

HOW ANTHROPOGENIC CLIMATE CHANGE EXACERBATES VULNERABILITY
IN PRISON COMMUNITIES;
A CRITICAL ENVIRONMENTAL JUSTICE ANALYSIS

By

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A Thesis Presented to
The Faculty of Humboldt State University
In Partial Fulfillment of the Requirements for the Degree
Master of Arts in Sociology

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December 2018

ABSTRACT

HOW ANTHROPOGENIC CLIMATE CHANGE EXACERBATES VULNERABILITY IN PRISON COMMUNITIES; A CRITICAL ENVIRONMENTAL JUSTICE ANALYSIS

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This thesis examines the link between anthropogenic climate change and mass incarceration by examining how governments address conditions in and around prisons resulting from hurricanes and wildfires. Critical Environmental Justice, Treadmill of Production and Destruction theories are synthesized using what is debuted here as an intersectional camera based on the theory of intersectionality. It examines how Trump administration policies will greatly exacerbate dangers caused by climate change and increase risks and dangers caused by mass incarceration. In addition to being a call to action, this project is intended to serve as a resource for prisoner rights activists. Prisons have become more ubiquitous, perilous and toxic over the past five decades, while the network of local, state, federal, and private systems responsible for their safety and maintenance has become increasingly chaotic. This thesis is a descriptive study that utilizes existing data from academic papers, news reports and legal cases to highlight the impacts of climate change on the marginalized inmate community *and*, simultaneously, the natural environment that surrounds incarceration facilities.

The need for this analysis is particularly imperative in light of recent efforts by the Trump administration to bureaucratically and legislatively eviscerate regulations

designed to protect human and ecological health that will magnify dangers caused by increasing global temperatures and subsequent extreme weather events like hurricanes, floods, and wildfires. Further, Trump Administration policies designed to increasingly criminalize and incarcerate already marginalized communities will exacerbate their vulnerabilities to the effects of climate change.

KEY TERMS:

8th Amendment, 13th Amendment, Climate Change, Criminality, Floods, Hurricanes, Incarceration, Intersectionality, Militarization, Consent Decree, Genocide, Mass Incarceration, Mental Health, Native People, Paris Climate Change Agreement, Pensions, Police, Power Elite, Prison Ecology Project, Prison Industrial Complex, Prison Labor, Solitary Confinement, Treadmill of Production, Treadmill of Destruction, Unions, Universal Declaration of Human Rights, Wildfires, Women

ACKNOWLEDGEMENTS

My birth mother and adoptive parents exemplify how individuals can affect tangible change. My birth mother, Kate Mulligan, works on a larger scale as a volunteer journalist. Her self-supported website, mentalhealthmoneymatters.org¹ provides extensive resources for those seeking treatment for mental health issues on local and national levels and inextricably links prison reform to public mental health issues. In addition, she contributes extensive time and resources to her local chapter of the League of Women Voters in Dane County, Wisconsin. Her constant advocacy and presence at League meetings and events has brought prison reform and mental issues to the forefront of the League's agenda. Their work forces politicians to include prison issues as part of their daily work. My adoptive mother, Judith Otto, volunteers as an instructor for inmates in the gardens of a medium security through Concord, MA Prison Outreach, Inc.² Her work there over the past several years has helped inmates gain valuable knowledge that empowers them to leave prison not only with a new skill set, but enriches them with an increased level of botanical literacy that decreases their dependence on commercial food and medicines while instilling a life-long love of gardening and self-reliance. At the nearby minimum security prison, New England Correctional Center, she facilitates weekend workshops called Alternatives to Violence³, a Quaker-based transformative program incorporating cognitive behavioral therapy. Using her privileged position as a

¹ <https://mentalhealthmoneymatters.org/>

² <https://www.concordprisonoutreach.org/>

³ <https://avpusa.org/>

well-educated, white female, she has personally challenged local and state politicians in public forums and on television to stop incarcerating and harassing brown people. My adoptive father, Howard Veit, devotes endless hours to the local chapter of the Long Boat Key Democrats⁴. While I do not support either of the dominant political parties in the United States, I admire how, at nearly 80 years old and relatively unfamiliar with computers, he has mastered blogging and digital lobbying. Lastly, I am grateful and permanently indebted to my professors at Humboldt State University, in particular Dr. Anthony Silvaggio, whose tireless efforts inspire students to take direct action against oppressive systems. Additional thanks go to Kendall Ford, Bowman Hastie, Larry Richmond, Don Oneglia and Brian Hill who provided material and moral support throughout this project. Special thanks go to Sandra Hermanns, who made sure I did not falter in continuing this research and created the intersectional camera graphic. All of the people mentioned here provide inspirational examples of how individuals can affect tangible change.

⁴ <https://www.lbkdemocrats.com/>

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CHAPTER 1 — INTRODUCTION AND RESEARCH QUESTIONS

Introduction

This thesis examines the link between the environment and mass incarceration by examining how governments address conditions in and around prisons resulting from anthropogenic climate change. This analysis draws on the treadmill of production theory and the critical environmental justice framework to understand the intersection of mass incarceration and environmental inequality. It attempts to explain why the multitude of environmental and human health problems created by the prison system in the United States remain ignored by state and federal regulators. It examines how Trump administration policies will greatly exacerbate dangers caused by climate change and increase environmental and human harm caused by mass incarceration. In addition to being a call to action, this project is intended to serve as a resource for prisoner rights activists, highlighting how the prison industrial complex in the United States simultaneously exacerbates social inequality and environmental degradation. The operation of prisons on toxic sites such as former coal mines and weapons testing grounds exemplifies the United States' long history of discrimination and further marginalizes the ever-growing community of prisoners, their families and prison staff. This research highlights the clear need to protect prisoners as a population that faces extreme environmental justice impacts.

This research project was written in conjunction with the Prison Ecology Project (PEP), a grass roots, non-profit, prisoner advocacy effort created by the Human Rights Defense Center, a non-profit that “advocates on behalf of the human rights of people held in U.S. detention facilities” (Human Rights Defense Center 2018).

The Prison Ecology Project addresses issues such as: damage of sewage and industrial waste from overpopulated and under-regulated prisons into waterways; threats to listed species by the ongoing construction and operation of prisons in remote, environmentally-sensitive rural areas; and environmental justice concerns regarding prisoners, staff and surrounding communities.

(Prison Ecology Project 2018)

The PEP works with prison activists, academics, lawyers, and the public to assess and redress the needs and vulnerabilities of those adversely affected by the United States’ prison industrial complex (PIC). Their work brings the often-ignored ecological impacts prisons and jails have on nearby land, rivers, and air. This research project was written to guide PEP in how they craft future public policy recommendations, legal action, and grass roots political action strategies. Currently, the PEP serves as a resilient, up-to date source of news that chronicles the environmental harms caused by the PIC. As this thesis will show, the PEP’s work has been instrumental in influencing the United States Environmental Protection Agency (EPA) to include prisons as a category in their environmental justice maps (EJScreens) that enable the public to determine the proximity prisons have to existing toxic and otherwise environmentally compromised areas. The PEP has brought attention to the discriminatory effects of mass incarceration in the U.S, and how the operation of prisons built on toxic sites, such as former coal mines, landfills,

waste dumps, and weapons testing grounds exacerbates health risks faced by inmates and prison workers. Through their work in conjunction with academics and journalists, the PEP is recognized as a primary source of information when new prisons are proposed and, most relevant to this project, when prisons and jails are affected by extreme weather events like hurricanes, wildfires and heat waves. Before, during, and in the aftermath of such events, the plight of inmates and the natural environment surrounding prisons and jails is usually ignored.

This project was also written to provide a theoretical framework upon which academics in the sociology community can build when studying environmental and criminal justice issues. These issues are normally segregated into distinct areas of study, but are inextricably linked. Dividing sociological inquiry into gender, racial, and criminal justice silos ignores what unites them all: the natural environment upon which everyone is dependent. Environmental sociologists have explored these links, but prisons and jails are often built in areas that are already contaminated by industry and military activity, leaving them exponentially more vulnerable to the effects of anthropogenic climate change. The need for this analysis is particularly imperative in light of recent efforts by the Trump administration to bureaucratically and legislatively eviscerate regulations designed to protect human and ecological health, which changes will magnify dangers caused by increasing global temperatures and subsequent extreme weather events like hurricanes, floods, and wildfires. Further, Trump Administration policies designed to increasingly criminalize and incarcerate already marginalized communities will exacerbate their vulnerability to the effects of climate change.

Organization of Thesis

To begin this sociological analysis of the intersection between prisons and the environment, Chapter Two provides an overview of the size and conditions prevalent in American prisons and jails, including data on inmate age, ethnicity, exposure to heat, and other factors that degrade inmate and ecological health. It details the historical underpinnings of the Prison Industrial Complex (PIC), the use of prison labor for private and public purposes, and the systems that prevent meaningful oversight of conditions in and around prisons and jails. In order to demonstrate the level of entrenchment the PIC has in maintaining mainstream economic norms (Sudbury 2004:13), I provide quantitative data on the number of American police, incarceration facilities and the role criminalization and mass incarceration have in determining public policy. The PIC, aptly called the “perpetual prison machine” (Dyer 2000) is dependent on tax revenues, criminal fines, and prison labor that entrenches disparities between economic, social, and ethnic groups (Balko 2014; Pellow 2018; Huling 2002; Davis, 1998; Friedman 2017).

In Chapter Three, I review some of the scholarly literature on the PIC, and introduce the theories and methods that guide this research. This thesis utilizes the critical environmental justice framework of David Pellow (Pellow and Brulle 2005; Pellow 2018) and is informed by two theoretical perspectives in environmental sociology; The Treadmill of Production (ToP) theory of Allan Schnaiberg (1980), the Treadmill of Destruction (ToD) (Hooks and Smith 2005, 2014). These theories are useful in critically

analyzing the PIC and understanding how it responds to anthropogenic climate events such as hurricanes and wildfires that capture widespread public attention. While I try to avoid the term race in this paper, (see Appendix A for an explanation why the terms race, people of color and African-American are generally avoided in this paper.) critical race theorists and racial justice scholars Angela Davis, Julia Sudbury, and Ruth Wilson Gilmore provide valuable framing that helps explain how the history of ethnic-based discrimination in the United States has contributed to the disproportionately high number of black and Latinx inmates held in American prisons. This thesis argues that prison activists could potentially be well served using the legal system. Borrowing from the language of Crenshaw's (1989, 1991) intersectionality theory, I try to demonstrate the potential utility of filing simultaneous lawsuits against beneficiaries of the prison industrial complex from a variety of fronts; including human rights violations, environmental degradation, worker safety and exploitation, the loss of endangered species. Further, by probing the connections between prison lobbyists and politicians, criminal activity could be exposed. These two approaches could be helpful in raising the level risks posed by companies and individuals who are interested in profiting from prison construction, maintenance, and the use of inmate labor.

In Chapter Four, I examine three cases of the environmental injustice of incarceration, analyzing popular press reports, court actions, internal investigations (state and federal), and environmental/human rights conventions to demonstrate the history and scope conditions that exacerbate environmental risks and human harm, particularly those in and around prisons and jails. These cases describe the catastrophic governmental

responses to high-profile hurricanes and wildfires that exacerbated the already decrepit and toxic conditions prevalent in and around prisons and jails. It illustrates how inmates, guards, and their families are left in crisis during such events. Their needs are largely ignored by the media, first-responders and relief agencies while civilians, their pets and livestock command attention and resources.

The conclusion, Chapter Five, examines advocacy efforts and explores possible remedies, proposing the use of multi-scalar litigation, or, borrowing a term derived from the legal decision that gave rise to intersectionality theory (Crenshaw 1989, 1991), “legal super-remedies” that simultaneously address climate change, discrimination, and the denial of basic human rights by state-sponsored and private institutions experienced by inmates and the communities surrounding prisons and jails. Throughout this theses, examples of prison reform that successfully reduce the harms caused by the PIC are critically analyzed, paying particular attention to systems that address the needs of women and those diagnosed mental illnesses. I hope this paper helps raise public awareness of how regular people can successfully erode public acceptance of the United States’ grotesque reliance on prisons and criminalization as an economic growth engine.

Research Questions

The approach taken in this project is designed to provide answers to the following questions: How does anthropogenic climate change affect incarceration communities? How will current state policies in the United States exacerbate dangers posed by

increasing temperature, hurricanes, floods, and wildfires? How can prison advocacy groups like PEP use and adapt existing United States laws and global conventions designed to protect human rights and the environment to include incarcerated people and the ecological health of prison communities?

CHAPTER 2 — SIZE, SCOPE AND HISTORY OF THE PRISON INDUSTRIAL COMPLEX

How Big is the Prison Industrial Complex?

The prison industrial complex (PIC) is a term we use to describe the overlapping interests of government and industry that use surveillance, policing, and imprisonment as solutions to economic, social and political problems. Through its reach and impact, the PIC helps and maintains the authority of people who get their power through racial, economic and other privileges. There are many ways this power is collected and maintained through the PIC, including creating mass media images that keep alive stereotypes of people of color, poor people, queer people, immigrants, youth, and other oppressed communities as criminal, delinquent, or deviant. This power is also maintained by earning huge profits for private companies that deal with prisons and police forces; helping earn political gains for “tough on crime” politicians; increasing the influence of prison guard and police unions; and eliminating social and political dissent by oppressed communities that make demands for self-determination and reorganization of power in the US.

(Critical Resistance website homepage 2018)

This chapter describes the size, scope, and historical underpinnings of the Prison Industrial Complex (PIC) in the United States by examining the socio-economic characteristics of prison populations and the economic growth coalitions that make prisons a staple of mainstream industry and commercial activity. Mass incarceration is status quo in the United States, with no end in sight (Travis 2014:23). In addition to incarcerating more people than any nation on earth, the United States has seen a near 700% increase in per capita incarceration rates since 1970 (Lee 2015). For every 100,000 people living in the United States, between 655 and 698 are incarcerated (Gramlich 2018; Wagner and Sawyer 2018). The US has only 5% of the world’s population, but its approximately 2.3 million prisoners comprise 25% of the global population of

incarcerated people (ACLU 2015). More accurate statistics are hard to ascertain because prison populations are fluid and incarceration facilities are administered by a confusing array of municipal, county, state and federal agencies. Numbers for those awaiting trial are not counted by the Federal Bureau of Justice statistics (Kaeble and Cowhig 2016) and states, counties, and municipalities report arrestee populations in a haphazard manner.

Estimates vary, but the United States currently has approximately 6,000 incarceration facilities operating at municipal, state and federal levels (Ingraham 2015). The California Department of Corrections began what became the largest prison building boom in global history in 1982 increased the amount of incarceration facilities by 400%. Between 1984 and 1998, California completed construction on twenty-two new prisons at a cost of \$280-350 million for each facility (Gilmore 1998:980). According to the federal Bureau of Prisons (BOP), 181,185 inmates are currently incarcerated in 122 federal facilities (BOP 2018). In 1980 there were 24,640 inmates held in BOP prisons. The remaining 2,000,000 or so inmates are currently incarcerated in state, county, and city prisons and jails.⁵Health care needs become increasingly complicated and expensive as prisoners age. Largely due to extremely long sentencing guidelines for narcotics infractions and the legacy of three-strikes laws, 45.6% of BOP inmates are over 40 years old (BOP 2018). As of 2018, another 4.5 million to 5 million people were under supervision by a parole or probation department (Kaeble 2018; Davis 1998). Such programs may be preferable to incarceration, but still disable former inmates from

⁵ One reason for the high number of state institutions is a lack of oversight at the state level in terms campaign contributions and lobbying influence when compared to federal laws (Sudbury 2004:14).

participating in mainstream economic activities and forever stigmatize them as a criminalized other (Schneider and McKim 2003; Rex 1999).

Prison populations represent concentrated examples of existing disparities between ethnic groups in the United States (Davis, 1998). Latinx people comprise 32.2% of the federal prison population (BOP 2018; Flores 2017), but only represent 18.1% of United States residents and citizens. Black people comprise 13.4% of the United States' population (United States Census 2017), but represent 38% of the federal inmate prison population (BOP 2018). One or both parents of 2.7 million children in the United States are currently incarcerated. One in nine black children have parents who are incarcerated. For white children, one in 57 have at least one parent currently spending time in a prison or jail (Pellow 2018:99). Such disparities result in large part from state-sponsored policing strategies that zealously target non-whites for prosecution in the name of public safety and the maintenance of public order (Garrison 2014; White and Fradella 2017). The state-sponsored underpinnings of these disparities are described later in this chapter in the next section describing how the 13th Amendment to the United States Constitution abolished slavery for everyone except prisoners as a way to maintain white supremacy.

The United States spends approximately \$100 billion on law enforcement annually through police payrolls, equipment, incarceration and the administrative systems they rely on (Friedman 2017). Like the American prison population itself, accurate data on the number of law enforcement officers is hard to ascertain, but is estimated to total around 900,000 including officers working for towns, cities, counties, states and specialized federal agencies that concentrate on issues like immigration, customs, and

narcotics (National Law Enforcement Officers Memorial Fund 2018). The United States Department of Justice (DOJ) has a \$28 billion taxpayer funded annual budget (DOJ Fiscal Year 2019) and is the nation's prevailing law enforcement entity, but they are still unable to accurately pin down how many American police officers and agencies are currently operating domestically.

Law enforcement in the United States is made up of about 18,000 federal, state, county, and local agencies. Each agency has varying legal and geographic jurisdictions, ranging from single-officer police departments to those with more than 30,000 officers. The most common type of agency is the small town police department that employs 10 or fewer officers. The decentralized, fragmented, and local nature of law enforcement in the United States makes it challenging to accurately count the number of agencies and officers.

(Banks, et al. 2016)

Publicly supported law enforcement officers are unionized and receive pensions that city, state and federal treasuries are responsible for until the officer dies. Since many police officers retire after only twenty years on the job, pension burdens weigh heavily on public coffers for decades and drain financial resources that could be allocated to education, environmental protection, and other public systems (Mock, 2015(2); Henrichson, Rinaldi, and Delaney, 2015:21). In Suffolk County, NY, a large commuter community bordering New York City, average police pensions of officers who retired after 2007 averaged \$86,702 per year, dwarfing those of other county employees, excluding teachers, which totaled \$37,270 (Johnson and Francescani 2012).

The Thirteenth Amendment and The Birth of the Prison Industrial Complex

The logic of slavery can be seen clearly in the current [sic] (PIC). While the PIC generally incarcerates communities of color, it seems to be structured primarily on an anti-Black racism. That is, prior to the Civil War, most people in prison were white. However, after the thirteenth amendment was passed—which banned slavery, except for those in prison, Black people previously enslaved through the slavery system were re-enslaved through the prison system. Black people who had been the property of slave owners became state property, through the convict leasing system.”

(Smith 2016:67)

The conditions that precipitated the birth of American PIC were codified into federal statute with the passing of the 13th Amendment in 1865, an event widely celebrated for its role in ending slavery and the four-year Civil War between the northern Union and southern Confederate armies. However, the 13th Amendment merely re-regulated the slave system into a convict leasing system, codifying people incarcerated in prisons and jails as exempt from protection against slavery (Pellow 2018:87). The 13th Amendment states: “Neither slavery nor involuntary servitude, *except as a punishment for a crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to its jurisdiction”⁶ (Italics added). This exception for those convicted of crimes made it possible for farmers, factory owners, and government bureaucracies at city, county, state, and federal levels to lease laborers who might otherwise be subject to basic worker protections like pensions, wage, and safety guidelines and extract a significant portion of the population from public life for use as

⁶ 13th Amendment to the U.S. Constitution: Abolition of Slavery The House Joint Resolution proposing the 13th amendment to the Constitution, January 31, 1865. Retrieved November 20, 2018 (<https://www.archives.gov/historical-docs/13th-amendment>)

captive workers. The United States' remarkable level of dependence on prison labor is described further in the next chapter in a section analyzing Treadmill of Production (ToP) theory (Schnaiberg 1980), and the extractive capitalist practices that view natural and human resources merely as tools of economic growth that perpetuate state and elite power.

A *Washington Post* article examining the 13th Amendment published after controversial musician Kanye West met with President Trump in the White House's Oval Office to lobby against it in front of dozens of television cameras, print and radio reporters, quoted University of Hawaii professor Robert Parkinson:

The 13th Amendment's exception clause allowed the convict-leasing system to flourish and grow, and it became the dominant form of imprisonment throughout the south. Thousands lost their lives in the process, and it was hugely profitable for state governments. It was an important part of the establishment of the Jim Crow segregationist system. And it served as a blueprint for the harsh, retributionist imprisonment that has become, tragically, the dominant form of American incarceration all the way into the 21st century.

(Flynn 2018)

The use of incarcerated people as an enslaved labor force continues in earnest and is an intrinsic pillar supporting mainstream economic growth coalitions that are integral to everyday American life (Davis 1998). Lingerie maker Victoria's Secret subcontracts inmate labor pools through the garment manufacturer Third Generation (Yarh 2015). Computer manufacturer IBM, Emory University, electronic cable maker Escod Corporation, graduation robe maker Jostens, Inc., coffee giant Starbucks, and the United States Air Force represent only a few of the hundreds, perhaps thousands, of companies,

state and federal agencies that use inmate labor to cut costs. Prison labor is estimated to generate more than \$2 billion annually (Bair 2004).

These arrangements are codified through the Private Sector/Prison Industry Enhancement Program (PS/PIEC) that has been in effect since 1979 and represents a crucial legal mechanism that enables the PIC to remain a profitable cornerstone of the American economy. The PS/PIEC removed earlier restrictions on goods produced by inmates that forbade them from interstate transport and sale (Sexton 1995:3). The program is administered through Department of Justice (DOJ) and allows contractors to brand their products “Made in the USA” without the financial burdens imposed by federal or state wage minimum wage laws and other worker protections.

“For private business,” write Eve Goldberg and Linda Evans (a political prisoner inside the Federal Correctional Institution at Dublin, California) “prison labor is like a pot of gold. No strikes. No union organizing. No health benefits, unemployment insurance, or workers’ compensation to pay. No language barriers, as in foreign countries. New leviathan prisons are being built on thousands of eerie acres of factories inside the walls. Prisoners do data entry for Chevron, make telephone reservations for TWA, raise hogs, shovel manure, make circuit boards, limousines, waterbeds, and lingerie for Victoria’s Secret -- all at a fraction of the cost of ‘free labor.’

(Davis 1998)

The use of inmate labor was one of many factors that inspired inmates in seventeen states to call a strike in August 2018 that ran through September 2018 (Garcia 2018). The prison labor issue brings attention to the next chapter which describes two fundamental pillars of the American economy, the Treadmills of Production and Destruction.

Pellow (2018:71) provides a chronology of prison labor, from widespread use of inmates as underpaid coal miners in the late 19th century, to prisoners currently receiving pennies a day processing electronic waste for recycling in extremely toxic and dangerous conditions. While prison labor has been integral to municipalities, governments and private enterprise in need of workers able to perform the hardest, most toxic work for little pay since the mid 19th-century, the current political climate further incentivizes the use of prison labor, entrenching a treadmill of destructive economic norms dependent on criminalization (Davis 1998).

Criminality as Municipal Revenue Stream

The prison-industrial complex is a symbiotic and profitable relationship between politicians, corporations, the media, and state correctional institutions that generates the racialized use of incarceration as a response to social problems rooted in the globalization of capital.

(Sudbury 2004:12)

The PIC drains not only tax revenues, but is additionally dependent on fines extracted from private citizens and residents who get ensnared into the criminal justice system. St. Louis County, Missouri, which borders but does not include the city of St. Louis, provides an exemplary snapshot of the relationship between criminalization and local governance. Balko (2014) details how police extract wealth from residents and passersby through stringent enforcement and prosecution of traffic laws and minor crimes. In a short drive along a major highway near St. Louis' main airport, Balko and a local criminal defense attorney spot police cars from at least four different jurisdictions

parked behind cars they had just pulled over. The attorney points out that his clients typically face charges from multiple jurisdictions simultaneously for what he calls “poverty violations.” These minor offenses range from wearing pants too low, to speeding, driving without a seatbelt, or failing to signal before turning a vehicle. “Some of the towns in St. Louis County can derive 40% or more of their annual revenue from the petty fines and fees collected by their municipal courts. A majority of these fines are for traffic offenses, but they can also include fines for fare-hopping on MetroLink (St. Louis’s light rail system), loud music and other noise ordinance violations, zoning violations for uncut grass or unkempt property...and vague infractions such as “disturbing the peace” or “affray” that give police officers a great deal of discretion to look for other violations” (Balko 2018). While initial citations require payments between \$100 and \$500, fines quickly multiply when people fail to pay or don’t show up to court, prompting the issuance of arrest warrants. One woman profiled in the article was typical of the defense attorney’s clients. She spent several weeks bouncing between three jails while her cases were adjudicated, lost access to her children, and was forced to suspend her training as a paralegal when an officer pulled her over for speeding and discovered she had missed a court date. The woman, whose name isn’t repeated here for privacy reasons, was transferred from jail to jail to jail while family scrambled to post bond in each jurisdiction. Her attorney, Michael-John Voss from the grass roots legal activist group ArchCity Defenders⁷, reported that the woman’s situation was typical in towns that

⁷ArchCity Defenders (ACD) is a 501(c)3 non-profit civil rights law firm providing holistic legal advocacy and combating the criminalization of poverty and state violence against poor people and people of

depend on criminality as a revenue stream. “I was representing a client in a poorer town and was negotiating with a prosecutor who was also the municipal prosecutor in a wealthier town, he actually told me that if we were in the wealthier town he could cut my client a deal. But he couldn’t do it in the poorer town, because there was more pressure on him to generate revenue” (Balko 2014).

The small city of Ferguson, Missouri in St. Louis County is typical in terms of its reliance on proceeds derived from criminalizing its residents. Ferguson has only 20,000 residents, but its police department supports 45 officers and 17 support staff. Court-imposed fees against Ferguson residents generate \$2.4 million annually representing 12% of their entire 2014 budget (Harvard Law Review 2015:1723).⁸ Officers who receive an average salary of \$45,000 annually were rewarded with a 7% raise in 2017 despite widely publicized civil unrest and rioting resulting from the murder of Michael Brown, an unarmed, non-white civilian, by Ferguson police officer Darren Wilson in 2014. Similar patterns of municipal dependence on criminal justice proceeds are common in the United States.

color. ACD uses direct services, impact litigation, and policy and media advocacy as its primary tools to promote justice, protect civil and human rights, and bring about systemic change on behalf of the poor and communities of color directly impacted by the abuses of the legal system. Archcity Defenders website. Retrieved November 24, 2018, (<http://www.archcitydefenders.org/>)

⁸ City of Ferguson, Missouri Annual Operating Budget Fiscal Year 2017 – 2018. iv. Retrieved November 25, 2018, (<http://www.fergusoncity.com/DocumentCenter/View/2854/2018->)

Heat in Prisons

In the United States, extreme heat has consistently caused more deaths annually than hurricanes, tornados, floods and earthquakes combined (Holt 2015:5). Reports chronicling the global rise in temperatures are released regularly from a variety of sources that have contributed to a global consensus warning how rising temperatures resulting from human use of fossil fuels and other carbon producing activities will cause more frequent extreme weather events and greatly intensify human suffering and environmental blight. Most recently, the federally funded United States Global Change Research Program (2018) released a widely publicized assessment of climate change predicting: “Future climate change is expected to further disrupt many areas of life, exacerbating existing challenges to prosperity posed by aging and deteriorating infrastructure, stressed ecosystems, and economic inequality.” The United Nations Intergovernmental Panel on Climate Change (IPCC) is the globe’s leading body dedicated to slowing the rise in global temperatures. Their most recent report warns that a rise of more than 1.5°C in the next twelve years will result in irrevocable environmental chaos, and “would require rapid, far reaching and unprecedented changes in all aspects of society” (IPCC 2018). Since 1895, average temperatures in the United States have increased by 1.3°F to 1.9°F, with most of that increase occurring since 1970. “The first decade of this century was the warmest on record, 2014 was the warmest single year on record, and the nation’s climate is only expected to become warmer” (NOAA 2014). Several records have been set in the past decade pertaining to the duration and frequency

of heat waves. “New records were set for both hottest daytime maximum temperatures and warmest nighttime minimum temperatures, part of an increasing trend in persistently high nighttime temperatures that prolong heat waves and amplify their health impacts” (Holt 2014:4).

The Columbia Law School’s Sabin Center for Climate Change Law’s 2015 report, *“Heat in US Prisons and Jails, Corrections and the Challenge of Climate Change”* (Holt 2015), chronicles the dangers caused by rising temperatures and how they affect prisons. Among a litany of sharp criticisms, they find that “correctional departments across the country are largely unprepared for the operational difficulties they will face as our climate continues to change” (Holt 2014:1). Several recommendations to address excessive heat in prisons are proposed that, when not adhered to, can be potentially be used by inmates bringing lawsuits against prisons that violate codified prison procedures. The report’s recommendations set minimum standards for working conditions based on temperatures, numbers of consecutive hours worked depending on temperatures, minimum amounts of fluid intake, duration of rest periods, and the cessation of work when temperatures exceed 120°F. The report further recommends inmates undergo medical screening before beginning strenuous work. These recommendations are quoted directly from the 2014 Texas Department of Criminal Justice Correctional Managed Care Health Policy Manual⁹ that were used as evidence in a 2017 civil lawsuit¹⁰ against the

⁹ Correctional managed health care policy manual effective date: 07/08/2015 Number: D-27.2. Retrieved November 20, 2018, (http://tdcj.state.tx.us/divisions/cmhc/docs/cmhc_policy_manual/D-27.02.pdf)

¹⁰ Cole et al. v. Collier et al. Case 4:14-cv-01698 Document 769 Filed in TXSD on 08/03/17. Retrieved November 20, 2018, (<https://static.texastribune.org/media/documents/texas-heat-proposal0817.pdf>)

1,432 bed Wallace Pack Unit, a Texas state prison for males that was violating heat policies.

The US District Court for the Southern District of Texas Houston Division ordered the Wallace Pack Unit to ameliorate conditions to accommodate inmates during periods of extreme heat, but their mandate fell well short of improving conditions in any meaningful way. Among the Court's orders were to install window screens, "develop a heat-wave policy", and "propose other remedies within 15 days." The Court's primary fix was ordering the maximum-security facility to maintain "respite areas" that were to be kept under 88°F and made accessible at all times to any inmate feeling ill effects from excessive heat. The Pack Unit was further ordered to place posters in common areas advising inmates of the new procedures, imploring them to inform prison staff when they were feeling "heat illness" and that they have the right to "request access to a respite area" regardless of whether they felt ill or not." Some inmates with medical conditions that made them more sensitive to the effects of high heat, including those over the age of 65, were transferred to air-conditioned facilities. In spite of the court's demands, no punitive or financial damages were awarded to inmates resulting from the conditions prevalent in the Pack Unit.

Rising temperatures, increasing humidity and wildfires have caused an epidemic of inmate respiratory disorders (Kelkar 2017). The PEP and grass roots activists from

Nation Inside¹¹ are currently spearheading a #stoptheheat¹² campaign focusing on the reduction of dangerously high temperatures prevalent in American prisons.

Oversight of Prison Conditions

Attempts to monitor prison conditions and enforce regulations in order to ameliorate dangerous conditions reveal a system in crisis at all levels. While transparency and reliable facts are difficult to ascertain, the elderly, mentally ill, trans people, children, and women suffer most acutely from neglect and hazardous conditions in and around American prisons. In addition to the academic literature cited throughout this paper, a dire picture of inmate life and vulnerabilities can be culled from internal inspections, lawsuits, grass roots activists and the media. The Department of Justice Office of the Inspector General (DOJOIG), the American Civil Liberties Union (ACLU), the Prison Ecology Project (PEP), the Prison Policy Initiative (PPI), national and local news outlets, and academic papers are all used as sources throughout this thesis.

Currently, the only bulwarks against the continuing erosion of prison conditions are the civil legal system and the DOJOIG. However, neither mechanism offers much hope in terms of utility for inmates or prison activists working on their behalf. The futility of civil lawsuits was demonstrated in the last section describing how a state prison in

¹¹“Nation Inside is a platform that connects and supports people who are building a movement to systematically challenge mass incarceration in the United States.” Retrieved November 24, 2018. (<https://nationinside.org/about-us/>)

¹²“Action Network is an open platform that empowers individuals and groups to organize for progressive causes.” Retrieved November 24, 2018, (<https://actionnetwork.org/groups/stoptheheat>)

Texas was ordered to implement largely cosmetic and unfeasible changes to address heat complaints. Further, the 1996 Prison Litigation Reform Act (P.L.R.A.)¹³ makes it nearly impossible for inmates to sue prisons for financial damages or help them get transferred or released (Poser 2016). With no realistic legal recourses available to prisoners whose treatment is deleterious to their health and safety, the onus falls on prison activists to use popular media in order to impel political leaders to craft legislation that will improve conditions in American prisons and jails. Repealing the P.L.R.A would be an excellent first step.

The Black Hole of Prison Medical Records

Federal prisons are required to maintain detailed electronic medical records, but according to a 2017 DOJOIG report (DOJOIG 2017), most do not, instead relying on a haphazard paper system that provides cover for systemic fraud and incompetence. The report does not substantively assess conditions in BOP clinics and affiliated hospitals because little data exists, but the glimpses it does provide are dire. Their examination of paper and digital records for 337,388 health care reimbursement claims resulting in \$399 million in payments from 2008 through 2017 found systemic over-billing, archaic record keeping and incomprehensible financial reportage.

...because the vast majority of BOP's health care claims are processed by paper at each individual institution, billing activity cannot be analyzed in any meaningful way...only 16 of BOP's 122 institutions were submitting electronic claims for

¹³ From the ACLU website. "Know Your Rights: The Prison Litigation Reform Act (PLRA)" Retrieved December 1, 2018, (https://www.aclu.org/sites/default/files/images/asset_upload_file79_25805.pdf)

processing by the claims adjudication vendor...the BOP is currently spending hundreds of millions of dollars on healthcare with what appears to be outdated and seemingly ineffective oversight. Of the records provided to the OIG, 99 percent contained no information about specific types of drugs prescribed, 34 percent contained no information about procedure codes billed, and 89 percent contained no information about diagnostic related groups.

(DOJOIG 2017:5)

Despite such a glaring lack of credible information, prisons frequently cite decreases in clinic visits as proof of improving conditions. With no clear picture outlining the state of medical care in prisons, researchers and reporters are left to rely on anecdotal reports by inmates through popular media, prisoner rights advocacy groups and a plethora of lawsuits filed on behalf of inmates. Therefore, it will difficult, if not impossible, to ascertain the quantity and severity of medical issues that can be attributed to climate change.

The Trump Administration: Towards Higher Temperatures, a More Toxic World, and More Police

The United States federal budget spearheads an agenda in support of private, for-profit prisons and immigration enforcement while eviscerating support, much of it Obama-era (2009-2017), for environmental protection, emergency response, and reconstruction caused by weather disasters. Militarized federal agencies like the Bureau of Prisons, the Department of Homeland Security, the US Border Patrol, and Immigration Customs Enforcement are slated for increases. The Federal Emergency Management Administration, the Environmental Protection Agency and the National Flood Insurance

Program are being cut.¹⁴ Conditions in and around prisons are already toxic, but these recent actions will exacerbate harm to inmates, their families, and staff. Now in its second year, the Trump administration has prioritized the expansion and modernization of federal detention facilities. Federal policies implemented during the Obama administration reduced some federal sentencing guidelines and brought the total prison population down slightly (Jacobson 2017), but the Trump-era (2017-present) Department of Justice has disrupted these efforts by revamping draconian wars on drugs and anti-immigrant policing strategies while supporting the construction of more prisons (Ruiz 2017).

Beyond the financial burdens police forces and prison systems present to taxpayers, their work results in the criminalization of vast swaths of human beings who are permanently tarred by a criminal record which excludes them from economic, educational, and housing opportunities afforded the general public. For arrestees who end up serving time, such marginalization is compounded by the physical and psychological damage resulting from inhumane conditions inside.

14 From: Office of the Press Secretary, United States Department of Homeland Security: The FY 2017 Budget Amendment “proposes funding to increase immigration detention capacity, hiring of 500 new Border Patrol Agents and 1,000 new ICE law enforcement personnel, plus associated support staff. Provides a further investment of \$2.6 billion for high priority tactical infrastructure and border security technology. Provides \$1.5 billion above the 2017 Annualized CR level to expand detention, transportation, and removal of illegal immigrants. Includes \$1.5 billion for DHS activities that protect federal networks and critical infrastructure from an attack. Restructures user fees for the Transportation Security Administration (TSA) and the National Flood Insurance Program (NFIP) to ensure that the cost of government services is not subsidized by taxpayers who do not directly benefit from those programs. Reduces Federal Emergency Management Agency (FEMA) administered grants, saving \$667 million; additionally the budget proposes establishing a 25% non-federal cost match for FEMA preparedness grants that do not currently require a non-federal match. Retrieved November 25, 2018, (<https://www.dhs.gov/news/2017/03/16/administrations-fiscal-years-2017-budget-amendment-and-2018-budget-requests-advance>)

The Trump administration has also promoted and implemented an agenda designed to increase the use of fossil fuels and eviscerate environmental regulations (Ludwig 2016). Soon after President Trump was inaugurated, federal agencies like the Environmental Protection Agency, the Department of the Interior, and the Nuclear Regulatory Commission were staffed with lobbyists and lawyers from extractive industries whose primary mission was to unravel regulations designed to protect the environment. (See Appendix B for a brief history of former EPA Administrator Scott Pruitt's history as an extractive industry lobbyist.) Their work will certainly exacerbate the rate of melting Arctic ice, increase the ferocity and frequency of extreme weather events, cause an increase in the amount of toxic pollutants dumped into waterways, and financially incentivize high polluting industries (Temple 2018).

The Trump administration has moved to eliminate the EPA's Office of the Science Advisor (Davenport 2018), a crucial department charged with coordinating risk assessment, modeling, human subject research, and coordination between the EPA's vast network of laboratories and research projects.¹⁵ This move is certain to cause more administrative chaos in an already ineffective agency. Soon after the dissolution of the Science Advisor position, the EPA announced that the head of their Office of Children's Health, Dr. Ruth Etzel, was being placed on administrative leave without any

¹⁵*United States Environmental Protection Agency Programs of the Office of the Science Advisor (OSA)*. Retrieved November 25, 2018 <https://www.epa.gov/osa/current-scientific-coordination-projects>

explanation. “As the head of an office that regularly pushed to tighten regulations on pollution, which can affect children more powerfully than adults, Dr. Etzel had clashed multiple times with Trump administration appointees who sought to loosen pollution rules” (Davenport 2018). Previous to Trump, the Science Advisor and Office of Children’s Health were primarily staffed with career bureaucrats who performed their duties regardless of political affiliation. Michael Mikula, who represents the American Federation of Government Employees, a union whose members include 900 EPA workers, described the move. “Clearly, this is an attempt to silence voices whether it’s in the agency’s Office of Children’s Health or the Office of the Science Advisor to kill career civil servants’ input and scientific perspectives on rule-making” (Davenport 2018). Further cuts and bureaucratic consolidation were simultaneously announced at the EPA’s Office of Research and Development. This sort of bureaucratic purge against career bureaucrats, scientists, and officials has been replicated across every non-military federal agency, especially those overseeing health and human services (Schoen 2018). This trend was jumpstarted in the 1980’s, entrenched under presidents Bush and Clinton (Davis 1998) and continued through the second Bush and Obama administrations, but Trump’s overt domestic militarization is particularly fervent and ferocious.

Rex Tillerson served for eleven years as Chief Executive Officer of Exxon Mobil, the world’s largest oil company, before being appointed by President Trump as United States Secretary of State in charge of global diplomacy. While focusing primarily on bolstering the United States’ military and trade dominance abroad, Secretary Tillerson expressed a desire for the United States to remain a signatory on the 2016 United Nations

Framework Convention (UNFCCC) on Climate Change Paris Agreement (Cama 2017).

The UNFCCC describes the Paris Agreement's primary mission:

The Paris Agreement central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius. Additionally, the agreement aims to strengthen the ability of countries to deal with the impacts of climate change.

(UNFCCC Paris Agreement 2015)

Secretary Tillerson's opinions were ignored by the executive office and he was forced to resign after 14 tumultuous months. The irony displayed by the fact that a former oil executive served as the administration's most vociferous supporter of the Paris Agreement demonstrates the Trump administration's high level of antipathy against environmental protection. With Tillerson out of the way, the United States began a years-long process of extricating itself from adherence to the Paris Agreement's recommendations. While UNFCCC goals are largely aspirational, they do provide elements of a template that can be applied to prison reduction. The Agreement's mix of broad goals and specific targets, adaptable framework and peer-to-peer cooperation are worthy of emulation in drafting targets for prison reduction. Under Paris, each nation is left to ratify domestic policies that help them develop and execute sustainable development strategies that reduce carbon emissions. These include tax incentives for green technologies, local laws requiring biodegradable materials, favorable loan conditions for environmentally sustainable business loans and robust regulatory structures that force industry and consumers to eschew polluting technologies. Under the Paris Agreement, the United States is committed to cutting domestic carbon emissions from 26% to 28%

below 2005 levels by 2025, while committing up to \$3 billion in aid for developing countries to reduce their carbon footprints by 2020 (Plumer 2017).¹⁶

Working on municipal, state and federal levels, proponents of PIC abolition could apply a Paris Agreement model to the United States' vast prison system with the aim of lowering incarceration rates from current levels, nearly 700 per 100,000 (Wagner and Sawyer 2018), to below the 1972 rate of 161 per 100,000 (Travis, et al. 2014) in a specific time frame. Federal matching funds can augment local and state efforts designed to reduce prison populations through job training, mental health services, and the closure of facilities. The unravelling of the PIC's integral role as an economic growth engine will require a synergistic relationship between federal and local governments to provide financial incentives for prison staff and police to be retrained for work that ameliorates the effects of climate change and social inequality. Instead of patrolling the streets looking for violators of picayune laws, police forces need to dedicate themselves to finding and fixing sources of pollution while preparing communities to respond to emergencies caused by climate change. Prisons and jails need to be demolished or repurposed for use as schools, hospitals, low-income housing and other humanitarian purposes. A mosaic of grass roots groups, many of which are cited throughout this paper, dedicated to abolishing the PIC, as well as the DOJOIG, have already identified which prisons and jails are the most egregious violators of human rights and should be closed immediately. Environmental justice mapping reveals which incarceration facilities are

¹⁶ <https://www.nytimes.com/2017/05/31/climate/qa-the-paris-climate-accord.html>

most vulnerable to hurricanes, floods, wildfires and extreme heat. However, the current political climate and economic norms make closing, moving, or repurposing these prisons and jails unlikely. More PIC abolitionist strategies are outlined in Chapter Five's section on alternative incarceration models.

CHAPTER 3 — REVIEW OF LITERATURE: CONNECTING CRITICAL ENVIRONMENTAL JUSTICE TO THE PRISON INDUSTRIAL COMPLEX

Prisons, jails, detentions centers, and juvenile centers are all on the frontlines of climate change. In all the ways we experience climate change out here, [inmates] experience those impacts to a more magnified degree.

Mei Lo, Bloc the Juvi organizer speaking at the Global Climate Action Summit, 2018. (Calma 2018)

The Prison Industrial Complex and The Treadmills of Production and Destruction

The treadmill of production literature has documented that competition, profitability, and the quest for market share has contributed to an acceleration of the human impact on the environment. But the pressures of war and arms races drive the treadmill of destruction.

(Hooks and Smith 2005)

My analysis of the relationship between the prison industrial complex and climate change draws on the Treadmill of Production (ToP) (Schnaiberg, Pellow and Weinberg 2000) and the Treadmill of Destruction (ToD) (Hooks and Smith 2005, 2014) theories to understand the intersection of mass incarceration and environmental health and to explain why the multitude of environmental and human health problems created by the prison system in the United States remain ignored by state and federal regulators. Environmental sociologists C. Wright Mills (1956) and Gould, Pellow and Schnaiberg (2004) outlined how post World War II, neo-liberal capitalist systems rely on militarization and environmentally destructive, capitalist production patterns to fortify state power and protect the privileges afforded what they call the power elite. The ToP is an economic change theory that explains how technological advances have spurred a perpetual

increase in the amount of natural resources needed for modern capitalism to function and grow. According to ToP theorists, modern economies are intrinsically dependent on environmentally destructive technological advances that make coal mining, oil drilling and the production of plastics and toxic chemicals perpetually more expedient. In modern democratic capitalism, whoever can devise ways to extract the greatest amount of natural resources in the shortest amount of time is rewarded with membership in the “power elite” (Mills 1956).

Mills describes the power elite as a combination of three entities; the government, corporations, and the military, all of whom share a synergistic relationship that controls modern economic life. Domhoff (1967) argues that business elites exert more control over democracies than militaries or state actors because the latter two are subservient to corporations who supply the financial resources relied upon by governments and militaries. Hooks (1991) argues that all three operate in a more symbiotic way, wherein each of these entities are mutually interdependent. Regardless of which is more powerful, in the United States the PIC is an elixir that fuels and supports all three.

The ToP is important in examining the PIC because, as described in the previous chapter, prison labor, incarceration and policing are such integral facets of mainstream economic life. PIC terminology was first coined by Mike Davis (1995) to describe a prison building boom in the 1980’s that “rivals agribusiness as the dominant force in the life of rural California and competes with land developers as the chief seducer of legislators in Sacramento” (Davis 1995:229–234). The PIC disenfranchises millions of people from participating in the electoral system, bolstering the strength and influence of

the power elite. Economic barometers like gross domestic production (GDP) are influenced by the efficiency of businesses and corporations to utilize prison labor. The cost of consumer goods and taxpayer funded programs is reduced when companies and states can take advantage of the ever-increasing pool of prisoners to assemble products, maintain infrastructure, and perform other necessary work, including, as is shown in Case Study #5, responses to disasters that result from climate change. Increasing domestic militarization in the form of police and prison staff offer the promise of economic stability and job security for those unable to find employment elsewhere. As prison staffs and police forces grow, the ability of political leaders to manipulate their support through financial incentives becomes easier. Simultaneously, as technology makes the use of human labor increasingly superfluous, extractive industries like commercial farming, coal mining, and oil drilling decline, making militarization and incarceration ever more attractive as economic alternatives (Huling 2002, Schnaiberg 1980; Whitfield 2008, Gilmore 1998, 2004, Sudbury 2004).

The ToD is a theoretical extension of the ToP, but emphasizes the role of militarism in maintaining mainstream capitalist practices. Military activity is far more toxic and dependent on the exploitation and destruction of natural resources than underwear factories, farms, mines and circuit board assembly plants. Similar to how ToP theorists emphasize how technology enables modern capitalists to extract natural resources with greater speed and efficiency, ToD theorists observe that militaries are inexorably dependent on the modernization of weapons that are dependent on toxic materials like plutonium, uranium, and fossil fuels like coal and oil. Similar to how the

work product of militaries is the destruction of land and cities that need to be repaired by states, police produce inmates whose well-being becomes the burden of the PIC, or to put it another way, consumers of the PIC. Once released, former inmates become the responsibility of probation departments, halfway houses, and drug rehabilitation clinics. Because prisoners are denied access to all sorts of employment and housing opportunities, in addition to suffering from a litany of physical and mental health problems that are exacerbated during confinement, their likelihood of recidivism increases (Alexander 2010; Duane, et al. 2017; Uggen 2000). This diversification of the PIC provides a source of perpetual growth that is a hallmark of any successful capitalist enterprise. The idea that prisons provide economic opportunities to communities has roots in military Keynesianism, or what is also known as the ‘warfare-welfare’ state that became entrenched into American life during after World War II (Gilmore 1998:177). Unprecedentedly massive profits, reaped by American military manufacturers became an irreplaceable source of revenue for federal coffers who were then able to fund and expand domestic programs like public education. This normalized dependence on militarization continues in earnest and has, in the wake of the United States’ war campaign in Iraq been globalized. Sudbury (2004:18) explains how reconstruction efforts that generated billions of dollars for American military and construction firms included two 4,000 bed prisons costing \$400 million (Sudbury 2004:19).

ToD theorists also outline how the United States’ history of genocide against Native peoples was reified through international militarization that gave rise to America’s role as the preeminent global superpower (Hooks and Smith 2004:562). They

demonstrate how ecological systems and marginal lands far from cities, ports and agricultural centers deemed superfluous to wealth production were first used as reservations for displaced Native people. As the inexorable progress of military technology continued through the 20th century, military bases that served as atomic and chemical weapons testing grounds were sited alongside Native reservations (Hooks and Smith 2004:564). A similar pattern emerges when examining prisons and jails using ToD theory. Incarceration facilities are often sited on unwanted toxic, marginal land that contributes to the deterioration of prisoner and ecological health (Bernd, Loftus-Farren and Nandini-Mitra 2017). Environmental justice mapping reveals that Native reservations, military bases and American prisons frequently inhabit the same toxic neighborhoods, but the United States military is still the world's largest polluter.

Producing more hazardous waste than the five largest U.S. chemical companies combined, the U.S. Department of Defense has left its toxic legacy throughout the world in the form of depleted uranium, oil, jet fuel, pesticides, defoliants like Agent Orange and lead, among others. In 2014, the former head of the Pentagon's environmental program told Newsweek that her office has to contend with 39,000 contaminated areas spread across 19 million acres just in the U.S. alone.

(Webb 2017)

ToD theorists (Hooks and Smith 2014 and 2017; Bradford and Stoner 2017; Jorgenson, Clark and Givens 2012) believe the roots of destructive extractive capitalism are more pernicious than the ToP because the social and political systems that created modern, neo-liberal capitalism are, and have always been, intrinsically dependent on militarization, genocide, ethnic segregation *and* a flagrant disregard towards environmental health. Marginalized people, in particular Native populations in the United States, were coerced through state-sanctioned genocidal violence to inhabit the most

toxic, remote and otherwise inhospitable areas in the United States (LaDuke 1999, Hooks and Smith 2014). This violent and bigoted history has been fundamental to the maintenance of heteropatriarchal white supremacy (Smith 2016).

The PIC is a combined manifestation of the ToP and ToD because it situates prisons in geographically and ecologically marginal areas (Williams. 2017), incarcerates people who already suffer from state-sponsored discrimination, is dependent on ever-increasing domestic militarization, and renders those processed through it as less deserving of economic and social opportunities than those who have not. Case Study #1 provides an example of the PIC treadmills in practice by describing how construction of a new federal prison on a toxic former coal strip mine in rural Letcher County, Kentucky will likely be built despite objections from the Deputy Attorney General, environmental groups and social justice activists.

In *Are Prisons Obsolete?* (2003), Angela Davis describes the symbiosis between the PIC and treadmills in terms of technological modernization and the political structures that allow for military industrialists to perpetually diversify their sources of profit. Producers of military technology have convinced law and order politicians that they can provide efficient solutions to logistical dilemmas that arise from incarcerating and monitoring people after release. Ankle monitoring bracelets and other surveillance solutions, records processing, and the delivery of supplies to prisons and police forces are but a few of the opportunities for companies like Westinghouse, General Dynamics, General Electric, and others who were previously reliant on mundane products like helicopter engines, bomb components, and other traditional military hardware as a

primary source of profits derived from government contracts (Davis 2003:1103 Kindle). These technological evolutions exemplify the treadmill of production while the elixir driving the reliance of governments on militarism embodies the treadmill of destruction. “Punishment no longer constitutes a marginal area of the larger economy. Corporations producing all kinds of goods—from buildings to electronic devices and hygiene products—and providing all kinds of services—from meals to therapy and healthcare—are now directly involved in the punishment business (Davis, 2003:1130-1133 Kindle).

Pillars of Critical Environmental Justice (CEJ)

CEJ views racism, heteropatriarchy, classism, nativism, ableism, ageism, speciesism (the belief that one species is superior to another), and other forms of inequality as intersecting axes of domination and control.”

(Pellow 2018:19)

Scholars have documented how climate change negatively affects marginalized populations more acutely than those in positions of privilege and power (Islam and Winkel 2017; Marshall et al. 2014; Barbier and Hochard 2018), but there is little academic research on how climate change impacts incarcerated people. Critical Environmental Justice (CEJ) connects the PIC directly to environmental issues like pollution and climate change and frames the argument that the PIC causes and exacerbates acute human and environmental harm. The most comprehensive exploration of CEJ can be found in David Pellow’s aptly titled, *What is Critical Environmental Justice?* (2018) This innovative take on the environmental causes and costs of the ongoing war in Palestine, prisons and jails, and the Black Lives Matter movement frames

environmental exploitation as fundamental to what are popularly perceived to be political and social problems. CEJ is a multi-scalar perspective that fuses social and political action strategies with environmental justice activism. It is based on four fundamental pillars. The first emphasizes the necessity of synthesizing multiple perspectives and theories into explanations of how the environment shapes the way human beings think and act. It is a ground-up approach that examines, in the context of prison justice reform, the land upon which facilities are located, the water they use, the systemic and historical mechanics used to justify their existence, and the social and political norms that contribute to their support. Pellow describes mass-incarceration as “an extractive activity that could be reframed as an environmental injustice. [sic] After all, family members, friends, neighbors, co-workers, and colleagues are literally siphoned off from their homes and social networks every day; they are critical “resources” for maintaining the functioning of our communities. Why not think of that as a form of environmental injustice (Pellow 2018:98)?”

The second pillar of CEJ emphasizes using a globalized perspective in examining what are commonly perceived to be local issues like pollution and economic inequality that spread beyond the borders of cities, states, countries, local ecosystems, or bioregions. The Paris Agreement described in Chapter Two is exemplary in this regard, but other United Nations conventions and agreements can be useful when crafting strategies and initiating legal action designed to abolish the PIC. A list of potentially useful international agreements is provided in Appendix C. Exploring how these Conventions and Agreements can potentially be of use to prison reform advocates should be a topic of

future research. Relevant to this thesis is how the Universal Declaration of Human Rights (UDHR 1948) outlines the needs of women as distinct from men's,¹⁷ although its use gendered pronouns may seem antiquated.

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

(Universal Declaration of Human Rights, Article 25 1948)

Such “special care and assistance” currently manifests in the form of multi-scalar, intersectional, population-specific health care services and educational efforts already in place under the direction of the United Nations International Children’s Emergency Fund, the United Nations Educational, Scientific and Cultural Organization, and the United Nations High Commissioner for Refugees. While the United Nations is rightfully criticized as an international arm of the power elite, their work does much to alleviate the suffering and should be seen as a resource for any social action network or activist whose intention it is to help vulnerable people. The “special consideration” for women mentioned in the UDHR is currently being practiced by some prisons that have implemented gender-responsive practices designed to reduce violence, punishments, and recidivism for female inmates (White 2012). These programs are discussed in more depth

¹⁷ The UDHR was created under the direction of Eleanor Roosevelt, a former first lady, social activist, United States Representative to the United Nations, and a member of United Nations’ Committee on Humanitarian, Social and Cultural Concerns. That Committee was part of the UN’s Permanent Commission on Human Rights in charge of refugee and repatriation issues.

in Chapter Five in a section discussing alternative methods of incarceration.

The third pillar of CEJ outlines how bigotry, discrimination, and inequality are not aberrational in terms of societal organization, but fundamental to the preservation of white supremacy and extractive capitalism (Pellow 2018:22). It is an extension of the ToP and ToD in that it describes how modern nation states are built upon the preservation of inequality and the perpetual superiority of certain groups over others. Because of this, looking to state bureaucracies for solutions to inequality and environmental exploitation is, in the view of CEJ, naïve. More practical solutions abound in the myriad grass roots, anarchic, horizontally organized, non-governmental organizations like the PEP that form organically in response to environmental crises. In the wake of natural disasters like hurricanes, floods, and wildfires, many are left without shelter, access to food, communications, electricity, emergency services, or publicly supported rescue teams. Neighbors organically band together to locate and help one another. Local businesses transform into soup kitchens and shelters offering flashlights, propane and other emergency supplies. Locals form security teams to fend off looters. Carpenters and other tradespeople volunteer to rebuild destroyed structures. Artists solicit private funds and build public structures to centralize relief efforts. All of this happens during and immediately after weather emergencies and manifest before federal, state and city officials are able to organize relief efforts. Examples of such spontaneous relief all occurred in response to the hurricanes and wildfires described in Chapter Four.

The fourth and final pillar of CEJ is a concept Pellow calls indispensability (Pellow 2018:60). In the neo-liberal world non-whites are largely considered expendable,

superfluous to the production of wealth, and a general nuisance whose very existence hinders the ability of governments and corporate capitalists to function and prosper. They are prime targets for criminalization and the exploitation by the PIC because few are members of the power elite and are not equipped with the financial and social resources available to white people. CEJ turns this on its head and views minorities as integral to societal functioning. As posited by author and activist Naomi Klein, “To change everything, we need everyone” (Klein 2015). In short, no one is expendable in the quest to find out “how social inequality, oppression, privilege, hierarchy, and authoritarian institutions and practices shape the lives of human beings (Pellow 2018:31). Activists seeking to abolish the PIC must look first to the networks and systems organically designed by those who suffer most acutely from genocide, marginalization, and ecological blight. Such a re-prioritization is impossible without the direct participation and input of non-state actors who create alternative support systems designed to help marginalized people who are not dependent on the support of entrenched state institutions. Many examples of this sort of horizontal, ground-up, grassroots activism can be found wherever people and environments are being destroyed. I have witnessed this first hand when my neighborhood, Rockaway Beach in New York City, was submerged in the wake of Hurricane Sandy in 2012.

From a CEJ perspective, the human beings forced to reside in prisons and on reservations are perceived by the general public and politicians as too damaged to participate in mainstream social and political systems. Prisons are, simply put, “human toxic waste dumps” (Simon 2007:143) where unwanted people are warehoused out of

public view. Prisoner bodies are then, by default, toxic waste sites undeserving of legal protections against brutality, nutritious food, adequate medical care or protections afforded against heat, floods, and wildfires (Pellow 2018:78).

The Intersectional Camera and Critical Environmental Justice

Legal scholar Kimberlé Crenshaw coined the term intersectionality in 1989 to describe how black women working at the General Motors automobile plant in Michigan were denied access to promotions because they were being simultaneously discriminated against because of their gender and skin color. (Crenshaw 1989, 1991). Then and now, those seeking legal redress against discriminatory practices must decide if skin color, gender, religion, or another single issue serves as cause for a lawsuit. Crenshaw analyzed the 1976 *DeGraffenreid et al. v General Motors* lawsuit pitting a group of black women against their employer charging discrimination based on a “last-hired first fired” seniority system that resulted in the segregation of men into assembly line and managerial positions and women into administrative roles, largely in the secretarial pool. In addition to gender segregation, General Motors hiring and promotion practices segregated non-whites into non-managerial tracks while creating opportunities for whites to advance to the upper echelons in terms of pay and position, creating what amounted to a power elite for white men in the company. Judge Harris Wangelin rejected their claim:

The Court notes that plaintiffs have failed to cite any decisions which have stated that black women are a special class to be protected from discrimination...The plaintiffs are clearly entitled to a remedy if they have been discriminated against. However, they should not be allowed to combine statutory remedies to create a new "super-remedy" which would give them relief beyond what the drafters of the

relevant statutes intended. Thus, this lawsuit must be examined to see if it states a cause of action for race discrimination, sex discrimination, or alternatively either, but not a combination of both.¹⁸

In describing the situation faced by the plaintiffs, Crenshaw constructed a metaphor of a two-road intersection whose traffic was represented as discrimination against women from one direction and black people of any gender from the other. The flow of discriminatory traffic would come to an abrupt halt when a white man tried to cross the same promotional intersection, stranding non-whites on the proverbial corner while non-whites and women bold enough to attempt crossing the intersection were forced to dodge traffic from both directions simultaneously. Black men working at General Motors had to be wary of discriminatory traffic from Black Street, but did not have to worry about traffic from Man Street. When examined this way, the United States' inmate population and their families stand perilously in the middle of one of the world's busiest discriminatory intersections as traffic rages simultaneously from several roads that have become normalized through the Treadmills of Production and Destruction. Free people of all skin colors not endowed with the privileges afforded the power elite face socio-economic impediments, but for prisoners the situation is far more perilous; it is as if they are dodging cars blindfolded while wearing earplugs.

The need for PIC abolitionists to fight for a legal "super-remedy" that considers multiple, simultaneous forms of discriminatory practice has become clearer as non-whites

¹⁸ DeGraffenreid v. GENERAL MOTORS ASSEMBLY DIV., ETC., 413 F. Supp. 142 (E.D. Mo. 1976) U.S. District Court for the Eastern District of Missouri - 413 F. Supp. 142 (E.D. Mo. 1976) May 4, 1976. Retrieved November 25, 2018.(<https://law.justia.com/cases/federal/district-courts/FSupp/413/142/1660699/>)

and women are increasingly marginalized and denied access to basic rights, freedoms, and opportunities (Crenshaw 1989; Smith 2016). While incarceration rates for men have recently declined, rates for women and juveniles are increasing (Wagner and Sawyer 2018).

Intersectionality identifies the systemic and cultural factors that marginalize some while affording privilege to others. In academic circles it is viewed as a lens through which one can decipher how women and non-whites are denied access to basic human rights that are more accessible to others (Crenshaw 1989;1991, Kaijser and Kronsell 2014). However, in form and function intersectionality more clearly represents a camera. A lens is a simple device meant to distort light into a discernible, focused form, while cameras are complex machines that use mirrors, motors, and sensors to translate light into an image understandable to human eyes. Cameras typically utilize one lens at a time, but, similar to CEJ, an intersectionality camera is designed to employ several lenses, or theories, simultaneously. (See Appendix D for an illustration of the intersectional camera.) Unlike a two-dimensional image produced by looking through a lens, an intersectionality camera portrays people and communities through academic papers, mission statements of social justice organizations, public policy and legal doctrine. It is multi-scalar, producing static and moving images simultaneously accompanied by a cacophonous soundtrack of marginalized voices and tragic music. The purpose of this paper is to help prison activists from the PEP design action plans and strategies that will erode public acceptance of the PIC in the US as protective, normal and positive, I advocate using sociological lenses on an intersectional camera to demonstrate the shared

vulnerabilities faced by prison communities experiencing the effects of anthropogenic climate change.

Intersectional cameras simultaneously reveal privilege and disenfranchisement. With the set of critical environmental justice lenses employed in this paper depicts the suffering and vulnerabilities faced by people and ecosystems caused by prison industrial complex is made as clear. Conversely, the benefits gained by corporations, politicians, other members of the power elite exploitation become acutely apparent. Metaphorically, the film inside the camera is the traditional type that produces a negative image where darker images become light. The film negative represents the power elite, including the corporation heads who benefit from the use of prison labor and politicians whose power becomes more entrenched through disenfranchisement and exploitation. Once the negative is immersed in a soup of chemicals, which I call praxis, the image reveals the discriminatory and exploitive practices faced by inmates, prison staff, and the larger human and non-human prison community. While not using the camera metaphor, sociologist prison advocacy organizer Brendan Beck describes the phenomenon this way:

Because incarceration combines with racism to force many people of color to the bottom of the labor hierarchy, whites have disproportionately benefited from economic booms and have been buffered from recessions. Sociologist Bruce Western found that, over all, black men obtained no benefit in either jobs or wages from the 1990s economic expansion because of their overrepresentation in prisons. Mass incarceration has also helped increase white political power. One in 13 black men cannot vote because of a felony conviction, and in Florida, Kentucky, and Virginia the figure is one in five. Sociologists Chris Uggen and Jeff Manza analyzed the outcome of U.S. senate and presidential races between 1978 and 2002 and found that if people with felony convictions had been allowed to vote, seven senate races and the 2000 presidential election that were won by Republicans would have been carried by Democrats. (Beck 2015)

Praxis and Prison Reform

Examining the social and political structures that perpetuate white supremacy from an intersectional perspective illuminates the roots of white privilege and the economic growth coalitions that compound risks and vulnerabilities faced by non-whites. Borrowing the words of Cho, Crenshaw and McCall the intersectional camera represents “an analytical tool to capture and engage contextual dynamics of power.” They elaborate on intersectionality’s utility by describing it as “a gathering place for open-ended investigations of the overlapping and conflicting dynamics of race, gender, class, sexuality, nation and other inequalities” (Cho, et al. 2013:788). Their template for a collaborative intersectionality is critical when examining the PIC and demonstrates the necessity of using multi-disciplinary, multi-scalar analysis incorporating skin color, ethnicity, culture, gender, environmental justice, criminal justice, social justice, and human rights advocacy that culminates in legal action through class-action suits and legislation in support of grass roots efforts dedicated to the immediate alleviation of suffering in incarceration communities. The authors explore how intersectionality has expanded in scope from its original focus on black women in the United States to serve as a heuristic lens through which activists, lawyers, public servants and academics can “inform connections across privilege as well as subordination to better facilitate meaningful collaboration and political action” (Cho, et al. 2013:803).

A key concept of intersectionality is praxis (Cho, et al 2013:786, Sudbury 2004), which, for an intersectional camera represents the sensors in the camera, the chemicals that coat the film and their relationship to light and sound that makes its way into a camera through the shutter. Instead of the usual single-lens, an intersectional camera body uses a praxis formula to decipher several sources of light and sound, identifying compounding forces of marginalization into metaphorical avenues of discriminatory impediments. Unlike a photograph or movie, intersectionality represents the needs of colonized communities through academic papers, mission statements of social justice organizations, public policy and legal doctrine. Scholar bell hooks describes praxis this way: “The praxis is not blind action, deprived of intention or of finality. It is action and reflection. Men and women are human beings because they are historically constituted as beings of praxis, and in the process they have become capable of transforming the world —of giving it meaning” (hooks 1994:48).

Reminiscent of the first pillar of Critical Environmental Justice, intersectional methodology looks to the most marginalized groups for guidance on how to respond first to immediate crises and subsequently design legal, political, and social action strategies to dismantle conditions that perpetuate unequal treatment. It is a horizontal approach wherein the primary exigence is to enhance the abilities of grassroots activists to continue and expand their work while changing what is deemed acceptable and normal by neo-liberal corporate states, non-governmental organizations (NGOs), and individuals. An example of this is described in Case Study #2 in a section describing how local residents organized in response to Hurricane Katrina in 2005.

In Crenshaw's examination of structural intersectionality, she observes how rape crisis counselors treating non-white women are invariably burdened attending to housing, medical, child care, and criminal justice issues instead of the job they were trained for, that of rape crisis counselor (Crenshaw 1991:4). Similarly, advocates for prison reform and prisoner rights are often stuck ameliorating the daily crises faced regularly by incarcerated people. The relationship between the compounding forces of discrimination and how they rely on and support one another creates a nebulous formula that conspires to bolster white supremacy and keep non-whites in a perpetual state of chaotic crisis management. In heteropatriarchal societies like the United States, the imprisonment of men, who are expected to provide their families a source of income and protection, radically degrades the ability of women to take care of themselves, their children, and relatives of all ages. In addition to being thrust into the role of primary caretaker for families in a system designed to afford more opportunities to men, women whose husbands, partners, children, and parents are incarcerated are further encumbered with taking care of the inmates' financial obligations. Visitation, communication, and the provision of "canteen" funds all contribute to their burdens. Because prisons and jails are usually located far from city centers, even a short, in-person visit requires hours of expensive travel. Because of lucrative contracts between prisons and service providers, telephone contact is invariably far more expensive than public communication (Davis 1998).

Women, Families and Criminalization

The plight of the St. Louis County woman described in Chapter Two who was transferred to three different jails because of multiple warrants resulting from traffic violations and missing court dates is typical of the difficulties faced by women ensnared in the criminal justice system (Crenshaw 1991; Parisi 2002; Sawyer 2018; Smith 2006). Her mother and sister were able to care for her three children while she was incarcerated, but the financial strain of covering her bails, court fees and fines required her mother to borrow against a life insurance policy that eroded the entire family's financial security. The woman summed up the effects of her experience this way. "It affects your family, your kids, your friends. My mother is disabled. And she had to help me out. My sister had to put her life on hold to watch my kids" (Balko 2014). Her situation, when examined through an intersectional camera with CEJ, ToP and ToD lenses, brings attention to the inadequacy of St. Louis County's public transportation system and how fossil fuel burning vehicles are still the only viable means of transportation available to workers, students and parents. This dependence on personal cars is seized upon by police whose job it is to pull over, ticket, fine and prosecute those unable to keep up with registration costs, insurance, and maintenance necessary for cars to remain legal and safe to operate. Metrolink, the light rail network, costs \$2.50 per ride while Missouri minimum wage is \$7.85 per hour. Thomas Harvey, a local defense attorney who is one of three founders of ArchCity Defenders observed how criminal convictions, even for traffic offenses, become part of the public record and are available to landlords and employers who

generally prefer to choose people without criminal histories. “So they just get sucked into this vortex of debt and despair,” he said (Balko 2014).

CHAPTER 4 — CASE STUDIES OF PRISONS AND CLIMATE CHANGE

In this chapter, I look at five cases that demonstrate how climate change events like hurricanes and wildfires affect prisoners and prison staff. Particularly grievous instances of neglect and abuse that exacerbate prison toxicity are found in the haphazard responses by governmental agencies workers to hurricanes, floods, and wildfires, all of which are becoming increasingly frequent and ferocious as temperatures increase. Because they are often located in remote, low-lying areas, incarceration facilities are uniquely prone to catastrophic floods that leave facilities isolated without power, communications, water, or adequate staff. Prisons and jails along the United States' Atlantic and Gulf Coasts have been hardest hit.

Case #1 The Treadmills in Action: From Toxic Coal Mine to Toxic Prison, Letcher County, Kentucky

Prisons are often marketed to rural communities as avenues for economic development, despite dubious evidence of the success of this economic strategy (Hooks, et al. 2004, 2010; Huling 2002, Sudbury 2004:13). One such project is a proposed \$444 million federal prison designed for 1,250 male inmates in Letcher County, Kentucky that exemplifies this pattern. Representing the local power elite, the Letcher County Planning Commission (LCPC) is a private group of wealthy residents that have considerable influence in supporting local politicians and shaping public policy. Many of its members are former coal and oil industry executives, bankers and local school

officials. Exemplifying the type of “unwarranted influence” warned against by President Dwight D Eisenhower in his famous “military industrial complex” (Eisenhower, 1961: 1035–1040) speech, the LCPC was entrusted by the Bureau of Prisons (BOP) to choose where to build the new facility. Their influence in selecting the site was criticized by the non-profit Abolitionist Law Center and local activists from the Letcher Governance Project in a lengthy report submitted to the BOP in response to the release of the project’s federally-sponsored environmental impact assessment (Posner 2017). In addition to finding several flaws with the government’s environmental impact assessment, including reported proximity to an active coal mine and the presence of radon in nearby homes, the report expresses concern that a private group, the LCPC, was given the authority by the BOP to select the prison site and noted that many of the LCPC’s members and relatives stand to profit from the sale of their property when the BOP eventually purchases land before beginning construction. “It remains unclear why the BOP would initiate such a large project at the behest of a non-government agency. What is even more disturbing is that multiple portions of land that the BOP intends to be acquired appear to be owned by members or family members of the Letcher County Planning Commission” (Posner 2017:24).

Local proponents of the prison extolled estimates that approximately 1,000 temporary prison construction jobs and 300-400 permanent security positions would result from its creation (Williams 2017). Local television news coverage highlighted potential job creation while ignoring the likely litany of lawsuits, adverse environmental impacts, and long-term costs that will come in the form of staff pay, maintenance, and

pension burdens (Kase 2018). While prisons in rural communities have been demonstrated to exacerbate poverty, (Braz and Gilmore 1999:101) the promise of short-term construction jobs and permanent staff positions created with state and federal funds is simply too tempting for communities to resist. Braz and Gilmore's (2006) analysis of a small town in California with 8,900 residents and 11,000 prisoners showed that poverty rates doubled there after the state spent over \$1 billion to construct a massive incarceration complex. With support from the LCPC, Local Congressman Hal Rogers and Governor Matt Bevin, both Republicans, defied opposition from the PEP and problems revealed by the environmental impact statement and persevered, eventually securing \$4.5 million from the federally-funded Abandoned Mine Lands Pilot Grant Program to build a sewage and water treatment plant that will service the prison and approximately 200 nearby homes. Once the water treatment plant is operational construction is supposed to begin. Instead of advocating for sentencing reform or a decrease in criminalization generally, Congressman Rogers further justified the need for the facility because of overcrowding in high-security federal prisons, despite the fact the federal prison populations had dropped 14% in the past few years (Zoukis 2017). The industry website *Correctional News* announced the project's approval by the DOJ in April 2018, lauding the efforts of Congressman Rogers and how he has been instrumental in bringing three other prisons and jails to the area (Neal 2018). The types of work and the companies that will use Letcher County BOP inmates to perform has yet to be determined.

The proposed prison is demonstrative of both the ToP and ToD. Like many prisons, it is scheduled to be built on an environmentally damaged area, a former coal strip-mining site that has already inspired a flurry of lawsuits based on the high levels of toxic chemicals present that will poison drinking water and make conditions inside and around the prison all the more dangerous and susceptible to harm from increasing temperatures and extreme weather. Despite a passing grade from the project's environmental impact assessment prepared by the BOP¹⁹, lawyers are already preparing suits in defense of endangered species that will be imperiled if the project moves forward. This approach, incorporating non-humans into PIC abolition, represents the type of innovative legal action that is an essential component of critical environmental justice (Pellow 2018:70:84).

Demonstrating the strength of multi-scalar social/legal initiatives that can thwart the treadmills of production and destruction, the Campaign to Fight Toxic Prisons, the Abolitionist Law Center (ALC), and the Friends of the Lilley Cornett Woods and North Fork Watershed filed a lawsuit in the District of Columbia United States District Court on behalf of 21 federal inmates attempting to stop construction of the \$444 million federal prison outlined in Case #1. The November 26, 2018 Complaint for Declaratory and Injunctive Relief seeks to stop further progress on the prison until the inmates and other plaintiffs can review the BOP's environmental impact statement and other pertinent

¹⁹Read the full BOP-sponsored Letcher County prison project environmental impact assessment here. Retrieved November 28, 2018. (https://www.prisonlegalnews.org/media/publications/FEIS_For_Proposed_US_Penitentiary_and_Federal_Prison_Camp_July_2015.pdf)

documents. The suit is based on three areas of concern: health risks from toxins present on the site, lack of consultation during the review process, and the DOJ's admission that the prison is not needed due to decreasing incarceration rates (Barroca, et al. v BOP).

The litigants analyzed peer-reviewed cancer studies of populations living near coal strip mining sites and found mortality rates 5% higher than other places in Appalachia. They attribute the higher rates to the presence of dangerous levels of "selenium, sulfate, magnesium, and other inorganic solutes in rivers downstream from active and reclaimed mining sites" (Barroca, et al. v BOP:28). Attorney Emily Posner described the risks. "Eastern Kentucky has the highest cancer rate in the nation. Forcing prisoners, correctional officers and their families to live, work and visit this environment is discrimination" (ALC 2018).

Coal companies throughout Kentucky and the Appalachian region have historically relied on MTR (mountain top removal or strip) mining not because it was necessary but because it was the cheapest way to access coal in the area because it requires fewer workers. This type of mining, however, has resulted in serious and long-lasting impacts to the communities and environment where the mining occurred. For instance, coal companies fill the surrounding valleys adjacent to the mine with the rocks, minerals and dirt removed from the tops of the mountains. These valley fills destroy headwaters and wetlands, and pollute the watershed with runoff of carcinogens and heavy metals such as selenium and manganese. Such pollution can persist for decades after mining ceases. Soil is also impacted from the diesel fuel used in blasting. This pollution impacts those living near MTR sites, even if mining has stopped. Several peer review articles have indicated that 1) people living near mountaintop mining have cancer rates of 14.4% compared to 9.4% for people elsewhere in Appalachia; 2) the rate of children born with birth defects was 42% higher in areas near mountaintop removal mining; and 3) the public health costs of pollution from coal operations in Appalachia amount to a staggering \$75 billion a year.

(Barroca, et al. v BOP:2)

The plaintiffs complain that they were not consulted during the environmental impact review process and point out that the health risks will have a “disproportionately high and adverse impact on low-income and predominantly minority communities” (Barroca, et al. v BOP:55). Posner also described the negative effect the prison will have on the local economy due to a decrease in tourism that will result from the prison complex’s “barbed wire, shooting ranges, ([sic] and) heavy traffic flow of transporting prisoners” (APL 2018). The suit cites Deputy Attorney General Rod Rosenstein, who is the second highest ranking officer at the Department of Justice and oversees the BOP, whose 2017 testimony to the United States House of Representatives Appropriations Committee temporarily blocked the funding request by the BOP to build the prison. Rosenstein testified that the federal prison population had declined by 30,000 inmates over the previous four years, representing a 14% decline, and concluded that “the FBOP just didn’t feel that we needed that facility at this time” (Barroca, et al. v BOP:41).

This lawsuit exemplifies the type of approach necessary to thwart the inexorable progress of the Prison Industrial Complex and should serve as a cornerstone for future study in environmental sociology. Through the use of critical environmental justice theory, it simultaneously challenges the treadmills of production and destruction to protect the rights and dignity of the forgotten, marginalized and vulnerable inmate population *and* the ecological health of the already toxic area where the prison is scheduled to be built. If the suit succeeds, future developments including prisons, schools, and shopping malls on toxic sites like former coal mines will be seen as too risky. Any prison examined with an intersectional camera equipped with critical

environmental justice lenses reveals toxic and destructive conditions that harm the humans inside and the environment surrounding it, but the success of this suit will compel lawyers working for private corporations to advise their clients not to pursue labor contracts with prisons that present high levels of environmental risk. A precedent will be established that will allow for future collective litigation against prisons on behalf of inmates, staff, and environmental protection advocates. Given the potential legal entanglement, communities facing uncertain economic futures will not be so easily swooned by promises of prison construction and security jobs; the legal and financial risks will simply be too great.

Case #2: Hurricane Katrina and Orleans Parish Prison

In 2005, a massive category 4 hurricane hit the coasts of Mississippi and Louisiana. While the winds and rainfall were among the strongest ever recorded, the city of New Orleans was spared the brunt of the storm, but nearby levees designed to restrain the waters of Lake Pontchartrain and Lake Borgne were overwhelmed by more than 10 inches of rain that eventually flooded more than 80% of the city. City officials had ordered a mandatory evacuation but tens of thousands remained. With their headquarters, vehicles, and communications systems underwater, police, fire, and other emergency service providers were unable to organize or implement relief efforts. It took 43 days for state, federal, local, volunteer, and international relief crews to pump out the flood waters. The hurricane was reported to cause over \$160 billion in damages and

permanently upended thousands of residents' lives.²⁰ International and national media attention focused on the desperate plight of those who were stranded on rooftops and bridges waiting for boats and helicopters to take them to safety. As is typical in such weather emergencies, the poorest people in the city suffered the greatest disruptions to their lives. Many did not carry insurance for their residences and belongings and did not have the means to evacuate. Buses, boats and caravans were hastily organized to help bring people to stadiums and other makeshift accommodations that were quickly filled beyond capacity and deteriorated into chaos. While dramatic images of stranded and fleeing city residents flooded international airwaves, the plight of inmates incarcerated in local jails was ignored.

A report by The American Civil Liberties Union (ACLU 2006) details the fatal and disastrous conditions that resulted when prisoners, staff and civilians were trapped in the aging Orleans Parish Prison (OPP) during Hurricane Katrina in 2005. In addition to inciting the Department of Justice Office of the Inspector General (DOJOIG) to take control of the facility through a consent decree in 2013, several lawsuits, and the eventual closing of the facility, the 142-page report demonstrates how difficult it is to produce and react to information about prison conditions. Lawyers and investigators from Human Rights Watch, The Juvenile Justice Project of Louisiana, the National Association for the Advancement of Colored People, the Legal Defense and Educational Fund, Inc., Safe Streets/Strong Communities and three departments of the ACLU all contributed to the

²⁰ From *Encyclopedia Britannica*. Retrieved November 27, 2018. (<https://www.britannica.com/event/Hurricane-Katrina>)

investigation. More than thirteen hundred people who were incarcerated at OPP during Hurricane Katrina were interviewed along with deputies, staff, and family members. In addition to the small army of lawyers, many of whom were working *pro-bono*, “numerous undergraduate and law school volunteers prepared hundreds of additional summaries, researched discrete legal issues, and interviewed individuals whose stories appear in this report” (ACLU 2006:5).

The ACLU report notes that emergency contingency procedures designed to protect inmates and staff were fundamentally flawed. A plan to ensure that emergency boats were “fueled and tested for operation...does nothing to ensure that enough vehicles are available to evacuate thousands of individuals in the event of an emergency.” (ACLU 2006:20) One inmate reported that “only three boats were available to evacuate nearly 7,000 prisoners, along with many hundreds of deputies, staff members, and civilians working at the prison. Many prisoners waited in Central Lock-Up for over ten hours in chest-deep water, while boats took a handful of prisoners at a time to the Broad Street Overpass” (ACLU 2006:26).

The ACLU report describes a history of neglect at Orleans Parish Prison, one of the most dangerous and mismanaged jails in the country. This culture of neglect was evident in the days before Katrina, when the sheriff declared that the prisoners would remain “where they belong,” despite the mayor’s decision to declare the city’s first-ever mandatory evacuation. OPP even accepted prisoners, including juveniles as young as 10, from other facilities to ride out the storm.

As floodwaters rose in the OPP buildings, power was lost, and entire buildings were plunged into darkness. Deputies left their posts wholesale, leaving behind prisoners in locked cells, some standing in sewage-tainted water up to their chests. “The sheriff’s office was completely unprepared for the storm,” said Tom Jawetz, Litigation Fellow for the National Prison Project. “The Louisiana Society for the Prevention of Cruelty to Animals did more for its 263 stray pets than the sheriff did for the more than 6,500 men, women and children left in his care.”

Prisoners went days without food, water and ventilation, and deputies admit that they received no emergency training and were entirely unaware of any evacuation plan. Even some prison guards were left locked in at their posts to fend for themselves, unable to provide assistance to prisoners in need.

The prisoners were finally evacuated by order of the state after days of fear and chaos. The report follows the prisoners as they were transferred to jails and prisons around Louisiana. Thousands of the men were first transported to the Elayn Hunt Correctional Center, where they were placed outdoors in a yard with inadequate food, medical care, and protection from other prisoners, many of whom were armed with makeshift weapons. According to the report, at several other facilities, prisoners were subjected to systematic abuse and racially motivated assaults by prison guards.

ACLU Press Release, August 10, 2006

Other inmates quoted in the ACLU report a litany of stabbings, rapes, fights, assaults by guards, punitive solitary confinement, mold, mildew, overflowing toilets, and spoiled food.

Conditions for prison staff before, during and after Katrina were intolerably dangerous. After being locked in during his shift on the mental ward, one guard was dispatched to the OPP roof with a shotgun and told to shoot anyone trying to leave the flooding building and was left stranded there long after prisoners were evacuated. A 13-year-old girl held in OPP's Youth Center was transferred to an area adjacent to an adult male holding area "where the men watched her use the toilet. As the building began to flood, [she] spent days in water up to her neck." The girl and a group of other juveniles were rescued and cared for by adult prisoners while staff abandoned the facility, but "pregnant girls received no assistance or treatment." Untold numbers of the prison population remained locked in their cells for days after the city had been evacuated "wading chest high in sewage contaminated flood water for up to 13 hours." An ACLU

attorney summed up Katrina's legacy this way. "These are the untold horrors of Hurricane Katrina. We must preserve these stories to create a record of the tragedy and to ensure that the mistakes detailed in this report are never repeated" (ACLU Press Release 2016).

At the grass roots level, a model of the spontaneous, collective, volunteer action described in Chapter Three emerged to serve the needs of those hardest hit by Hurricane Katrina. Pellow cites activist Scott Crow from the Common Ground Collective who embodied this approach:

We did service work, but it was a revolutionary analysis and practice. We created a horizontal organization that defied the state and did our work in spite of the state ... not only did we feed people and give them aid and hygiene kits and things like that, but we also stopped housing from being bulldozed, we cut the locks on schools when they said schools couldn't be opened, and we cleaned the schools out because the students and the teachers wanted that to happen. And we didn't do a one size fits all like the Red Cross would do – we asked the communities, every community we went into, we asked multiple people, the street sex workers, the gangsters, the church leaders, everybody, we talked to them: what can we do to help your neighborhood, to help your community, to help you? And that made us different because for me, it's the overlay of anarchism. Instead of having one franchise thing, you just have concepts, and you just pick the components that match the needs of the people there.

(Pellow 2018:24-25)

Hurricane Katrina and the Consent Decree Quagmire

The garbled response of state, county and federal officials to the tragedy at Orleans Parish Prison is exemplary of what faces incarceration communities across the United States. Eight years after Katrina, inmates were still being housed in four 85-person tents in the parking lot of the Orleans Parish Prison (Whitworth 2014). The

temporary tent camp jail was eventually closed and inmates were dispersed across the state or into the new 871-bed Orleans Justice Center (OJC), opened at a cost of \$125 million in September 2015. The new jail almost immediately became the target of a flurry of lawsuits and federal intervention that has besieged administrators in charge of New Orleans' incarceration facilities ever since. Victories by legal justice advocates and oversight by DOJIG consent decree have shed more light on the macabre conditions, but oversight is left to the beleaguered sheriff and a rotating cast of federal compliance directors in charge of enforcing consent decree recommendations (McGill 2018).

Within months of opening, the OJC was cited by inmates, legal advocates and federal investigators for unsafe conditions, including an increase in suicides and violence between inmates and between inmates and guards. Monitoring of environmental conditions is still an afterthought at best. The consent decree system requires surprise and announced inspections by DOJIG inspectors and provides glimpses of glaring safety deficiencies including inadequate medical care, unsanitary conditions, suicides, and violence. It is clear from their reports that everyday conditions in the facility are dangerous. The Orleans Parish Sheriff's Department has been operating under DOJ consent decree to improve conditions in its facilities since 2013, but has made little verifiable progress in terms of safety, emergency preparedness, toxicity or medical care. Facing fierce criticism from the media, inmates, and the DOJIG, Sheriff Marlin Gusman faced an interminable onslaught of complaints and is currently being sued by a group of Orleans Justice Center inmates (Sledge, 2015). The DOJ has had a hard time finding staff for the team responsible for implementing the consent decrees

recommendations. A local reporter assessed the Sheriff's performance for the New

Orleans Advocate this way:

Marlin Gusman's powers as Orleans Parish sheriff have been eviscerated by a federal judge. His former right-hand man is on probation after pleading guilty to fraud charges. A court-appointed monitor is still deeply unsatisfied with conditions at the city jail Gusman was elected to run. And his chances of winning a fourth full term in office look excellent.

(Sledge 2017)

The Orleans Justice Center opened in 2015 and conditions immediately eroded, but Gusman was re-elected sheriff in 2017 and was immediately confronted with more lawsuits. In an Al Jazeera news feature (May 2013), Gusman is interviewed at the OJC while construction crews prepare for the grand opening. Gusman and the reporter both wear hardhats and construction vests as work crews busy themselves in the background. Gusman, the first New Orleans sheriff to identify as African-American, was elected as a criminal justice advocate and expressed misgivings about the future of the prison he was elected to run. "It is, in some respects, a contradiction in terms that someone who is a champion of individual rights and freedoms is also responsible for their incarceration. But that is part of what we have to do...I'm hopeful for the day when we have very few people in here. And the smaller the facility, the better we are going to be as people" (May 2013). In keeping with the difficulties posed when attempting to retrieve information about prison conditions, as of this writing, the Orleans Parish Sheriff's Department website is down, phone numbers lead to dead ends, and messages go unreturned. When finally reached by telephone, an operator failed to confirm that the website was down, but

did say that it does “go down sometimes.” Conditions at the Orleans Justice Center remain chaotic, violent and dangerous.

Base pay for guards at OPP is low, \$28,000 as of this writing and \$33,000 starting in January 2019 (Lane, 2018). One OPP guard who spoke anonymously using the pseudonym Mike to a local reporter, blamed a lack of training for the unsafe conditions:

To become a guard in OPP, one only needs to be 21 years old, have a high school diploma or general equivalency degree and a valid driver’s license. Recruits must complete a 90-hour training class, which Mike said is nothing more than an orientation. As long as you show up and don’t cause any trouble, you are given a badge and sent to the jail, he said.

(Webster 2011)²¹

Many New Orleans inmates are held for minor crimes like public intoxication and traffic fines and are awaiting trial (Coleman, 2018). However, the resulting scrutiny from the Katrina debacle resulted in some substantive changes to policing procedures that inspired state officials to change sentencing laws that allowed for drug and alcohol treatment in lieu of incarceration, repealed some mandatory minimum sentences for theft, drug possession and arson, and established a pre-trial system that allowed low-income arrestees to go free until trial without presenting a cash bail (Coleman, 2018).

The new policies have contributed to a 67% percent drop in the city’s jail population (Mock 2015), but, despite federal oversight and the public and legal flogging experienced by Orleans Parish Sheriff’s Department, these reforms may not have been

²¹ Webster’s *New Orleans City Business* article published November 17, 2018 provides a harrowing, account of life in the Orleans Parish Prison complex that details how guards were forced to work 12-hour shifts four days in a row, spent much of their time sleeping on the job, and encouraged adult inmates to watch juveniles fight after the tv’s were turned off as a means of entertainment. Retrieved November 29, 2018. (<https://neworleanscitybusiness.com/blog/2011/11/17/opp-guards-inmate-detail-brutality-inside-jail/>)

implemented without the release of an undercover video made by inmates in one of the jails that comprise OPP complex, the Orleans House of Detention, that was seized by guards and discovered by federal consent decree monitors. Excerpts were shown on local news stations (Robin 2013) and the video was mocked by local comedians (PPTV 2013) after being shown to a federal judge during the consent decree review. The video revealed inmates sleeping on the floor due to high temperatures, shooting heroin and other drugs, drinking beer, and brandishing loaded firearms. Inmates filmed disgusting kitchen facilities that abutted a moldy shower. Cells meant for ten regularly held 14 and 15 people, all of whom were black. A 17-year-old complained that he had been waiting to see a doctor for an advanced skin condition for two months. Others complained about the high prevalence of rats, spiders and mold. There was no heat or air conditioning.

“Whatever it’s like outside is how it is in here, so when it’s hot out there it’s hot in here.” one inmate said. There were no garbage cans in the cells and refuse was piled in a corner. Inmates displayed cell phones and other contraband items and reported that guards are easily bribed to help bring them in “because they all about the money” (2legit2quit 2013). Several of the inmates who appeared in the video noted that conditions in the sprawling OPP complex were worse than before Hurricane Katrina.

Case #3 — Hurricane Harvey 2016 - Flooded Prisons and Courts

Evacuation plans, sewage systems, and access roads were all rendered unusable when Hurricane Harvey landed in Houston, Texas, and the small city of Beaumont, Texas

90 miles away on August 25, 2017. Both cities are home to large incarceration complexes where several county, state and federal facilities are concentrated in areas at remarkably high risk from crisis resulting from floods. Like Hurricane Katrina, Hurricane Harvey garnered international attention while the city was flooded and normal life came to a flooded halt. The abnormally high concentration of hazardous waste sites near the prisons makes conditions under normal operating conditions all the more precarious. An examination of the one-mile radius surrounding the nine incarceration facilities that comprise the Houston incarceration complex using the EPA's Environmental Justice (EJSCREEN²²) feature found 20 of 22 categories to be above the 80th percentile in terms of contamination nationally. Indicators for the presence of diesel, traffic proximity, Superfund²³ proximity, wastewater discharge, and cancer risk from toxins were all at or above the 95th percentile nationally.

The Houston criminal justice complex is located along the downtown Buffalo Bayou fork which was flooded under several feet of water for weeks after Hurricane Harvey struck. Over 20 state district courts for felony cases and 16 misdemeanor courts

22 Lobbying by the Prison Ecology Project resulted in a fundamental first step towards assessing the environmental vulnerability of prisons in September 2017. Earth Island Journal reports. "This summer, the EPA added a "prisons layer" to its Environmental Justice Screening and Mapping Tool. Known as EJSCREEN for short, the tool can be used by the public to assess possible exposure to pollutants that might be present in the environment (i.e., land, air, and water) where they live or work...The new layer allows the public to overlay the locations of the country's 6,000-plus prisons, jails, and detention centers with information about environmental hazards like Superfund and hazardous waste sites, something the nonprofit Human Rights Defense Center has been pushing for as part of its campaign for the EPA to consider prisoners within an environmental justice context. For the prison ecology movement, which addresses issues at the intersection of mass incarceration and environmental degradation, it could be a game changer." The EJ Screen mapper can be found at (Retrieved November 5, 2018.<https://ejscreen.epa.gov/mapper/>).

²³For information on what a Superfund site is see (<https://www.epa.gov/superfund/what-superfund>). Retrieved November 20, 2018.

located at the nexus of federal, state, and county incarceration facilities were flooded. Thousands of cases were dismissed, but untold numbers were delayed as inmates were dispersed throughout the state. An underground jury assembly building, built with a park on top, was destroyed. “Damage extended throughout the building after water seeped in through the walls and pooled in the basement, triggering a malfunction in computers that regulate the water pressure. This in turn sent water gushing through sinks, toilets, and water fountains on some upper levels, causing pipes to burst and flooding courtrooms that wouldn't otherwise have been damaged” (Rogers 2017). As of November, 2017, criminal court proceedings were being held in civil, juvenile, and family courthouses across the city.

Water service for the entire city of Beaumont, TX, 90 miles east of Houston, was shut off during and after Hurricane Harvey in neighborhoods where guards and medical staff live, making it impossible for them to get to or return from work. A September 8, 2017 interview on the American independent daily news show *Democracy Now!* with Lance Lowry, president of the AFSCME Local 3807 union chapter for Texas Correctional Employees, revealed how Hurricane Harvey caused staff shortages and perilous conditions when access roads were flooded and facilities suffered protracted power outages:

Toilets in the facilities were down. Inmates were drinking toilet water and getting sick...We're concerned about the health and safety, as far as mold, black mold exposure...Obviously, one thing I've seen as far as a major flaw in Texas has been our staffing ratios. We don't have a high number of correctional staff available for emergencies such as this. They were lucky to get 6,000 inmates out south of Houston, where it was flood-prone. Had we had more disastrous situations in Beaumont, at the time, we didn't have enough time to get people in and evacuate

those offenders or even the officers. And I've been on site and have seen, you know, and talked to, like I said, a lot of the officers. It has severely impacted our officers. And running these prison systems without the correct appropriations is leading to constitutional issues. We don't have enough staffing in place. When you don't have enough staff, you know, services sometimes are delayed. If you look at the state of Texas as far as our staffing ratios, we manage, for every officer, six offenders. You go to the state of New York, it's one and three.

(Goodman 2017)

Conditions at the Beaumont FCI Detention Complex were further described by Rachel Villalobos, wife of an inmate, on *Democracy Now!* (Goodman, 2017) this way. "They had no power. They had the generators that they were turning on and off. The AC—they didn't have no AC for a good while...I was told that the officers there are watching him (her husband) and telling him what to write. So, right at this moment, I don't know what to believe, but that I was told from other inmates' wives that they did not have AC, either." Villalobos reported that her husband and other inmates were using toilets as a source of drinking water while defecating and urinating into plastic bags and bottles. She reported rumors of two deaths that other inmates and spouses attributed to contaminated water. "Because of the water shortage, four portable toilets were brought in to service the men's building. No chemicals were placed in the toilets, which have already been topped off with waste" Villalobos further read from an email by her husband. "We are getting two bottles of water a day thus far. Which is obscene. We are getting three brown bags of peanut butter and bologna a day." Bryan Collier, Texas Department of Criminal Justice Executive Director, has denied that any fatalities had occurred during and after the storm (Alfonso 2017).

One mildly positive note resulting from the judicial chaos left in Harvey's wake was the release and rapid adjudication of low-level offenders because of the flooded courts and processing centers. While many were released on reduced charges, others were hurried into taking pleas. Local District Attorney Kim Ogg reported that, in the wake of the storm, her top lieutenants reviewed about 600 low-level drug cases in a feverish bid to make plea deals. "We dismissed about 110 of those cases, and we pled about 200 others," Ogg said. "There were about 300 that we couldn't plead" (Rogers 2017).

Case #4 — Tropical Storm Florence 2018

In September 2018, the massive tropical storm Florence flooded several towns and cities in North and South Carolina. A federal state of emergency was declared, releasing millions of dollars in emergency aid from the national budget to help mitigate the damage. As is typical during such emergencies, news reports lauded the rescue and protection efforts of volunteers and first responders who brought flooded residents and their pets to safety while some local jails ignored evacuation orders and left inmates and guards to weather the storm. South Carolina incarceration facilities located within the mandatory evacuation zone remained open.

Some coastal jails in North Carolina and Virginia were evacuated during Florence, but Dexter Lee, a South Carolina Department of Corrections (SCDC) spokesman, cited transportation issues as justification to leave inmates and staff in place, telling *The New Yorker*, "In the past, it's been safer to leave them there" (Gross 2018). The ACLU has spoken out against the SCDC's position and has begun the arduous work

of compiling witness statements in preparation for legal action similar to their response on behalf of inmates during Hurricane Katrina.

As Florence approached, inmates spoke anonymously to *The New Yorker* using contraband cellphones. The article confirmed the men were indeed being held in SCDC facilities in the evacuation zone. In keeping with emergency protocols, inmates were put on “lockdown” as the storm approached, curtailing their access to libraries, visitors, the outside or recreation areas. The inmates incarcerated in the maximum security facility recounted previous floods that breached prison walls, filling cells with ankle-deep water. While inmates feared water and sanitation system failure caused by the imminent floods, they were forbidden from storing water in plastic bottles or any other containers due to prison safety regulations.

Case #5 — California Wildfires and Prison Labor

Before outlining how California inmates are being exploited by the state to fight wildfires, a quick history of California’s rapid prison industry expansion in the 1980’s and 1990’s is warranted. In addition to inspiring the formation of radical coalitions of activists that previously worked independently, it established the intersectional abolitionist approach that used to delay the Letcher County prison project described in the previous case.

The Mothers of East Los Angeles (MELA) were one of the first direct action, locally driven anti-prison activist groups to successfully fuse environmental justice with prison abolition. In 1986, the small group of six people began going door to door in their

East Los Angeles neighborhood talking primarily to mothers about their opposition to a proposed prison project scheduled for their neighborhood. With help from local church and political leaders they were able to stop the prison from being built. During the course of their successful fight against the state prison they learned of a proposed oil pipeline and toxic waste incinerator plant scheduled for their neighborhood. Their bilingual coalition eventually swelled to over 400 members and had achieved enough political capital to mobilize against these projects, both of which were stopped in their tracks (Braz and Gilmore 2006:98).

A coalition of social justice, human rights, and environmental justice organizations that formed in opposition to the construction of the North Kern State Prison in central California exemplifies the type of multi-scalar approach that is a key component of critical environmental justice. Known as Delano II because the nearby Kern Valley State Prison is also in the city of Delano, North Kern State Prison opened in 2005 after four years of legal and legislative battles. While the activists were unsuccessful, what is helpful for PIC abolitionists is the activist model they created. Traditional protests and public information campaigns were bolstered by legal action undertaken on a variety of fronts. Among others, chapters from the National Association for the Advancement of Colored People; the Center on Race, Poverty, and the Environment; the Rainforest Action Network; the Ecology Center; the California chapter of the National Association of Social Workers; the National Lawyers Guild Prison Law Project, and the Friends of the Kangaroo Rat organized under the umbrella of the group Critical Resistance. “In total, more than one thousand individuals, organizations, and

state agencies filed comments on the California Department of Correction's (CDC) revised environmental analysis—all but one raising serious concerns about the impact of the proposed prison on everything from destroying farmland of statewide importance and habitat for endangered species like the Tipton kangaroo rat and the San Joaquin Valley kit fox..." (Braz and Gilmore 2006:101). Demands were made that the CDC translate environmental impact reports and hold meetings in Spanish. Legislators were harassed, lobbied and deluged with requests for information and meetings with community members. Mainstream media outlets propagated their concerns and questioned the economic benefits of the prison (Nieves, 2000), giving birth the term, "The Prison Prosperity Myth" (Heller 2002).

Lawyers fighting the prison were clear about how limited, time-consuming, and potentially fruitless legal action often is, but it is a necessary tactic that can delay projects long enough to make investors and legislators skittish about initiating potential projects that can get bogged down into interminable legal quagmires that are not only expensive for both sides, but can erode the popularity of elected officials. Environmental law should be used in conjunction with the threat of criminal charges that can arise when legislators are illegally influenced by those who stand to benefit from construction and supply contracts. A current civil suit in New Orleans described in Case Study #2 might set a precedent that sheriffs, prison officials and municipalities can be held liable in civil suits arising from inmate mistreatment, violation of zoning ordinances and other causes. It is a fundamental pillar of critical environmental justice to not rely on state systems to affect substantive reform, especially in today's extremely conservative legislative climate, but

the legal system can be a very effective weapon in a war of attrition. While cases are fought on multiple fronts, from the protection of rare animal and plant species to toxic exposure and other health risks, the media has time to expose corruption between legislators and lobbyists, dragging them through the proverbial toxic mud as part of a larger strategy designed to turn public opinion against the project.

The 2018 wildfire season in California was the deadliest and most widespread on record (Meyer 2018), exceeding the damage wrought by the 2017 wildfire season, which was also set records in terms of ecological damage and loss of human and animal life. The 2018 Woolsey and Camp fires commanded daily international media attention and prompted Governor Jerry Brown to declare the level of damage as “not the new normal, but the new abnormal” and, in defiance of President Trump’s denials, directly linked climate change as a fundamental cause of the increasing ferocity and frequency of wildfires (Ramos 2018). Inmates used to help control fires and mitigate damage to structures and habitats were housed in 27 fire-camps and supervised by prison guards. The California Department of Corrections lauded their contribution through a social media post. “Today, more than 2,000 volunteer inmate firefighters, including 58 youth offenders, are battling wildfire flames throughout CA. Inmate firefighters serve a vital role, clearing thick brush down to bare soil to stop the fire's spread. [#FergusonFire](#) [#MendocinoComplex](#) 4:40 PM - 31 Jul 2018” (CADO 2018).

Inmate “volunteers” who choose to fight fires are paid \$2 per day and \$1 per hour and have time taken off their sentences commensurate to days spent fighting wildfires. The work is grueling and dangerous. Under extremely hot conditions the use of

respirators to filter toxins from smoke is often impractical. California corrections officials cryptically laud the rehabilitative effects the program has on the adults and youths who participate in terms of “team-building” and the acquisition of a skill set. But because inmates invariably carry criminal convictions, they are usually not eligible to become employees of a city, state, or county fire department. Inmates are not trained as emergency medical technicians in preparation for their firefighting and brush clearing duties (Hess 2018). This work does nothing in terms of training to eventually become a pensioned firefighter, but it does provide some experience that would be beneficial to landscaping and demolition, occupations already dominated in California by communities of undocumented people from Mexico, Central America and beyond (Campbell 2016).

Haphazard responses to several recent natural disasters like the prisoner fire protection scheme described here can and do reduce prisoner populations and help communities mitigate the crises caused by anthropogenic climate change. Simultaneously, they reify the practice of using prison laborers without the wage and safety protections afforded free citizens performing the same work. Inmates placed on wildfire gangs are placed in extremely smoky and toxic areas that are often still smoldering from fire become more likely to suffer from respiratory ailments and a litany of conditions that are compounded by conditions in the prison. Without the protection of a labor union that guarantees health care coverage, incarcerated people will have little recourse in terms of health care as their conditions worsen (Tsolkas, 2018).

Inmates work alongside National Guard soldiers on “hand crews [who] work areas already burned by the Carr Fire, extinguishing hot spots to prevent fire flare-ups”

(Siguenza 2018). National Guard soldiers usually work part-time one weekend per month and are typically deployed at the discretion of a state's governor during natural disasters (Gambino 2014). The state is usually stuck with the bill, although presidents occasionally authorize federal funds for large-scale disasters like Hurricanes Katrina, Harvey and Florence and the fires that, as of this writing, are currently active in Northern and Southern California.

Why not pay prisoners the same as National Guard soldiers who make \$1,638.30 per full week and \$218.44 per weekend in their first year? After twenty years and increases in rank, National Guard pay can rise to \$6,068.70 per week and/or \$809.16 per weekend.²⁴ While not afforded the same pension privileges as police, National Guard soldiers are given access to educational grants, home loans and a retirement plan offering “monthly payments based on serving one weekend per month plus an additional 15 days per year, for 20 years.” Such a system would be remarkably beneficial as a way for inmates to save money, prepare for their release, gain access to better legal representation, health care, better food, while also taking care of family obligations.

²⁴National Guard Pay Calculator. Retrieved November 27, 2018. Retrieved November 28, 2018. (<https://www.nationalguard.com/pay/calculator>)

CHAPTER 5 — CONCLUSION: PIC ABOLITION, PRISONER ADVOCACY AND ALTERNATIVES

PIC abolition is a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment. From where we are now, sometimes we can't really imagine what abolition is going to look like. Abolition isn't just about getting rid of buildings full of cages. It's also about undoing the society we live in because the PIC both feeds on and maintains oppression and inequalities through punishment, violence, and controls millions of people. Because the PIC is not an isolated system, abolition is a broad strategy. An abolitionist vision means that we must build models today that can represent how we want to live in the future. It means developing practical strategies for taking small steps that move us toward making our dreams real and that lead us all to believe that things really could be different. It means living this vision in our daily lives. Abolition is both a practical organizing tool and a long-term goal.

Critical Resistance Website – 2018²⁵

The Need for Critical Environmental Justice — A Cautionary Example of the Treadmills of Production and Destruction Disguised as PIC Abolition

The 77,000 sq. ft. Claremont Custody Center in Coalinga, CA was closed in 2011 and sold to the Ocean Grown, a cannabis cultivation and extraction company in 2016 for \$4.1 million. The facility's approximately 500 inmates were released or sent to other jails. On its face, the conversion seems to be an ideal example of universal rationality, instead of a toxic slave factory that tortured Californians for decades, permanently inflicting stress disorders, addictions and other accrued effects of insufficient medical care for inmates, a progressive farm designed to increase botanical literacy, decriminalize

²⁵ Critical Resistance Website. (<http://criticalresistance.org/about/not-so-common-language/>)

drugs, provide cheap, effective medicine, and an alternative to more harmful drugs would be built in its stead. A plant stigmatized by criminal sanction had been freed and capitalists were eager to enter it into the consumer mainstream. Officials in the once oil-rich city were elated, the cash windfall would potentially wipe out a significant portion of their \$4.3 million debt (James 2016). Instead of unionized guards and prison staff who would present a public financial burden through pensions and medical coverage for decades, company officials projected over 100 new private, non-union jobs would be coming to the area. But America's prevailing capitalist model and entrenched economic growth coalitions make the project just another example of how capitalist ventures based on mono-crop agriculture do not meet the needs of Coalinga's most vulnerable people, but are designed to create a source of perpetual profit for company investors and reify the treadmill of production.

Company officials had not anticipated that the local power company, Pacific Gas and Electric, would need to upgrade their local power station to fulfill the facility's electricity needs. By choosing to grow most of their cannabis indoor under high-wattage bulbs, Ocean Grown Extracts adds significantly to the company's carbon footprint. Plans are afoot to increase the factory's reliance on solar power, but incorporating energy and water self-sufficiency into their original business plan would have sidestepped the problem entirely. This basic principle was outlined at a UN review of Paris Agreement targets encouraging member states to promote "proven technologies at a cost level of less than USD 100/t CO₂ eq, including solar and wind energy, efficient appliances, efficient passenger cars, afforestation and avoiding deforestation, as well as actions in buildings

and agriculture, have the potential to reduce sectoral emissions by around twice the amount of the emissions gap projected for 2030” (Blok, et al. 2017).

The federal US Board of Reclamation (BOR), whose motto is *Managing Water in the West*, has threatened to report Coalinga city administrators to the Department of Justice if they allow municipal water to be used for the cultivation and processing of cannabis products, a threat that currently hangs over the now operational factory. The Board of Reclamation controls Coalinga’s water spigots and other cities in the Central Valley and has the authority “to completely withhold Project water for certain legal obligations.” Regardless of state and local laws, producing cannabis, especially extracts, the entire project is in direct opposition to federal narcotics statutes. Not only can the BOR shut down the factory’s water at any time, but the company’s dependence on the BOR for access to water from the San Luis Canal to meet its needs was foolhardy to begin with.

Instead of plastic bags and rolling paper roaches, today’s marijuana consumers produce a far more diverse array of toxic trash and waste. Like many regulated cannabis operations, Ocean Grown Extracts produces cannabis oil extracts using a CO₂ extraction system. In most large scale operations, most of the spent CO₂ is vented into the cultivation areas and is consumed by the plants. The oil is then mixed with combinations of plant terpenes and other unknown oils. Most companies use coconut oil, but manufacturers are not required to disclose their formulas. The oil, terpenes and additives are then placed in plastic containers for use in pipes or is portioned into small, disposable, glass, plastic and metal tubes that are heated using a lithium battery operated “vape pen”

device that burns the oil into low-temperature smoke, or, as it is inaccurately known, vapor. Not only are the batteries seldom recycled, but the plastic trash produced by vape pen cartridges is ubiquitous (Guru 2016). The vape pen and battery device is an ecological blight in and of itself, but surrounding child-proof packaging adds yet more plastic and cardboard to the mix. Further complicating the mess is the absurd California requirement forcing cannabis dispensaries to place items leaving the shop in an additional opaque “dispensary exit bag.”²⁶ Again, it’s admirable that there is a cannabis farm and extraction lab where prisoners were held for decades, but for prison activists to view the transition as a success indicates submission to the myopic view that neo-liberal, corporatized capitalist projects that ignore their ecological footprints should be viewed as progressive. Any farm is better than a prison, but a farm that breeds botanical ignorance through reliance on a single plant, while producing obscene amounts of permanent packaging waste, is yet another example of the treadmill of production that perpetuates environmentally destructive practices sanctioned by the dominant economic growth coalition.

Advocates for criminal justice reform may praise California’s decriminalization of a common plant and people who consume it, but the economic growth coalition created to regulate it merely marginalizes the plant in a different way, reinforcing its place among potentially dangerous plants that only state actors are responsible enough to control. From a critical environmental justice perspective, the benefits of such a prison to

²⁶ § 5184. Exit Packaging https://www.bcc.ca.gov/law_regs/mcrsa_ptor.pdf

farm project aren't so clear. Instead of using the former prison as an educational institution, rape crisis center, clinic, community farm, biodiversity center, music stage, art center, skateboard park, farmers market, or any combination thereof, Ocean Grown simply offers low paying jobs and a stream of tax dollars that city officials say they will use primarily for debt servicing to private financial institutions. Remaining revenues, if there are any, can potentially be used to fund police, jails, schools or public works projects. The new cannabis economy is already creating more members of the local power elite whose primary interest is the perpetuation of company profits. The regulated segregation and continued criminalization of cannabis in California has further marginalized those without access to the vast amounts of wealth necessary to legally invest in the highly-taxed and unrealistically regulated industry and is exemplary of the role of advancing technology has advancing the Treadmill of Production.

While business opportunities in the new cannabis economy are being regulated out of the grasp of low-income people, the same thing is happening to low-income people who are not afford to afford cannabis therapies. Previous to the implementation of California's new cannabis laws, dispensaries, or compassion collectives, were able to operate with few regulations. Members of the collectives were encouraged to grow and process their own cannabis for sale and use by its members. Through local initiatives, municipalities and counties were able to regulate cannabis as they saw fit. Dispensaries could charge members a fair price without the burden of excise taxes and were allowed to donate products to low-income people. California's new regulatory system has turned the more collective organic model into yet another reflection of modern capitalism. (Holland

2018; Carreon 2018) Adding to the morass is the California law allowing the state's Bureau of Cannabis Control to deny licenses and work permits to formerly incarcerated people²⁷.

Prisoner Advocacy in Action, the Prison Ecology Project

In addition to the academic theories described here, this paper relies on the publicly available work of legal, social action and grassroots activists committed to dismantling the PIC. Their work provides tangible examples of direct action that can be taken outside of academic circles in order to affect the dismantling of scope conditions that created and currently nurture the PIC.

The grassroots Prison Ecology Project (PEP) chronicles environmental conditions inside prisons and the areas that surround them through its website and the publication of articles in magazines and newspapers.

The mission of the Prison Ecology Project is to map the intersections of mass incarceration and environmental degradation, and create action plans to address the multitude of problems found there. The Prison Ecology Project addresses issues such as: damage of sewage and industrial waste from overpopulated and under-regulated prisons into [sic] water ways; threats to listed species by the ongoing construction and operation of prisons in remote, environmentally-sensitive rural areas; and environmental justice concerns regarding prisoners, staff and surrounding communities.

(Nation Inside 2018)

An *Earth Island Journal* article, "America's Toxic Prisons: The Environmental Injustices of Mass Incarceration" featuring the PEP's work described how prisons are

²⁷ California Code of Regulations Title 16, Division 42. Bureau of Marijuana Control:7. Retrieved December 1, 2018. (https://www.bcc.ca.gov/law_regs/mcrsa_ptor.pdf Article 3. General Licensing § 5031. [RESERVED] § 5032. Substantially Related Offenses)

often built in marginal, economically deprived and environmentally fragile communities. One of the PEP's most useful contribution to prison reform has been its role in successfully pressuring the United States Environmental Protection Agency (EPA) to include prisons as a sub-category in the Environmental Justice maps (EJ Screens) that demonstrate the proximity of prisons and jails to dangerous sites, including toxins and radioactive waste. The maps have been instrumental in initiating legal action and public antipathy against the expansion of the PIC.

It's well known that low-income communities and communities of color are disproportionately impacted by environmental degradation. Polluting facilities are more likely to be built in these communities, and environmental regulations are often less stringently enforced in these neighborhoods. This legacy of environmental injustice extends to the siting of prisons that are often located in or close to low-income communities. Additionally, they are built on some of the least desirable and most contaminated lands in the country, such as old mining sites, Superfund ²⁸ cleanup sites, and landfills. According to a [sic] Geographic Information Systems analysis of a 2010 dataset of state and federal prisons by PEP cartographer Paige Williams found at least 589 federal and state prisons are located within three miles of a Superfund cleanup site on the National Priorities List, with 134 of those prisons located within just one mile."

(Bernd, Farren and Mitra 2017)

The non-profit Prison Policy Initiative's (PPI) research library provides several articles chronicling the state of treatment for incarcerated people who suffer from mental illnesses. PPI uses a multi-scalar, intersectional approach incorporating the work of

²⁸ The US Environmental Protection Agency's (EPA) Superfund system provides a framework upon which the sustainable reclamation of property devoted to incarceration facilities can be built. The EPA cites high profile environmental calamities in the late 1970s as the impetus for Congress to pass the 1980 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), which created a system to rehabilitate hazardous waste, or Superfund, sites using a combination of polluter fines, federal, state and local funds. CERCLA's four goals: "Protect human health and the environment by cleaning up polluted sites; Make responsible parties pay for cleanup work; Involve communities in the Superfund process; Return Superfund sites to productive use."

advocacy groups like Disability Rights Oregon, the National Association of State Mental Health Program Directors, the Treatment Advocacy Center, the Fair Punishment Project, Families Against Mandatory Minimums, the Vera Institute of Justice, the Amplifying Voices of Inmates with the Disabilities Prison Project, Human Rights Watch, the American Civil Liberties Union (ACLU), several law schools and the DOJOIG. This extensive list of organizations is included here because PPI represents the kind of multi-scalar approach necessary for meaningful PIC reform to occur. The PEP's work is instrumental in demonstrating the links between prisons and the ecology, but would be greatly assisted by forming alliances and partnerships with environmental advocacy and human rights defense organizations, mental health advocates, rape crisis centers, and independent and mainstream media outlets. Efforts aimed towards abolishing the PIC necessitate the use of small armies of researchers, lawyers, reporters, students, and activists. Every report cited by PPI demonstrates, on grand and small scales, how inept and destructive the PIC is in terms of rehabilitating inmates and preventing recidivism, and is updated frequently. The exhaustive ACLU report cited in Chapter Four chronicling conditions in a New Orleans prison during and after Hurricane Katrina uses this kind of collaborative approach and was instrumental in inspiring the state to implement meaningful sentencing reforms that brought down the city's prison population by 67%.

Alternative Incarceration Models

Alternatives like restorative justice practices, neighborhood patrols, and rape crisis centers are bold demonstrations that police are not the only or the best response to

violence. These on-the-ground responses, coupled with jobs, housing, health care, and schools, are the basis of the left response to violence.

(Beck 2015)

This paper advocates the elimination of the PIC as an engine that propels normalized economic growth coalitions that have become mainstays of modern American life. Prisons should not be punitive, but a last resort for people to find the treatment, training, and education they need to survive and thrive in the modern world. Examples abound that demonstrate how legal systems and prisons world-wide can be used for effective rehabilitation and a source of life skills that ameliorate damage caused by state policies that marginalize and destroy people.

Because women are far more likely than men to have been sexually abused than men and, if the goal of incarceration is rehabilitation and successful re-entry into public life, women require specific treatments (Lynch, Mathews and Cepada 2012; Elliot, et al. 2005). In response to rising rates of female incarceration, gender responsive approaches to incarceration are currently gaining leverage (Berman and Ney 2001). The National Institute of Corrections (NIC) has developed a system change model that specifically addresses the needs of women transitioning out of prison.²⁹ An Iowa prison featured in a radio documentary analyzed data from men's and women's prisons in 15 states and found that women are three times more likely to be punished for minor infractions than men. "Even citations for minor infractions can lead to significant punishments for women. They can get time added to their sentence or go to solitary confinement. They can lose

²⁹ The NIC's TPC model was developed by Abt Associates and is currently being implemented in nine jurisdictions – District of Columbia, Georgia, Indiana, Michigan, Missouri, New York, North Dakota, Oregon, and Rhode Island – with the assistance of the NIC and the Center for Effective Public Policy.

privileges, including permission to see visitors or to use the phone. Those matter: Because women in prison, far more than men, are the caregiving parent for a minor child” (Shapiro 2018). A new warden assigned to the Iowa Correctional Institute for Women ended this punitive approach and curtailed the enforcement of picayune rules regarding dress codes and displaying personal items, allowed inmates to engage in more physical and telephone contact with children, ended nude strip searches, and increased access to mental health care services. All officers and staff at this prison are now trained in gender-responsive practices that include ways to recognize and respond to signs of trauma. This example is not cited here to condone the incarceration of women. It is included to illustrate the need for any institution, activist group, or public service agency to recognize and meet the unique needs of women and their potential to create alternative norms that challenge existing systems.

A Prison Without Guards or Weapons

Once we recognize that prisons promote order and security for a few at the cost of generating violence, inequality, and social disruption for the many, we have taken the first step in developing an abolitionist vision.

(Sudbury 2004:16)

Despite the fact that Brazil is third in terms global incarceration rates (Alves 2017), a private, Catholic network of prisons there provides an example of positive change. Working through the Brazilian Fraternity of Assistance to the Convicted (FBAC), the Association for the Protection and Assistance to the Convicted (APAC) operates 49 units across the country serving 3,500 prisoners. While APAC inmates

represent only .5% of the country's bloated total inmate population, they have recently received grants from private donors and the Italian non-governmental organization AVSI Foundation (Griffin 2018) to expand throughout Brazil and beyond.³⁰

APAC facilities have cells and bars, but inmates carry keys to their own cells and are required to attend classes and participate in hobbies like painting, music, and gardening. Amazingly, there are no armed guards. Mental health professionals run individual and group sessions to help victims of sexual abuse and those with addiction problems and other mental health disorders. APAC's founder, António Ferreira, described Brazil's publicly funded prisons this way.

The prisons are nothing more than a bandit factory. The system as a whole is precarious, deficient, chaotic, bankrupt, violent, corrupt and overcrowded and does not fulfill its role of recovering or re-socializing. I did not perceive only an abandonment at a structural level, but at a human and spiritual level too. It struck me deeply. I began to look for a way to ease the suffering of those who lived behind the bars.

(Gray 2018)

Recidivism rates are far lower than publicly funded Brazilian prisons and APAC has yet to experience an escape or riot.

³⁰ European Commission International Cooperation and Development Retrieved November 27, 2018. (https://ec.europa.eu/europeaid/projects/human-rights-and-dignity-prisoners-scaling-apac-model-association-protection-and-assistance_en)

Challenging the Treadmills of Production and Destruction

A court case currently wending its way through the US judicial system filed by 21 people aged 11 through 22 provides a glimmer of hope that United States energy policy will adapt to the norms embraced by the globe's signatories to the Paris Agreement. The lawsuit, *Juliana, et al. v. The United States of America*³¹ was filed in 2015 and demands that the US government take substantive action to reduce the use of CO₂-producing energy sources in order to thwart further ecological damage resulting from anthropogenic climate change. Citing a lack of legal precedent, the Obama and Trump administrations fought the lawsuit's progress, but have lost repeated bids to have it dismissed. Several courts, including the current Republican-leaning Supreme Court, have allowed the suit to proceed and kicked the case back to the Oregon District Court. Attorneys for the plaintiffs are confident that the suit will proceed to trial. The plaintiff's lawyers argue that their clients' constitutional right to a clean environment is being impinged by federal policies that promote the use of fossil fuels. Their complaint, which specifically targets presidents Obama and Trump and dozens of cabinet officials, "alleges that the defendants have allowed cumulative CO₂ emissions to increase...defendants' actions and inactions—whether or not they violate any specific statutory duty—have so profoundly damaged our home planet that they threaten plaintiffs' fundamental constitutional rights to life and liberty...These young plaintiffs, mere children and youth, are already suffering

³¹ *Juliana, et al. v. The United States of America* Retrieved November 27, 2018. (http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170609_docket-17-71692_petition.pdf)

irreparable harm which worsens as each day passes with more carbon dioxide accumulating in the atmosphere and oceans” (Barnes and Dennis 2018). Their complaint demands that the government prepare a detailed accounting of United States greenhouse gas emissions and have filed discovery requests dating back to the Johnson administration (1963-1969). If released, reams of government documents will detail decades of complicity with the energy industry and the underpinnings of the economic growth coalitions that promote the treadmills of production and destruction. The young plaintiffs, “seek nothing less than a complete transformation of the American energy system — including the abandonment of fossil fuels — ordered by a single district court at the behest of twenty-one children and youth” (Barnes and Dennis 2018). In a brief to the Supreme Court, Solicitor General Noel J. Francisco requested the lawsuit be dismissed, calling it “burdensome” and “an egregious abuse of the civil litigation process and violation of the separation of powers.”³² This is the sort of legal “super-remedy” sought in *Degraffneid v General Motors* that is now being put into play against the Letcher County, KY prison project described in case study #1.

This analysis demonstrates that prisoners and prison communities are exponentially more vulnerable to harm from exposure to ecologically precarious conditions than are free people. The litany of accruing internal inspections, news reports and legal cases reviewed here demonstrate the severely high level of danger faced by incarcerated people and their surrounding communities. Anthropogenic climate change

³²https://www.supremecourt.gov/DocketPDF/18/18A410/67845/20181024122415329_Juliana%20Stay%20Application%20Reply%20-%2010%2024%202018.pdf

poignantly universalizes and exacerbates these risks. By any logical definition, the PIC's standard procedures are cruel and unusual. Despite several court rulings in favor of prisoners citing the 8th Amendment³³ against cruel and unusual punishment, the mistreatment and systematic abuse in prisons continues unabated. Even if prisoners are able to muster the legal resources necessary to file suit and win, remediation becomes muddled by a lack of oversight mechanisms capable of implementing any substantive reforms.

The Prison Industrial Complex is simply too entrenched into mainstream life for any significant reform to occur. For now, the only resources that exist that can help abolish it are prisoner activist groups, legal activists, politicians, and consumers who have the ability to identify, publicize, and boycott products made with prison labor and the companies that profit from prison construction and maintenance. What is required as a first step towards PIC abolition is a relentless onslaught of public protest and legal

33 "In *Hudson v. McMillian*, 503 U.S. 1, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992), the U.S. Supreme Court held that the use of excessive physical force against a prisoner may constitute cruel and unusual punishment even if the prisoner does not suffer serious injury. When an inmate does suffer serious injury from the excessive use of force by prison officials, a violation of the Cruel and Unusual Punishment Clause is clear. In *Hope v. Pelzer*, 536 U.S. 730, 122 S.Ct. 2508, 153 L. Ed. 2d 666 (2002), the U.S. Supreme Court held that the Eighth Amendment had been contravened when prison officials had disciplined an inmate for disruptive behavior by handcuffing him to a "hitching post", once for two hours and once for seven hours, depriving the inmate of his shirt, exposing him to the sun, denying his requests for hydration, and refusing to allow him the opportunity to use the bathroom.

However, a defendant need not suffer actual physical injury or pain before a punishment will be declared cruel and unusual. In *Trop v. Dulles*, 356 U.S. 86, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958), the U.S. Supreme Court held that the use of denationalization (the deprivation of citizenship) as a punishment is barred by the Eighth Amendment. The Court reasoned that when someone is denationalized, "[t]here may be involved no physical mistreatment, no primitive torture. There is instead the total destruction of the individual's status in organized society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in the development." The Court also opined that the Eighth Amendment must "draw its meaning from the evolving standards of decency that mark the progress of a maturing society. *Free Legal Dictionary*. Retrieved November 27, 2018. (<https://legal-dictionary.thefreedictionary.com/Cruel+and+Unusual+Punishment>)

actions that hit different aspects of the PIC from several simultaneous fronts. Cases need to be brought that simultaneously incorporate environmental damage, human rights violations, ethnic and gender based discrimination, and working conditions for inmates *and* prison staff.

Conclusion

Although written in 1998, the words of Angela Davis are ever more prescient today.

The emergence of a U.S. prison industrial complex within a context of cascading conservatism marks a new historical moment, whose dangers are unprecedented. But so are its opportunities. Considering the impressive number of grassroots projects that continue to resist the expansion of the punishment industry, it ought to be possible to bring these efforts together to create radical and nationally visible movements that can legitimize anti-capitalist critiques of the prison industrial complex. It ought to be possible to build movements in defense of prisoners' human rights and movements that persuasively argue that what we need is not new prisons, but new health care, housing, education, drug programs, jobs, and education.

(Davis 1998)

Reduction of the overall amount of prisons and the prison population requires radical reform from local, state and federal agencies and a fundamental demilitarization of political structures and systems. For prison abolition efforts to be effective, a complex coalition of state and public actors must share exigencies aimed towards reducing the overall number of incarceration facilities and the population of criminalized people generally. Prioritizing the shuttering or conversion of incarceration facilities that are most vulnerable because of extreme weather, along with those who have most comprehensive histories of cruel and unusual punishment, should be an ideal starting point of any

legislation designed to degrade the power and reach of the PIC. With enough coordinated action, it is possible to reduce the number of incarcerated Americans in half, below one million, within a few years. Reduction below a pre-1972 incarceration population in the United States under 200,000 is not unattainable and is in keeping with global per-capita norms (Wagner and Sawyer 2018). However, the toxicity of incarceration facilities will increase exponentially if current trends towards domestic militarization and environmental deregulation continue.

Fossil fuel use and pollution from plastic packaging, industrial and military activity have already caused unprecedented global chaos. Increasing amounts of refugees from war, pollution, wildfires, and floods will continue to be displaced as mainstream economic practices continue. Instead of a corresponding rise in humanitarian efforts designed to alleviate their suffering and radical restructuring of government priorities that inculcate sustainable development, the Treadmills of Production and Destruction illustrate that the first response of modernizing states will likely be the criminalization of climate refugees and their incarceration in ever-larger prisons that will become exponentially more vulnerable to rising temperatures, hurricanes, floods, and wildfires.

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APPENDICES

APPENDIX A. Why not use race and other racist terms?

A quick note about terminology. Despite the excellent and innovative work done by critical race theorists Bonilla-Silva, Crenshaw, Gilmore and others, the use of the word race is invariably vague, eliciting different meanings in readers, policy makers, activists and regular folk. The term is simply too charged to be effective and is generally avoided in this paper. Bonilla-Silva's "pigmentocracy" (Bonilla-Silva 2014:228) more aptly describes the American skin-color based power dynamic. Racism popularly connotes bigotry, segregation and discrimination between groups based on skin color and ethnicity. Economically dominant groups like white Americans and Japanese people, for example, often ascribe non-human attributes to members of different groups; black people are called animals, non-heterosexuals are deemed freaks, immigrants are characterized as snakes and rats, Koreans are dogs, and so it goes. This kind of so-called racism, while pernicious and de-humanizing, does not adequately describe the process of bigotry and discrimination faced by these groups. Simply put, using the word race to describe different groups of humans, all of whom belong to the human race, simply makes no sense. In my opinion, those who lend credence to the term race by using it as a means of defining groups of humans reify what they call racism.

Another beguiling, unscientific term that will be avoided here is African-American. As the son of a white mother and black father born in the United States, I am usually considered black, brown, or mulatto. Mulatto is certainly dehumanizing, referring to the

mixture of a donkey and horse, but I find it far less offensive than African-American because that absurd term reifies geographic and scientific ignorance and was foisted on America's black and brown population without our consent by a small group of civil rights activists in the 1980's. The simple fact that homo-sapiens as a species first came to be in the continent that is now called Africa renders all Americans African-American.

Yet another nonsensical term used by progressives is person-of-color, often used in lieu of colored, which reminds many Americans of the codified, Jim Crow system of skin color-based segregation popular until the late 1960's in the United States. How can one be of color? As posited in a personal and humorous essay by linguist Geoffrey Pullum, "a person who is censored is not a person of censor; a person who is visored is not a person of visor; a person who is monitored is not a person of monitor; a person who is sponsored is not a person of sponsor." (Pellum 2007) While politicians often address crowds as "People of Ohio," or wherever they are campaigning, color is not a place, and so it goes. I use non-white here because it is universally understood and clearly delineates between white people and non-whites. Bonilla-Silva posits a third category, "honorary whites" who are able to enjoy the privileges afforded the power elite despite their non-Anglo-Caucasian heritage, (Bonilla-Silva 2014:228) but that definition is too fluid to be useful in the context of this paper. Non-white is simple and clear, while person-of-color, when examined in depth, only serves to confuse.

APPENDIX B. Profile: The Environmental Protection Agency – A Coal Lobbyist Takes the Helm

Through presidential appointment and Senate confirmation, senior leadership of the EPA was taken over by Scott Pruitt and Andrew Wheeler, two of the coal industry's most active lobbyists, whose careers have been defined by their advocacy for the evisceration of environmental regulations. Pruitt's 16-month tenure as EPA Administrator was mired in controversy stemming from his contact with energy industry lobbyists and excessive spending on travel and security and he was forced to resign. His previous post as Oklahoma Attorney General (2010-2017) was indicative of Trump administration's antipathy towards environmental regulation. During his tenure as Attorney General he initiated 14 legal actions on behalf of the State of Oklahoma against the EPA, fighting regulations designed to limit public exposure to mercury, airborne toxins and water pollution.³⁴ He was a founder and key player of the Republican Attorney General's Association (RAGA), a coalition of 26 Attorneys General from different states whose primary mission is to coordinate federal lawsuits against the EPA in order to loosen regulations that target the fossil fuel, nuclear and chemical industries. A few days after Pruitt was confirmed as EPA Administrator, over 3,000 of his emails detailing his role as a lobbyist and attorney for Oklahoma's largest coal and oil companies were publicly released by the Oklahoma Attorney General in response to a request by the media activist watchdog group, The Center for Media and Democracy.

³⁴ <https://www.documentcloud.org/documents/3290872-Pruitt-v-EPA-a-Compilation-of-Oklahoma-14.html>

While serving as Oklahoma Attorney General, Pruitt described the 2015 Clean Power Plan as a “war on fossil fuels” deeming the Obama administration’s approach towards environmental regulation “coercive” because it impugned the autonomy of individual states and hampered economic growth. “The EPA was weaponized against certain sectors of our economy, fossil fuels generally, and just that’s not the job of a regulator...It’s important that each of these, from coal to natural gas to oil to hydro to nuclear, renewables across the spectrum, they all should be what? A part of our energy mix” (Ramahlo 2018). This is not say that the EPA was doing an adequate job eliminating fossil fuel use before Pruitt, but carbon reduction was the publicly-stated, aspirational and bureaucratic goal of the EPA. Previous to Trump, the EPA’s ostensible purpose was to bring greenhouse gas production down and slow global warming while compelling states and private actors to repair existing damage in accordance with evolving global norms.

Speaking on Las Vegas TV station KSNV in February 2018, Pruitt did acknowledge that global temperatures were rising, but expressed the preposterous idea that warming trends were positive.

Is it an existential threat? Is it something that is unsustainable? Or what kind of effect or harm is this going to have? I mean, we know that humans have most flourished during times of what? Warming trends. I mean, so I think there’s assumptions made that because the climate is warming, that that necessarily is a bad thing...Do we really know what the ideal surface temperature should be in the year 2100, in the year 2018? And that’s somewhat—you know, fairly arrogant for us to think that we know exactly what it should be in 2100.

(Ramalho 2018)

APPENDIX C. Useful International Conventions and Agreements

The Universal Declaration of Human Rights (UDHR) (1948), The Forced Labour Convention (1932), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987) and the Convention on the Rights of the Child (1990) are but a few aspirational documents designed to guide the human rights policies of the United Nations' 193 member states. Even a cursory glance at any of them reveals the PIC to represent a stark contrast to the humanitarian ethos they aspire to, but all contain escape hatches for state actors to continue to dehumanize and mistreat incarcerated people. The Convention Against Torture is quite similar to the 13th Amendment because it allows for states to exploit inmate labor.

APPENDIX D. The Intersectional Camera

The Intersectional Camera

