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Violations of the Eighth Amendment: How Climate Change Is Creating Cruel and Unusual Punishment

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Violations of the Eighth Amendment: How Climate Change Is Creating Cruel and Unusual Punishment

*Robert Pistone**

ABSTRACT

As climate change continues to threaten human life on Earth, greenhouse gas emissions are causing more frequent record-setting temperatures and natural disasters. If the current United States prison system does not take steps to address how climate change is affecting the quality of life of its inmates, then imprisonment will be considered cruel and unusual punishment in the near future. In fact, in light of climate change, there is a strong argument that the current treatment of prisoners is already cruel and unusual punishment when other factors are taken into account. This paper focuses on the standards of what conditions qualify as cruel and unusual punishment, the effect that climate change has had and is projected to have on prisoners in relation to cruel and unusual punishment, and what changes should be made to prison infrastructure to solve the issue. The effects which will be discussed include how climate change does and will impact the following: the living conditions of prisoners, the working conditions of prisoners, and the effect that more frequent natural disasters will have on the prisoners and their wellbeing. This paper will also discuss what should be done to avoid violation of the Eighth Amendment, the likelihood that changes will be made willingly based on current proposed climate legislation, and if not, what the likelihood is that there will be court intervention to force changes to be made to prison administration and infrastructure.

* J.D., 2022, University of California Hastings College of the Law, Summa Cum Laude. Thank you Professor David Takacs for all your help.

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INTRODUCTION

The Intergovernmental Panel on Climate Change (“IPCC”) projects that the global surface temperature will continue to increase as long as carbon dioxide (“CO₂”) emissions remain net positive and will continue to increase when emissions are no longer net positive, because of lag times for the concentrations and effects of greenhouse gases (“GHG”).¹ IPCC projects that the minimum global surface temperature increase by the year 2100 will be one degree Celsius if human CO₂ emissions become net zero, and up to a 5°C increase when GHG emissions remain “very high.”² From 1980 to present, more than 13,000 cities worldwide have had their number of extreme heat days tripled.³ This increase in extreme heat days is “due to a combination of growing urban population and rising temperatures.”⁴

Extreme heat is defined as 30°C on the “wet-bulb global temperature” scale, where high humidity is taken into account to calculate how temperatures actually impact and feel to people once humidity is factored in.⁵ This means the 30°C threshold for an “extreme heat day” does not just use a normal straight conversion of Celsius to Fahrenheit, but is increased based on the humidity levels.⁶ When factoring in humidity, 30°C actually converts to one 106°F, twenty degrees higher than a straight conversion.⁷ A “straight conversion” is when degrees Celsius is directly converted to Fahrenheit; 30°C converts directly to 86°F, without humidity. With humidity, it has the effect of 106°F on people. At 106°F, most people have trouble being outside, and those with underlying health conditions can become very ill or die at those temperatures.⁸ As of 2022, “17% of cities [have] experienced an extra month of extreme heat days each year.”⁹ The increased frequency of high temperature days results in increased morbidity and mortality, exacerbates pre-existing health conditions, and impacts people’s ability to work.¹⁰

Rising temperatures and the increase in both frequency and severity of extreme-heat events do not just impact regular citizens, but “will jeopardize the health of inmates and correctional officers alike, and will

1. Richard P. Allan et al., IPCC, *Climate Change 2021: The Physical Science Basis, Summary for Policy Makers* 5–7, 37 (2021), <https://perma.cc/HD5C-XWZR>.

2. *Id.* at 15–16.

3. Gloria Oladipo, *Extreme Heat Exposure Across the World Has Tripled Since 1980s, Study Finds*, GUARDIAN (Oct. 4, 2021, 15:00 EDT), <https://perma.cc/E3W3-KCAZ>.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Oladipo, *supra* note 3.

9. *Id.*

10. *Id.*

stress the physical plant of the correctional sector.”¹¹ While climate change legislation seeks to mitigate and adapt to the changes that will be occurring over the next few decades, incarcerated people have been largely left out of the conversations and the legislation surrounding climate justice proposals, like the Green New Deal or the Build Back Better Bill.¹² Both of these proposed bills, as well as other climate or infrastructure based bills, neglect to address decarceration, prison abolition, improvement of prison infrastructures, or demilitarization.¹³ Inmates are likely to be one of the groups hit hardest by the temperature and natural disaster changes brought about by climate change, since they have no agency to take real mitigating steps on their own behalf, and are not taken into account when climate change legislation is proposed.¹⁴ This adversity will likely result in Eighth Amendment issues, which states that cruel and unusual punishment shall not be inflicted on incarcerated people.¹⁵

There are “more than 5,000 correctional facilities” in the United States, including prisons and jails, with a total population of “over 2.2 million inmates.”¹⁶ Over fifty percent of inmates are incarcerated for violent offenses, and since they have longer sentences, most of the prison population will age significantly while incarcerated and consequently endure “significant health risk from heat-related illnesses.”¹⁷ Correctional officers in prisons and jails also face increased health risks; in one year “92 state correctional officers reported heat-related illnesses as a result of working in prisons lacking climate control.”¹⁸ As temperatures rise, incarcerated individuals have died as a consequence of the lack of infrastructure for regulating temperature and climate in prisons.¹⁹ Climate change is also causing lower temperatures to become more extreme. When the Brooklyn Metropolitan Detention Center lost heat during January and February of 2019, “prisoners were left to freeze for almost a full week” before the electricity was turned back on.²⁰ Prisoners “reported a lack of

11. DANIEL W.E. HOLT, *HEAT IN US PRISONS AND JAILS: CORRECTIONS AND THE CHALLENGE OF CLIMATE CHANGE*, at i (2015), <https://perma.cc/3KRG-W7JP>.

12. Kim Kelly, *The Climate Disaster Inside America's Prisons*, NEW REPUBLIC (Sept. 18, 2019), <https://perma.cc/786P-8HBV>.

13. *Id.*

14. Kelly, *supra* note 12.

15. U.S. CONST. amend. VIII.

16. Laurie L. Levenson, *Climate Change and the Criminal Justice System*, 51 ENV'T L. 333, 367 (2021).

17. *Id.*

18. *Id.*

19. Manny Fernandez, *In Texas, Arguing that Heat Can Be a Death Sentence for Prisoners*, N.Y. TIMES (July 28, 2012), <https://www.nytimes.com/2012/07/29/us/in-texas-arguing-that-heat-can-be-a-death-sentence-for-prisoners.html>.

20. Kelly, *supra* note 12; see also Annie Correal & Joseph Goldstein, “It’s Cold as Hell”: *Inside a Brooklyn Jail’s Weeklong Collapse*, N.Y. TIMES (Feb. 9, 2019), <https://www.nytimes.com/2019/02/09/nyregion/brooklyn-jail-no-heat-inmates.html>.

heating and hot water and no lights in their cells, and the sick went without medical care.”²¹ These conditions could have been mitigated or avoided if the prison had proper insulation or a more robust power infrastructure which would allow for at least basic amenities to continue to function. Because low temperatures will likely become more frequent in colder areas of the country, there will be an increased demand on the power grid, which may lead to more blackouts and more instances where prisoners are simply left to fend for themselves in cells that lack the proper framework to handle such low temperatures.

Aside from passive living conditions affecting inmates, prisoners also feel the consequences of climate change when “forced to labor in sweltering Texas fields” or when “fighting wildfires . . . in California.”²² Inmate firefighters fighting California wildfires “are more than 4 times as likely, per capita, to incur object-induced injuries,” which have resulted in more than “1,000 inmate firefighters [to require] hospital care between June 2013 and August 2018,” and caused the deaths of three inmate firefighters between “February 2016 and July 2017.”²³ While inmates are provided with comprehensive healthcare when participating as firefighters, they make only two dollars per day in the program.²⁴ Even the comprehensive healthcare seems insufficient, as prisoners are often neglected when it comes to actual treatment for sickness and impact injuries they sustain.²⁵

When large scale hurricanes hit the United States, “prison officials . . . [often] refuse to evacuate their prisons,” causing consequences ranging from prisoners succumbing to disease while “left to rot in waist-high water” to even death.²⁶ Climate change has caused increased frequency of “extreme weather events, such as intense storms, droughts, wildfires, heat waves, and more frequent and more intense hurricanes.”²⁷ As climate change increases the number of natural disasters that the United States and the world are experiencing, it is predicted that if “the planet continues to warm on its current trajectory, the average 6-year-old will live through roughly 3 times as many climate disasters as their grandparents.”²⁸ On average, children will see “twice as many wildfires, 1.7 times as many

21. Kelly, *supra* note 12.

22. *Id.*

23. Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely To Get Hurt, Records Show*, TIME (Nov. 16, 2018, 7:40 PM), <https://perma.cc/5VVB-KFJN>.

24. *Id.*

25. *Id.*

26. Kelly, *supra* note 12.

27. Levenson, *supra* note 16, at 338.

28. Sarah Kaplan, *Today's Kids Will Live Through Three Times as Many Climate Disasters as Their Grandparents, Study Says*, WASH. POST (Sept. 26, 2021, 7:01 PM), <https://www.washingtonpost.com/climate-environment/2021/09/26/change-disasters-kids-science-study/>.

tropical cyclones, 3.4 times more river floods, 2.5 times more crop failures, and 2.3 times as many droughts as someone born in 1960.”²⁹

These projected increases in natural disasters as climate change worsens, coupled with the neglect that inmates suffer and the risks to which inmates are exposed, increase the likelihood of inmate injury and death, thereby leading to Eighth Amendment violations against cruel and unusual punishment. Under the Eighth Amendment, a cause of action exists if there is an objective substantial risk of harm, and if government officials were subjectively aware of the risk and failed to act.³⁰ Some inmates have successfully brought Eighth Amendment claims against officials of correctional facilities in which climate change was a factor, such as a Mississippi case in which the inmates stated that the “extreme temperatures, humidity, uncontrolled mosquito infestations, and other conditions . . . posed a risk to inmate safety and health.”³¹

This paper proposes that changes to prison infrastructure mandates should be enacted to require temperature and humidity regulation within prisons where inmates are likely to experience temperature extremes. This paper also proposes that states should put specific protocols in place regarding the protection of inmates from increased risk of injury from natural disasters, whether in the form of protocols for orderly evacuations in the event of hurricanes and other natural disasters or for better compensation and healthcare for volunteer firefighters.

I. BACKGROUND—BRIEF OVERVIEW OF CLIMATE CHANGE

Rising levels of greenhouse gases (“GHG”), mainly carbon dioxide (“CO₂”), cause temperatures to rise, snow and rainfall patterns to shift, and more extreme climate events—such as record high temperatures or heavy rainstorms—to occur.³² GHG are gases which “trap heat in the atmosphere” and are in large part emitted through human activity, mainly the combustion of fossil fuels.³³ To limit the impact of climate change, “countries agreed to cut greenhouse gas emissions” under the 2015 Paris Agreement “to limit the [global] temperature increase” to 1.5°C “above pre-industrial levels.”³⁴ While the goal of the Paris Agreement is to limit the warming of Earth to

29. Kaplan, *supra* note 28.

30. Levenson, *supra* note 16, at 368.

31. *Id.*

32. *Climate Change Indicators in the United States*, U.S. ENV’T PROT. AGENCY, <https://perma.cc/KU6W-T6W4>.

33. *Overview of Greenhouse Gases*, U.S. ENV’T PROT. AGENCY, <https://perma.cc/3A4P-MW2W>.

34. *Special Report: Global Warming of 1.5°C, FAQ Chapter 1*, IPCC, <https://perma.cc/84N2-3Z36>.

1.5°C, “warming in many regions has already exceeded” the 1.5°C threshold, and “[o]ver a fifth of the global population” live in regions that have experienced warming “greater than 1.5°[C] above pre-industrial levels.”³⁵

There are several consequences of failing to keep global warming at 1.5°C. Warming of 1.5°C can result in “severe heatwaves at least once every five years” for “about 14 percent of Earth’s population.”³⁶ Warming of 2°C can result in 37% of Earth’s population suffering severe heatwaves.³⁷ At the current pace of warming, without reductions, the world would reach the 1.5°C limit around 2040.³⁸ Until the world achieves carbon neutrality, we can expect temperature increases to continue to become more severe, and for natural disasters to continue to increase in frequency. Even after carbon neutrality is achieved, it is likely that temperatures will continue to rise and climate change effects will continue to worsen as a residual effect of GHG which have already been emitted.³⁹ As such, conditions that are already poor for prison inmates will continue to decline and cross the threshold of cruel and unusual punishment if no measures are taken to mitigate the effects of climate change by improving the infrastructure of the facilities and the treatment of the prisoners.

II. STANDARDS OF CRUEL AND UNUSUAL PUNISHMENT

A. STANDARD OF EIGHTH AMENDMENT VIOLATION IN PRISONER LIVING CONDITIONS

Whether prison conditions are considered cruel and unusual depends on the tests and standards that have evolved through Eighth Amendment litigation.⁴⁰ The condition of a prison:

“may be held cruel and unusual (1) because it is of such “‘inherent cruelty’” that no conduct upon the part of inmates can warrant it, (2) because, although perhaps not frowned upon in the past, it is abhorrent to contemporary society, and/or (3) because it is ‘excessive,’ either in the sense that it is disproportionate to the infraction of prison rules for which it was imposed, or in the sense that it is not justified by legitimate penal purposes or aims.”⁴¹

35. IPCC, *supra* note 34.

36. Alan Buis, *A Degree of Concern: Why Global Temperatures Matter, Part 2: Selected Findings of the IPCC Special Report on Global Warming*, NAT’L AERONAUTICS & SPACE ADMIN. (June 19, 2019), <https://perma.cc/SUU8-QA6J>.

37. *Id.*

38. IPCC, *supra* note 34.

39. Allan et al., *supra* note 1, at 5–7.

40. William H. Danne, Jr., Comment Note, *Prison Conditions as Amounting to Cruel and Unusual Punishment*, 51 A.L.R. 3d 111, at § 2(a), Westlaw (1973).

41. Danne, *supra* note 40.

Inmates have a cause of action if they can demonstrate that: (1) the conditions, alone or in combination, objectively pose a substantial risk of harm, *even if* no harm has resulted yet; and (2) that government officials were subjectively aware of the risk and acted with deliberate indifference to the danger posed to the inmates' health or safety.⁴²

Courts have rejected the idea that a prison condition need be "attributable to disciplinary action in order to fall within the concept of cruel and unusual punishment," thereby allowing worsening conditions caused by climate change, even with the absence of prison officials' actions, to fall under the umbrella of cruel and unusual punishment.⁴³ When the conditions of a prisoner's confinement become so bad as to be "shocking to the conscience of reasonably civilized people," the confinement alone may "amount to cruel and unusual punishment."⁴⁴ Courts have looked at the "cumulative effect of several prison conditions which, considered independently, might or might not approach the requisite severity" to be considered cruel and unusual punishment, taking a "totality of the circumstances" approach.⁴⁵ This approach means that even if a prisoner's health complications due to extreme heat caused by climate change alone are not enough to be considered cruel and unusual punishment, the continuing increases in temperature can still be taken into account in conjunction with other factors that may be specific to the prison or prisoner, and result in more successful claims of cruel and unusual punishment. This consequence has been shown in court cases in which increasing temperature and humidity were a factor in finding a violation of cruel and unusual punishment under the Eighth Amendment.⁴⁶ The specifics of the *Russell* case, as well as what other factors will likely be taken into account for the prison population as a whole, will be discussed further below.

The totality of the circumstances approach will apply to prisoners making Eighth Amendment claims based on conditions caused by climate change, as the approach is "generally employed in suits where the overall conditions of confinement in a penal institution, rather than a discrete condition or practice, are, or allegedly are, what make the confinement unconstitutional."⁴⁷ Nonetheless, it appears that federal courts "may not hold conditions at a penal institution to be unconstitutional . . . [if] based on a vague conclusion that the totality of the conditions constitutes cruel

42. Levenson, *supra* note 16, at 368.

43. Danne, *supra* note 40.

44. *Id.*

45. *Id.*; see also Debra T. Landis, Annotation, *Propriety and Construction of "Totality of Conditions" Analysis in Federal Court's Consideration of Eighth Amendment Challenge to Prison Conditions*, 85 A.L.R. Fed. 750, § 1(a), Westlaw (1987).

46. *Russell v. Johnson*, 2003 U.S. Dist. LEXIS 8576 (N.D. Miss. May 21, 2003).

47. Landis, *supra* note 45.

and unusual punishment, and that the court’s principal focus should be on the specific conditions of confinement.”⁴⁸ Thus, vague allegations that treatment is cruel and unusual, without specific facts or conditions which show such present or future treatment, are generally insufficient for Eighth Amendment purposes. The specific conditions regarding the topic of climate change vary depending on what the discrete issue is: whether it is lack of heating and cooling systems, which can regulate temperatures and protect prisoner health from extreme hot or cold weather, the treatment and evacuation of prisoners in the event of a natural disaster, or the forced labor conditions under which prisoners are often made to work. Each of these issues will be discussed further below.

B. STANDARD OF EIGHTH AMENDMENT VIOLATION IN FORCED WORKING CONDITIONS

A threshold question to consider before delving into how climate change may cause Eighth Amendment violations under forced working conditions is whether forced labor of prisoners itself is considered cruel and unusual punishment. While forced labor is “another restriction upon inmate freedom of activity,” it “has been uniformly regarded as permissible in a cruel and unusual punishment sense.”⁴⁹ However, forced labor “may become cruel and unusual when the labor in question is beyond his strength, dangerous to his health, or unduly painful.”⁵⁰

As climate conditions become more extreme, and days hotter and more humid, certain forced labor activities reach this threshold of cruel and unusual punishment. Increasing temperatures combined with forced and strenuous labor is especially dangerous to prisoner health when the prison population is increasing in age and, as a consequence, are also developing medical conditions which make them susceptible to heat-related injuries.⁵¹ One example of worsening conditions of forced labor, specifics of which will be discussed more in depth below, includes work in Texas agriculture, where some inmates work picking cotton or mowing lawns “for hours on end.”⁵² As discussed earlier, the hottest recorded months in Texas have been continually broken in recent years.⁵³ Forced outdoor prison labor for hours at a time conducted in states which consistently see temperatures rising above the 90s and 100s will likely reach the threshold of being

48. Landis, *supra* note 45.

49. Danne, *supra* note 40.

50. *Id.*

51. Weihua Li & Nicole Lewis, *This Chart Shows Why the Prison Population Is So Vulnerable to Covid-19*, MARSHALL PROJECT (Mar. 19, 2020, 2:45 PM), <https://perma.cc/XWU8-HFR5>.

52. Keri Blakinger, *Some Prison Labor Programs Lose Money—Even when Prisoners Work for Pennies*, NBC NEWS, (Sept. 2, 2021, 3:00 AM), <https://perma.cc/67WC-SDZJ>.

53. Fernandez, *supra* note 19.

considered “dangerous to [prisoner] health,” as heat waves get more severe and more frequent.⁵⁴ As a result, climate change is effectively pushing already harsh conditions for prisoners into the realm of cruel and unusual punishment. This result is compounded when prisoners’ health causes them to be more susceptible to heat-related illnesses.

With the standards of what is considered cruel and unusual punishment under the Eighth Amendment in mind, for both living conditions and in forced labor conditions, prisoners will more than likely meet that threshold as climate change continues to worsen temperatures, humidity, and frequency of natural disasters.

III. EFFECTS OF CLIMATE CHANGE ON PRISONER HEALTH AND WELL-BEING

A. CLIMATE CHANGE CAUSES DETERIORATION OF PRISONERS’ LIVING CONDITIONS

Inmates have suffered from both record hot and record cold temperatures occurring more and more frequently, likely as a result of climate change.⁵⁵ Temperatures fluctuate to new record extremes, causing prisoners to suffer, sometimes to a fatal degree.⁵⁶ In 2011, during a “record-breaking heat wave” in Texas, ten inmates “died of heat-related causes . . . in a 26-day period” and were “housed in areas that lacked air-conditioning.”⁵⁷ All but three of the inmates “had hypertension . . . had heart disease or were taking antipsychotic medications, which can affect the body’s ability to regulate heat.”⁵⁸ These medical conditions contributed to their deaths in conjunction with the heat.⁵⁹ In recent decades, Texas has “regularly reach[ed] over 90[°F] during . . . summer months, with some days reaching over 100[°F].”⁶⁰ In California, the “rise in temperature alone” will mean the Central Valley, “where many of California’s prisons are located,” will see “temperatures of at least 100[°F] during the summer,” with temperatures “as high as 116°F” also recorded in that area.⁶¹

These extreme temperatures are exacerbated further by the fact that prisons are commonly built from heat-retaining materials, which often

54. Mary E. Adair, Comment: *Beat the Heat: Texas’s Need To Reduce Summer Temperatures in Offender Housing*, 51 ST. MARY’S L.J. 707, 708 (2020).

55. Fernandez, *supra* note 19.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. Adair, *supra* note 54.

61. Levenson, *supra* note 16, at 338.

make internal prison temperatures exceed that of outdoor temperatures.⁶² For example, during a two day heat wave in September of 2020, the California Institution for Women (“CIW”) recorded temperatures at 115°F, before even taking into account the eight-by-twelve cement-walled cells which lack ventilation and air circulation.⁶³ One inmate suffering from high-blood pressure, diabetes, and kidney problems, all of which increases risk of heat-related illness, said that she had to wash her clothes in the sink and wear them wet at all times just to survive the heat wave.⁶⁴ Other CIW inmates have reported a lack of access to air-conditioned spaces, working fans, and inability to obtain more than two small cups of ice per day, describing the experience in the prison as “‘unbearable,’ ‘torture,’ ‘a living hell,’ and ‘like being cooked alive.’”⁶⁵

When CIW was first built in 1952, it was designed to hold just over 1,000 prisoners and was built with a yearly average of less than two heat waves per year in mind.⁶⁶ As of 2013, CIW operated at 150% capacity and the area routinely sustained as many as ten heat waves per year, which were far longer and far hotter than the average 1950’s heat wave.⁶⁷ While the California Department of Corrections and Rehabilitation (“CDCR”) has stated that there are plans to improve energy facilities, including cooling and housing units, no concrete timeline was given as to when, or even if, those improvements would actually be made.⁶⁸

Humidity affects how hot the temperature actually feels and compounds the heat-retaining aspect of prisons.⁶⁹ For example, in the McConnell Unit of Beeville, Texas, outdoor temperatures were 98°F but humidity made it feel like 110°F.⁷⁰ Quintero Jones, a thirty-six-year-old inmate at that prison, died as a result of the high-temperatures and humidity, mixed with his preexisting condition of asthma.⁷¹ Similar to Mr. Jones, the heat that prisoners are experiencing “can cause a number of heat-related illnesses, ranging from mild ailments, such as heat cramps, to life-

62. Alexi Jones, *Cruel and Unusual Punishment: When States Don’t Provide Air Conditioning in Prison*, PRISON POL’Y INITIATIVE (June 18, 2019), <https://perma.cc/Z8KJ-CX59>.

63. Cyrus Dunham, *Dispatches from a California Prison amid the Climate and Coronavirus Crises*, INTERCEPT (Nov. 22, 2020, 5:00 AM), <https://perma.cc/3UXZ-8UGN>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. Oladipo, *supra* note 3.

70. Nathalie Baptist, *Without Air Conditioning, America’s Prisons Can Be Unbearable—And Sometimes Deadly*, GRIST (Aug. 14, 2017), <https://perma.cc/QT8P-3VDQ>.

71. Baptist, *supra* note 70.

threatening heat strokes.”⁷² Underlying health conditions, age, and medications prisoners may be forced to take are inseparable from the increasing temperatures and the risk they pose to prisoner health.

Increasing numbers of inmates suffer from medical conditions which can become exacerbated from extreme heat, as “older adults make up a larger share of the state prison population than people from 18 to 24.”⁷³ Of the prison population, “[n]early 150,000 people incarcerated in state correctional facilities were 55 or older in 2016,” and “11[%] of the federal prison population—more than 20,000 people—is 56 or older, according to Bureau of Prisons data.”⁷⁴ These older populations have also developed health risks such as diabetes, obesity, hypertension, and high blood pressure which are exacerbated by the heat.⁷⁵ Even without explicit underlying health conditions, prolonged exposure to extreme heat can cause dehydration and heat stroke, which can lead to death.⁷⁶ Extreme heat can also affect otherwise healthy people’s kidneys, liver, heart, brain, and lungs, which may cause renal failure, heart attack, and stroke.⁷⁷ The effect is worsened when the prisoners actually have underlying health conditions or medications that make them more susceptible to injury from prolonged heat exposure.⁷⁸ In Los Angeles County alone, over 30% of the jail population receives psychotropic medications, which are known to impact the body’s ability to self-regulate its internal temperature when hot.⁷⁹ These medications can be forcibly administered to incarcerated individuals without their consent.⁸⁰ The effect of these medications and the heat-related risks they pose only get worse when compounded with lack of access to cooling systems and adequate medical care in many prisons.⁸¹

As of 2012, out of the 111 prisons overseen by the Texas Department of Criminal Justice “only 21 . . . [were] fully air-conditioned,” with inmates and their advocates arguing that the lack of air conditioning in summers where the temperatures hit triple-digits were a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment.⁸² The air conditioning statistics in Texas have only slightly changed since then, where, as of 2019, only thirty of the 109 prisons in Texas have air conditioning.⁸³ This lack of air conditioning in Texas prisons has resulted

72. Adair, *supra* note 54.

73. Li & Lewis, *supra* note 51.

74. *Id.*

75. *Id.*

76. Jones, *supra* note 62.

77. *Id.*

78. *Id.*

79. Dunham, *supra* note 63.

80. *Id.*

81. *Id.*

82. Fernandez, *supra* note 19.

83. Kelly, *supra* note 12.

in twenty-two prisoner deaths in the last fourteen years due to extreme heat.⁸⁴ This same issue is also present in known hot states such as Alabama, Arizona, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North and South Carolina, and Virginia, all of which lack universal air conditioning within prison housing facilities.⁸⁵ Of the states just mentioned, the lack of cooling systems is particularly egregious in Alabama, Arizona, Florida (for primarily state-run prisons), Kansas, Kentucky, Louisiana, Mississippi, Missouri, Texas, and Virginia, as all of these states lack air conditioning in at least 50% or more of their prisons.⁸⁶

Temperatures in these states will continue to rise as well, with Climate Central, a nonprofit climate science news organization, estimating that Miami's average number of days exceeding 90°F will increase from 86°F to 134°F by the year 2050.⁸⁷ Similarly in Jennings, Louisiana, the days which exceed 90°F are expected to increase from eighty-seven days per year to one hundred and twenty-five days per year by the year 2050.⁸⁸ In spite of this projected increase, a new jail near Jennings was approved by residents in 2014 only after it was promised there would be no air conditioning for the inmates.⁸⁹ In similar situations, it is not just passive inaction by prison officials which leads to suffering and death of inmates from heatstroke and heat-related illnesses, but a much more egregious and conscious decision to refuse to provide what is essentially life-saving amenities to prisoners. Looking at the increasing age of prisoners, health risks which make prisoners susceptible to heat-related illnesses, increasing temperatures and heat waves, heat-retaining building materials, the effects of humidity, and the lack of any air-cooling systems in these prisons, it is clear that these inmates have a cause of action under the Eighth Amendment. These conditions, taken together, objectively pose a substantial risk of harm to these inmates, and it is also clear that government officials are subjectively aware of the risk that these conditions pose and yet are acting with deliberate indifference to the danger to inmate health. Clearly, the required objective and subjective elements of the Eighth Amendment are met.

The other end of the temperature spectrum should also be noted. While increasing temperatures are the driving force behind prisoners being subject to cruel and unusual punishment, climate change is also causing new record temperature lows, which puts strain on power grids and leads to power outages that also adversely affect prisoners. When a jail in Brooklyn lost power for a week at the end of January and into February,

84. *Id.*

85. Jones, *supra* note 62; *see also* Kelly, *supra* note 12.

86. Jones, *supra* note 62.

87. Baptist, *supra* note 70.

88. *Id.*

89. *Id.*

temperatures got as low as 2°F.⁹⁰ During this time, inmates suffered because of a lack of infrastructure and foresight for such an event.⁹¹ There is no backup generator and no protocol in place to assist the inmates in dealing with the low temperatures. Temperatures were only bearable in common areas, compared to the much colder temperatures in the actual living quarters of the inmates.⁹² The jail failed to have any preparation to deal with this event.

During the power outage, jail staff did not open inmate cells or provide them with any heating appliances or materials, leaving inmates instead to fend for themselves, wrapping themselves up in any clothing or blankets they had to try to keep warm.⁹³ Inmates had no heating, hot water, or lights in their cells, and the sick did not receive any medical care.⁹⁴ This jail was not equipped to handle the localized power outage and there was no relief for an entire week.⁹⁵ Just as climate change increases temperatures in hot areas, it is also decreasing temperatures in colder areas, and prison infrastructure will need to improve to mitigate the negative effects that prisoners will experience during extreme weather events.

The prison conditions addressed above, taken in the totality of the circumstances approach, already show that treatment in some prisons is cruel and unusual and will only continue to get worse. Prison overcrowding is yet another factor which must be considered in addition to what has already been discussed. In federal prisons alone, the Bureau of Prisons inmate population exceeds the rated capacity of its prisons by an average of 10% to 20%, varying based on security levels of the prisons.⁹⁶ The rated capacity is calculated based on stratified double bunking across all security levels, in which lower security prisons see more overcrowding than high-security prisons.⁹⁷

For state prisons, there are different ways in which overcrowding has been measured. The “operational capacity” looks at how many prisoners the prisons can actually hold to operate sufficiently, whereas “design capacity” method looks at what volume of incarcerated individuals the architect had planned the facility to hold.⁹⁸ Looking at “operational capacity” of state prisons as of 2019, ten states exceed 100% of their

90. Correal & Goldstein, *supra* note 20.

91. *Id.*

92. Correal & Goldstein, *supra* note 20.

93. *Id.*

94. Kelly, *supra* note 12.

95. Correal & Goldstein, *supra* note 20.

96. U.S. DEP'T OF JUST., FY 2021 PERFORMANCE BUDGET CONGRESSIONAL SUBMISSION, FEDERAL PRISON SYSTEM BUILDINGS AND FACILITIES 2, <https://perma.cc/6AQM-SHFT>.

97. *Id.*

98. Ryan Spohn, *State Prison Overcrowding and Capacity Data*, NEB. CTR. FOR JUST. RSCH. (Melanie Kiper ed., May 3, 2020), <https://perma.cc/Z9Y4-8EDL>.

operational capacity.⁹⁹ Of the twelve states mentioned earlier which are known to have high temperatures and no universal air conditioning, only Georgia also exceeded its operational capacity based on these statistics. However, looking at “design capacity,” there are fourteen state prisons that exceed the capacity which the prisons were actually designed to hold.¹⁰⁰ Of the high temperature states without universal air conditioning mentioned earlier, Alabama and Arizona exceeded their design capacity.¹⁰¹ Of particular note, Alabama was exceeding its design capacity at a whopping 175.7%, even while reporting its operational capacity at 98.1%.¹⁰² California, which was discussed earlier as being prone to particularly frequent extreme heat waves, is also noted to exceed its design capacity at a rate of 135%, while reporting an operational capacity of 96.5%.¹⁰³ This overcrowding, if it were only taken alone and without more, would be unlikely to be considered a violation of the Eighth Amendment. However, it is clear that overcrowding can spread prison resources thin, including medical care for conditions brought on by extreme heat or extreme cold.

It has been discussed earlier that increased heat exposure can cause, or exacerbate, inmate medical issues. Correctional healthcare is low-quality, difficult to access, and is expensive, as most prisons actually charge incarcerated people a co-pay for doctor visits.¹⁰⁴ It is the combination of the faulty system of prison healthcare, the overcrowding, and increased health risks that occur from extreme temperature exposure, which altogether create conditions that are dangerous to prisoner health and can become fatal. However, if only one of these factors existed, then prisoner health might not necessarily be at risk.

The above-mentioned living conditions of prisoners, in which prisoners experience increasing temperatures, taken into account with the compounding effect of humidity and heat-retaining materials, underlying health conditions, lack of adequate medical care, increasing prisoner age, the lack of proper cooling amenities, and prison overcrowding, are sufficient to be considered cruel and unusual punishment under a totality of the circumstances approach. The lack of these basic amenities is excessive punishment to prisoners, is abhorrent to society’s view of how people should be treated, and is clearly both objectively dangerous to prisoner health and known subjectively to prison administration to cause injury and death of prisoners. Since prisoners lack free agency to take feasible steps to mitigate the heat on their own, prison infrastructure must be improved so that prisoners no longer suffer from these harsh conditions. To resolve

99. *Id.*

100. *Id.*

101. Spohn, *supra* note 98.

102. *Id.*

103. *Id.*

104. *Health, PRISON POL’Y INITIATIVE*, <https://perma.cc/C5KA-J5TC>.

this issue, proper cooling systems and insulation need to be installed so that, at the very least, prisoners are protected from the increasingly severe heat and no longer need to fear for their health or lives. Improved medical care and basic amenities for prisoners who have health conditions that make them more susceptible to heat-related illnesses should also be provided so that prisoners do not die or become seriously ill as a result of increasing temperatures. Prisoners who are forced to work outside are also suffering as a result of climate change, whether that be as a result of increased temperatures while they work in the fields or increased danger from natural disasters which they are enlisted to combat.

B. CLIMATE CHANGE CAUSES DETERIORATION OF PRISONERS' WORKING CONDITIONS

Many prisoners are affected by climate change not just through their living conditions, but through the work that they do as well. Prisoners across the country work a variety of jobs, such as harvesting cotton, fighting fires, fixing school buses, making gavels for judges, or even digging mass graves for COVID-19 victims.¹⁰⁵ These jobs are not something prisoners can refuse to do without repercussions, because if a prisoner refuses to work, they can lose privileges, or be punished by being sent to solitary confinement or being denied parole.¹⁰⁶ Often, prisoners are either paid very little or no money at all from these jobs, and yet there are many programs which see no profits and lose money instead.¹⁰⁷ In Texas, an audit found that 46% of the prison system's agricultural products actually cost more to grow than they are worth, whereas the system could have saved \$17 million over five years by buying canned foods and certain crops instead of having prisoners produce them.¹⁰⁸ Several other states have reported similar financial losses based on their prison systems, including Washington, Georgia, and California.¹⁰⁹

Regardless, many prisoners are forced to work outdoors in Texas doing what seems to be useless work of clearing debris and weeds from fields which are not utilized to grow crops.¹¹⁰ It should be noted that Texas does not pay incarcerated workers.¹¹¹ As temperatures are increasing in Texas and other states, this seemingly useless outdoor work such as

105. Blakinger, *supra* note 52; see also Jackie Vandinther, *Drone Video Shows Inmates Digging Mass Burial Graves on New York's Hart Island*, CTV News (Apr. 8, 2020, 12:04 PM), <https://perma.cc/6VZ6-ZTTH>.

106. Blakinger, *supra* note 52.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *If Prison Workers Are Essential, We Should Treat Them Like It: Prison Labor in the US, Part I*, CORP. ACCOUNTABILITY LAB (Aug. 5, 2020), <https://perma.cc/MU6V-FW4H>.

clearing unused fields in the sweltering heat not only directly exposes the inmates to the ever-increasing heat but also adds in the factor of strenuous physical activity. Again, under the Eighth Amendment, forced labor to an inmate “may become cruel and unusual when the labor in question is beyond his strength, dangerous to his health, or unduly painful.”¹¹² It is clear that as temperatures increase, these types of programs which will become more and more strenuous, and also seem to serve no purpose, will be dangerous to inmate health. As a result, this treatment of inmates, even when looked at alone and without other factors discussed at length previously, can eventually reach the threshold of being cruel and unusual punishment. Other work that prisoners do includes fighting wildfires, cleaning up toxic spills, or preparing for hurricanes, which affect prisoners negatively as fires and hurricanes not only become more severe but are also projected to become more frequent and longer because of climate change.¹¹³

The effect of hurricanes on prisoners will be discussed more in the next section as it is more relevant when addressing how natural disasters are impacting prisoners negatively, but it should be noted that on several occasions prisoners have been forced to work to both prepare for hurricanes to make landfall and to clean up debris after the hurricane has passed.¹¹⁴ Inmates are also used by private companies to reduce costs, such as those used by British Petroleum to clean up toxic waste.¹¹⁵ This exacerbates an issue which some prisons experience simply based on location; prisoners who already have a higher risk of toxic exposure given the location of their prisons are exposed more directly to toxic substances based on this private work they are required to do.¹¹⁶ Simply living near toxic waste sites may be enough to be considered cruel and unusual punishment depending on the likelihood of the manifestation of health issues or risks to prisoner health, but by additionally forcing prisoners to actively handle toxic substances (indirectly relating to climate change) which cause health issues, the conditions push closer to cruel and unusual treatment. A more direct connection to how climate change is affecting prisoners is when prisoners are actively fighting fires which have increased in frequency and severity as a result of climate change.

Over the past twenty years, a 1.8°F increase in average summer temperature increased the risk of a fire starting in California by between

112. Danne, *supra* note 40.

113. Henry Fountain, *Hotter Summer Days Mean More Sierra Nevada Wildfires, Study Finds*, N.Y. TIMES (Nov. 17, 2021), <https://perma.cc/7RCS-DWGS>; see also Sophie Duncan, *Prison Labor in a Warming World*, FREE RADICALS (Aug. 14, 2018), <https://perma.cc/7KUH-U6ZT>.

114. Duncan, *supra* note 113.

115. *Id.*

116. *Id.*

19-22%, and increased the volume of the burned area by 22-25%.¹¹⁷ On days where temperatures reach 100°F fire spreads quickly because of dry vegetation, making the fire last for weeks at a time.¹¹⁸ In 2018, of the 14,000 firefighters employed to fight fires during the dry season, 1,916 were inmates who were paid \$1/hour when in the field and \$2/day when off-duty.¹¹⁹ While none of these inmate firefighters are forced labor, most of them are on the frontlines of the fires, actively using tools to reduce dry brush to curb the effects of fires and stop the spreading flames.¹²⁰ With fires increasing in size and frequency, prisoners are expected, and needed, more than ever to assist in managing the spread of these fires, and they are generally more likely to be injured than other firefighters.¹²¹

Prisoners are 4 times as likely to suffer injuries compared to professional firefighters working on the same fires and are 8 times more likely to be injured after inhaling smoke and particulates compared to other firefighters.¹²² As a result, more than 1,000 inmate firefighters have required hospital care between June 2013 and August 2018, with three dying between February 2016 and July 2017.¹²³ In addition, medical treatment of inmate firefighter injuries appears to be lackluster compared to professional firefighters, where inmates are often not given x-rays for impact injuries they suffer and which are later revealed to be broken bones.¹²⁴ Aside from impact injuries, prisoner firefighters have also seen a lack of access to treatment and actual treatment for illnesses they contract due to firefighting, which only worsen as they go untreated.¹²⁵ Unless prisoners are provided with better healthcare to actually treat the injuries they sustain while working these jobs, this current medical neglect of inmate firefighters fits squarely within the legal scope of cruel and unusual treatment.

This neglect is clearly in violation of the Eighth Amendment as it is dangerous to prisoner health and unduly painful when inmates cannot get adequate medical treatment for injuries that are a direct result of their work. As inmates continue to work the incredibly risky jobs of fighting fires and managing other natural disasters, which are projected to only get worse in scope and frequency, the danger to their health continues to increase. Solutions regarding prisoner work environments in the face of climate

117. Fountain, *supra* note 113.

118. *Id.*

119. Jonathan J. Cooper & Paul Elias, *14,000 Fight California Fires, Some from Prisons or Overseas*, KGW8 (Aug. 8, 2018, 7:24 PM), <https://perma.cc/9G4X-J52G>.

120. *Id.*

121. Vesoulis, *supra* note 23.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

change should include adopting regulations which safeguard when, where, and under what circumstances prisoners can be forced to do such work. Regarding outdoor work that prisoners are compelled to do, states should, at the bare minimum, regulate the time of day and types of conditions in which prisoners are to work outside, so they may avoid working in extreme weather. States should also regulate which prisoners can be forced to work (as to exclude those with health complications). For prisoners who deal with natural disasters, states will need to choose to either improve their available medical treatment for these prisoners or stand the risk of losing the right to use inmates because doing so at the current standard will be considered cruel and unusual treatment. This concept blends into the next topic which will be discussed herein, which is the treatment of prisoners in the event of natural disasters.

C. NEGLECT OF PRISONERS DURING NATURAL DISASTERS

As was stated at the beginning of this paper, children living today will generally see twice as many wildfires, 1.7 times as many tropical cyclones, 3.4 times more floods, 2.5 times more crop failures, and 2.3 times as many droughts as someone born in 1960.¹²⁶ This projection becomes a problem for prisoners who are incarcerated in natural disaster areas, as well as for those who work in managing these natural disasters. As discussed above, prisoners play a key role in mitigating natural disasters, particularly wildfires, but they also help in the field both before and after hurricanes and are often injured and neglected medically as they do so.¹²⁷ Regardless of how these increasingly severe weather events affect prisoners who are active responders to natural disasters, inmates are often affected even when they are non-participants.

Disasters which seem to have most directly affected prisoners, aside from wildfires and those inmates fighting them, are hurricanes. There are multiple examples of prison officials failing to evacuate incarcerated individuals and simply leaving them to fend for themselves when a hurricane hits.¹²⁸ Hurricane Irma, which hit Florida in August and September of 2017, resulted in the failure to evacuate at least 4,500 incarcerated people, even while Florida forced hundreds of these inmates to prepare for the hurricane and later participate in the cleanup of debris created by the storm.¹²⁹ Even though these inmates were forced to work before and after the storm, they were not protected by the state of Florida when the hurricane hit.

126. Kaplan, *supra* note 28.

127. Vesoulis, *supra* note 23.

128. Vaidya Gullapalli, *As It Prepares for a Hurricane, South Carolina (Once Again) Does Not Evacuate a Prison*, APPEAL (Sept. 4, 2019), <https://perma.cc/8EEM-8BRU>; *see also* Kelly, *supra* note 12.

129. Duncan, *supra* note 113.

In Texas, Hurricane Harvey saw hundreds of inmates fill sandbags as forced labor to be used against flood waters, but they were not allowed to be evacuated.¹³⁰ This failure to evacuate when Harvey struck caused the inmates to live in conditions in which they lacked medicine, had flooded cells, had no access to clean drinking water, were dehydrated, and were left in their electronically operated cells when power outages occurred.¹³¹ Ultimately, a federal judge ordered an evacuation of the prison affected by Hurricane Harvey. However, these two events in Florida and Texas in which prisoners were not evacuated in the face of hurricanes were not isolated incidents. Similar stories are told regarding Hurricanes Katrina, Ike, Andrew, Michael, and others that hit landfall several times in South Carolina.¹³² When Hurricanes Dorian and Florence struck South Carolina, the state refused to evacuate the prisoners on either of these occasions, leaving prisoners to weather the hurricanes on their own.¹³³

The acts of prison officials in not evacuating prisons in the event of hurricanes fall squarely under the purview of the Eighth Amendment. Even the inaction of prison officials can be a violation of the Eighth Amendment, if the conditions of a prisoner's confinement are shocking to the conscience.¹³⁴ When prisoners are not evacuated and must suffer through hurricanes, left in their cells without food or drinkable water, often without medical care or electricity, and often for days at a time, such neglect is shocking to the conscience.¹³⁵ These conditions are of such inherent cruelty that no conduct upon the part of inmates could have warranted them, and they violate the Eighth Amendment.¹³⁶ There is an objective injury to prisoner health, and it is clear that prison officials are acting with deliberate indifference with respect to these events, as there are even news articles where they explain that they will not be evacuating prisoners in the face of a pending storm.¹³⁷ For prison officials to cease violating the Eighth Amendment in regards to their conduct during hurricanes, state prison officials must establish procedures to evacuate prisoners in the face of a pending hurricane so that they are not subjected to these cruel conditions as they have in the past.

In the event that prison administrations fail to take remedial action regarding prisoner living conditions, working conditions, and treatment

130. *Id.*

131. *Id.*

132. Duncan, *supra* note 113; *See also* Gullapalli, *supra* note 128; Kelly, *supra* note 12.

133. Gullapalli, *supra* note 128; *see also* Kelly, *supra* note 12.

134. Danne, *supra* note 40.

135. Kelly, *supra* note 12.

136. Danne, *supra* note 40.

137. Gullapalli, *supra* note 128.

during natural disasters affected by climate change, then court intervention may be necessary.

IV. CURRENT SCOPE OF CLIMATE CHANGE LEGISLATION AND THE EFFECT ON PRISONERS

Several potential solutions have already been proposed above regarding what states and the federal government can actively do to avoid violating the Eighth Amendment rights of incarcerated individuals as climate change continues to worsen. Unfortunately, there is little optimism for state or federal action to resolve the issues discussed above. On a state level, Texas recently killed a bill which would have required air conditioning in prisons.¹³⁸ This bill estimated it would cost approximately \$1.1 billion to install cooling systems, with an upkeep of approximately \$140 million/year.¹³⁹ This bill has been introduced every couple of years in Texas, but it has not seen any progress even with the deaths previously discussed above; thus, it is unlikely to be passed anytime in the near future.¹⁴⁰ Meanwhile, a California Legislative Analyst's Office report from 2020 recommended over 150 projects to improve prison infrastructure at a cost of approximately \$11 billion; there appears to be no movement in proposing any of these projects.¹⁴¹

On a federal level, no upcoming major bill discusses improving prison conditions or how to deal with the effect climate change is having on prison populations. In President Biden's recently passed infrastructure bill, there is no mention of funding towards prison infrastructure.¹⁴² In the Build Back Better Bill, while it addresses climate change and medical care generally, there is no mention that any of the funding will be going to improve prison infrastructure or the healthcare that prisoners receive.¹⁴³ The Green New Deal, which is a proposed bill of some renown with the purpose of addressing climate change, also makes no mention of prisons and jails when outlining what the goals and strategies of the bill are.¹⁴⁴ Lastly, prisoners are not addressed anywhere in the action plan of the House Select

138. Madison Pauly, *As Texas Enters Another Hot Summer, Lawmakers Kill Effort To Cool Sweltering Prisons*, MOTHER JONES (May 30, 2021), <https://perma.cc/6YHM-FZZD>.

139. *Id.*

140. *Id.*

141. CAL. LEGIS. ANALYST'S OFF., *THE 2020-2021 BUDGET: EFFECTIVELY MANAGING STATE PRISON INFRASTRUCTURE* (2020). <https://perma.cc/SE5L-NSFC>.

142. Katie Lobosco & Tami Luhby, *Here's What's in the Bipartisan Infrastructure Package*, CNN (Nov. 15, 2021, 5:47 PM), <https://perma.cc/FC3D-PYC2>.

143. *The Build Back Better Framework*, WHITE HOUSE, <https://perma.cc/47LQ-JKRR>.

144. H.R. 109, 116th Cong. (2019); *see also* Kelly, *supra* note 12.

Committee on the Climate Crisis.¹⁴⁵ Since neither state nor federal plans appear to realistically resolve the issue of how climate change is infringing on prisoners' Eighth Amendment rights, courts will likely need to intervene to enforce their rights.

V. METHODS BY WHICH PRISONERS' EIGHTH AMENDMENT RIGHTS CAN BE PROTECTED DESPITE A LACK OF STATE AND FEDERAL ACTION

It is likely that court intervention may be necessary to enforce the Eighth Amendment rights of prisoners since, as stated above, there seems to be little hope that legislation will be passed in the near future to resolve the impact that climate change is having on prisoners. It is unlikely that any particularly proactive prison reform will occur, as prisoners often lack advocacy and are not exactly a priority when states are deciding how to allocate taxes, and so courts are likely needed to step in to force state and federal prison administrations to make changes to prison infrastructure.

Prisoners have brought successful Eighth Amendment cases against states in which climate change was at least a factor of the cruel and unusual punishment. In *Ball v. LeBlanc*, the Fifth Circuit Court of Appeals found that housing three death-row inmates in very hot cells, without sufficient access to heat-relief measures, while also knowing that each suffered from conditions which rendered them extremely vulnerable to serious heat-related injury, violated the Eighth Amendment.¹⁴⁶ When the prison conditions posed an unreasonable risk of serious damage to the prisoner's health, and prison officials acted with deliberate indifference to the risk posed, and was sufficient for the court to issue an order that the violation be remedied.¹⁴⁷ This case reflects the type of situation discussed above regarding the various conditions that many prisoners are currently experiencing.

In *Russell v. Johnson*, the court found that, looking at the totality of the circumstances, the conditions of sanitation, heating and cooling, pest control, lighting, preventive maintenance, laundry, and mental health care altogether were grossly inadequate, amounting to a violation of the Eighth Amendment.¹⁴⁸ Notably, the court ruled that "monetary considerations will not be considered . . . as a legitimate reason for non-compliance" with the

145. *Solving the Climate Crisis: The Congressional Action Plan for a Clean Energy Economy and a Healthy, Resilient, and Just America*, H. SELECT COMM. ON THE CLIMATE CRISIS, <https://perma.cc/EX4F-MPFJ>.

146. *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015).

147. *Id.*

148. *Russell v. Johnson*, 2003 U.S. Dist. LEXIS 8576, at *1 (N.D. Miss. May 21, 2003).

order to remedy the Eighth Amendment violations.¹⁴⁹ If action is not voluntarily taken, states or the federal government may be forced to make expenditures without a substantial say in the matter.

The U.S. Supreme Court has stated that relief generally needs to be narrowly drawn and extend no further than necessary to correct the violation of the Eighth Amendment.¹⁵⁰ However, the Court has also ruled that “constitutional violations [cannot] continue simply because a remedy would involve intrusion into the realm of prison administration.”¹⁵¹ While normally states have the right to determine how to manage their prison systems, that right does not allow indifference to the plight of prisoners who are subjected to a harsh and unbearable environment brought on by climate change and a lack of infrastructure to address it. Courts can order a remedy that states must implement if it is narrowly drawn and will resolve the Eighth Amendment issue. This situation leaves non-complying states with a choice: to either resolve the Eighth Amendment issue caused by climate change proactively or await a court judgment under which they will have to comply.

CONCLUSION

With the current trajectory that the world is on with respect to climate change, and since current regulations are insufficient to meet the 1.5°C or 2°C threshold of the Paris Agreement, temperatures will continue to rise, and natural disasters will continue to become more frequent. The current prison infrastructure and living conditions of incarcerated individuals in many prisons and jails are already insufficient and border on violating, or already violate, the Eighth Amendment. As climate conditions get worse, it is nearly certain that inmate treatment in certain areas of the country will meet the standards of cruel and unusual punishment in violation of the Eighth Amendment. To resolve this issue, states should invest in infrastructure for the prisons which are hardest hit by the temperature changes, by installing cooling/heating systems or insulation, and by providing adequate medical care for inmates who are at high risk of disease or death from high temperatures due to their preexisting conditions. States that will see increases in natural disasters, such as coastal areas where hurricanes are becoming more frequent, also must put in place administrative regulations that properly allow responses to the disasters that protect inmate health and well-being, including evacuation protocols rather than leaving inmates to await the disaster to hit the prison and simply fend for themselves.

149. *Id.*

150. *Brown v. Plata*, 563 U.S. 493, 512 (2010).

151. *Id.* at 511.

Similar climate change regulations should be put in place on a national level as those that this article an even milder version of climate legislation bill will be passed, much less one that grants funding and attention to prisoners, who are not a group which has particularly strong advocacy or lobbying support. It is therefore likely that any voluntary substantive changes to prison reform in the near future will have to be enacted at the state and local level, at least until the federal government can come to an initial agreement on taking substantive steps to address climate change. If federal and state governments wait too long to implement prison reform to account for the impacts of climate change on their prisoners, then it is likely that the governments will be forced to allocate resources once the temperature and natural disaster risks become dire enough that the courts find a violation of the Eighth Amendment and order remedial action to be taken.