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. All told, the inferno claimed twenty-two lives 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.” At the time, the fire was the most destructive inferno in the state’s history, yet barely a year later it was usurped by the Camp Fire, which destroyed over three times as many structures. 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. In 2021 alone, California experienced 7,396 wildfires, burning 2,569,386 acres and 3,846 structures.

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 people to aid in public works. Chief among the services provided by the thirty-five camps is wildlands firefighting, inspiring their

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4 Barber, supra note 2.


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


common moniker: fire camps. To qualify for service, volunteers must retain minimum-custody status and have eight years or less remaining in their sentence. Those selected undergo days of training and field exercises, which involve intensive — and sometimes fatal — physical conditioning. 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.” Through their service, the firefighters earn “between $2.90 and $5 a day,” plus “an additional $1 to $2 an hour when they’re on a fire line.”

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. For those serving time for violent offenses, every two days of service grants one day of credit. Moreover, CDCR touts that many camp graduates find civilian firefighting jobs upon their release. The success of the camp-to-firehouse pipeline, however, is muddled at best.

Throughout California’s history, the fire camps have played an important role in state firefighting efforts. The camps span twenty-five counties and account for thirty percent of the state’s wildlands...
fighting force,\textsuperscript{24} providing millions of man-hours annually.\textsuperscript{25} Indeed, incarcerated firefighters battled both the Tubbs\textsuperscript{26} and Camp Fires,\textsuperscript{27} and the CCP’s success has inspired other states to adopt similar initiatives.\textsuperscript{28} Nevertheless, in recent years the camps have declined,\textsuperscript{29} as those eligible to staff the camps have been released by actions,\textsuperscript{30} spurred by criminal justice reformers and court orders,\textsuperscript{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.\textsuperscript{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.

\textsuperscript{24} Lowe, supra note 17.


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

\textsuperscript{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].

\textsuperscript{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).

\textsuperscript{30} See Neklason, supra note 25 (“The measures . . . dramatically reduced the number of low-security inmates in state prisons — just the sort [CDCR] recruits . . . .”).

\textsuperscript{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. 10, 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 . . . .”).

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.” Lawmakers laid the foundations of penal servitude in early penitentiaries that substituted “carceral punishment of imprisonment at hard labor” for other sentences. 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.” 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 “coerce[ ] resistant freed slaves into becoming wage laborers.” 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,” effectively represented “a bridge between slavery and paid work.” As “state-maintained structures of racism,” southern prisons were not shy about their connection to chattel slavery. Angola State Prison, for example, was built on an old

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34 Id. at 20.
35 Id. at 37; see also id. at 36 (describing the rise of “house[s] of repentance”).
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. The most notorious of the “penal plantations,” Angola housed its population on old slave quarters and forced them to work, leaving a legacy that is still seldom taught today. 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. 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.” By the start of the twentieth century, America’s prison population had exploded, nearly tripling in the South alone.

Twentieth-century politicians initially curbed the prison industrial complex but eventually continued with racialized mass incarceration. Through pressure from labor unions fearing worker displacement, legislation restricted the reach of prison labor, isolating certain industries for only civilian workers. 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.” 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.” 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.

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.
47 See Gilmore, supra note 37, at 199 (describing unionist lobbying efforts).
49 Duxbury, supra note 37, at 1.
50 CAPTIVE LABOR, supra note 48, at 27.
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 afool 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 “deny[] that incarcerated workers are workers at all.”\(^61\) Although some call for

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\(^53\) CAPTIVE LABOR, supra note 48, at 34.

\(^54\) 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/2021/10/15/331eccc-26f1-11ec-8ef0-3ca8feq4392_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 . . . .”).


\(^57\) CAPTIVE LABOR, supra note 48, at 17.

\(^58\) Id. at 47 (emphasis omitted).


\(^60\) 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.\textsuperscript{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.”\textsuperscript{63} Still, modern prison labor remains mired in criticism, rooted in its ties to the worst of America’s legal history.

\textbf{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.\textsuperscript{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.”\textsuperscript{65} Moreover, as the camps are primarily staffed by other firefighters and administrators,\textsuperscript{66} they lack armed guards.\textsuperscript{67} Indeed, firefighters “have almost complete freedom of movement, provided they stay within camp boundaries and provided they report to work.”\textsuperscript{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.”\textsuperscript{69} Egregious violations, such as “refusing to work,” are met with threats of sending the offender “back to a walled prison.”\textsuperscript{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.”\textsuperscript{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.\textsuperscript{72} And even work off of the fire line consists of “hard manual labor for various local,  

\textsuperscript{62} Wilson & Baker, supra note 56, at 15.
\textsuperscript{63} Id.
\textsuperscript{65} Goodman, supra note 64, at 356.
\textsuperscript{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 . . . .”).
\textsuperscript{67} Hahn, supra note 55 (“Gun towers are . . . absent, and the guards aren’t even armed.”).
\textsuperscript{68} Goodman, supra note 64, at 357.
\textsuperscript{70} Id.
\textsuperscript{71} Id.
county, and state agencies.”

These “grade projects” 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.” 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, yet historically, camp graduates have met significant barriers to obtaining employment. For instance, many areas of California require firefighters to have an EMT certification. The process restricts who can apply and bans applicants with two or more felony convictions. After a federal court struck down legal challenges to these restrictions, California passed AB 2147, which allows camp graduates to expunge their felony records. However, this mechanism has proved lacking; even with appropriate paperwork, camp veterans often have to wait months for courts to act. In short, while “AB 2147 is a solution . . . [it’s] not a particularly quick or straightforward one.”

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. This resentment can grow upon a firefighter’s return to an indifferent (or even

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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. SCI., Mar. 2020, at 1, 5–10 (describing general barriers to employment).
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.iaawonline.org/article/confessions-of-an-inmate-firefighter [https://perma.cc/S288-6CWD] (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. 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.”

Yet, some of the camps’ most vocal proponents have been former workers. Joshua Daniel Bligh writes that in camp he “discovered 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.” 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.” Bligh recalls that civilian firefighters respect incarcerated crews, owing perhaps to their shared experiences. Further, incarcerated firefighters support one another, notwithstanding the de facto racial segregation in California’s prisons. 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.” Finally, some firefighters find internal validation. Goodman observes that many firefighters believe the work aids their rehabilitation. He notes: “There is remarkable consensus . . . about how rehabilitation is facilitated in the prison fire camps: the learning of a strong ‘work ethic.’” In this way, the camps may aid some firefighters in rehabilitation efforts.

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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-P7Pl].

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.”).


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.

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

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).
115 Id.
populations, which are aged and ill-suited for heat.\textsuperscript{117} Indeed, “[h]eat-stroke and other heat-related illnesses” have already “claimed the lives of numerous inmates in recent years.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{120} As the flames neared, “[n]o one . . . had any idea if, when, or how they would get out.”\textsuperscript{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.\textsuperscript{122} When they were finally moved, the water had risen past their knees.\textsuperscript{123} Despite these accounts, states have failed to reform prison response protocols.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{126} They are also “eight times as likely to be injured after inhaling smoke and particulates.”\textsuperscript{127} Some injuries have proven fatal; three firefighters died in the camps between 2016 and 2017.\textsuperscript{128} And even in training, many “have been sickened and killed by heat exposure.”\textsuperscript{129} Thus, incarcerated firefighters disproportionately bear the burden of exacerbated climate conditions.

\begin{itemize}
  \item \textsuperscript{117} Id. at ii; see also id. (observing medicinal risk factors for heat-related illness in prisons).
  \item \textsuperscript{118} Id.
  \item \textsuperscript{119} See, e.g., Brown, supra note 109.
  \item \textsuperscript{120} Id.
  \item \textsuperscript{121} Id.
  \item \textsuperscript{123} Id. Notably, Florida disputes these accounts. Id.
  \item \textsuperscript{124} See, e.g., id. (recounting Florida’s unwillingness to reform response plans).
  \item \textsuperscript{125} Wilson & Baker, supra note 56, at 18.
  \item \textsuperscript{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].
  \item \textsuperscript{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 Ide, supra note 29, at 243–45.
  \item \textsuperscript{128} Vesoulis, supra note 126.
  \item \textsuperscript{129} CAPTIVE LABOR, supra note 48, at 14.
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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 disparity and increasing the cost of economic prosperity.130 As Professor Nadia Ahmad observes, “natural resource stresses have served as threat multipliers for conflict, compounding centuries of economic and racial inequality.”131 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.”132 The response from the global community “has been to detain, imprison, and deport” these refugees.133 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).
133 Id. at 300.
134 Id. at 314.
137 Id. ¶ 29.
for protesting deforestation linked to a new “cop city.”

In the tragedy’s wake, Georgia police doubled down, prosecuting other protestors under domestic terrorism laws. 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.

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, as a strong link exists between accelerating climate change and wildfire severity. Climate change alters precipitation patterns, and rising temperatures produce drier, windier conditions ideal for fires. It is unsurprising, then, that fifteen of the twenty most destructive fires in state history have occurred in the last ten years, seven of which have been the hottest on record. California has also suffered a dearth of civilian workers. As nearly half

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


the state is managed by federal agencies[^148] — including fifty-seven percent of forests[^149] — 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 workforce[^154] 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


[^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-QD28].

[^155]: Notably, others have already perceived this risk. See, e.g., Ide, supra note 29, at 241.

[^156]: See *Budget Change Proposal*, supra note 32, at 4 (noting the CCP is now at forty percent capacity).

[^157]: See Neklason, supra note 25.


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. Plata¹⁶⁷ 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


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.


¹⁶⁸ Id. at 545.

the state was “slow-walking the process.” 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.” 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, 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. If climate carceralism germinates, the prison industrial complex — our “modern-day slavery” — 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. 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. Thus, alongside grassroots legislative efforts, 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. Although it “is not static” and

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170 Kucinich, supra note 166.
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.
174 CAPTIVE LABOR, supra note 48, at 47.
175 See supra section I.A, pp. 709–12.
176 See, e.g., Ide, 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)).
178 U.S. CONST. amend. VIII.
“draw[s] its meaning from . . . evolving standards of decency,” in Helling v. McKinney the Supreme Court recognized the amendment secures certain standards of treatment for “food, clothing, shelter, medical care, and reasonable safety.” The Court explained that “[i]t is ‘cruel and unusual punishment to hold convicted criminals in unsafe conditions,’” including conditions that risk future harm. Though, this is not to say such claims are easy. To succeed, a plaintiff must prove that the conditions “alone or in combination” create a “substantial risk of serious harm” and that officials were “subjectively aware of the risk” and thereby acted with “deliberate indifference.”

Climate change has already spurred a new breed of Eighth Amendment challenges in the realm of prison conditions. 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 2011) were compounded by their medications, increasing the risk of heat-related illness. The district court agreed — and the Fifth Circuit affirmed — that the heat posed a substantial risk of serious harm. 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. Thus, the judiciary is taking notice of worsening climate conditions in prisons, an outcome some observers have recently pushed for.

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

180 Id. at 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.”).
185 Id. at 829.
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.
Eighth Amendment protections for working conditions have been recognized in the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits. 

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 (3d Cir. 1983); Rhodes, 10 F.4th at 682–83; Hall v. Bennett, 379 F.3d 462, 464–65 (7th Cir. 2004); Ray v. Mabry, 536 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).

Thus, if plaintiffs can clear the doctrinal hurdles, courts 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. 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...

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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 (3d Cir. 1983); Rhodes, 10 F.4th at 682–83; Hall v. Bennett, 379 F.3d 462, 464–65 (7th Cir. 2004); Ray v. Mabry, 536 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 Ide, 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.
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); Ide, 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); Ide, 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, whereas programs like the fire camps profess to be voluntary. Although some may see the camps as coercive in theory, 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” by failing to respond in an “objectively reasonable manner.” “Deliberate indifference” is a stringent standard of fault, requiring that a government actor “disregard[] a known or obvious consequence of his action” or inaction. Finally, as defendants in most cases will be prison officials or correctional staff, the defense of qualified immunity looms ever present over new filings.

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* is instructive. The court reviewed an Eighth Amendment claim from an incarcerated worker who was injured by a falling laundry cart 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. 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. The court even recognized that “although 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.” 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.*
220 Caldwell v. Warden, 748 F.3d 1090, 1099 (11th Cir. 2014).
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.

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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.