oil/>.

92. *Id.*

addition, in some of these facilities, prisoner wages are withheld to pay for room and board, thus allowing the facility to retain much of the cost of the labor.⁹³ Another highly polluting industry that benefits from incarcerated labor is industrial farming.⁹⁴ Workers on industrial farms also face risks such as extreme heat and exposure to toxic pesticides.⁹⁵ By facilitating industrial growth through cheap labor and industrial activity within prisons, the carceral labor system increases fossil fuel use and emissions, thus accelerating climate disaster.⁹⁶

II. RISING TEMPERATURES AND UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT

I would be so hot that my vision would blur. I couldn't hear for some reason. I would flood the toilet. And I would lay in about an inch of cold running water with my band propped over me.

- Jason Crawford⁹⁷

Rising global temperatures will lead to increasing dangerous and unconstitutional prison conditions across the US South. Based on evidence from historical heat data, in North Carolina, 103 facilities face severe or extreme heat conditions.⁹⁸ In Texas, this number is more than quadrupled at 478 carceral facilities.⁹⁹ Texas, a state that already experiences extreme heat, can serve as an early predictor of conditions that will become common throughout the South as temperatures continue to rise due to climate change. Since 1998, at least 23 prisoners have died

93. At one facility in Louisiana, despite paying 50 cents higher than the federal minimum wage, the facility retained 64% of prison wages to pay for room and board. *Id.*

94. *Id.*

95. *Id.*

96. Julius Alexander McGee, Patrick Trent Greiner, & Carl Appleton, *Locked into Emissions: How Mass Incarceration Contributes to Climate Change*, 8 SOCIAL CURRENTS 326, 327 (2021).

97. Jason Crawford spent over fourteen years in the Texas Prison System. John Yang, Andrew Corkery, Azhar Merchant, & Satvi Sunkara, *People in Prison Struggle to Survive Unrelenting Heat Without Air Conditioning*, PBS (July 15, 2023, 5:40 PM), <https://www.pbs.org/newshour/show/prison-inmates-struggle-to-survive-unrelenting-heat-without-air-conditioning>.

98. Brown, *Boiling Behind Bars*, *supra* note 14.

99. *Id.*

in Texas from injury or illness caused by extreme heat.¹⁰⁰ Northern states will also face risk as temperatures rise. Though these states may not experience the long heat spells of the South, brief, but acute, periods of heat can present serious risk where prison infrastructure is not prepared to respond.¹⁰¹ Research into the climate crisis and prison mortality has seen the highest increase of mortality rates in recent years from prisons in the Northeast.¹⁰² For instance, a heat index above 90 degrees Fahrenheit can increase overall mortality by as much as 18% in the Northeast.¹⁰³ The impact of heat may be greater where people are not acclimated to the weather.¹⁰⁴ Furthermore, there are multiple examples of Northeast prisons lacking the proper infrastructure to respond to heat risk.¹⁰⁵ Northeastern cities such as Boston; Hartford, Connecticut; and Chicago, as well as high elevation cities such as Elkins, West Virginia, broke longstanding heat records in 2024.¹⁰⁶ Prisons in these areas will increasingly face problems as global temperatures rise. Furthermore, prisoners lack access to survival strategies such as moving to air-conditioned public spaces, seeking shade, or taking a cold shower.

In 1991, the Supreme Court recognized that warmth was an “identifiable human need,” the deprivation of which can constitute an unconstitutional condition of confinement.¹⁰⁷ Similar logic has led at least five federal circuits to find that extreme heat can constitute an unconstitutional condition of confinement.¹⁰⁸ No binding law exists for

100. Emily C. Gribble & David N. Pellow, *Climate Change and Incarcerated Populations: Confronting Environmental and Climate Injustices Behind Bars*, 49 FORDHAM URB. L.J. 341, 353 (2022).

101. Brown, *Boiling Behind Bars*, *supra* note 14.

102. Alleen Brown, *Study: Extreme Heat is Driving Deaths in U.S. Prisons*, GRIST (Mar., 1, 2023), <https://grist.org/equity/new-study-people-dying-extreme-heat-in-prisons-us/>.

103. *Id.*

104. *Id.*

105. Inmates in New York, Wisconsin, and Washington have reported unbearable heat due to a lack of air conditioning. *Id.*; Amanda Hernández, *Stifling Prison Heat Used to be Just a Southern Problem. Not Anymore.*, STATELINE (Aug. 14, 2023, 5:00 AM), <https://stateline.org/2023/08/14/stifling-prison-heat-used-to-be-just-a-southern-problem-not-anymore/>.

106. Tim Balk, *The Heat Wave Has Set Records in Boston, Chicago, and Other Cities*, N.Y. TIMES (June 20, 2024), <https://www.nytimes.com/live/2024/06/20/us/heat-wave-news?smid=url-share#the-heat-wave-has-set-records-in-boston-chicago-and-other-cities>.

107. *Wilson v. Seiter*, 501 U.S. 294, 304 (1991); Daniel W. E. Holt, *Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change*, SABIN CENTER FOR CLIMATE CHANGE LAW 34 (2015), <https://ssrn.com/abstract=2667260>.

108. *See Ball v. LeBlanc*, 792 F.3d 584, 596 (5th Cir. 2015); *Chandler v. Crosby*, 379 F.3d 1278, 1294 (11th Cir. 2004); *Walker v. Schult*, 717 F.3d 119, 128 (2d Cir. 2013); *Graves*

the Fourth Circuit, though some district courts in the Fourth Circuit have held that plaintiffs failed to prove claims of excessive heat causing unconstitutional conditions of confinement.¹⁰⁹ As temperatures continue to rise, heat creates substantial risk of illness and injury that the prison system is not prepared to address. First, current prisons lack the resources to deal with cases of extreme heat. Second, prison populations are uniquely vulnerable to heat-related illnesses and injuries. Finally, as cases of severe heat become the norm, claims of unconstitutional prison conditions will increase, leading to increased litigation costs.

A. *Prisons Lack the Resources to Respond to Severe Heat*

*We're in here during the hottest parts of the day
There will be times I can't put my back on the concrete
wall because it's so hot. The toilets we sit on are stainless
steel. When we sit on those, sometimes the back of the
toilet will burn your back because it's so hot.*

- Anonymous Prisoner at the Hobby Unit prison in Marlin,
Texas¹¹⁰

As mentioned previously, according to the NC Department of Adult Corrections, 23% of beds in state correctional facilities are not air conditioned.¹¹¹ Comparatively, 95% of households in the South have air conditioning, including 90% of households with \$20,000 or less in annual income.¹¹² Thirteen of the hottest states in the U.S. do not have universal air conditioning in all their prisons.¹¹³ In Alabama, no prisons had air conditioning in 2019.¹¹⁴

While some hesitations to install life-saving temperature relief may be cost-related, tough on crime ideologies may also be at play. This

v. Arpaio, 623 F.3d 1043, 1049 (9th Cir. 2010); Vasquez v. Frank, 209 Fed. App'x 538, 541 (7th Cir. 2006).

109. See *infra* notes 157–64 and accompanying text.

110. Buchele, *supra* note 2.

111. *Prison System Air Conditioning Upgrades*, *supra* note 70.

112. Jones, *supra* note 13.

113. *Id.*

114. *Alabama State Sen. Cam Ward Discusses DOJ Report on Unsafe Prison Conditions*, NPR (Apr. 4, 2019), <https://www.npr.org/2019/04/04/709999368/alabama-state-sen-cam-ward-discusses-doj-report-on-unsafe-prison-conditions>.

is evidenced by Louisiana paying more than one million dollars in legal bills fighting legal battles brought by inmates on death row bringing claims of dangerous heat and humidity.¹¹⁵ A quarter of that money would have been sufficient to install air conditioning on death row.¹¹⁶

Installing air conditioning in all of Texas' state prisons would cost millions of dollars.¹¹⁷ The head of Texas' state prison system claims this is too much to consider asking the state legislature to cover.¹¹⁸ However, the state has paid over half a million dollars in workers compensation claims to correction officers for heat related illness and injury.¹¹⁹ Furthermore, the Texas prison system has also spent seven hundred and fifty thousand dollars to air condition barns where pigs are kept for food.¹²⁰ The prison system's policy required pigs, but not prisoners, to be kept in environments with temperatures not exceeding 85 degrees.¹²¹ While the cost of installing air conditioning for all prisons may be high, political will, in addition to cost, seems to prevent remedial action.

B. *Vulnerabilities to Heat-Related Illness Within Prison Population*

We're just really trying to survive. It gets to the point where, like, I'll have headaches from dehydration. I have a problem using the restroom because I'm so dehydrated.

Just the other day, somebody was picked up in a wheelchair because they were having heat stroke symptoms. She looked extremely pale. She was sweating profusely. She couldn't even get up, put herself in the

115. Michael Kunzelman, *Louisiana Spends \$1 Million to Fight Air Conditioning on Death Row*, PORTLAND PRESS HERALD (June 14, 2016), <https://www.pressherald.com/2016/06/13/louisiana-spends-1-million-to-fight-air-conditioning-on-death-row/>.

116. *Id.*

117. *Cruel and Unusual? The Lethal Toll of Hot Prisons*, WEATHER CHANNEL (Oct. 11, 2017), https://www.youtube.com/watch?v=jUhjI_qgEpk.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

wheelchair. They had to pick her up. Luckily, she made it through.

But we have to do something about this heat. I mean, dogs in a dog pound have air conditioning.

- Anonymous Prisoner at the Hobby Unit prison in Marlin, Texas¹²²

Prisoners are especially vulnerable to rising temperatures for several reasons: the increasing age of the prison population; physical health conditions that make prisoners more susceptible to heat-related illnesses; and the use of medications, particularly psychotropic drugs used to treat mental illnesses, increases susceptibility to heat.¹²³ Prolonged exposure to extreme heat can result in dehydration and heat stroke, and can also impact the ability of kidneys, livers, hearts, brains, and lungs to function properly.¹²⁴

There are a disproportionate number of people with chronic health conditions within prison populations when compared with the general U.S. population.¹²⁵ About half of all those incarcerated within both state and federal prison systems report currently or previously having a chronic health condition.¹²⁶ Vulnerabilities are more likely to affect Black residents as the Black incarcerated population is more likely to come to prison medically vulnerable and is more likely to reside in the U.S. South where the effects of climate change will be most felt.¹²⁷

C. *Constitutional Challenges to Conditions of Severe Heat*

Even before current rates of climate change exacerbated extreme heat conditions, people restrained in extremely hot facilities and prison yards were successfully bringing claims that such conditions constituted

122. Buchele, *supra* note 2.

123. Brown, *Boiling Behind Bars*, *supra* note 14.

124. Jones, *supra* note 13.

125. Paloma Wu & D. Korbin Felder, *Hell and High Water: How Climate Change Can Harm Prison Residents and Jail Residents, and Why COVID-19 Conditions Litigation Suggests Most Federal Courts Will Wait-And-See When Asked to Intervene*, 49 FORDHAM URB. L.J. 259, 272–74 (2022).

126. *Id.*

127. *Id.* at 281–84.

cruel and unusual punishment. Starting in 1991, the Supreme Court recognized warmth as an essential human need and held that extreme cold could amount to an Eighth Amendment violation.¹²⁸ In *Gates v. Cook*, a 2004 case from the Fifth Circuit, multiple people incarcerated on Death Row in Mississippi brought an action alleging unconstitutional conditions of confinement due to “profound isolation, lack of exercise, stench and filth, malfunctioning plumbing, high temperatures, uncontrolled mosquito and insect infestations, a lack of sufficient mental health care, and exposure to psychotic inmates in adjoining cells.”¹²⁹ Regarding the claims of high temperatures, the trial court found that the Death Row facility was not air conditioned and, despite use of industrial and personal fans, there was not proper ventilation to provide a “minimum level of comfort” during the hot summer months.¹³⁰ The court recognized that mental illness often inhibited behaviors that would help the plaintiffs tolerate the heat and that psychotropic medications also interfered with the body’s ability to regulate its internal temperature.¹³¹ Finally, the court found that no efforts were made to mitigate the heat such as providing extra showers, ice water, or fans to the plaintiffs.¹³²

The trial court issued an injunction requiring prison officials to provide fans, ice water, and daily showers on days where the heat index was higher than 90 degrees, which the appellate court affirmed for the Death Row unit, but not for the entire prison facility.¹³³ Although this case is important in that it recognizes extreme heat as an unconstitutional condition of confinement, it is also notable that the injunction was limited to providing heat mitigating comfort and did not require that the prison keep internal temperatures below a certain threshold. It also did not require any structural changes to the prison itself such as improving ventilation or installing air conditioning.

The Eighth Amendment prohibits “cruel and unusual punishment.”¹³⁴ This prohibition has been interpreted to require humane conditions of confinement.¹³⁵ To assert a successful claim of unconstitutional conditions of confinement, a plaintiff must establish (1)

128. *Wilson v. Seiter*, 501 U.S. 294, 304 (1991).

129. *Gates v. Cook*, 376 F.3d 323, 327 (5th Cir. 2004).

130. *Id.* at 334.

131. *Id.*

132. *Id.*

133. *Id.* at 339.

134. U.S. CONST. Amend. VIII.

135. *Gates*, 376 F.3d at 332.

a “substantial risk of serious harm” and (2) that prison officials were “subjectively aware” of the risk and acted with “deliberate indifference” to the plaintiff’s safety.¹³⁶ In cases of extreme heat, the first element is usually simple to prove, but the “subjectively aware” and “deliberate indifference” standard is harder to meet.

Within the last five years, at least three reported cases from district courts in the Fourth Circuit held that the plaintiff failed to show deliberate indifference by prison officials.¹³⁷ Despite clear evidence of heat-related injury—such as heat rashes and dizziness in one case¹³⁸ and vomiting, headaches, and difficulty breathing in another¹³⁹—in both cases the court held that the plaintiff failed to show that the defendant acted with a “sufficiently culpable state of mind in imposing such conditions as punishment.”¹⁴⁰ While symptoms of heat induced illness satisfy the first prong of a condition of confinement claim, that there is a substantial risk of serious harm, the conditions must also be “open and obvious” such that the lack of an adequate response by prison officials is unreasonable.¹⁴¹ This standard can be difficult to meet in cases where there are short periods of intense heat, as compared to longer periods of excessive heat because it is harder to show that the risk was “open and obvious.” Furthermore, the prison official’s actions must be “more blameworthy than negligent.”¹⁴² Evidence of complaints of heat-related symptoms can show that the prison official knew of and openly disregarded heat-related risk. As temperatures rise and more prisons are subject to extended periods of severe heat, it will be less likely that prison officials will be able to argue that the risk of heat-related injury and illness was not open and obvious.

Although rising temperatures will increase the potential for heat-related illness and death, it will also make these conditions more apparent. Based on data collected by the Intercept as part of their

136. *Id.*; Gribble & Pellow, *supra* note 100, at 357–58.

137. *Yancey v. Davis*, No. 21-CV-1115, 2022 U.S. Dist. LEXIS 125281 (E.D. Va. July 13, 2022); *Ross v. Warden*, No. JKB-18-2078, 2020 U.S. Dist. LEXIS 166860 (D. Md. Sept. 11, 2020); *Price v. Jackson*, No. 20-2141-SAL-SVH, 2021 U.S. Dist. LEXIS 103109 (D.S.C. Apr. 20, 2021).

138. *Ross*, 2020 U.S. Dist. LEXIS 166860 at *8.

139. *Price*, 2021 U.S. Dist. LEXIS 103109 at *14.

140. *Ross*, 2020 U.S. Dist. LEXIS 166860 at *8; *Price*, 2021 U.S. Dist. LEXIS 103109 at *14.

141. *See Price*, 2021 U.S. Dist. LEXIS 103109, at *5; *Gates*, 376 F.3d at 339-40.

142. *Farmer v. Brennan*, 511 U.S. 824, 834 (1994).

“Climate and Punishment” project, 2292 prisons out of 5936 prisons (about 39%) operating as of June, 2020 had a heat risk of “severe” or “extreme”.¹⁴³ For each of these prisons, based on historic heat indexes from 1971 to 2000, an average of 50 days or more per year were over 90 degrees Fahrenheit.¹⁴⁴ That means that almost half of existing prisons are at risk of severe or extreme heat that prison officials have no reason not to anticipate. Furthermore, this number can be expected to grow as climate change leads to more extreme temperatures across the U.S.

Finally, the “subjectively aware” and “deliberate indifference” standards in an Eighth Amendment analysis focuses too much on the individual victim over systemic harm. In her critique of the Supreme Court’s Equal Protection jurisprudence, Dorothy Roberts makes a similar argument regarding the “discriminatory purpose” requirement.¹⁴⁵ This requirement imagines an “individualized understanding of racism” in which a biased perpetrator discriminates against an individual victim, rather than a racialized community experiencing legal repression.¹⁴⁶ Furthermore, Roberts argues, such an understanding imagines oppression as a “system malfunction” rather than a deliberate and central purpose of the carceral system.¹⁴⁷ That the current carceral system grew out of slavery and the racial capitalist regime created and sustained by slavery is a central tenet of abolitionist philosophy.¹⁴⁸ Therefore, discrimination within the system does not require a malfunction of the system or deliberate discriminatory actions by the system’s agents; it only requires that the system operate as normal.¹⁴⁹

The “subjectively aware” and “deliberate indifference” standards of the Eighth Amendment suffer from similar issues as the “discriminatory purpose” doctrine of the Fourteenth Amendment. These standards require an individual perpetrator to know of, and ignore,

143. Severity is based on the daily maximum heat index for the county in which the prison is located. A risk of “severe” means the county had, on average, fifty-one to one hundred days per year where the daily maximum heat index was over ninety degrees. A risk of “extreme” means that the county had, on average, over one hundred days per year where the daily maximum heat index was over ninety degrees. Alleen Brown and Akil Harris, *Climate and Punishment*, INTERCEPT (Feb. 12, 2022), <https://projects.theintercept.com/climate-and-punishment/>.

144. *Id.*

145. See Roberts, *supra* note 22 at 85–86.

146. *Id.*

147. *Id.*

148. *Id.* at 7.

149. *Id.* at 85–86.

potential harm to a victim. It does not imagine structural or systemic harms inherent to the carceral system.

III. ADDRESSING ALTERNATIVE SOLUTIONS OTHER THAN ABOLITION

To some, abolition may seem an extreme solution. There are almost two million incarcerated people in over five thousand prisons across the United States.¹⁵⁰ Ending such an expansive program will certainly not be easy. However, for various reasons, solutions that do not address abolishing or at least scaling down existing prisons systems fall short in addressing the feedback loop described above.

A. *Air Conditioning is Not Enough*

Providing air conditioning in the prisons that do not have it is essential, but due to rising temperatures, it will likely not be enough to combat the unconstitutional conditions caused by climate change. First, air conditioning alone will fail to adequately protect prison populations from excessive heat. Second, the cost of installing air conditioning given the number of prisons that do not have it will likely be too high to be practical without reducing the size and number of prisons.

Even if air conditioning was installed in all facilities, this would not prevent all risks created by climate disaster. Climate change has drastically increased the rate of extreme weather conditions such as hurricanes or wildfires.¹⁵¹ Extreme heat is also likely to result in droughts, making essential water scarce.¹⁵² Finally, even with systems such as heating and cooling in place, blackouts and extreme weather events can increase the chances that these systems fail.¹⁵³ If air conditioning fails outside of prisons, people can take cool showers, drink cold water, move to the shade, or go to a place that is air conditioned. If air conditioning fails in prisons, inmates have no such recourse.

In February 2021, widespread power outages across Texas resulted in severe cold, understaffing, and shortages of food, water, and

150. Sawyer & Wagner, *supra* note 9.

151. See Ramirez, *supra* note 3.

152. Tiffany Means, *Climate Change and Droughts: What's the Connection?*, YALE CLIMATE CONNECTIONS (May 11, 2023), <https://yaleclimateconnections.org/2023/05/climate-change-and-droughts-whats-the-connection/>.

153. See *id.*

medication in prisons.¹⁵⁴ No access to water means that toilets become unflushable and eventually start overflowing with waste.¹⁵⁵ Similarly, in Brooklyn, New York, a federal class action lawsuit was brought by prisoners after a winter storm caused a power outage that lasted for seven days.¹⁵⁶ This outage resulted in lockdown conditions, lack of light to see or eat by, severe cold temperatures without adequate clothing, lack of access to hot food or water, and disruptions to medical care.¹⁵⁷

Even if air conditioning was enough to facilitate constitutional prison conditions, the cost of installing air conditioning in all prisons has been said to be prohibitively expensive. The cost to “upgrade the HVAC system of a prison to make it habitable is \$38,414 per inmate.”¹⁵⁸ With almost two million people currently incarcerated,¹⁵⁹ and at least 44 states lacking universal air conditioning,¹⁶⁰ the cost would certainly be high. However, Texas State Senator John Whitmore, responding to an interview in 2011, said about installing air conditioning in Texas prisons: “We couldn’t afford to do it if we wanted to. But number one we just don’t want to.”¹⁶¹ Thus even if the cost was not prohibitive, political resistance to making prisons more habitable might hinder efforts to prevent unconstitutional conditions of confinement.

154. Keri Blakinger, *Inside Frigid Texas Prisons: Broken Toilets, Disgusting Food, Few Blankets*, MARSHALL PROJECT (Feb. 19, 2021), <https://www.themarshallproject.org/2021/02/19/inside-frigid-texas-prisons-broken-toilets-disgusting-food-few-blankets>.

155. Jolie McCullough, *Texas Jails and Prisons See Brutal Cold and Overfilled Toilets in Winter Storm*, TEXAS TRIBUNE (Feb. 18, 2021), <https://www.texastribune.org/2021/02/18/texas-jails-prisons-winter-storm/>.

156. Kevin Bliss, *Lawsuit Over Winter Power Outage at Brooklyn’s Troubled Federal Detention Center Granted Class Certification*, PRISON LEGAL NEWS (Feb. 1, 2022), <https://www.prisonlegalnews.org/news/2022/feb/1/lawsuit-over-winter-power-outage-brooklyns-troubled-federal-detention-center-granted-class-certification/>.

157. *Scott v. Quay*, 338 F.R.D. 178, 183–86 (E.D.N.Y. 2021).

158. Levenson, *supra* note 35, at 153.

159. Sawyer & Wagner, *supra* note 9.

160. Additionally, many southern states lack air conditioning in a majority of prison facilities, including Texas where 30% of facilities have full air conditioning and Florida with only 24% of facilities having air conditioning. Jeanine Santucci & Maria Aguilar, *Most US States Don’t Have Universal Air Conditioning in Prisons. Climate Change, Heat Waves are Making it ‘Torture’*, USA TODAY (Sept. 12, 2022), <https://news.yahoo.com/most-us-states-dont-universal-090006461.html>.

161. Maurice Chammah, *“Cooking Them to Death”: The Lethal Toll of Hot Prisons*, MARSHALL PROJECT (Oct. 11, 2017), <https://www.themarshallproject.org/2017/10/11/cooking-them-to-death-the-lethal-toll-of-hot-prisons>.

B. “Green” Prisons

Because retrofitting old prisons to be resilient to climate disasters would be costly, states may be tempted to build new, better prisons. However, this solution would still require new construction that would create more emissions. Furthermore, building new prisons would require setting aside more land for this construction that could alternatively be conserved or put to another more sustainable purpose. Too much emphasis on creating sustainable prisons can distract from important conversations regarding the scale of the prison system itself and addressing not only climate issues, but also social justice issues.¹⁶² This phenomenon parallels “greenwashing” of material goods, which masks important considerations of whether certain goods should continue to be produced at current rates. It is too easy to think of the challenge of building a large, continuously operating building, with security requirements that prohibit the use of certain materials, as a problem to be solved by clever construction, rather than a fault with U.S. prison policy.¹⁶³ These discussions overshadow arguments that prisons need not exist at the current scale,¹⁶⁴ or at all.

Focusing on sustainability alone allows both conservative and liberal policy makers to avoid addressing the systemic issues of incarceration. On the conservative side, sustainable prisons can be more profitable, more efficient, and can perpetuate “tough on crime” policies.¹⁶⁵ On the liberal side, “green” prisons suggest a healthier and more environmentally friendly prison system.¹⁶⁶ This line of thinking paints “green” prisons as an attractive option, ignoring institutional harms that continue to exist and aren’t rectified by clean energy. Therefore, a focus on “green” prisons allows both sides of the political adversarial system to ignore larger issues of social harm and climate disaster perpetuated by the prison system. Notably, the U.S. Department of Justice’s own report on “greening” the corrections system does not make any mention of decreasing the scale of the prison system itself.¹⁶⁷ Instead,

162. See Jewkes & Moran, *supra* note 32, at 463.

163. See *id.* at 456.

164. See *id.* at 463.

165. *Id.*

166. *Id.*

167. Mindy Feldbaum, Frank Greene, Sarah Kirschenbaum, Debbie Mukamal, Megan Welsh, & Raquel Pinderhughes, *The Greening of Corrections*, U.S. DEP’T JUSTICE (2011),

the report concludes that the number of incarcerated individuals that has “grown so greatly so quickly” is what makes a “holistic” approach that teaches personal responsibility and “green skills” so important.¹⁶⁸ Even the language of “sustainable prisons” indicates that it is not only increasing the efficiency of energy use within prison buildings but sustaining the prison system itself at its current scale.¹⁶⁹

While prison growth has slowed since the 1970s, more prisons are still being built.¹⁷⁰ Even a prison built with sustainable materials, efficient heating and cooling, and “green” consumer practices will still produce emissions. Furthermore, most existing prisons fall very short of sustainable standards. The destruction of old prisons and the creation of new prisons would contribute significantly to greenhouse gas emissions even using the best practices. We must confront whether building more prisons—including “green” prisons—is a desired solution rather than a degrowth¹⁷¹ of the prison industry.

Furthermore, a focus on building “green” prisons fails to respond to systemic racial and class discrimination within the U.S. prison population. The U.S. Department of Justice’s report on “greening” the corrections system also does not make any mention of addressing race and class within the corrections system.¹⁷² Although the government has recognized the racial inequity in climate justice,¹⁷³ it has done little to address how mass incarceration has had profound effects on the risk posed to Black, Latinx, and poor Americans within the U.S. prison system.

<https://nicic.gov/resources/nic-library/all-library-items/greening-corrections-creating-sustainable-system>.

168. *Id.* at 52.

169. Jewkes & Moran, *supra* note 32, at 463.

170. *See supra* notes 25–28 and accompanying text.

171. “Degrowth is an idea that critiques the global capitalist system which pursues growth at all costs, causing human exploitation and environmental destruction. The degrowth movement of activists and researchers advocates for societies that prioritize social and ecological well-being instead of corporate profits, over-production and excess consumption. This requires radical redistribution, reduction in the material size of the global economy, and a shift in common values towards care, solidarity and autonomy. Degrowth means transforming societies to ensure environmental justice and a good life for all within planetary boundaries.” *What is Degrowth*, DEGROWTH, <https://degrowth.info/degrowth> (last visited Mar. 3, 2025).

172. Feldbaum, Greene, Kirschenbaum, Mukamal, Welsh, & Pinderhughes, *supra* note 168.

173. *Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice> (last visited Jan. 12, 2024).

Shifting the focus away from the “green” prison does not require abandoning necessary reform of the existing system. As discussed in Part II of this paper, there are unconstitutional conditions affecting people in Southern U.S. prisons today. These people need relief, they need air conditioning, access to water, and access to medical care. Balancing reforms needed to protect people in prison today and progress towards abolishment of prisons is one of the biggest challenges facing abolitionists.¹⁷⁴

IV. ABOLITION AS A SOLUTION

We are firm in our resolve and we demand, as human beings, the dignity and justice that is due to us by our right of birth. We do not know how the present system of brutality and dehumanization and injustice has been allowed to be perpetrated in this day of enlightenment, but we are the living proof of its existence and we cannot allow it to continue.

- From the Attica Prisoner’s Manifesto of Demands (1971)¹⁷⁵

I just want people to remember that, while I made a mistake, I’m still somebody’s daughter and somebody’s sister. I feel like anybody could be sitting where I’m at. I made a choice. I made a decision. It was a bad one. But I’m you, just one decision away.

Remember that we’re humans. I did commit a crime . . . I’m still being punished. But this is torture. If that’s what they wanted to do . . . why didn’t they just kill us?

174. Angela Y. Davis & Dylan Rodriguez, *The Challenge of Prison Abolition: A Conversation*, 27 SOCIAL JUSTICE 212, 216 (2000).

175. In July 1971, the inmates of Attica Prison submitted a manifesto with 27 demands to the Commissioner of Corrections. *Attica Prisoners Manifesto of Demands (1971)*, ABOLITION NOTES, <https://abolitionnotes.org/attica-prisoners-manifesto-of-demands> (last visited Feb. 29, 2024).

- Anonymous Prisoner at the Hobby Unit prison in Marlin, Texas¹⁷⁶

As explained in Part I and II of this paper, the current system of incarceration will continue to accelerate climate change and risk the health and safety of incarcerated individuals, even with remedial action. As current temperatures continue to rise, incarceration will both perpetuate current conditions of cruel and unusual punishment in the Southern U.S. while also risking other areas of the country. Incremental change will therefore prove insufficient to address both the climate crisis and unconstitutional prisons. Abolition is the only solution for breaking this cycle. First, constitutional arguments for abolition should be continuously raised by petitioners making Eighth and Fourteenth Amendment claims against incarceration. Second, there are tangible steps to be taken towards the complete abolition of prisons.

A. *Constitutional Arguments for Prison Abolition*

Before discussing the practical steps to affect prison abolition, it is worthwhile discussing the constitutional basis for challenging the carceral system. Both the Eighth Amendment's prohibition on cruel and unusual punishment and the Fourteenth Amendment's equal protection guarantees are legitimate avenues for arguing that our current system of incarceration is unconstitutional.

The plaintiff's argument in *McCleskey v. Kemp* provides a framework for such an argument. After being convicted and sentenced to death in Georgia, Warren McCleskey filed a petition for a writ of habeas corpus that, among other claims, challenged Georgia's capital sentencing as racially discriminatory in violation of the Eighth and Fourteenth Amendments.¹⁷⁷ In support of his constitutional claims, McCleskey presented rigorous statistical evidence showing that the race of a defendant affected the risk of a death sentence, with Black defendants accused of killing white victims having the highest risk of a death sentence.¹⁷⁸ Despite the strength of the data and the Court's limited acceptance of statistical evidence as proof of discrimination,¹⁷⁹ the Court

176. Buchele, *supra* note 2.

177. *McCleskey v. Kemp*, 481 U.S. 279, 285–86 (1987).

178. Roberts, *supra* note 22, at 91.

179. *McCleskey*, 481 U.S. at 293.

held that McCleskey had not shown that the Georgia State Legislature enacted or maintained its capital punishment laws for a discriminatory purpose.¹⁸⁰ Similarly, although a risk of racial bias can be an Eighth Amendment violation, the Court found the statistical evidence was not “constitutionally significant.”¹⁸¹ The Court suggested that too many factors exist to show that race influences capital sentencing.¹⁸² Furthermore, the Court held up the importance of discretion as integral to our criminal justice system and providing benefits to defendants.¹⁸³ Finally, the Court’s opinion, written by Justice Powell, remarked that McCleskey’s claim “taken to its logical conclusion” would apply not just to capital sentencing, but to all criminal penalties.¹⁸⁴ Abolitionist Dorothy Roberts characterizes this reasoning as “animated by a desire to avoid the radical change an abolitionist constitutionalism would require” or a “fear of too much justice.”¹⁸⁵ However, whether the requirements of the constitution require the abolition of criminal punishments due to the disparate impact and severity of those punishments is a question the Court can, and should, contend with, rather than favoring the status quo simply out of fear that the change required would be too extreme.

Despite the majority’s rejection of McCleskey’s argument, hope remains for future challenges under similar claims. In Justice Brennan’s dissent, he points to the sophistication of the multiple-regression analysis presented by McCleskey in rebutting the majority’s claim that McCleskey failed to show a constitutionally significant risk that his sentence was influenced by his race.¹⁸⁶ Furthermore, the dissent also engages with the death penalty’s racist history and held that this history supports McCleskey’s claim.¹⁸⁷ Thus, even as most members of the Court clung to the existing racial regime, four more members expressed a willingness to engage with the realities of the system. Nor should it be a deterrence that the Court ruled against an abolitionist reading of the

180. *Id.* at 299–300.

181. *Id.* at 313.

182. *Id.* at 294–95.

183. *Id.* at 311–12. It should be argued, however, discretion within the criminal justice system only benefits defendants where it acts to improve the overall fairness of proceedings. However, the very statistical evidence that McCleskey provided to challenge the constitutionality of Georgia’s death penalty shows that discretion within the system has not had this effect.

184. *Id.* at 315–16.

185. Roberts, *supra* note 22, at 90–92.

186. *McCleskey*, 481 U.S. at 327–28 (Brennan, J., dissenting).

187. *Id.* at 328–33.

Constitution in this case. In *Dred Scott v. Sandford*, the Court relied on an existing system built on racial discrimination rather than looking to fundamental principles of equality and democracy.¹⁸⁸ Yet, it was the abolitionist movement to end slavery that drove national conversation regarding the Constitution's stance on slavery and led to the eventual passing of the Reconstruction Amendments.¹⁸⁹ Similarly, prison abolitionists must continue to hold that the fundamental values of the Constitution, including equal protection and the prohibition on cruel and unusual punishment, will not tolerate caging human beings. George Jackson, an abolitionist and member of the Black Panther Party, said abolitionists must "hold the legal pigs to the strictest interpretation of the Constitution possible."¹⁹⁰ Following this call means to uphold the Constitution as a document of freedom that will not allow for the exploitation of her people.

B. *Steps to a Society Without Cages*

The first step in prison abolition, *moratorium*, is to "stop building cages."¹⁹¹ The number of correctional facilities increased by 43% from 1990 to 2005, and even though prison construction has slowed since, new prisons are still being built.¹⁹² Stopping construction on new prisons helps to lower the fossil fuel emissions caused by prison construction and maintenance. This step also requires policymakers to abandon ideas of "green" prisons as an alternative to reducing the scale of the prison system. As discussed earlier, even prisons built and maintained using sustainable practices will still create emissions. The prison system simply

188. Roberts, *supra* note 22, at 53-55.

189. Although many abolitionists saw the Constitution as an antislavery document, even before the Reconstruction Amendments, another group of thinking (referred to as the Garrisonians after William Lloyd Garrison) repudiated the document because it permitted slavery. Roberts, *supra* note 22, at 54-55. Today as well, many abolitionists do not seek support in constitutional law. *Id.* at 8. Given the current constitutional jurisprudence as well as the composition of the current Supreme Court, it is understandable not to expect immediate success from a constitutional argument. I argue not that the document should be defended as untainted by racial capitalism, for it is not, but for its use as a tool towards abolition. For a more nuanced discussion of abolitionist constitutionalism, see Roberts, *supra* note 22, at 7.

190. *Id.* at 110-11 (quoting Letter from George Jackson to Fay Stender (Mar. 31, 1970), in GEORGE JACKSON, SOLEDAD BROTHER: THE PRISON LETTERS OF GEORGE JACKSON, at 231 (1970)).

191. John Washington, *What is Prison Abolition?*, NATION (July 31, 2018), <https://www.thenation.com/article/archive/what-is-prison-abolition/>.

192. See *supra* notes 25-28 and accompanying text.

cannot continue to operate at its current scale without perpetuating the cycle of emissions, climate change, and unconstitutional prison conditions.

Abolitionists and environmentalists have already collaborated to form coalitions opposing new prison construction. About twelve years following the completion of United States Penitentiary Big Sandy in Martin County, Kentucky, the federal government allocated \$444 million towards another federal prison in Letcher County, Kentucky.¹⁹³ In response, community members formed the Letcher Governance Project (LGP).¹⁹⁴ Members of the coalition immediately began vocalizing their concerns and demanding sustainable economic and environmental justice investments instead of building a prison.¹⁹⁵ The coalition partnered with environmental groups to raise concerns about the threat to nearby old growth forests and the effects of air, water, noise, and light pollution that would result from building the prison.¹⁹⁶ The groups filed a lawsuit along with incarcerated people that were likely to be transferred to the prison.¹⁹⁷ During the Federal Environmental Impact Statement Process,¹⁹⁸ the public filed over 2,000 comments opposing the project.¹⁹⁹ After a two year delay in the planned construction, federal officials formally cancelled construction and abandoned the plan to build a prison in Letcher County.²⁰⁰ The work of the community in Letcher County shows the potential for collaboration between the environmental justice and abolition movements.

The second step in prison abolition, *decarceration*, is about getting people out of prisons.²⁰¹ In the 1980s, the growth of the prison industry coincided with declines in farming, mining, timberwork, and manufacturing and the transition to a service economy.²⁰² Many rural

193. Vaidya Gullapalli, *Fighting Against a New Prison—And Winning—In Letcher County, Kentucky*, APPEAL (July 1, 2019), <https://theappeal.org/fighting-against-a-new-prison-and-winning-in-lecher-county-kentucky/>.

194. McLeod, *supra* note 21, at 1556.

195. *Id.* at 1557.

196. *Id.* at 1558.

197. *Id.*

198. Under the National Environmental Policy Act, federal agencies must prepare an Environment Impact Statement for any action “significantly the quality of the human environment.” 42 U.S.C. § 4332(C).

199. McLeod, *supra* note 21, at 1558–59.

200. *Id.* at 1559.

201. Washington, *supra* note 192.

202. Tracy Huling, *Building a Prison Economy in Rural America*, in *INVISIBLE PUNISHMENT* 197 (Marc Mauer & Meda Chesney-Lind eds., 2002).

Americans sought jobs in prisons as these jobs were considered to be more stable.²⁰³ Getting people out of prisons and shutting down prisons will create a new population of people that need jobs, both those previously incarcerated and those that previously worked in the prison industry. This new workforce should be harnessed to advance truly sustainable efforts. Furthermore, with decreased government spending on prisons, more money will be available to go towards these projects.

By limiting access to exploitative labor in the form of incarcerated labor, this step also forces oil and gas industries to begin paying the true cost of labor. Furthermore, it will stop industries and the government from avoiding the cost of natural disasters, forcing a focus on preventative action and building resilient communities.

During this phase, priority should go towards shutting down older prisons built before the 1990s since these prisons are the most likely to deteriorate as humidity and temperatures increase. Rather than building new “green” prisons, prison services, to the extent they exist at all, can be concentrated in the most efficient buildings that currently exist.

Throughout these first two phases, efforts should be focused on decommissioning prisons and decreasing rates of incarceration towards a complete end of the carceral system. However, no abolitionist truly expects that such changes will happen overnight. Therefore, some attention must still be given to harm reduction within the carceral system while the process of ending the system is ongoing. Prison abolitionists pursue “non-reformist reforms” that focus on changes within the carceral system that reduces harm to individuals and the system’s capacity for harm.²⁰⁴ Examples include the elimination of cash bail, decriminalization of drug use and other non-violent crime, and ending police stop-and-frisk practices.²⁰⁵ Similarly, installing air conditioning in all prisons, lowering commissary prices through regulation, and requiring fair wages for incarcerated labor would all reduce the harm caused by prisons and reduce the power of the state and the for-profit corrections market from profiting off of the exploitation of incarcerated populations.

The third and final step in prison abolition, *excarceration*, is about diverting people from prisons.²⁰⁶ This step requires responding to

203. *Id.*

204. Roberts, *supra* note 22, at 114.

205. *Id.* at 115–16.

206. Washington, *supra* note 192.

social problems and injustices. This step will require environmental justice initiatives that decrease the burden put on poor and minority communities and avoid further entrenching wealth and racial divides.

Efforts towards decriminalization in other countries have seen great social and environmental benefits. In the Netherlands and Portugal, the decriminalization of drugs has led to much smaller prison populations and greater household incomes by allowing families to stay together.²⁰⁷ German and Dutch prison systems operate on a principle of “normalization” where prison life is structured to be as close to life outside the prison as possible with the goal being reintegration.²⁰⁸ These countries also use diversion programs to avoid prosecution altogether.²⁰⁹ These countries are both able to maintain incarceration rates that are just over a tenth of the U.S.’s incarceration rate.²¹⁰ Improved living conditions within prisons in Belize and the Dominican Republic have decreased recidivism rates, leading to less cost per prisoner when compared with U.S. prisons.²¹¹ By addressing the societal and political issues that have led to mass incarceration in the first place, we can prevent large prison populations thus decreasing the need for high-emitting construction and maintenance of prisons. By treating inmates with humanity by improving prison conditions and decreasing extreme security measures, we can also reduce recidivism.

Excarceration acknowledges that prison abolition is not just about the negative goal of dismantling prison systems, but also includes the positive goals of addressing social, economic, and political conditions that cause crime.²¹² One of these goals includes the end of capitalism²¹³ which is at the same time responsible for both deep racial and class divides, as well as a leading cause of climate disaster. Factors that reinforce poverty and mass incarceration also contribute to the climate crisis. For example, automation of industrial labor erodes the working

207. Elijah Baker, *A Path Forward: Global Success in Decriminalization, Reform, and Re-entry into Society* in ENVIRONMENTAL JUSTICE STRUGGLES IN PRISONS AND JAILS AROUND THE WORLD, GLOBAL ENV’T JUSTICE PROJECT 90, 93–94 (2020).

208. Ram Subramanian & Alison Shames, *Sentencing and Prison Practices in Germany and the Netherlands: Implications for the United States*, VERA INSTITUTE OF JUSTICE, 7 (Oct. 2013), <https://www.vera.org/publications/sentencing-and-prison-practices-in-germany-and-the-netherlands-implications-for-the-united-states>.

209. *Id.* at 8.

210. *Id.* at 7.

211. Baker, *supra* note 208 at 96.

212. Barkow, *supra* note 16, at 264.

213. *Id.* at 249.

class, while also increasing emissions.²¹⁴ The Black Panther Party's theory of "lumpenization" described this phenomenon as early as the 1970s as they witnessed the erosion of the working class due to increased automation.²¹⁵ Automation progressively reduces the need for certain jobs, making the working class continually less employable.²¹⁶ These lumpen, or surplus populations, are then forced into prisons.²¹⁷ Through this process, power is maintained in the white proletarian class and Black Americans are continually subjugated.²¹⁸ Besides further entrenching racial divides, automation also comes at an environmental cost. Newer technologies, such as A.I., require large amounts of computing power and electricity, leading to increased emissions.²¹⁹ While technology itself is not necessarily bad, automation paired with exploitative labor practices and a capitalist philosophy is bad for both people and the climate.

Abolition is more than the ending of mass incarceration. Abolition, as envisioned by abolitionists such as Angela Davis, is a "feminist, anti-racist, anti-oppressive, decolonial and ultimately, [a] democratic socialist project."²²⁰ Part of abolition's radical philosophy requires imagining a society that no longer has a need for prisons.²²¹ This work requires that abolition's restorative and transformist vision expands beyond the prison walls. Working toward abolition requires working toward liberty and protection for all people, providing material security such as housing and healthcare.²²² Abolition also requires protection from natural disaster and environmental degradation.²²³ Some modern movements have also recognized that the protections needed for carceral reform also require access to a clean environment. For instance, the Green New Deal, proposed in 2019, requires "providing all people of the United States with— (1) high quality health care; (ii) affordable, safe, and

214. Jude Coleman, *AI's Climate Impact Goes Beyond Its Emissions*, SCIENTIFIC AMERICAN (Dec. 7, 2023), <https://www.scientificamerican.com/article/ais-climate-impact-goes-beyond-its-emissions/>.

215. Lumpenization builds off the Marxist idea of the lumpen, unemployed workers who keep labor costs down and weaken labor unions. WANG, *supra* note 18, at 57–58.

216. *Id.*

217. *Id.* at 64.

218. *See id.* at 58–59.

219. Coleman, *supra* note 215.

220. Ti Lamusse, *Doing Justice Without Prisons: A Framework to Build the Abolitionist Movement*, 35 SOCIALISM & DEMOCRACY 300, 2–3 (2021).

221. Roberts, *supra* note 22, at 119–20.

222. Brandon Hasbrouck, *Reimagining Public Safety*, 117 NW. U.L. REV. 685, 712–13 (2022).

223. *Id.* at 713.

adequate housing; (iii) economic security; and (iv) clean water, clean air, healthy and affordable food, and access to nature.”²²⁴ Similarly, the Red Nation Program recognizes that “[e]veryone deserves free housing, food, clean drinking water, education, mobility, employment, . . . healthcare[,] . . . spiritual freedom[,] and a livable earth.”²²⁵ These programs argue for “the right to live, not simply exist” which requires shelter, but not captivity.²²⁶

Abolition requires a holistic solution because drastically reducing the prison population is unhelpful if society is not prepared to meet the needs of the reentry population. We must address structural issues that cause crime while dismantling the prison system. Addressing climate disaster is necessary to create the societal change required to obfuscate the need for prisons. At the same time, ending mass incarceration is necessary to prevent climate disaster.

CONCLUSION

*Outside my window
 Outside my window, a new day I see,
 And only I can determine what kind of
 Day it will be.
 It can be busy and sunny, laughing and gay,
 Or barren and cold, unhappy and gray.
 My own state of mind is the determine key
 For I am only the person I let myself be
 I can enjoy what I do and make it seem fun
 Or gripe and complain and make it hard on someone
 But have faith in my self and believe what I say
 And personally I intend to make the best of each day*

- *Untitled*, by a California prisoner²²⁷

224. H.R. 109, 116th Cong. (2019).

225. *The Red Nation Program*, RED NATION, <https://therednation.org/10-point-program/> (last visited Feb. 29, 2024).

226. Hasbrouck, *supra* note 223, at 712.

227. A California Prisoner, *Untitled*, PRISON CENSORSHIP (May 2006), <https://www.prisoncensorship.info/archive/etext/agitation/prisons/poetry/>.

The current U.S. prisons system contributes significantly to climate change. At the same time, prison populations suffer due to rising global temperatures caused by climate change. If we want to break this cycle of emissions and unconstitutional prisons, we must consider solutions that dismantle the structure of the prison system, not just the prisons themselves. “Green” prisons are not cost-effective or even possible at the current scale of U.S. prisons. Furthermore, we need to carefully consider what we are sustaining. Solutions that do not address the inequality within the U.S. criminal system miss an opportunity to create both a more environmentally friendly and a more equitable society.