

CLIMATE CARCERALISM: THE FUTURE OF CLIMATE-LINKED PRISON LABOR

In 2017, Sonoma County, California, was hit by the Tubbs Fire, the largest blaze it had experienced in over fifty years.¹ All told, the inferno claimed twenty-two lives² and burned over five thousand homes,³ together with the other named fires that burned across northern California that fall, it scorched more than four hundred square miles, “an area larger than the five boroughs of New York City.”⁴ At the time, the fire was the most destructive inferno in the state’s history,⁵ yet barely a year later it was usurped by the Camp Fire, which destroyed over three times as many structures.⁶ These disasters are part of a great and growing trend of fires; from 2009 to 2018, over three million more acres burned in California than from 1979 to 1988.⁷ In 2021 alone, California experienced 7,396 wildfires, burning 2,569,386 acres and 3,846 structures.⁸

Part of California’s solution to this crisis has been to harness prison labor through its Conservation Camp Program (CCP). First established in 1915 and expanded during World War II, the CCP is managed by two state departments — the California Department of Corrections and Rehabilitation (CDCR) and the California Department of Forestry and Fire Protection (CAL FIRE) — which select, train, and employ incarcerated people⁹ to aid in public works.¹⁰ Chief among the services provided by the thirty-five camps is wildlands firefighting, inspiring their

¹ See Gaye LeBaron, *Tubbs Fire Revives Memory of a Blaze that Now Haunts Santa Rosa*, PRESS DEMOCRAT (Oct. 14, 2017), <https://www.pressdemocrat.com/article/news/gaye-lebaron-tubbs-fire-revives-memory-of-a-blaze-that-now-haunts-santa-ro> [https://perma.cc/62HF-CGAQ].

² Phil Barber, *A Walk in the Ashes of the Tubbs Fire: Five Years After Sonoma County’s Worst Disaster*, PRESS DEMOCRAT (Oct. 3, 2022), <https://www.pressdemocrat.com/article/news/a-walk-in-the-ashes-of-the-tubbs-fire-five-years-later-in-sonoma-county> [https://perma.cc/JZ9N-LMZG].

³ Claire Hao, *It’s Been Five Years Since the Catastrophic Tubbs Fire. Survivors Are Still Tending to the Scars*, S.F. CHRON. (Oct. 9, 2022, 5:24 PM), <https://www.sfchronicle.com/california-wildfires/article/Its-been-five-years-since-the-catastrophic-17496357.php> [https://perma.cc/R934-N25P].

⁴ Barber, *supra* note 2.

⁵ *Id.*; see also *Top 20 Most Destructive California Wildfires*, CAL FIRE (Oct. 24, 2022), https://34c031f8-c9fd-4018-8c5a-4159cdf6bod-cdn-endpoint.azureedge.net/-/media/calfire-website/our-impact/fire-statistics/featured-items/top20_destruction.pdf [https://perma.cc/JSD2-H9QD].

⁶ See *Top 20 Most Destructive California Wildfires*, *supra* note 5.

⁷ See HANNA BUECHI ET AL., U.C. SANTA BARBARA & THE NATURE CONSERVANCY, LONG-TERM TRENDS IN WILDFIRE DAMAGES IN CALIFORNIA 2 fig.1 (2021), <https://emlab.ucsb.edu/sites/default/files/documents/wildfire-brief.pdf> [https://perma.cc/RFX5-Z5AL].

⁸ See *2021 Incident Archive*, CAL FIRE (2021), <https://www.fire.ca.gov/incidents/2021> [https://perma.cc/HP5C-53FY].

⁹ For unquoted text in this Note, I use “incarcerated people” instead of “prisoner” or “inmate.” See Lawrence Bartley, *I Am Not Your “Inmate,”* MARSHALL PROJECT (Apr. 12, 2021), <https://www.themarshallproject.org/2021/04/12/i-am-not-your-inmate> [https://perma.cc/JB7W-CRR6].

¹⁰ *Conservation (Fire) Camps Program*, CAL. DEP’T CORR. & REHAB., <https://www.cdcr.ca.gov/facility-locator/conservation-camps> [https://perma.cc/64EG-QJQ4].

common moniker: fire camps.¹¹ To qualify for service, volunteers must retain minimum-custody status and have eight years or less remaining in their sentence.¹² Those selected undergo days of training and field exercises,¹³ which involve intensive — and sometimes fatal — physical conditioning.¹⁴ This training reflects the harsh nature of the work. When not on the fire lines, incarcerated firefighters are “clearing fire breaks, loading sandbags for future uses, restoring historical areas, maintaining parks[,] and clearing dead, dry brush.”¹⁵ Through their service, the firefighters earn “between \$2.90 and \$5 a day,”¹⁶ plus “an additional \$1 to \$2 an hour when they’re on a fire line.”¹⁷

Notwithstanding the poor wages, the fire camps offer incentives for prospective volunteers: sentence reductions and preparation for employment. In 2016, California voters passed Proposition 57, which grants time credit to certain incarcerated workers, shortening their sentence.¹⁸ For those serving time for violent offenses, every two days of service grants one day of credit.¹⁹ Moreover, CDCR touts that many camp graduates find civilian firefighting jobs upon their release.²⁰ The success of the camp-to-firehouse pipeline, however, is muddled at best.²¹

Throughout California’s history, the fire camps have played an important role in state firefighting efforts.²² The camps span twenty-five counties²³ and account for thirty percent of the state’s wildlands

¹¹ *Frequently Asked Questions: Conservation (Fire) Camp Program*, CAL. DEP’T CORR. & REHAB. [hereinafter *Camp FAQ*], <https://www.cdcr.ca.gov/facility-locator/conservation-camps/faq-conservation-fire-camp-program> [<https://perma.cc/FFA6-X5US>].

¹² *Id.*

¹³ *Id.*

¹⁴ See Associated Press, *Inmate Firefighter Dies After Collapsing in Training Hike*, KQED (Apr. 22, 2018), <https://www.kqed.org/news/11664047/inmate-firefighter-dies-after-collapsing-in-training-hike> [<https://perma.cc/MJD8-FN8J>].

¹⁵ *What Is Fire Camp? Who’s Eligible? What Are the Benefits?*, GREG HILL & ASSOCS. [hereinafter *What Is Fire Camp?*], <https://www.greghillassociates.com/what-is-fire-camp-whos-eligible-what-are-the-benefits.html> [<https://perma.cc/LY8R-7LGH>].

¹⁶ Francine Uenuma, *The History of California’s Inmate Firefighter Program*, SMITHSONIAN MAG. (Sept. 1, 2022), <https://www.smithsonianmag.com/history/the-history-of-californias-inmate-firefighter-program-180980662> [<https://perma.cc/DZK5-GMQN>].

¹⁷ Jaime Lowe, *What Does California Owe Its Incarcerated Firefighters?*, THE ATLANTIC (July 27, 2021), <https://www.theatlantic.com/politics/archive/2021/07/california-inmate-firefighters/619567> [<https://perma.cc/PGR9-E26B>].

¹⁸ *In-Prison Credit-Earning Opportunities*, CAL. DEP’T CORR. & REHAB., <https://www.cdcr.ca.gov/proposition57> [<https://perma.cc/S2YH-7QPK>].

¹⁹ See *id.*; see also *What Is Fire Camp?*, *supra* note 15.

²⁰ *Camp FAQ*, *supra* note 11.

²¹ See Lizzie Johnson, *After Prison, The Fight to Be a Firefighter*, S.F. CHRON. (Nov. 10, 2021, 10:25 AM), <https://www.sfchronicle.com/california-wildfires/article/After-prison-the-fight-to-be-a-firefighter-16593127.php> [<https://perma.cc/64XJ-NSKP>].

²² See *id.*

²³ *Camp FAQ*, *supra* note 11.

firefighting force,²⁴ providing millions of man-hours annually.²⁵ Indeed, incarcerated firefighters battled both the Tubbs²⁶ and Camp Fires,²⁷ and the CCP's success has inspired other states to adopt similar initiatives.²⁸ Nevertheless, in recent years the camps have declined,²⁹ as those eligible to staff the camps have been released by actions,³⁰ spurred by criminal justice reformers and court orders,³¹ to reduce the state prison population. The result has been a rapid decline in the pool of potential volunteers, culminating in camp closures and staffing shortages.³²

These camps embody a new era in prison labor's expansionist history. Using the camps as a touchstone, this Note synthesizes existing scholarship to predict that the need for climate-linked labor will spur prison growth, and urges reformers to develop theories of litigation to keep future expansion in check. Part I describes prison labor's history and current fire camp conditions. Part II explores how climate change is impacting prisons and setting the stage for inflated prison labor programs. Part III proposes that prison growth caused by climate change, which this Note terms "climate carceralism," can be fought with creative applications of and efforts to expand existing Eighth Amendment law.

²⁴ Lowe, *supra* note 17.

²⁵ See Annika Neklason, *California Is Running Out of Inmates to Fight Its Fires*, THE ATLANTIC (Dec. 7, 2017), <https://www.theatlantic.com/politics/archive/2017/12/how-much-longer-will-inmates-fight-californias-wildfires/547628> [<https://perma.cc/DR6T-9FVR>].

²⁶ See Alex Helmick, *Hundreds of the Firefighters Battling Sonoma Fires — Inmates*, KQED (Oct. 13, 2017), <https://www.kqed.org/news/11623289/hundreds-of-the-firefighters-battling-sonoma-fires-inmates> [<https://perma.cc/H9X3-AKB9>].

²⁷ See Johnson, *supra* note 21 (describing story of Josh, a firefighter who fought the Camp Fire).

²⁸ Abby Cunniff, *California Is Dependent on Prison Labor for Fighting Fires. This Must End.*, TRUTHOUT (Sept. 23, 2022), <https://truthout.org/articles/california-is-dependent-on-prison-labor-for-fighting-fires-this-must-end> [<https://perma.cc/Y5E7-PTNP>].

²⁹ See Maisie Ide, Note, *Behind Bars and Flames: Protecting the Occupational Health and Safety of California's Incarcerated Firefighters*, 42 BERKELEY J. EMP. & LAB. L. 237, 240–42 (2021) (tracing the history of this decarceral trend before and after the COVID-19 pandemic).

³⁰ See Neklason, *supra* note 25 ("The measures . . . dramatically reduced the number of low-security inmates in state prisons — just the sort [CDCR] recruits . . .").

³¹ See, e.g., *Brown v. Plata*, 563 U.S. 493, 545 (2011); Order Granting in Part Plaintiffs' Motion for Further Enforcement Order at 1–2, *Coleman v. Brown*, No. 90-cv-00520 (E.D. Cal. Apr. 19, 2017); *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 1003 (E.D. Cal. 2009) ("[D]efendants shall provide the court with a population reduction plan that will in no more than two years reduce the population of the CDCR's adult institutions . . .").

³² CAL. DEP'T OF FORESTRY & FIRE PROT., BUDGET CHANGE PROPOSAL 4 (2022) [hereinafter BUDGET CHANGE PROPOSAL], https://esd.dof.ca.gov/Documents/bcp/2223/FY2223_ORG3540_BCP6013.pdf [<https://perma.cc/FS84-HQ4F>] ("The depopulation resulted in the permanent reduction of 40 inmate hand crews . . . [leaving] an average of only 61 of the 152 inmate hand crews . . . staffed."); see also GABRIEL PETEK, LEGIS. ANALYST'S OFF., THE 2023–24 BUDGET: CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION'S MAJOR CAPITAL OUTLAY PROPOSALS 6 (2023), <https://lao.ca.gov/reports/2023/4693/CA-Dept-Forestry-Fire-Protection-022123.pdf> [<https://perma.cc/U9NH-5ALQ>] ("[A]s of January 2023, 1,689 people were housed in conservation camps, compared to 3,980 people in January 2010.").

I. CONTEXT OF THE CAMPS

This Part presents the historical context of prison labor, beginning with its roots in racialized expansion and exploitation, before continuing on to modern-day critiques. It then turns to the nuanced conditions of the fire camps, centering incarcerated firefighters' experiences.

A. *Prison Labor's Past and Present*

Using incarcerated labor has extensive roots in American history. In the early Republic, lawmakers established systems of prison labor as alternatives to traditional punishments, such as execution and dismemberment, which they perceived to be classically "monarchical."³³ Prison labor "had particular appeal . . . [where] there was both a real and perceived shortage of settlers and laborers."³⁴ Lawmakers laid the foundations of penal servitude in early penitentiaries that substituted "carceral punishment of imprisonment at hard labor" for other sentences.³⁵

Throughout the nineteenth century, American prison labor adopted a more specific objective: legally supplanting, and eventually expanding, racialized systems of coerced labor originating from chattel slavery. After the Civil War and the subsequent emancipation in the South, states realized they could continue their legacy of racial exploitation through the Thirteenth Amendment's exception for involuntary servitude imposed as "punishment for crime."³⁶ Through the passage of the Black Codes, which "increased the penalties for crimes such as vagrancy, loitering, and public drunkenness," states used mass incarceration to "coerc[e] resistant freed slaves into becoming wage laborers."³⁷ Prison work for the state and the practice of "convict leasing," wherein states leased Black prisoners "to local businesses and corporations desperate to rebuild the South's infrastructure,"³⁸ effectively represented "a bridge between slavery and paid work."³⁹ As "state-maintained structures of racism," southern prisons were not shy about their connection to chattel slavery.⁴⁰ Angola State Prison, for example, was built on an old

³³ REBECCA M. MCLENNAN, *THE CRISIS OF IMPRISONMENT: PROTEST, POLITICS, AND THE MAKING OF THE AMERICAN PENAL STATE*, 1776–1941, at 19 (2008).

³⁴ *Id.* at 20.

³⁵ *Id.* at 37; *see also id.* at 36 (describing the rise of "house[s] of repentance").

³⁶ U.S. CONST. amend. XIII, § 1; *see also* MCLENNAN, *supra* note 33, at 14. *See generally* MICHELLE ALEXANDER, *THE NEW JIM CROW* 25–73 (10th Anniversary ed., 2020).

³⁷ Kim Gilmore, *Slavery and Prison — Understanding the Connections*, SOC. JUST., Fall 2000, at 195, 198. Prisons also played a role in suppressing those attempting to flee southern states. *See generally* Scott W. Duxbury, *Peculiar Institution? The Legacy of Slavery and Prison Expansion in the United States, 1970–2015*, JUST. Q., Mar. 2023, at 1, 3–4 (describing Jim Crow-style laws targeting Black migrants within destination states like Maryland and Virginia).

³⁸ Gilmore, *supra* note 37, at 198.

³⁹ *Id.* at 197. States also found loopholes in other major Reconstruction laws, such as the Civil Rights Act of 1866 and the Fourteenth Amendment. *See* MCLENNAN, *supra* note 33, at 15.

⁴⁰ Gilmore, *supra* note 37, at 198.

Louisiana plantation in the late nineteenth century.⁴¹ The most notorious of the “penal plantations,” Angola housed its population on old slave quarters and forced them to work,⁴² leaving a legacy that is still seldom taught today.⁴³ Prisons like Angola embodied the blurred line between the displaced system of chattel slavery and the newly minted prison industrial complex, which provided a new front for legally coerced labor.

Racial exploitation of prison labor was not confined to the South. Northern prisons also saw “racially based divisions . . . sharpened after emancipation,” whereby Black citizens “were criminalized for committing Black Code–type crimes” and “were subject to tougher sentences.”⁴⁴ The drive for labor was perpetuated, then, by capitalistic and racist impulses that were not confined by geography, and was so prolific that by the 1870s “large-scale industrial interests set up shop in the American penal system.”⁴⁵ By the start of the twentieth century, America’s prison population had exploded, nearly tripling in the South alone.⁴⁶

Twentieth-century politicians initially curbed the prison industrial complex but eventually continued with racialized mass incarceration. Through pressure from labor unions fearing worker displacement,⁴⁷ legislation restricted the reach of prison labor, isolating certain industries for only civilian workers.⁴⁸ However, these reforms were short lived. Beginning in the 1970s, the Nixon-led era of mass incarceration emerged, starting “an upward march [in prison populations] that would not ebb for 45 years.”⁴⁹ As prisons were filled, regulations were rolled back, and “Congress and individual states increasingly allowed private entities and state governments to benefit from incarcerated labor.”⁵⁰ These policies bore a striking resemblance to incarceration under the Black Codes, as communities of color were the primary targets of President Nixon’s new age of prison expansion through the war on drugs.⁵¹

⁴¹ Paul Gardullo, *Angola Prison: Collecting and Interpreting the Afterlives of Slavery in a National Museum*, F.J., Spring 2017, at 21, 23.

⁴² *Id.*

⁴³ See Liam Kennedy, “*Today They Kill with the Chair Instead of the Tree*”: Forgetting and Remembering Slavery at a Plantation Prison, 21 THEORETICAL CRIMINOLOGY 133, 134 (2017).

⁴⁴ Gilmore, *supra* note 37, at 198.

⁴⁵ MCLENNAN, *supra* note 33, at 87.

⁴⁶ MARGARET WERNER CAHALAN, U.S. DEP’T OF JUST., HISTORICAL CORRECTIONS STATISTICS IN THE UNITED STATES, 1850–1984, at 29 tbl.3-2 (1986), <https://bjs.ojp.gov/content/pub/pdf/hcsus084.pdf> [<https://perma.cc/F49W-QHGX>] (showing southern prison populations increasing from 8,417 in 1880 to 21,248 in 1904).

⁴⁷ See Gilmore, *supra* note 37, at 199 (describing unionist lobbying efforts).

⁴⁸ See, e.g., ACLU & GLOB. HUM. RTS. CLINIC, UNIV. OF CHI. L. SCH., CAPTIVE LABOR: EXPLOITATION OF INCARCERATED WORKERS 26–27 (2022) [hereinafter CAPTIVE LABOR] (describing legislation that “prohibited the interstate sale of prison-made goods,” *id.* at 27).

⁴⁹ Duxbury, *supra* note 37, at 1.

⁵⁰ CAPTIVE LABOR, *supra* note 48, at 27.

⁵¹ See *Nixon Adviser Admits War on Drugs Was Designed to Criminalize Black People*, EQUAL JUST. INITIATIVE (Mar. 25, 2016), <https://ej.org/news/nixon-war-on-drugs-designed-to-criminalize-black-people> [<https://perma.cc/T97Y-FMK8>] (“[By associating] Blacks with heroin, and then criminalizing [it] heavily, we could disrupt those communities.”).

The trend of increased incarceration and prison expansion has continued into the modern day.⁵² In the status quo, incarcerated workers produce goods and services worth billions of dollars each year.⁵³ Predictably, the beneficiaries of this labor are not the workers, but private interests and government actors. Incarcerated workers are often paid less than a dollar per hour for nonindustry work, if they are paid at all.⁵⁴ Moreover, just as in the past, prison work is often menial, degrading, and subject to hazardous conditions.⁵⁵ Indeed, prison labor scholars have argued that modern prison labor is akin to “modern-day slavery.”⁵⁶

Modern prisons allow states to utilize a “captive labor force”⁵⁷ that is uniquely vulnerable to legalized coercion. Such coercion includes “the threat of punishment — such as solitary confinement and loss of family visitation,” “deprivation — whereby incarcerated people work because it is the only way for them to pay for basic necessities,” and incentives, “such as the promise of earning ‘good time.’”⁵⁸ Though, as Professor Noah Zatz observes, coercion may well be the goal. He contends that poor conditions are rationalized as a part of punishment, since granting incarcerated workers “the pay, protections, and status accorded to free citizen-workers” runs afoul of the principle of “less eligibility,” which “requires that the state impose . . . conditions that visibly and viscerally convey degradation relative to those marked as ‘law abiding.’”⁵⁹ Poor conditions thereby serve a pragmatic role, distinguishing free-market labor from prison labor.⁶⁰ To retain this divide, the state must “den[y] that incarcerated workers are workers at all.”⁶¹ Although some call for

⁵² See *50 Years and a Wake Up: Ending the Mass Incarceration Crisis in America*, SENT’G PROJECT, <https://www.sentencingproject.org/advocacy/50-years-and-a-wake-up-ending-the-mass-incarceration-crisis-in-america> [<https://perma.cc/LX6B-9HCH>].

⁵³ CAPTIVE LABOR, *supra* note 48, at 31.

⁵⁴ *Id.* at 97 tbl.B. On average, wages for industrial work are only slightly better. See *id.*

⁵⁵ See *id.* at 61–68; see also Matthew Hahn, Opinion, *Sending Us to Fight Fires Was Abusive. We Preferred It to Staying in Prison.*, WASH. POST (Oct. 15, 2021, 6:55 AM), https://www.washingtonpost.com/outlook/prison-firefighter-california-exploit/2021/10/15/3310eccc-2c61-11ec-8ef6-3ca8fe943a92_story.html [<https://perma.cc/UV8A-D5YK>] (“[C]onsider the guy pushing a broom in his cell block making the equivalent of one Top Ramen noodle packet per day . . .”).

⁵⁶ CAPTIVE LABOR, *supra* note 48, at 47; see also Cambria Wilson & Elijah Baker, *Prison Labor and Vulnerability: From Environmental Disasters to Disasters of Consumer Capitalism*, in GLOB. ENV’T JUST. PROJECT, U.C. SANTA BARBARA, ENVIRONMENTAL JUSTICE STRUGGLES IN PRISONS AND JAILS AROUND THE WORLD 14, 15 (2020). See generally Michele Goodwin, *The Thirteenth Amendment: Modern Slavery, Capitalism, and Mass Incarceration*, 104 CORNELL L. REV. 899 (2019) (contending modern mass incarceration coerces workers and is “slavery behind bars,” *id.* at 907).

⁵⁷ CAPTIVE LABOR, *supra* note 48, at 17.

⁵⁸ *Id.* at 47 (emphasis omitted).

⁵⁹ Noah D. Zatz, *The Carceral Labor Continuum: Beyond the Prison Labor/Free Labor Divide*, in LABOR AND PUNISHMENT: WORK IN AND OUT OF PRISON 133 (Erin Hatton ed., 2021).

⁶⁰ See *id.* (explaining that prison labor is “an alternative source of cheap, subordinated labor power” that threatens to undermine civilian labor markets).

⁶¹ *Id.*

an end to prison labor, others believe prison labor empowers workers.⁶² They claim work gives incarcerated people “an opportunity to earn their keep, learn new skills, and, ultimately, be more prepared to return to [civilian] life.”⁶³ Still, modern prison labor remains mired in criticism, rooted in its ties to the worst of America’s legal history.

B. *Fire Camps in the Modern Age*

Within an ever-expanding, racialized prison industrial complex, the fire camps are special as labor programs that function outside of prison walls. Consequently, camp conditions differ from those found within ordinary prisons.⁶⁴ While “[m]ost of California’s walled prisons have massive electrified fences[,] are staffed by hundreds of officers and staff[,] and are often barren, concrete, and drab,” in the camps, “concrete is replaced with greenery and attractive landscaping[,] electrified fences with small wooden signs reading ‘camp boundary[,]’ and infamously bad prison food with comparatively tasty and wholesome meals.”⁶⁵ Moreover, as the camps are primarily staffed by other firefighters and administrators,⁶⁶ they lack armed guards.⁶⁷ Indeed, firefighters “have almost complete freedom of movement, provided they stay within camp boundaries and provided they report to work on time and prepared to work.”⁶⁸ This is not to say that the camps are pleasant, however. They “resemble well-kept army outposts,” maintain “considerable (if sporadic) surveillance by officers,” and “[meet] infractions . . . [with] significant punishments.”⁶⁹ Egregious violations, such as “refusing to work,” are met with threats of sending the offender “back to a walled prison.”⁷⁰

Camp working conditions can also be brutal. For one thing, the work is “physically arduous,” requiring the “us[e of] power and hand tools to create fuel breaks to stop wildfires.”⁷¹ This work “clearing out red-hot embers, churning burning soil, and ripping out tree stumps” can be truly dangerous, leading to severe burns and blisters.⁷² And even work off of the fire line consists of “hard manual labor for various local,

⁶² Wilson & Baker, *supra* note 56, at 15.

⁶³ *Id.*

⁶⁴ See Philip Goodman, *Hero and Inmate: Work, Prisons, and Punishment in California’s Fire Camps*, 15 J. LAB. & SOC’Y 353, 356–57 (2012); see also Hahn, *supra* note 55.

⁶⁵ Goodman, *supra* note 64, at 356.

⁶⁶ See *Conservation (Fire) Camps Program*, *supra* note 10 (“CAL FIRE maintains the camps, supervises the work of the hand crews, and is responsible for crew custody . . .”).

⁶⁷ Hahn, *supra* note 55 (“Gun towers are . . . absent, and the guards aren’t even armed.”).

⁶⁸ Goodman, *supra* note 64, at 357.

⁶⁹ Philip Goodman, “Another Second Chance”: *Rethinking Rehabilitation Through the Lens of California’s Prison Fire Camps*, 59 SOC. PROBS. 437, 442 (2012).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Complaint at 3, *Leavitt v. Nevada*, No. A-23-867730-C (Nev. Jud. Dist. Ct. Mar. 22, 2023); see also *infra* notes 126–29 and accompanying text (noting disparity between the injuries incurred by civilian firefighters and their incarcerated counterparts).

county, and state agencies.”⁷³ These “grade projects”⁷⁴ include menial, physically intensive jobs, such as “using sledgehammers to demolish stone grills at a local park, [and] landscaping and general maintenance at fire stations and public parks.”⁷⁵ Thus, although camp living conditions may seem amenable, the work is dangerous and exhausting.

Despite facing such hardships, firefighters have difficulty finding work upon release. CDCR claims that the camps prepare graduates for future careers,⁷⁶ yet historically, camp graduates have met significant barriers to obtaining employment.⁷⁷ For instance, many areas of California require firefighters to have an EMT certification.⁷⁸ The process restricts who can apply and bans applicants with two or more felony convictions.⁷⁹ After a federal court struck down legal challenges to these restrictions,⁸⁰ California passed AB 2147,⁸¹ which allows camp graduates to expunge their felony records.⁸² However, this mechanism has proved lacking; even with appropriate paperwork, camp veterans often have to wait months for courts to act.⁸³ In short, while “AB 2147 is a solution . . . [it’s] not a particularly quick or straightforward one.”⁸⁴

As a result of these poor conditions, many camp veterans justifiably feel exploited from their time working in the camps, particularly when serving alongside civilian firefighters earning real wages.⁸⁵ This resentment can grow upon a firefighter’s return to an indifferent (or even

⁷³ Goodman, *supra* note 69, at 442.

⁷⁴ Goodman, *supra* note 64, at 357.

⁷⁵ *Id.* at 358.

⁷⁶ *Camp FAQ*, *supra* note 11; see also Goodman, *supra* note 69, at 448.

⁷⁷ See Johnson, *supra* note 21. See generally Sandra Susan Smith & Jonathan Simon, *Exclusion and Extraction: Criminal Justice Contact and the Reallocation of Labor*, RUSSELL SAGE FOUND. J. SOC. SCIS., Mar. 2020, at 1, 5–10 (describing general barriers to employment).

⁷⁸ See Erika D. Smith, Opinion, *Why Is It Still So Hard for Former Prisoners to Become Firefighters in California?*, L.A. TIMES (June 4, 2021, 5:00 AM), <https://www.latimes.com/california/story/2021-06-04/why-is-it-hard-former-prisoners-become-firefighters-california> [https://perma.cc/7U4M-PWE9].

⁷⁹ See Andrew Wimer, *Despite Setback in Court, Former California Prison Firefighters Will Continue to Fight for EMT Certification*, INST. FOR JUST. (June 13, 2022), <https://ij.org/press-release/despite-setback-in-court-former-california-prison-firefighters-will-continue-to-fight-for-emt-certification> [https://perma.cc/D5RQ-C6EC].

⁸⁰ Nick Sibilla, *Federal Judge: Californians Who Fought Fires in Prison Can’t Become Career Firefighters*, FORBES (Feb. 16, 2021, 10:30 AM), <https://www.forbes.com/sites/nicksibilla/2021/02/16/federal-judge-californians-who-fought-fires-in-prison-cant-become-career-firefighters> [https://perma.cc/CP7A-KVXH].

⁸¹ CAL. PENAL CODE § 1203.4b (West 2023).

⁸² Smith, *supra* note 78.

⁸³ See *id.*

⁸⁴ *Id.*

⁸⁵ See Joshua Daniel Bligh, *Confessions of an Inmate Firefighter*, INT’L ASS’N WILDLAND FIRE (Feb. 2016), <https://www.iawfonline.org/article/confessions-of-an-inmate-firefighter> [https://perma.cc/S28B-6CWD] (noting “the pathetic little money we were making risking our lives and working our fingers to the bone”); see also Lowe, *supra* note 17.

hostile) civilian workforce.⁸⁶ And even those who tout the benefits of fire camp acknowledge that the work is coercive. As camp veteran Jacques D’Elia explains: “You’re an inmate and you have to do what they say, scary as it is, or else you’re going to get sent back to prison.”⁸⁷

Yet, some of the camps’ most vocal proponents have been former workers.⁸⁸ Joshua Daniel Bligh writes that in camp he “discover[ed] things inside [him]self that [he] didn’t know [he] possessed And the greatest joy is the chance to be appreciated, to feel normal for a week or two.”⁸⁹ From Bligh’s words, a tension arises between the dual identities camp veterans inhabit: as firefighters, and as incarcerated people. As firefighters, camp veterans may find validation that is rare in carceral settings. For instance, Matthew Hahn found “satisfaction in knowing that [his] work was as valuable as that of any other firefighter.”⁹⁰ Bligh recalls that civilian firefighters respect incarcerated crews, owing perhaps to their shared experiences.⁹¹ Further, incarcerated firefighters support one another, notwithstanding the de facto racial segregation in California’s prisons.⁹² As Professor Philip Goodman writes: “[P]risoners are putting their lives in the hands of their crewmates, including those who . . . belong[] to diverse ethnoracial groups.”⁹³ Finally, some firefighters find internal validation. Goodman observes that many firefighters believe the work aids their rehabilitation.⁹⁴ He notes: “There is remarkable consensus . . . about how rehabilitation is facilitated in the prison fire camps: the learning of a strong ‘work ethic.’”⁹⁵ In this way, the camps may aid some firefighters in rehabilitation efforts.⁹⁶

⁸⁶ See, e.g., Amika Mota, Opinion, *I Saved Lives as an Incarcerated Firefighter. To California, I Was Just Cheap Labor*, THE GUARDIAN (Sept. 8, 2020, 10:28 AM), <https://www.theguardian.com/us-news/2020/sep/01/california-incarcerated-firefighters-prison> [<https://perma.cc/B79D-93SE>].

⁸⁷ Eli Hager, *Prisoners Who Fight Wildfires in California: An Insider’s Look*, MARSHALL PROJECT (Aug. 20, 2015, 2:01 PM), <https://www.themarshallproject.org/2015/08/19/prisoners-who-fight-wildfires-in-california-an-insider-s-look> [<https://perma.cc/gLQA-XC4V>].

⁸⁸ See, e.g., Hahn, *supra* note 55.

⁸⁹ Bligh, *supra* note 85.

⁹⁰ Hahn, *supra* note 55; see also *Residents Thank Fire Crews for Saving Homes*, CAL. DEP’T CORR. & REHAB. (Oct. 14, 2022), <https://www.cdcr.ca.gov/insidecdcr/2022/10/14/residents-thank-fire-crews-for-saving-community> [<https://perma.cc/XJ8T-P7P6>].

⁹¹ See Bligh, *supra* note 85 (“We were dressed the same. . . . We lived at fire camp with the civilian and government crews. We worked side-by-side with them on the fire line. . . . We ate the same food, under the same tent. In a sense, we were the same.”).

⁹² See, e.g., Marvin Mentor, *Violence from Racial Tension and Overcrowding Pervades California Jails, Spreads to Prisons*, PRISON LEGAL NEWS (Jan. 15, 2007), <https://www.prisonlegalnews.org/news/2007/jan/15/violence-from-racial-tension-and-overcrowding-pervades-california-jails-spreads-to-prisons> [<https://perma.cc/HF8R-RSUA>].

⁹³ Philip Goodman, *Race in California’s Prison Fire Camps for Men: Prison Politics, Space, and the Racialization of Everyday Life*, 120 AM. J. SOCIO. 352, 355 (2014) (“[P]risoners . . . will fight natural disasters side by side . . . but separate into racial groups when in the camp itself.” *Id.* at 352.).

⁹⁴ Goodman, *supra* note 69, at 445.

⁹⁵ *Id.* at 447.

⁹⁶ See Bligh, *supra* note 85; see also Cliff Hayes & Jason Spraitz, *Forged in Fire: Rehabilitation on the Fireline*, ASTRA: MCNAIR SCHOLARS’ J., Summer 2022, at 44, 46–48.

Of course, these forms of “validation” are not universally given or retained. Incarcerated firefighters struggle with feelings of “internalized . . . shame and worthlessness,”⁹⁷ stemming from communal and personal sources.⁹⁸ Hahn surmises that some people do not even notice the camps, returning to their homes “unaware and probably unconcerned that an incarcerated fire crew had saved it.”⁹⁹ So, the firefighters experience the camps in complex ways and cannot wholly overcome the looming shroud of incarceration. As Goodman remarks: “[T]he camps cannot be fully understood using either of the two popular frameworks for thinking about penal labor, namely, as pure exploitation or as a panacea to the exorbitant cost of corrections and high rates of recidivism.”¹⁰⁰

Moreover, even in the camps, incarcerated people are driven to “volunteer” for hard labor by prison conditions. Hahn observes that while some “[do] everything in their capacity to ensure that they [get to the camps],” their motivation is not to serve, but to escape: “The conditions in California prisons are so terrible that fighting wildfires is a rational choice.”¹⁰¹ And combined with the fact that the camps threaten return to prison as a punishment for noncompliance,¹⁰² firefighters know their stay in the camps is conditioned on their cooperation. Per the ACLU’s definition of coercion, then, volunteering for the camps is not a free choice, as the contrast in camp and prison conditions puts pressure on incarcerated people to volunteer and work hard.¹⁰³ These coercive pressures coexist with and overshadow the firefighters’ dual identities, producing labor conditions that are unique but still exploitative.

II. PRISON ECOLOGY: HOW CLIMATE IMPACTS PRISONS

In addition to being nuanced extensions of prison labor, the fire camps are also climate-linked institutions. That is, their function and purpose arise from adverse climate conditions and, specifically, the prevalence of disaster. The camps are thereby manifestations of “prison ecology,” lying at the intersection of climate change and the prison system. This Part describes how climate change impacts prison conditions and policy, as well as how it is setting the stage to expand prison labor. Though this Part spotlights California, the trends observed are not confined to the Golden State, but are predictive of a broader relationship between a worsening climate and prison labor incentives.

⁹⁷ Taryn VanderPyl, “We’re Silent Heroes”: *Inmate Firefighters’ Experiences with Dignity and Shame in a Prison Labor Program*, 101 PRISON J. 398, 408 (2021).

⁹⁸ See *id.* at 408–09.

⁹⁹ Hahn, *supra* note 55.

¹⁰⁰ Goodman, *supra* note 93, at 360 n.7.

¹⁰¹ Hahn, *supra* note 55; see also Bligh, *supra* note 85 (“When I sense outrage and shock . . . I remember that I could have been sitting in a prison cell in the penitentiary.”).

¹⁰² See Goodman, *supra* note 69, at 442.

¹⁰³ See CAPTIVE LABOR, *supra* note 48, at 47; Hahn, *supra* note 55.

A. Prison Conditions

Climate change describes “long-term shifts in temperatures and weather patterns.”¹⁰⁴ Prison ecology posits that prisons — and mass incarceration especially¹⁰⁵ — have been impacted by pollution¹⁰⁶ and climate change,¹⁰⁷ and are themselves drivers of decay.¹⁰⁸ One such impact lies within prison walls. Prison populations are uniquely vulnerable to climate externalities,¹⁰⁹ such as rising temperatures¹¹⁰ and increasingly severe natural disasters.¹¹¹ They lack the agency to “sell their homes and move,”¹¹² relying on their wardens or on courts for remedies.¹¹³ Further, incarcerated populations are made vulnerable by dilapidated prison conditions. Consider rising temperatures; when summer days regularly top one hundred degrees, the absence of air conditioning can prove deadly.¹¹⁴ This is not uncommon. Nine in ten Texas facilities “are in places with more than 50 days a year of 90-plus-degree heat indexes.”¹¹⁵ Climate change will only intensify this pattern as temperatures rise, “jeopardiz[ing] the health of inmates and correctional officers alike.”¹¹⁶ The risk is particularly pronounced for current

¹⁰⁴ *What Is Climate Change?*, UNITED NATIONS, <https://www.un.org/en/climatechange/what-is-climate-change> [<https://perma.cc/K7TA-UNZH>].

¹⁰⁵ See, e.g., *Facts*, PRISON ECOLOGY PROJECT, <https://nationinside.org/campaign/prison-ecology-project/facts> [<https://perma.cc/T63S-XQRC>].

¹⁰⁶ See Elizabeth A. Bradshaw, *Tombstone Towns and Toxic Prisons: Prison Ecology and the Necessity of an Anti-prison Environmental Movement*, 26 *CRITICAL CRIMINOLOGY* 407, 410–12 (2018) (describing toxic prison conditions).

¹⁰⁷ See David N. Pellow, *Introduction to* DAVID N. PELLOW ET AL., *GLOB. ENV'T JUST. PROJECT, U.C. SANTA BARBARA, IMPACT OF LAW AND POLICY ON PRISON ENVIRONMENTAL JUSTICE*, at vi, vii (2022).

¹⁰⁸ See Dashka Slater, *Prison Ecology*, *SIERRA* (Oct. 5, 2015), <https://www.sierraclub.org/sierra/2015-6-november-december/grapple/prison-ecology> [<https://perma.cc/FNU3-MVZK>].

¹⁰⁹ See Alleen Brown, *Dark, Smoky Cells: As Wildfires Threaten More Prisons, The Incarcerated Ask Who Will Save Their Lives*, *THE INTERCEPT* (Feb. 12, 2022, 9:12 AM), <https://theintercept.com/2022/02/12/wildfires-prisons-climate-california> [<https://perma.cc/KK98-UJBY>].

¹¹⁰ DONALD J. WUEBBLES ET AL., *U.S. GLOB. CHANGE RSCH. PROGRAM, 1 CLIMATE SCIENCE SPECIAL REPORT: FOURTH NATIONAL CLIMATE ASSESSMENT* 185 (2017).

¹¹¹ See *id.* at 231. See generally Sandra Banholzer et al., *The Impact of Climate Change on Natural Disasters*, in *REDUCING DISASTER: EARLY WARNING SYSTEMS FOR CLIMATE CHANGE* 21 (Zinta Zommers & Ashbindu Singh eds., 2014).

¹¹² Dani Di Placido, *The Mass Humiliation of Ben Shapiro*, *FORBES* (Aug. 11, 2020, 4:26 PM), <https://www.forbes.com/sites/danidiplacido/2020/08/11/the-importance-of-humiliating-ben-shapiro> [<https://perma.cc/K7EU-3LYG>].

¹¹³ See, e.g., Panagioti Tsolkas, *Prisoners File Environmental Lawsuit Against Proposed Federal Prison in Kentucky*, *PRISON LEGAL NEWS* (Jan. 8, 2019), <https://www.prisonlegalnews.org/news/2019/jan/8/prisoners-file-environmental-lawsuit-against-proposed-federal-prison-kentucky> [<https://perma.cc/2CH9-UKYR>].

¹¹⁴ See Alleen Brown, *Boiling Behind Bars: In Sweltering Texas, Prisons Without Air Conditioning Are About to Get a Lot Hotter*, *THE INTERCEPT* (Feb. 12, 2022, 9:00 AM), <https://theintercept.com/2022/02/12/prisons-texas-heat-air-conditioning-climate-crisis> [<https://perma.cc/6SES-ZM5P>].

¹¹⁵ *Id.*

¹¹⁶ DANIEL W.E. HOLT, *SABIN CTR. FOR CLIMATE CHANGE L., HEAT IN US PRISONS AND JAILS: CORRECTIONS AND THE CHALLENGE OF CLIMATE CHANGE*, at i (2015).

populations, which are aged and ill-suited for heat.¹¹⁷ Indeed, “[h]eat-stroke and other heat-related illnesses” have already “claimed the lives of numerous inmates in recent years.”¹¹⁸

Prison populations are also vulnerable due to compromised political priorities. In times of disaster, states can be slow to evacuate or aid the incarcerated.¹¹⁹ In 2021, when the Dixie Fire approached Susanville, California, those incarcerated at the correctional center “were locked in their dark, smoky cells,” having gone nearly a month without power.¹²⁰ As the flames neared, “[n]o one . . . had any idea if, when, or how they would get out.”¹²¹ Similarly, as Tropical Storm Elsa flooded Dixie County, Florida, inhabitants of the Cross City Correctional Institution were locked up in ankle-deep water laden with human waste.¹²² When they were finally moved, the water had risen past their knees.¹²³ Despite these accounts, states have failed to reform prison response protocols.¹²⁴ Of the forty-seven states with public emergency planning documents, “only 32% . . . identified inmates as a vulnerable population; that same percentage of states also define inmates . . . as a ‘hazard’ because they are viewed as a threat to public safety.”¹²⁵ The lesson is clear: in times of disaster, the safety of incarcerated people is only an afterthought.

Of course, the fire camps themselves reflect this trend, as incarcerated firefighters experience hazards more severely than their civilian counterparts. “More than 1,000 inmate firefighters required hospital care between June 2013 and August 2018,” and inmate firefighters are “more than four times as likely, per capita, to incur object-induced injuries” compared to civilian firefighters.¹²⁶ They are also “eight times as likely to be injured after inhaling smoke and particulates.”¹²⁷ Some injuries have proven fatal; three firefighters died in the camps between 2016 and 2017.¹²⁸ And even in training, many “have been sickened and killed by heat exposure.”¹²⁹ Thus, incarcerated firefighters disproportionately bear the burden of exacerbated climate conditions.

¹¹⁷ *Id.* at ii; *see also id.* (observing medicinal risk factors for heat-related illness in prisons).

¹¹⁸ *Id.*

¹¹⁹ *See, e.g.,* Brown, *supra* note 109.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Alleen Brown, *Trapped in the Floods: With Floodwaters Rising, Prisoners Wait for Help in Floating Feces*, THE INTERCEPT (Feb. 12, 2022, 9:18 AM), <https://theintercept.com/2022/02/12/prison-climate-crisis-flood> [https://perma.cc/E299-95M6].

¹²³ *Id.* Notably, Florida disputes these accounts. *Id.*

¹²⁴ *See, e.g., id.* (recounting Florida’s unwillingness to reform response plans).

¹²⁵ Wilson & Baker, *supra* note 56, at 18.

¹²⁶ Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show*, TIME (Nov. 16, 2018, 7:40 PM), <https://time.com/5457637/inmate-firefighters-injuries-death> [https://perma.cc/GD3F-KWJ2].

¹²⁷ *Id.* Although the trend is clear, the cause of this disparity is not. Though, some reasons may include differing work assignments and poor medical care. *See* *Id.*, *supra* note 29, at 243–45.

¹²⁸ Vesoulis, *supra* note 126.

¹²⁹ CAPTIVE LABOR, *supra* note 48, at 14.

B. Prison Policymaking

Climate conditions also spur changes in carceral policy. Climate change is a crucible for governments and social institutions; it intensifies resource scarcities by exacerbating disparity¹³⁰ and increasing the cost of economic prosperity.¹³¹ As Professor Nadia Ahmad observes, “natural resource stresses have served as threat multipliers for conflict, compounding centuries of economic and racial inequality.”¹³² Under this strain, lawmakers adopt increasingly draconian measures to retain order, including restricting resources by caging particular groups. Ahmad notes that “[w]e are a planet of populations on the move,” where people are “forcibly moved by ‘sudden onset’ weather events.”¹³³ The response from the global community “has been to detain, imprison, and deport” these refugees.¹³⁴ The United States is no exception; it detains and deports migrants, including those fleeing climate disaster.¹³⁵

Incarceration is also a means of domestic social control. The United Nations warns that “as more people around the world organize to defend their lands and demand a green future, violent repression has also increased,”¹³⁶ including through “criminal prosecution and other forms of legal harassment.”¹³⁷ For instance, climate conferences in Poland and Egypt, COP24 and COP27, were disrupted by mass arrests of attendees.¹³⁸ Poland even passed a dedicated surveillance law, expanding police powers to collect personal data from conference goers.¹³⁹ Likewise, in the United States incarceration has been used to stymie climate activism. Just earlier this year, Manuel Esteban Paez Terán — a climate protestor — was shot and killed by police in Atlanta, Georgia,

¹³⁰ See ALEX EVANS, CTR. ON INT’L COOP., RESOURCE SCARCITY, CLIMATE CHANGE AND THE RISK OF VIOLENT CONFLICT 4 (2010).

¹³¹ See, e.g., Christian Rixen et al., *Winter Tourism and Climate Change in the Alps: An Assessment of Resource Consumption, Snow Reliability, and Future Snowmaking Potential*, 31 MOUNTAIN RSCH. & DEV. 229, 229–30 (2011) (observing increasing costs to provide snow cover).

¹³² Nadia Ahmad, *Climate Cages: Connecting Migration, The Carceral State, Extinction Rebellion, and the Coronavirus Through Cicero and 21 Savage*, 66 LOY. L. REV. 293, 294 (2020).

¹³³ *Id.* at 300.

¹³⁴ *Id.* at 314.

¹³⁵ See Nadia B. Ahmad, *The Cliodynamics of Mass Incarceration, Climate Change, and “Chains on Our Feet,”* 49 FORDHAM URB. L.J. 371, 373–76 (2022).

¹³⁶ Clément Nyaletsossi Voule (Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association), *Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, ¶ 18, U.N. Doc. A/76/222 (July 23, 2021).

¹³⁷ *Id.* ¶ 29.

¹³⁸ See *Poland: Arrests and Refusal of Entry to Environmentalists During the COP24 Climate Talks*, AMNESTY INT’L (Dec. 11, 2018), <https://www.amnesty.org/en/documents/eur37/9550/2018/en> [<https://perma.cc/JD95-ECVV>]; Nina Lakhani, *Egyptian Regime Criticized as Climate Activist Arrested in Run-Up to Cop27*, THE GUARDIAN (Nov. 2, 2022, 1:03 AM), <https://www.theguardian.com/environment/2022/nov/02/egypt-human-rights-climate-crisis-cop27> [<https://perma.cc/N79T-23P2>].

¹³⁹ See Kate Aronoff, *Poland’s New Surveillance Law Targets Personal Data of Environmental Advocates, Threatening U.N. Climate Talks*, THE INTERCEPT (July 2, 2018, 2:28 PM), <https://theintercept.com/2018/07/02/cop24-poland-surveillance-law> [<https://perma.cc/VXR7-KS5F>].

for protesting deforestation linked to a new “cop city.”¹⁴⁰ In the tragedy’s wake, Georgia police doubled down, prosecuting other protestors under domestic terrorism laws.¹⁴¹ This has become a familiar tactic in recent years, as law enforcement increasingly uses the language of anti-terrorism to investigate, prosecute, and incarcerate climate activists.¹⁴²

C. Prison Labor and Climate Carceralism

Finally, climate change pressures states to increasingly rely on prison labor, encouraging them to expand their prison populations. This reliance grows as states confront two realities: worsening climate disasters and diminishing civilian resources. Consider California: the state’s wildfire troubles will only worsen over time,¹⁴³ as a strong link exists between accelerating climate change and wildfire severity.¹⁴⁴ Climate change alters precipitation patterns, and rising temperatures produce drier, windier conditions ideal for fires.¹⁴⁵ It is unsurprising, then, that fifteen of the twenty most destructive fires in state history have occurred in the last ten years,¹⁴⁶ seven of which have been the hottest on record.¹⁴⁷ California has also suffered a dearth of civilian workers. As nearly half

¹⁴⁰ Steven Donziger, *Environmentalist Manuel Esteban Paez Terán’s Death Is Part of a Disturbing Trend*, THE GUARDIAN (Mar. 6, 2023, 3:44 PM), <https://www.theguardian.com/commentisfree/2023/feb/02/manuel-esteban-paez-teran-climate-activist-killed-atlanta-police> [https://perma.cc/7MD9-SN5L].

¹⁴¹ See Timothy Pratt, “Cop City” Protest Lawyers Challenge Use of Domestic Terrorism Statute, THE GUARDIAN (June 3, 2023, 1:40 PM), <https://www.theguardian.com/us-news/2023/jun/02/atlanta-cop-city-protest-domestic-terrorism-statute> [https://perma.cc/MD4D-QE59].

¹⁴² See *id.*; Sam Levin, *Revealed: FBI Terrorism Taskforce Investigating Standing Rock Activists*, THE GUARDIAN (Nov. 28, 2017, 12:42 AM), <https://www.theguardian.com/us-news/2017/feb/10/standing-rock-fbi-investigation-dakota-access> [https://perma.cc/ZNL3-VNBJ]; William Morris, *Appeals Court Upholds 8-Year Sentence of Des Moines Activist in Dakota Access Pipeline Sabotage*, DES MOINES REG. (June 6, 2022, 4:44 PM), <https://www.desmoinesregister.com/story/news/crime-and-courts/2022/06/06/dakota-access-pipeline-dapl-protestor-sentence-jessica-reznicek/7535555001> [https://perma.cc/5N9X-TH56].

¹⁴³ See *Id.*, *supra* note 29, at 242 (“California’s need for . . . [and] reliance on incarcerated fire-fighters . . . will only increase as climate change continues to intensify the fire season.”).

¹⁴⁴ See, e.g., MATTHEW W. JONES ET AL., CLIMATE CHANGE INCREASES THE RISK OF WILDFIRES 1 (2020), https://sciencebrief.org/uploads/reviews/ScienceBrief_Review_WILDFIRES_Jan2020.pdf [https://perma.cc/4W5Y-AFUQ] (reviewing fifty-seven studies linking climate change to wildfires).

¹⁴⁵ Daniel L. Swain, *A Shorter, Sharper Rainy Season Amplifies California Wildfire Risk*, GEOPHYSICAL RSCH. LETTERS, Mar. 16, 2021, at 1, 2.

¹⁴⁶ BUDGET CHANGE PROPOSAL, *supra* note 32, at 2; see also Robinson Meyer, *California’s Wildfires Are 500 Percent Larger Due to Climate Change*, THE ATLANTIC (July 16, 2019), <https://www.theatlantic.com/science/archive/2019/07/climate-change-500-percent-increase-california-wildfires/594016> [https://perma.cc/7V8T-KC29].

¹⁴⁷ Sarah Kaplan & John Muyskens, *The Past Seven Years Have Been the Hottest in Recorded History, New Data Shows*, WASH. POST (Jan. 13, 2022, 11:00 AM), <https://www.washingtonpost.com/climate-environment/2022/01/13/global-temperature-record-climate-change> [https://perma.cc/D4QP-WADZ].

the state is managed by federal agencies¹⁴⁸ — including fifty-seven percent of forests¹⁴⁹ — the state relies on both state and federal firefighters.¹⁵⁰ Yet recently both sources have suffered manpower shortages,¹⁵¹ hampering firefighting efforts. In 2021, half of the state's 273 wildfire engines were understaffed,¹⁵² delaying response times and reducing containment capacity.¹⁵³ As wildfires grow, this exhausted workforce¹⁵⁴ may shrink even more as it strains under greater workloads.

Prison labor programs are a seductive answer to this crisis.¹⁵⁵ Incarcerated workers can be coerced when civilian recruitment stagnates, as their wellbeing matters little to states in times of emergency.¹⁵⁶ Further, the financial incentives are great; California saves hundreds of millions of dollars a year using incarcerated firefighters.¹⁵⁷ For each incarcerated firefighter earning a few dollars a day, the state avoids paying a civilian thousands of dollars each month.¹⁵⁸ And other states are taking notice. In 2021, Arizona expanded its firefighting program, “call[ing] for the use of inmate crews to help thin [forest] fuel.”¹⁵⁹ Texas

¹⁴⁸ See Yoohyun Jung, *Here's How Much of California Is Owned by Different Government Agencies and Why That Matters*, S.F. CHRON. (Jan. 14, 2022), <https://www.sfchronicle.com/bayarea/article/Here-s-how-much-of-California-is-owned-by-16773882.php> [<https://perma.cc/G2L5-9NMV>].

¹⁴⁹ Letter from Dianne Feinstein & Kamala D. Harris, U.S. Sens., to Sonny Perdue, U.S. Sec'y of Agric., and David Bernhardt, U.S. Sec'y of Interior (Oct. 19, 2020).

¹⁵⁰ See Alicia Victoria Lozano, “Ground Zero for Attrition”: California Federal Fire Crews Understaffed as Fire Threat Rises, NBC NEWS (May 20, 2021, 4:30 AM), <https://www.nbcnews.com/news/us-news/ground-zero-attrition-california-federal-fire-crews-understaffed-fire-threat-n1267882> [<https://perma.cc/VYS9-SU3F>].

¹⁵¹ See Kurtis Alexander, “It Scares the Heck out of Me”: California's Federal Firefighter Shortage Has Gotten Dramatically Worse, S.F. CHRON. (Aug. 6, 2022, 2:54 PM), <https://www.sfchronicle.com/california-wildfires/article/forest-service-firefighters-17350152.php> [<https://perma.cc/24GW-ZGYT>] (noting that in 2022, the U.S. Forest Service had over 1,300 unfilled positions in California); Isabella Vanderheiden, “Breaking Point”: McGuire Seeks to Boost Cal Fire Staffing in 2022, TIMES-STANDARD (Dec. 10, 2021, 2:27 PM), <https://www.times-standard.com/2021/12/10/breaking-point-mcguire-seeks-to-boost-cal-fire-staffing-in-2022> [<https://perma.cc/PK7X-82RS>].

¹⁵² Sophie Quinton, *Lack of Federal Firefighters Hurts California Wildfire Response*, STATELINE (July 14, 2021, 12:00 AM), <https://stateline.org/2021/07/14/lack-of-federal-firefighters-hurts-california-wildfire-response> [<https://perma.cc/FF9B-X8CR>].

¹⁵³ See Avery Haines, *Fewer Firefighters Mean Slower Response Times, Jeopardizing Lives*, CTV NEWS (Oct. 4, 2022, 4:03 PM) <https://www.ctvnews.ca/w5/fewer-firefighters-mean-slower-response-times-jeopardizing-lives-1.6090717> [<https://perma.cc/A33J-P2MC>].

¹⁵⁴ See Julie Cart, *Overworked California Firefighters Struggle with PTSD, Suicide, Fatigue, Intensifying Wildfires*, CALMATTERS (June 13, 2022), <https://calmatters.org/environment/2022/06/california-firefighter-trauma-ptsd> [<https://perma.cc/9FA4-4D28>].

¹⁵⁵ Notably, others have already perceived this risk. See, e.g., *Id.*, *supra* note 29, at 241.

¹⁵⁶ See *supra* notes 119–25 and accompanying text. Indeed, the CCP was historically far larger. See BUDGET CHANGE PROPOSAL, *supra* note 32, at 4 (noting the CCP is now at forty percent capacity).

¹⁵⁷ See Neklason, *supra* note 25.

¹⁵⁸ See *Become a Seasonal Firefighter*, CAL FIRE, <https://www.fire.ca.gov/join-calfire/seasonal-firefighter> [<https://perma.cc/9X6U-WSX4>] (listing monthly civilian wages at \$3,600 to \$4,550).

¹⁵⁹ Ron Dungan, *Arizona Wants to Use More Inmates as Wildland Firefighters — But at What Cost to the Prisoners?*, KJZZ (Dec. 9, 2021, 10:04 AM), <https://kjzz.org/content/1738893/arizona-wants-use-more-inmates-wildland-firefighters-what-cost-prisoners> [<https://perma.cc/N6B6-4KYB>].

also used unpaid workers to prepare for Hurricane Harvey — who were then stranded for days, waiting to be evacuated.¹⁶⁰

Increased reliance on prison labor may justify carceral growth. Throughout American history, demand for cheap, expendable labor has incentivized expanding and filling prisons.¹⁶¹ Indeed, the ACLU has warned that “when incarcerated people are used for cheap labor, there is a risk that our criminal justice policy will be hijacked . . . to grow or maintain this literally captive labor force.”¹⁶² In future decades, states like California may expand the reach of their carceral systems to ensure an adequate supply of climate-linked labor, as other attempts to shore up the camps have failed.¹⁶³ This “climate carceralism” might manifest as higher arrest rates, increased labor coercion, or fewer early releases.

The threat of climate carceralism is not merely theoretical. In California, camp closures have met opposition from public officials and civilian firefighters.¹⁶⁴ As Sacramento Sheriff Scott Jones declared, “if [the state] kept more people in prison . . . they would have plenty of people for fire crews.”¹⁶⁵ Then—Attorney General Kamala Harris met heavy criticism when her office made similar claims.¹⁶⁶ In 2011, the Supreme Court held in *Brown v. Plata*¹⁶⁷ that California’s prisons were unconstitutionally overcrowded.¹⁶⁸ Subsequent decisions ordered the state to hasten its downsizing efforts,¹⁶⁹ spurred by class action lawsuits alleging

¹⁶⁰ Polly Mosendz, *When Do You Move Prisoners Out of a Storm’s Path?*, BLOOMBERG (Sept. 8, 2017, 12:10 PM), <https://www.bloomberg.com/politics/articles/2017-09-08/when-do-you-move-prisoners-out-of-a-hurricane-s-path> [<https://perma.cc/6338-S9WW>].

¹⁶¹ See *supra* section I.A, pp. 709–12 (describing the post-Reconstruction South and Nixon era).

¹⁶² CAPTIVE LABOR, *supra* note 48, at 18.

¹⁶³ The state has tried recruiting from jails and expanding camp eligibility without significant success. See Neklason, *supra* note 25; Ide, *supra* note 29, at 240.

¹⁶⁴ See, e.g., Alicia Victoria Lozano, “In Desperate Need of These Programs”: California to Close Inmate Firefighting Training Center, NBC NEWS (June 8, 2021, 12:40 PM), <https://www.nbcnews.com/news/us-news/desperate-need-these-programs-california-close-inmate-firefighting-training-center-n1269570> [<https://perma.cc/CX7X-656D>].

¹⁶⁵ Rowena Shaddox, *Dwindling Inmate Firefighter Population Forces California to Hire More Expensive Crews*, FOX40 (Feb. 7, 2021, 10:41 PM), <https://fox40.com/news/local-news/dwindling-inmate-firefighter-population-forces-california-to-hire-more-expensive-crews> [<https://perma.cc/7SC7-JTYR>].

¹⁶⁶ See Jackie Kucinich, *Kamala Harris’ A.G. Office Tried to Keep Inmates Locked Up for Cheap Labor*, DAILY BEAST (Feb. 11, 2019, 10:24 PM), <https://www.thedailybeast.com/kamala-harris-ag-office-tried-to-keep-inmates-locked-up-for-cheap-labor> [<https://perma.cc/U9XK-FTFC>]; Alexander Sammon, *How Kamala Harris Fought to Keep Nonviolent Prisoners Locked Up*, AM. PROSPECT (July 30, 2020), <https://prospect.org/justice/how-kamala-harris-fought-to-keep-nonviolent-prisoners-locked-up> [<https://perma.cc/4UQN-YSX3>].

¹⁶⁷ 563 U.S. 493 (2011).

¹⁶⁸ *Id.* at 545.

¹⁶⁹ Paige St. John, *Federal Judges Order California to Expand Prison Releases*, L.A. TIMES (Nov. 14, 2014, 2:39 PM), <https://www.latimes.com/local/political/la-me-ff-federal-judges-order-state-to-release-more-prisoners-20141114-story.html> [<https://perma.cc/PFB9-KCYV>]; see also Order Granting in Part Plaintiffs’ Motion for Further Enforcement Order, *supra* note 31, at 1–2; *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 1003 (E.D. Cal. 2009).

the state was “slow-walking the process.”¹⁷⁰ In one filing, the state argued that expanding the credit program “would severely impact fire camp participation — a dangerous outcome while California is in the middle of a difficult fire season and severe drought.”¹⁷¹ The impulse to fill prisons to ensure a supply of firefighters, then, has already manifested. And although the state is currently decreasing its prison population,¹⁷² rising wildfires may inevitably cause it to reverse this trend.

III. COMBATING THE RISE OF CLIMATE CARCERALISM

The continued exploitation of incarcerated workers cannot be allowed to undergo yet another era of expansion, especially as disaster work is so uniquely dangerous.¹⁷³ If climate carceralism germinates, the prison industrial complex — our “modern-day slavery”¹⁷⁴ — will continue to run roughshod over incarcerated people’s well-being, perpetuating a cycle of legalized exploitation descended from our legal system’s most shameful roots.¹⁷⁵ And in keeping with the history of prison labor, the risks, as well as the brunt of any subsequent rise in incarceration, will be primarily shouldered by people of color.¹⁷⁶ Thus, alongside grassroots legislative efforts,¹⁷⁷ reformers should explore litigation to counterbalance states’ expansionist impulses. To this end, this Part assesses several legal challenges stemming from the Eighth Amendment.

A. *The Eighth Amendment as a Legal Toolbox*

Powerful legal tools to prevent prison growth lie within the Eighth Amendment. The amendment, which proscribes “cruel and unusual punishment[],” is the Constitution’s primary safeguard against inhumane conditions of confinement.¹⁷⁸ Although it “is not static” and

¹⁷⁰ Kucinich, *supra* note 166.

¹⁷¹ Defendants’ Opposition to Plaintiffs’ Motion for Further Enforcement Order at 4, *Coleman v. Brown*, No. 90-cv-00520 (E.D. Cal. Apr. 19, 2017).

¹⁷² See *supra* notes 29–32 and accompanying text. Also, other states may not be as committed to reducing prison populations as California, making their carceral impulses even stronger.

¹⁷³ See *supra* notes 126–29 and accompanying text; *Id.*, *supra* note 29, at 242.

¹⁷⁴ CAPTIVE LABOR, *supra* note 48, at 47.

¹⁷⁵ See *supra* section I.A, pp. 709–12.

¹⁷⁶ See, e.g., *Id.*, *supra* note 29, at 238 (“Although [CDCR] does not publish data on the racial composition of the fire camps, ‘the racial and ethnic demographics of camps are [estimated to be] roughly similar to the overall state prison population,’ in which Black and Latinx individuals are overrepresented.” (second alteration in original) (footnote omitted) (quoting Goodman, *supra* note 69, at 442 n.5)).

¹⁷⁷ Organizations like Californians for Safety and Justice and the ACLU of Southern California have fought to close state prisons. See *CDCR to Deactivate California Correctional Center*, CAL. DEP’T CORR. & REHAB. (Apr. 14, 2021), <https://www.cdcr.ca.gov/insidecdcr/2021/04/14/cdcr-to-deactivate-california-correctional-center-in-susanville> [<https://perma.cc/V8ZL-2CU4>]; *Jails Project*, ACLU S. CAL., <https://www.aclusocal.org/en/issues/jails-project> [<https://perma.cc/9T7Z-QQDK>]; *What We Do*, CALIFORNIANS FOR SAFETY & JUST., <https://safeandjust.org/about-us> [<https://perma.cc/BKF5-2AZ9>].

¹⁷⁸ U.S. CONST. amend. VIII.

“draw[s] its meaning from . . . evolving standards of decency,”¹⁷⁹ in *Helling v. McKinney*¹⁸⁰ the Supreme Court recognized the amendment secures certain standards of treatment for “food, clothing, shelter, medical care, and reasonable safety.”¹⁸¹ The Court explained that “[i]t is ‘cruel and unusual punishment to hold convicted criminals in unsafe conditions,’” including conditions that risk future harm.¹⁸² Though, this is not to say such claims are easy. To succeed, a plaintiff must prove that the conditions “alone or in combination”¹⁸³ create a “substantial risk of serious harm”¹⁸⁴ and that officials were “subjectively aware of the risk” and thereby acted with “deliberate indifference.”¹⁸⁵

Climate change has already spurred a new breed of Eighth Amendment challenges in the realm of prison conditions.¹⁸⁶ In 2013, several people imprisoned on Angola’s death row filed suit in federal court claiming that the prison’s sweltering climate was cruel and unusual, as the dangers of the heat index (which reached 195 degrees in 2011¹⁸⁷) were compounded by their medications, increasing the risk of heat-related illness.¹⁸⁸ The district court agreed — and the Fifth Circuit affirmed¹⁸⁹ — that the heat posed a substantial risk of serious harm.¹⁹⁰ Another court in 2017 was even more explicit, granting injunctive relief and noting “heat waves will become more frequent, more severe, and more prolonged” because of climate change.¹⁹¹ Thus, the judiciary is taking notice of worsening climate conditions in prisons, an outcome some observers have recently pushed for.¹⁹²

If the threat of climate carceralism comes to pass, and states push for expanded prisons to grow their climate-linked labor programs, litigious reformers could use Eighth Amendment doctrine to attack disaster work as inherently dangerous. Although the Supreme Court has yet to establish a general Eighth Amendment standard for working

¹⁷⁹ *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

¹⁸⁰ 509 U.S. 25 (1993).

¹⁸¹ *Id.* at 32 (quoting *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989)).

¹⁸² *Id.* at 33 (quoting *Youngberg v. Romeo*, 457 U.S. 307, 315–16 (1982)); *see also id.* (“[A] remedy for unsafe conditions need not await a tragic event.”).

¹⁸³ *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

¹⁸⁴ *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Helling*, 509 U.S. at 35).

¹⁸⁵ *Id.* at 829.

¹⁸⁶ *See PELLOW ET AL.*, *supra* note 107, at 27–31.

¹⁸⁷ *Bird Marella Team Works on Louisiana Pro Bono Prison Matter*, BIRD MARELLA (Aug. 5, 2013), <https://www.birdmarella.com/news-insights/news/bird-marella-team-works-on-louisiana-pro-bono-prison-matter> [<https://perma.cc/29Z7-UB27>].

¹⁸⁸ *Ball v. LeBlanc*, 988 F. Supp. 2d 639, 644 (M.D. La. 2013), *aff’d in part, vacated in part*, 792 F.3d 584 (5th Cir. 2015).

¹⁸⁹ *Ball*, 792 F.3d at 593.

¹⁹⁰ *Ball*, 988 F. Supp. 2d at 662–64.

¹⁹¹ *Cole v. Collier*, No. 14-CV-01698, 2017 WL 3049540, at *31 n.27 (S.D. Tex. July 19, 2017) (quoting *HOLT*, *supra* note 116, at i).

¹⁹² *See, e.g.*, Robert Pistone, Note, *Violations of the Eighth Amendment: How Climate Change Is Creating Cruel and Unusual Punishment*, 28 HASTINGS ENV’T L.J. 213, 218 (2022).

conditions,¹⁹³ a majority of circuit courts have held that prison work can “constitute a condition of confinement,”¹⁹⁴ and may not be too dangerous or taxing.¹⁹⁵ For instance, the Ninth Circuit forbids prisons from compelling a worker to “perform physical labor which [is] beyond [his] strength, endanger[s] his life or health, or cause[s] undue pain.”¹⁹⁶

As states rely on prison labor to fight disasters, they may invite litigation under this standard, presenting an opportunity for reformers. After all, in the context of firefighting, the work can be perilous, especially for incarcerated workers.¹⁹⁷ And as climate change worsens, so too will the danger: “Fatalities and injuries rise with the . . . frequency and intensity of fires, and fire hazards like burnovers, heat exhaustion, and tree hazards are more likely.”¹⁹⁸ Fire camp work is also physically exhausting,¹⁹⁹ perhaps lying “beyond” a worker’s strength.²⁰⁰ In *Howard v. King*,²⁰¹ the Fifth Circuit recognized that “being worked each and everyday [sic] . . . for 56 hours a week”²⁰² could constitute a colorable Eighth Amendment claim if the deprivation of rest caused “physical and mental suffering.”²⁰³ Incarcerated firefighters work shifts upwards of twenty-four hours when fighting fires, “far more hours than those contemplated by the rules and regulations of the Director of Corrections.”²⁰⁴ Thus, if plaintiffs can clear the doctrinal hurdles, circuits may well recognize disaster work to be impermissible under existing labor standards.

Eighth Amendment litigation of this sort may already be on the horizon. Just earlier this year, the ACLU, representing several incarcerated firefighters in Nevada, challenged the state’s camp conditions.²⁰⁵ The complaint alleges that the firefighters were issued old, worn boots that were not fit for the field, which literally melted off their feet when

¹⁹³ See *Rhodes v. Michigan*, 10 F.4th 665, 680 (6th Cir. 2021) (“[The Court] has not specifically applied the Eighth Amendment[] [to] . . . unsafe working conditions.”).

¹⁹⁴ *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006).

¹⁹⁵ Eighth Amendment protections for working conditions have been recognized in the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits. See *Gill v. Mooney*, 824 F.2d 192, 195 (2d Cir. 1987); *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); *Rhodes*, 10 F.4th at 682–83; *Hall v. Bennett*, 379 F.3d 462, 464–65 (7th Cir. 2004); *Ray v. Mabry*, 556 F.2d 881, 882 (8th Cir. 1977) (per curiam); *Ambrose v. Young*, 474 F.3d 1070, 1078 (8th Cir. 2007); *Morgan*, 465 F.3d at 1045; *Smith v. United States*, 561 F.3d 1090, 1104–05 (10th Cir. 2009).

¹⁹⁶ *Morgan*, 465 F.3d at 1045 (quoting *Berry v. Bunnell*, 39 F.3d 1056, 1057 (9th Cir. 1994) (per curiam)); see also Pistone, *supra* note 192, at 221–22.

¹⁹⁷ See *supra* notes 126–29 and accompanying text; Lowe, *supra* note 17; Pistone, *supra* note 192, at 228–31 (describing worsening fire camp work as cruel and unusual punishment).

¹⁹⁸ *Id.*, *supra* note 29, at 242 (citing Patrick Withen, *Climate Change and Wildland Firefighter Health and Safety*, 24 NEW SOLS.: J. ENV’T & OCCUPATIONAL HEALTH POL’Y 577 (2015)).

¹⁹⁹ See *supra* notes 71–75 and accompanying text.

²⁰⁰ *Morgan*, 465 F.3d at 1045 (quoting *Bunnell*, 39 F.3d at 1057).

²⁰¹ 707 F.2d 215 (5th Cir. 1983).

²⁰² *Id.* at 218.

²⁰³ *Id.* at 220.

²⁰⁴ Brady L. Root, Note, *California’s Incarcerated Firefighters Are Owed the Minimum Wage*, 32 S. CAL. REV. L. & SOC. JUST. 35, 47 (2023).

²⁰⁵ Complaint, *supra* note 72, ¶ 202.

fighting fires, leading to pain so intense they “believed their socks had melted to their feet.”²⁰⁶ After their supervisors finally allowed them to visit the hospital, the firefighters’ feet were so burned that hospital staff had to “debride[] [them] one at a time,” cutting away “all the dead skin and tissue from [their] burns.”²⁰⁷ Importantly, the lawsuit goes beyond alleging simple negligence on the part of the State. Instead, it cites the Ninth Circuit’s standard to allege that the State was “deliberately indifferent to the [p]laintiffs’ health or safety while [they] performed physical labor [that] endangered their health.”²⁰⁸ This suit reveals that climate-linked labor spurs colorable challenges under the Eighth Amendment.

Notably, another (significantly less novel) way to challenge climate carceralism under the Eighth Amendment is to revive the prison overcrowding litigation featured in *Brown*.²⁰⁹ Such litigation has the benefit of being rooted in Supreme Court precedent, as the *Brown* Court recognized the harm of prison overcrowding, noting that “[f]or years the medical and mental health care provided by California’s prisons has fallen short of minimum constitutional requirements Needless suffering and death have been the well-documented result.”²¹⁰ So, if California (or any other state) inflates its prison population to secure climate-linked labor,²¹¹ it may walk right back into the conditions that undergirded the Eighth Amendment claims in *Brown*. Indeed, overcrowding challenges have already found success, as they helped hold California accountable for slow-walking prison release mandates throughout the 2010s.²¹²

Wielding Eighth Amendment litigation has the potential to check states’ expansionist impulses. By holding states accountable for the dangerous, exhausting conditions of climate-linked labor, litigants can tip the policy scales to counterbalance the significant incentives for using such labor. At the very least, such litigation has the potential to provide recourse for incarcerated workers, who may increasingly find themselves combating disaster. And although this Note discusses only the Eighth Amendment, other repositories of legal challenges lie dormant. For instance, some litigants have turned to claims under state law²¹³ or the Due Process Clause²¹⁴ to seek relief. Though their successes have been limited,²¹⁵ the potential remains.

²⁰⁶ *Id.* ¶ 119.

²⁰⁷ *Id.* ¶ 176. The plaintiffs also allege they were not given any pain medication. *Id.* ¶ 178.

²⁰⁸ *Id.* ¶ 206.

²⁰⁹ See *Brown v. Plata*, 563 U.S. 493, 517, 545 (2011).

²¹⁰ *Id.* at 501.

²¹¹ See *supra* notes 161–63 and accompanying text.

²¹² See sources cited *supra* note 169.

²¹³ See, e.g., Complaint, *supra* note 72, ¶¶ 231–234 (asserting a claim under Nevada’s state constitution); *Id.*, *supra* note 29, at 246–49 (assessing claims under California workers’ compensation law).

²¹⁴ See, e.g., *Rhodes v. Michigan*, 10 F.4th 665, 683–85 (6th Cir. 2021) (analyzing plaintiff’s substantive due process claims asserted under the state-created-danger doctrine).

²¹⁵ See *id.* at 685 (rejecting due process claims); *Id.*, *supra* note 29, at 249–51.

B. Challenges and Reservations

While there is potential for new Eighth Amendment litigation, doctrinal barriers abound. First, many courts' standards apply only to "compelled" prison labor,²¹⁶ whereas programs like the fire camps profess to be voluntary.²¹⁷ Although some may see the camps as coercive in theory,²¹⁸ courts may hesitate to find camp labor to be "compelled" as a matter of law, as to do so raises questions of what prison work is *not* compelled. Further, plaintiffs still face the daunting task of proving that camp staff *actually knew* of the substantial risk of danger and acted with "deliberate indifference"²¹⁹ by failing to respond in an "(objectively) reasonable manner."²²⁰ "[D]eliberate indifference' is a stringent standard of fault," requiring that a government actor "disregard[] a known or obvious consequence of his action" or inaction.²²¹ Finally, as defendants in most cases will be prison officials or correctional staff, the defense of qualified immunity looms ever present over new filings.²²²

These doctrinal barriers, though significant, are not insurmountable. Circuit courts may differ in their analysis, yet some have already shown a willingness to curb the reach of these defenses. Here, the Sixth Circuit case of *Rhodes v. Michigan*²²³ is instructive. The court reviewed an Eighth Amendment claim from an incarcerated worker who was injured by a falling laundry cart,²²⁴ and rejected several defenses raised by the defendants. For instance, the court declined to extend qualified immunity to the defendants, as despite the lack of Supreme Court precedent, the considerable circuit recognition of workplace protections under the Eighth Amendment was well established at the time of the accident.²²⁵ And interestingly, the court refused to deny relief on account of the work's voluntariness, contending that Supreme Court "caselaw does not call for [an] inquiry into voluntariness or compulsion."²²⁶ The court even recognized that "[a]lthough there is always some power imbalance between employers and employees, . . . the dynamic is magnitudes more severe in prison and thereby reduces a prison worker's ability to protect themselves from workplace abuses."²²⁷ As such, *Rhodes* reveals some judicial willingness to soften otherwise-dispositive doctrinal defenses.

²¹⁶ *Morgan v. Morgensen*, 465 F.3d 1041, 1045 (9th Cir. 2006) (emphasis added).

²¹⁷ See *Camp FAQ*, *supra* note 11. Though, other climate-linked prison labor programs may be more classically coercive. See, e.g., Mosendz, *supra* note 160.

²¹⁸ See *supra* p. 715; *Ide*, *supra* note 29, at 240.

²¹⁹ *Farmer v. Brennan*, 511 U.S. 825, 829 (1994).

²²⁰ *Caldwell v. Warden*, 748 F.3d 1090, 1099 (11th Cir. 2014).

²²¹ *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 410 (1997).

²²² See, e.g., *Henry v. Rowe*, No. 17-cv-273, 2019 WL 1430403, at *3 (N.D. Fla. Feb. 25, 2019) (noting defendants asserted qualified immunity as a defense).

²²³ 10 F.4th 665 (6th Cir. 2021).

²²⁴ *Id.* at 669.

²²⁵ *Id.* at 682 (citing *Brown v. Battle Creek Police Dep't*, 844 F.3d 556, 567 (6th Cir. 2016)).

²²⁶ *Id.* at 676.

²²⁷ *Id.* at 677.

Setting aside doctrinal troubles, reformers may hesitate for normative reasons, as historical pushes for “improved” prison conditions have inadvertently entrenched prison power. Professor Heather Schoenfeld observes that prison-conditions litigation beginning in the 1960s, though “intended to reduce the state’s reliance on incarceration,” instead “contributed to unprecedented prison growth” throughout the 1970s.²²⁸ Faced with pressure to keep prisons open and full,²²⁹ lawmakers responded to these challenges by funneling money into prisons to pay for new beds and facilities.²³⁰ The result was expansion; from 1995 to 2007, the Federal Department of Corrections built thirty-two institutions, and in 2007, Florida alone “spent one in every 11 budget dollars on corrections.”²³¹ Suing for “better” labor programs by requiring new equipment or more staff could similarly divert resources into prison coffers.²³² Nevertheless, careful litigation may subvert this worry. Decarceral remedies, such as early release or camp closure, provide potentially suitable alternatives for future litigation.²³³ In fact, such remedies were central to litigants’ challenges against California throughout the 2010s.²³⁴

CONCLUSION

California’s fire camps are nuanced legal microcosms. They occupy a unique place in the expansionist history of prison labor, and incur labor demands that grow with disaster. As the need to combat disaster rises, climate-linked prison labor programs like the camps stand poised to continue the trend of inflating prisons to harness captive labor. Activists and reformers should take notice and prepare to resist states’ expansionist impulses. The most vital legal tools to do so may dwell within Eighth Amendment jurisprudence, which recognizes certain protections for incarcerated workers. Though existing doctrine is undeniably limited, litigants can and should fight for novel applications to ensure that state incentives to exploit prison labor are sufficiently counterbalanced.

²²⁸ Heather Schoenfeld, *Mass Incarceration and the Paradox of Prison Conditions Litigation*, 44 *LAW & SOC’Y REV.* 731, 732 (2010).

²²⁹ *Id.* at 740.

²³⁰ *See id.* at 748–49.

²³¹ *Id.* at 756.

²³² *See, e.g.,* PETEK, *supra* note 32, at 6–9 (assessing a \$100 million proposal to refurbish an older camp and noting that many other camps are old and dilapidated).

²³³ Professor Margo Schlanger argues that such decarceral remedies can provide resources for incarcerated people without growing prisons. Margo Schlanger, *Anti-incarcerative Remedies for Illegal Conditions of Confinement*, 6 *U. MIA. RACE & SOC. JUST. L. REV.* 1, 3 (2016).

²³⁴ *See* sources cited *supra* note 169.