

CLIMATE CAGES: CONNECTING MIGRATION, THE CARCERAL STATE, EXTINCTION REBELLION, AND THE CORONAVIRUS THROUGH CICERO AND 21 SAVAGE

*By Nadia Ahmad**
Loyola Law Review (forthcoming)

This article addresses the unmapped linkage of mass incarceration and encagement as responses to climate change and the coronavirus. I coin the phrase, *climate cages*, to highlight how public policy responses to atmospheric dynamics limit mobility, worsen prison conditions, and increase carcerality. In this article, I use the song lyrics of 21 Savage’s “A Lot” and his subsequent arrest as an example to highlight the intersectionality of race, climate change, migration, protest movements, and COVID-19. Further, I reexamine Cicero’s adage of “summum ius summa iniuria”

* Associate Professor of Law, Barry University. Dwayne O. Andreas School of Law; B.A., University of California, Berkeley; J.D., University of Florida Fredric G. Levin College of Law; LL.M. in Natural Resources and Environmental Law and Policy, University of Denver Sturm College of Law. This article has benefited from discussions at the 2020 Loyola Law Review Symposium, 2019 Southeast Environmental Law Scholars Workshop, 2019 Margaret Montoya Writing Workshop, 2019 Critical Legal Academics and Scholars International Collective Workshop, and the 2019 Online Environmental Law Workshop. Special thanks to Barry University School of Law and my dean, Leticia Diaz, for the creative space and intellectual support to facilitate this research. Much appreciation extended to the research assistance of Melissa Bryan. A shout out to Mishel Suarez and Carlos Torrealba for their insights on brainstorming for this topic. Special thanks to Stacie Davis, Mary Kate Fernandez, Karen Sokol, and Robert Verchick. Thanks to Cathren Page, Melissa Martin, Tyler McCreary, Cyra Choudhary, Usha Natarajan, Vaskuki Nesiah, Julia Dehm, Lua Kamál Yuille, Michael Vandenberg, J.B. Ruhl, Nathan Richardson, Shelley Welton, Kalyani Robbins, Jonathan Nash, Joshua Engle, Jessica Owley, Jonas Monast, Amy Stein, Gabe Pacyniak, and Nicholas Bryner for feedback on this article. Thanks to library assistance of Whitney Curtis, Jason Murray, and Diana Botluck. A note of gratitude to Akmal, Senan, Hanan, Jihan, my parents, and my siblings for their love and support.

to show problematic configurations of the carceral state and the edifice of the law generally.

A warming planet has decreased available land, freshwater, and clean air to live and earn a livelihood. The world's megacities, from New Delhi to Houston, are choking from air pollution of their vehicles, power plants, factories, and industrial facilities. Not even rural areas are immune to the impacts of chemicals from agricultural activities. These natural resource stresses have served as threat multipliers for conflict, compounding centuries of economic and racial inequality. Economic and environmental chokepoints are leading to migration, movement, and higher rates of mass incarceration. Currently, the level of income inequality is at its peak, and record high and low temperatures are becoming the norm. The governmental response from the halls of Congress to the desk of the Oval Office has not been to find solutions to the climate crisis, but to restrict mobility and incarcerate Black and Brown people to maximize available land and space for those who are either more affluent and/or of the more preferred race, religion, and national origin. While historically human hierarchies and caste systems have existed for thousands of years, the impacts of intensified global warming have correlated with the increased prison populations and worsening prison conditions in the age of the Anthropocene.

TABLE OF CONTENTS

INTRODUCTION.....296

I. “SUMMUM IUS SUMMA INIURIA”302

II. THE CARCERAL STATE: “PEOPLE WAS INNOCENT, COULDN’T GET LAWYERS”305

A. DEFINING THE CARCERAL STATE: “LEFT YOU OUT TO ROT”306

B. (IM)MIGRANT CAGES: “STUCK AT THE BORDER”311

C. HEATING AND COOLING IN PRISONS: “STILL NEED WATER”315

D. EXTREME WEATHER EVACUATIONS: “THE LIGHTS WAS OFF”317

III. EXTINCTION REBELLION “STRAIGHT FROM THE GUTTER”318

IV. NORMATIVE SOLUTIONS “HAD TO GO A LIL’ HARDER”320

A. FOSSIL FUEL DIVESTMENT.....321

B. PRISON ABOLITION.....322

C. ICE ABOLITION324

CONCLUSION326

INTRODUCTION

There is something about poverty that smells like death.
 Dead dreams dropping off the heart like leaves in a dry sea-
 son and rotting around the feet; impulses smothered too long
 in the fetid air of underground caves. The soul lives in a sick-
 ly air. People can be slave-ships in shoes.

— Zora Neale Hurston¹

Started from the bottom straight from the gutter, so I had to
 go a lil' harder.

The lights was off, the gas was off, so we had to boil up the
 water.

Been through some things so I can't imagine my kids stuck at
 the border.

Flint still need water.

People was innocent, couldn't get lawyers.

— 21 Savage²

Days after the release of the song, “A Lot,” U.S. Immigration and Customs Enforcement (ICE) arrested the rapper Shéyaa Bin Abraham-Joseph, known by his stage name as 21 Savage. He would meet a destiny he had met previously—of being arrested—but this time, his crime was his immigration status as an undocumented Black immigrant. Shéyaa had been a member of the broader criminal syndicate gang of Bloods in his youth.³ He had a lengthy arrest record from frequent “run-ins” with the law on account of losing those close to him at a young age to violence and the criminal justice system.⁴ Yet Shéyaa turned his life around and became a successful musician and businessman, paying it forward to his community with philanthropic initiatives to end

1. ZORA NEALE HURSTON, *Dust Tracks on a Road: An Autobiography* 116 (1986).

2. Charmaine Griffin, *21 Savage Performed a Song Featuring Anti-ICE Lyrics Days Before His Arrest*, BLAVITY NEWS (Feb. 4, 2019, 12:45 PM), <https://blavity.com/21-savage-performed-a-song-featuring-anti-ice-lyrics-days-before-his-arrest?category1=news>.

3. Lisa Respers France, *5 Things You May Not Have Known About 21 Savage*, CNN, <https://www.cnn.com/2019/02/04/entertainment/21-savage-trnd/index.html> (last updated Feb. 4, 2019, 2:30 PM).

4. Brianne Tracy, *Everything to Know About Rapper 21 Savage, Who was Arrested by ICE After Reportedly Overstaying Visa*, PEOPLE (Feb. 6, 2019, 2:45 PM), <https://people.com/music/21-savage-everything-to-know/>.

gang violence and promote sports.⁵ The arrest of this Grammy-nominated artist at a Grammy after-party in Atlanta had all the tell-tale signs of irony and selective law enforcement. Shéyaa was arrested not only for who he *was*—an undocumented Black immigrant—but also for what he *said*. Shéyaa’s message in “A Lot” was “a” factor or “the” factor in his subsequent arrest and engagement. Billboard magazine said he was “one of hip-hop’s most promising new stars with his blunt tales of poverty, gang violence and the trauma they inflict.”⁶ His arrest sent shockwaves in the entertainment industry.

Shéyaa’s case raised the intersectionality of race and environmental justice in the immigration debate.⁷ The case also illustrates the new dialogic of environmentalism, which showcases how language, law, and law enforcement collide. Patrise Khan-Cullors, the co-founder of Black Lives Matter, said:

Much of how we are trained to think about immigration issues in this country is that it’s a Latinx issue. Black immigrants are more likely to be detained and deported than any other immigrant group solely because of their blackness. We

5. Ivie Ani, *21 Savage Launches Charity on ‘Ellen’ to Teach Kids Financial Literacy*, OKAYPLAYER (Mar. 13, 2018), <https://www.okayplayer.com/music/21-savage-launches-charity-on-ellen-teach-kids-financial-literacy.html>.

6. Gail Mitchell & Jewel Wicker, *How 21 Savage is Managing Art and Activism After ICE Scare*, BILLBOARD (Apr. 11, 2019) <https://www.billboard.com/articles/columns/hip-hop/8506597/21-savage-billboard-cover-story-2019> (“His most recent album, last December’s *I Am > I Was*, topped the Billboard 200 for two consecutive weeks, and his catalog of songs – including hits like ‘A Lot’ and his Grammy Award-nominated turn on Post Malone’s Billboard Hot 100-topping ‘rockstar’ – has earned over 3.3 billion on-demand streams in the United States, according to Nielsen Music.”).

7. See generally Stephanie A. Malin & Stacia S. Ryder, *Developing Deeply Intersectional Environmental Justice Scholarship*, 4 ENVTL. SOC. 1, 1-7 (2018). See also Mary Romero, *The Inclusion of Citizenship Status in Intersectionality: What Immigration Raids Tells Us About Mixed-Status Families, the State and Assimilation*, 34 INT’L J. SOC. FAM. 131, 131-152 (2008); Robert D. Bullard, *Dismantling Environmental Racism in the USA*, 1 LOCAL ENVIRON 5, (1999); April Karen Baptiste, *What Do We Know About Climate Change: The Jamaican Pedro Cays Fishers’ Case*, 46 THE BLACK SCHOLAR 40, (2016); Jalonne Lynay White-Newsome, *A Policy Approach Toward Climate Justice*, 46 THE BLACK SCHOLAR 12, (2016); Leslie G. Fields, *Mercy Mercy Me, A (Climate) Change is Going to Come*, 46 THE BLACK SCHOLAR 52, (2016); Ryan Holifield, *Defining Environmental Justice and Environmental Racism*, 22 URBAN GEOGRAPHY 78, (2001).

are living in a country where it becomes double whammy to be both black and undocumented.⁸

Despite having a broader platform, words of encouragement from the public, and the flurry of support from A-list celebrities, Shéyaa's music and personal life crashed. Months after the incident, he was hesitant to disclose the details of his ten days in immigration detention.⁹ Shéyaa remained silent on his most intimate struggle—his undocumented status—until this 2019 arrest. Shéyaa said: "That was the deepest thing" about the "A Lot" video." He added: "People will be going through a lot of stuff, but you'll never know what they're hiding behind their smiles. Like, nobody would ever know that I wasn't born here."¹⁰ In the most confessional tracks, Shéyaa avoided the intimate parts of his own story. Although Shéyaa rapped about a close friend who was murdered during a drug deal in "A Lot", he never mentioned his immigration experience.¹¹

On January 28, 2019, Shéyaa performed a different version of "A Lot" to an international TV audience on the Jimmy Fallon show.¹² The lyrics in this performance were different than in the version available on streaming platforms of "A Lot"—criticizing ICE, the lack of clean water and adequate energy access, and the access to justice for victims of the Flint Water Crisis.¹³ Some argued that the lyrics of "A Lot," which raised awareness of environmental justice, energy access, access to justice, water quality concerns, and immigration detentions, were, in fact, behind the arrest.¹⁴ Shéyaa says that his ICE detention was unlike anything he had ever experienced: "The worst thing was sitting in there,

8. Beatriz da Costa, *21 Savage Speaks on Immigration in 'Billboard' Cover Story*, VIBE (Apr. 12, 2019, 12:00 PM), <https://www.vibe.com/2019/04/21-savage-speaks-on-immigration>.

9. Mi Gail Mitchell & Jewel Wicker, *How 21 Savage is Managing Art and Activism After ICE Scare*, BILLBOARD (Apr. 11, 2019), <https://www.billboard.com/articles/columns/hip-hop/8506597/21-savage-billboard-cover-story-2019>.

10. *Id.*

11. *Id.*

12. Nick Barrickman, *Atlanta-based rapper 21 Savage detained by ICE Agents in "target operation"*, WORLD SOCIALIST WEB SITE (Feb. 11, 2019), <https://www.wsws.org/en/articles/2019/02/11/sava-f11.html>

13. *Id.*

14. Erin Donnelly, *Alexandria Ocasio-Cortez Criticized for Tweeting Support for Rapper 21 Savage in ICE Deportation Battle*, YAHOO (Feb. 5 2019), <https://www.yahoo.com/entertainment/alexandria-ocasio-cortez-criticized-tweeting-support-rapper-21-savage-ice-deportation-battle-105943671.html>.

not knowing what was going to happen, or when it's going to happen."¹⁵ "Whenever I went to jail before, it was, 'You're being charged with this and going to court on this date.' But immigration ain't like that. You're just being held."¹⁶ ICE officials alleged that when Shéyaa came back to the United States from the United Kingdom in 2005, his visa expired even though he arrived years earlier.¹⁷

It remains unclear the precise reason that triggered the ICE detention of Shéyaa. It is likely that his growing popularity, broader public platform, message of intersectional justice, and the coincidence of increased incidents of immigration detentions all worked together as a multiplicity of factors. Nevertheless, the high-profile arrest was deeply political, having the potential to moderate the tone and messaging of the rapper and other entertainers. The effect was to silence Shéyaa due to the threat of deportation.

Migration, climate change, and environmental justice are inextricably linked. We can no longer draw neat borders around environmentalism of white spaces.¹⁸ More so, environmentalism and climate change adaptation efforts can no longer be the exclusive domain of protecting white spaces. Because of rising income inequality in poor nations, conflict, and political upheaval, migrants are seeking out new places for safety.¹⁹ From natural disasters such as hurricanes, wildfires, tornadoes, and earthquakes, to the horrors of famine, disease, and religious violence, people

15. Gail Mitchell & Jewel Wicker, *How 21 Savage is Managing Art and Activism After ICE Scare*, BILLBOARD (Apr. 11, 2019), <https://www.billboard.com/articles/columns/hip-hop/8506597/21-savage-billboard-cover-story-2019>.

16. *Id.*

17. Charmaine Griffin, *21 Savage Performed a Song Featuring Anti-ICE Lyrics Days Before His Arrest*, BLAVITY NEWS (Feb. 4, 2019, 12:45 PM), <https://blavity.com/21-savage-performed-a-song-featuring-anti-ice-lyrics-days-before-his-arrest?category1=news>.

18. See generally Bekah Mandell, *Racial Reification and Global Warming: A Truly Inconvenient Truth*, 28 B.C. THIRD WORLD L.J. 289 (2008); Kate Aronoff, *Climate Activists Can Learn a Lot From Black Lives Matter*, THE WAGING NONVIOLENCE (Dec. 29, 2015), <https://wagingnonviolence.org/2015/12/what-climate-activists-can-learn-from-the-movement-for-black-lives/?pf=true>; Wen Stephenson, *From Occupy to Climate Justice*, THE NATION, Feb. 7, 2014, <http://www.downtoearthstories.org/wp-content/uploads/2016/08/Additional-articles1.pdf>; Dan Berger, *Social Movements and Mass Incarceration*, 15 SOULS 3 (2013).

19. See UNITED NATIONS, WORLD SOCIAL REPORT 2020: INEQUALITY IN A RAPIDLY CHANGING WORLD (2020), <https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2020/01/World-Social-Report-2020-FullReport.pdf>

are moving. We are a planet of populations on the move. The Brookings Institute reported that in 2017, nearly 68.5 million people were forcibly displaced.²⁰ Approximately one-third of these individuals (22.5 million to 24 million people) were forcibly moved by “sudden onset” weather events, including flooding, forest fires after droughts, and intensified storms.²¹ Climate change is causing a “slow onset” of events, including “desertification, sea-level rise, ocean acidification, air pollution, rain pattern shifts and loss of biodiversity.”²²

Journalism professor and author Suketu Mehta puts forward “that immigrants ‘have become a credit to this country’—the United States” through job growth, decreased crime rates, enhanced cultural innovation, and as a counterweight to aging populations through their “youth, fertility, and ability to support retirees.”²³ Immigration corrects “the wrongs of colonialism and corporate neocolonialism.”²⁴ The arrest and detention of 21 Savage offers a lens into the carceral state and environmentalism, which can also highlight the constraints of environmental law and the pressures on environmental advocates. Mehta draws from the work of environmental law professor Michael Gerrard, who puts forth that “the United States and other nations disproportionately responsible for carbon emissions should accept climate change refugees as a form of compensation to them and a form of justice.”²⁵ The rash of immigration detentions, deportations, and self-deportations highlights parallel environmental struggles. While the struggles may diverge, the systems at play operate in hegemonic unison. If immigration was previously the province of political asylum cases and highly-educated profes-

20. JOHN PODESTA, THE BROOKINGS INSTITUTE, THE CLIMATE CRISIS, REFUGEES, AND MIGRATION (2019), <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>.

21. *Id.*

22. *Id.*

23. Gaiutra Bahadur, *The United States' Debt to Immigrants*, THE NEW REPUBLIC (June 25, 2019), <https://newrepublic.com/article/154290/united-states-debt-immigrants> (quoting Suketu Mehta, *This Land is Our Land: An Immigrant's Manifesto* (2019)).

24. *Id.*

25. *Id.* (citing Michael B. Gerrard, Opinion, *America is the Worst Polluter in the History of the World. We Should Let Climate Change Refugees Resettle Here*, THE WASHINGTON POST (June 25, 2015), https://www.washingtonpost.com/opinions/america-is-the-worst-polluter-in-the-history-of-the-world-we-should-let-climate-change-refugees-resettle-here/2015/06/25/28a55238-1a9c-11e5-ab92-c75ae6ab94b5_story.html?noredirect=on&utm_term=.d5ff338d9aa6).

sionals seeking work visas, climate change has expanded and intensified those struggles. The information technology engineer from Chennai, wanting a better life for their family in America, is not only seeking out economic opportunity, but a way out of India's rising communalism and failed efforts to stem rising waters of the Indian Ocean as well as the lack of potable water. Last summer, the water reservoirs in India's sixth largest city ran dry.²⁶

The arrest of 21 Savage in Atlanta,²⁷ a later blackout at a New York federal prison,²⁸ and arrests of meatpacking workers in Mississippi are isolated events, but taken together, they are part of a wider net of mass incarceration to silence environmental, labor, and human rights, as well as examples of denying access to protection from environmental impacts.²⁹ Climate change will increase extreme weather conditions, increasing vulnerabilities for those already at the margins—from prison populations to those attempting to cross the borders. These incidents were a way to preserve an economic system known as corporatism through racist immigration and incarceration policies, which later manifested in disparate responses to environmental pollution concerns from

26. Emily Schmall, *Parched Manufacturing City in India Brings in Water by Rail*, ASSOCIATED PRESS: NEWS 10, <https://www.news10.com/news/parched-manufacturing-city-in-india-brings-in-water-by-rail/> (last updated July 29, 2019, 12:56 AM) (“Demand for water in the manufacturing and IT hub on the Bay of Bengal far outstrips supply, forcing authorities to take extreme and costly measures to serve the city’s 10 million people. And so, every day, the train sets out on a four-hour, 216-kilometer (134-mile) journey, its 50 tank cars carrying 2.5 million liters (660,000 gallons) of water drawn from a dam on the Cauvery River. The train is classic Indian ‘jugaad,’ the Hindi word for a makeshift solution to a complicated problem.”); see also Jamie Deline, *This Indian City Doesn’t Have Enough Drinking Water — So it’s Shipping it in by Train*, PR WIRE, <https://myprwire.com/this-indian-city-doesnt-have-enough-drinking-water-so-its-shipping-it-in-by-train/> (last visited Nov. 8, 2020).

27. Erik Ortiz, *Rapper 21 Savage Describes Arrest by ICE: ‘We got Savage,’* NBC (Feb. 15, 2019), <https://www.nbcnews.com/news/us-news/rapper-21-savage-describes-arrest-ice-we-got-savage-n971951>.

28. Steve Almasy et al, *Inmates Without Power at New York Federal Prison Shivering in Their Cells for Days*, CNN (Feb. 3, 2019), <https://www.cnn.com/2019/02/02/us/new-york-federal-prison-no-heat/index.html>.

29. Environmentalism, political and ethical movement that seeks to improve and protect the quality of the natural environment through changes to environmentally harmful human activities; through the adoption of forms of political, economic, and social organization that are thought to be necessary for, or at least conducive to, the benign treatment of the environment by humans; and through a reassessment of humanity’s relationship with nature. Lorraine Elliot, *Environmentalism*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/environmentalism>.

the Flint water crisis to protests of the Dakota Access Pipeline³⁰ In Flint, Michigan, residents are paying fines for not paying bills for polluted water. In North Dakota, protesters were arrested for their direct action to stop the construction of the Dakota Access Pipeline. In other words, caging is a strategy—both legal, financial, and political—used against the critics of this corporatist system, which capitalizes upon and targets marginalized communities and vulnerable populations. Corporatism is “a system of interest and/or attitude representation, a particular modal or ideal-typical institutional arrangement for linking the associational-ly organized interests of civil society with the decisional structures of the state.”³¹ Meanwhile, the impacts of corporatism are also environmental in that these impacts work to silence environmental efforts and to demonstrate adverse impacts of climate change on frontline communities. That is, vulnerable communities, located in “sacrifice zones,” have less of a right to be here—in the United States or on the planet—and, therefore, require less of a need for a clean environment, including clean air, clean water, and energy access.³²

I. “SUMMUM IUS SUMMA INIURIA”

This ancient adage from Cicero, “summum ius, summa iniuria” (more laws, more injustice) inspired modern conversation about how severe laws may need to be retooled, because of the intended and unintended consequences of the increase in laws that may lead to more injustice and more inequality.³³ The work of the classical Roman legal philosopher provides a window into the foundational flaws in the current carceral state complex in the United States and elsewhere. Basic notions of justice and fairness are the subject of philosophical discussion for centuries. Going back to the historical roots of the Anglo-American legal tradition in Roman law sheds light as to why the carceral state’s emphasis on prison profiteering has the opposite effect of what is often in-

30. See generally Nadia Ahmad, *The Baseline Bar*, 65 KANSAS L. REV. 579 (2017).

31. Philippe C. Schmitter, *Still the Century of Corporatism?*, 36 REV. POLITICS 85, 86 (1974).

32. See generally Robert D. Bullard, *Sacrifice Zones: The Front Lines of Toxic Chemical Exposure in the United States*, ENVIRONMENTAL HEALTH PERSPECTIVE (June 2011),

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3114843/> (book review).

33. M. TULLIUS CICERO, DE OFFICIIS, BOOK I: MORAL GOODNESS, SECTION 33 (1913), <http://data.perseus.org/citations/urn:cts:latinLit:phi0474.phi055.perseus-eng1:1.33>.

tended. In other words, more laws, more regulation, more prisons, more detentions, and more inhumane conditions create more chaos, uncertainty, and insecurity in communities.

Cicero's notion of "summum ius, summa iniuria" re-emerged in the twentieth century following the publication of Johannes Stroux's book of the same name.³⁴ "This rigidity of established laws can be softened, even in Roman law, by interpretation and by ratio iuris, legal reasoning."³⁵ Law professor Bernard Jacob notes:

This adage, which appears in Cicero, makes the strongest possible case for a saving equity (ratio iuris) in the application of the law, for it argues that a right most rigorously applied (summum ius) may itself turn out to be the acme of wrong (summa iniuria). Stroux attributes this humanizing effect of legal interpretation, ratio iuris, to a conscious application of rhetorical training and more generally argues that rhetoric and not philosophy, Stoic or otherwise, was the source of such reasoning.³⁶

Other legal scholars were intrigued by Cicero's interpretation of rigid legal structures.³⁷ German jurist Theodor Viehweg connected how debates about Roman law relating to the idea of injustice looked at the extent to "which legal reasoning was itself deeply affected by the rhetorical education that most advocates and ju-

34. See generally JOHANNES STROUX, *SUMMUM IUS, SUMMA INIURIA* (1949).

35. Bernard E. Jacob, *Ancient Rhetoric, Modern Legal Thought, and Politics: A Review Essay on the Translation of Viehweg's "Topics and Law"*, 89 *TOPICS AND LAW* 1622, 1652–53 (1995) ("The source of ratio iuris may have come from the study of rhetoric.").

36. *Id.*

37. Law professor Darien Shanske looks at the gradual recognition of the unfairness of laws:

That the strict law at times worked unfairly (summum ius, summa iniuria) was recognised in the Edictal reforms and the juristic "interpretatio." It has recently been shewn with a wealth of illustration that the modification of law in the direction of aequitas, inspired by Greek philosophy, through the rhetoricians, was strongly operative among the lawyers from Cicero's time. It tends to interpretation according to intent, rather than literal (voluntas as against verba) and to such interpretation as gives a fair result, which is not quite the same thing. The changes are only gradually realised, but their prominence in republican times is a serious difficulty in the way of those writers who are inclined to see in allusions to "voluntas" and the like signs of Byzantine interpolation.

Darien Shanske, *Four Theses: Preliminary to an Appeal to Equity*, 57 *STAN. L. REV.* 2053, 2061–62 (2005).

See also W.W. BUCKLAND & PETER STEIN, *A TEXT-BOOK OF ROMAN LAW FROM AUGUSTUS TO JUSTINIAN* 55 (3d ed. 1966).

risconsults would have had as part of their background.”³⁸ The idea of “*summum ius summa iniuria*” offers a solution to legal predicaments relating to punishment and carcerality. The source of the laws, as well as their reasoning, is called into question. Legal scholar and philologist Max Radin also discussed Cicero’s view on the law with respect to interpretation of statutes.³⁹ He observes: “The desire of any one adversely affected by a general rule to have his case made exceptional is not difficult to understand.”⁴⁰ Cicero’s view of the law underscores concerns of punishment, carceral systems, and justice. The rise of prison populations and the increase in prison sentences have exacerbated inequality and confounded attempts to secure equality. Mass incarceration is a way to assert control over populations through the law.

History scholar Ari Bryen observed the salience of Cicero’s adage particularly toward the end of the Roman empire.⁴¹ However, Bryen cautions that “the narrative of the state’s attempt to exert control over an unwieldy system is not the entire story.”⁴² Bryen suggests: “[T]he Roman provincial experience of the ‘rule of law’ is intimately linked to, and in some senses coterminous with, the experience of empire.”⁴³ The sense that law in its totality is concerned not simply about justice, but also control and empire, offers a clearer understanding of the role of the law in society.

38. Bernard E. Jacob, *Ancient Rhetoric, Modern Legal Thought, and Politics: A Review Essay on the Translation of Viehweg’s “Topics and Law”*, 89 TOPICS AND LAW 1622, 1652–53 (1995).

39. See Max Radin, *A Short Way with Statutes*, 56 HARV. L. REV. 388, 423-24 (1942).

40. *Id.* at 403 n. 33 (“But both popular feeling and moral philosophy have concurred in believing that a generalization which suffers no exceptions is likely to be harsh in many instances. The moralist doctrine is illustrated by the vast literature to which the Aristotelian doctrine has given rise. The popular view crystallized in the maxim *summum ius summa iniuria*, which became the favorite phrase for those who wished to express their dislike of law in general.”).

41. Ari Z. Bryen, *Judging Empire: Courts and Culture in Rome’s Eastern Provinces*, 30 LAW & HIST. REV. 771, 808 (2012) (“There is a case to be made for this kind of statement; according to Cicero the problem was that individuals abused the letter of the law to unfairly or unjustly go after their opponents. He preferred, unsurprisingly, a system that would have been rationalized (in a philosophical sense) to take account of higher goods.”).

42. *Id.* at 809.

43. *Id.* (“There is a broader point that would seem to be relevant to other imperial situations. Approaching the courtroom as a ritualized space of communication means that the historian or anthropologist needs to take account of the myriad ways in which ritual can serve as a form of power; not just the power of those who notionally run the world, but also of the power of those who do not.”).

The law provides a mechanism to exert control and subdue populations. Through the use of mass incarceration, modern empires, whether nations or transnational corporations in the corporatist view, are able to expand in an unyielding manner. Yet, once the threat multiplier of climate change emerges, the mass incarceration efforts to subdue populations become inadequate, even as an attempt to increase incarceration intensifies. Legal scholars J.B. Ruhl and Daniel Martin Katz have explored legal complexity at the design and performance phases as factors that impact equity, fairness, legitimacy, and transparency.⁴⁴ The next section considers the impacts of climate change on the aims of the carceral state. I argue that systems of the carceral state are another way that climate change adversely impacts and hurts marginalized communities. A vested interest of society is to protect its most vulnerable instead of exploiting them in the age of climate crises.

II. THE CARCERAL STATE: “PEOPLE WAS INNOCENT, COULDN’T GET LAWYERS”

I could stand in the middle of Fifth Avenue and shoot somebody, and I wouldn’t lose voters.

— Donald J. Trump in Iowa in January 2016⁴⁵

This bewildering statement by the future U.S. President epitomizes the brutish and totalitarian truth of crime and punishment. Some have described that statement as “the essential moment in his unexpected rise to power.”⁴⁶ President Trump was not concerned about the punishment of his hypothetical crime. In fact, he knew with high level of certitude that shooting someone in public would have minimal to no impact on his popularity. In fact, the lawless statement energized his base and raised his national profile. Trump understood and delineated a fundamental tenant of the rule of law: the issue of the crime is not what is done, but who does it.⁴⁷ How will the law view the criminal? Not,

44. See generally J.B. Ruhl and Daniel Martin Katz, *Measuring, Monitoring, and Managing Legal Complexity*, 101 IOWA L. REV. 191 (2015).

45. Jeremy Diamond, *Trump: I Could ‘Shoot Somebody and I Wouldn’t Lose Voters’*, CNN (Jan. 24, 2016), <https://www.cnn.com/2016/01/23/politics/donald-trump-shoot-somebody-support/index.html>.

46. Roger Berkowitz, *Why Arendt Matters: Revisiting “The Origins of Totalitarianism”*, L.A. REVIEW OF BOOKS (Mar. 18, 2017), <https://lareviewofbooks.org/article/arendt-matters-revisiting-origins-totalitarianism/>.

47. Michael Gordon, Opinion, *Trump isn’t the ‘law and order’ president. He’s the ‘lawless and disorder’ president*, BUSINESS INSIDER (August 30, 2020),

what is the crime? This divergence between “crime” and “criminal” lies at the heart of the carceral state.

A. DEFINING THE CARCERAL STATE: “LEFT YOU OUT TO ROT”

The definition of the “carceral state” has been analogized to the “welfare state” based on the size of the prison population, the harsh sentences, and the disproportionate impact on low-income, minority communities.⁴⁸ The American logic of the carceral state mirrors other countries which have also implemented punitive and lengthy prison sentences that adversely impact marginalized communities.⁴⁹ This process of increased carcerality could be occurring independently across the globe, yet investigative reporting suggests the U.S. Department of State has been providing rule of law initiatives to expand carcerality in foreign counties.⁵⁰ Thus, not only has America expanded its own systems, the Amer-

<https://www.businessinsider.com/trump-is-not-law-order-president-lawless-disorder-rnc-2020-8>.

48. See Marie Gottschalk, *Bring It On: The Future of Penal Reform, The Carceral State, and American Politics*, 12 OHIO STATE J. CRIM. L. 559, 559-61 (2015); Marie Gottschalk, *Democracy and the Carceral State in America*, 651 ANNALS AM. ACAD. POL. & SOC. SCI. 288, 288-90 (2014); Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1693-95 (2006).

49. Vicky Peláez, *The Prison Industry in the United States: Big Business or a New Form of Slavery?*, GLOBAL RESEARCH (June 14, 2020), <https://www.globalresearch.ca/the-prison-industry-in-the-united-states-big-business-or-a-new-form-of-slavery/8289>.

50.

The program began in Latin America during the “war on drugs” of the early 2000s, spread through the Middle East during the “war on terror,” and then to the rest of the world as part of an Obama-era counterterrorism strategy. The State Department has trained around 50,000 prison officers across the world over the past decade and those officers have educated at least another 60,000. It is currently involved in the prison systems of 38 countries, deploying more than 100 full-time advisers.

The scale of the US’s efforts to remodel prisons around the world in its image raises some serious questions, given the reputation of its own correctional facilities. The US has been criticized at home for its overreliance on solitary confinement and its out-of-control prison population — although the US has only 5% of the world’s population, it contains 25% of its prisoners, or more than 2.2 million people. And scandals have hit US prisons abroad, from Guantanamo to Abu Ghraib, while a US detention center in Iraq was where ISIS’s leaders first organized.

US efforts to remake foreign prisons have made considerable strides since the debacles in the Middle East in the early 2000s, but as Donald Trump adopts a hard-power foreign policy, the US may again find itself embroiled in controversial overseas facilities. Already the new president has stated his interest in bringing back Bush-era policies such as the CIA’s notorious “black site” prisons.

Doug Bock Clark, *The US Wants to Remake the World’s Prisons in Its Own Image*, BUZZFEED (May 28, 2017), <https://www.buzzfeednews.com/article/dougbockclark/america-remakes-the-worlds-prisons#.xrk3p4Be>.

ican idea of the carceral state has also expanded through rule of law programs for prison systems.⁵¹

Changes in the carceral state that may actually reduce crime and carcerality itself tend to be ignored by policymakers and legislators in favor of programs which increase construction of prisons and create jobs for prison workers. Public attention tends to be diverted away from substantive reforms.⁵² These types of reforms include improving police practices, prosecutorial discretion and decision-making, and sentencing guidelines for judges.⁵³ Carceral citizenship has an immobilizing impact on individuals and communities, stripping them of citizenship and creating tiers of citizenship.⁵⁴ The distinction in the impact of carcerality to citizenship and differences of citizenship based on race are significant. Social work scholars Reuben Jonathan Miller and Amanda Alexander argue that mass incarceration has produced a new class of citizens, the carceral citizen.⁵⁵ The social conditions cre-

51. *America Is Exporting its Extreme Prison System Across the Globe*, EQUAL JUSTICE INITIATIVE (June 2, 2017), <https://eji.org/news/america-exporting-abusive-prison-system-across-globe/> (“Starting in 2000, the United States spent \$140 million to overhaul Colombia’s justice system as part of the ‘war on drugs.’ Six new prisons were built between 2000 and 2003 based on blueprints from a federal prison in Florida. Sixteen more prisons were built over the next dozen years, increasing capacity by 70 percent, and guards were trained using American instruction manuals translated into Spanish. Colombia hired Rudy Giuliani as a consultant and adopted his ‘broken windows’ policy, which includes harsh punishment for minor offenses.”).

52. See Michael A. Rosengart, *Justice Reinvestment in Alaska: The Past, Present, and Future of SB 91*, 34 ALASKA L. REV. 237, 268–69 (2017).

53. *Id.*

54. Scholars Reuben Jonathan Miller and Amanda Alexander cite critical geographer, Jenna Loyd, who writes, ‘Black and Latino communities (particularly, though not exclusively) live with the burden of a vast system of criminalization, policing, and carceral immobilization. . . . The power of criminalization does not necessarily strip citizenship to the point of statelessness (as was [Hannah] Arendt’s concern), but it does *strip and differentiate rights among citizens*.’ Advancing Michael Omi and Howard Winant’s racial formation theory, Loyd exhibits how the creation, embodiment, transformation, and destruction of racial categories occur at the regional level through U.S. immigration policy, using Haiti as a case study. Loyd’s work demonstrates how ‘criminalization . . . serves as a means to rationalize the repressive restructuring of the social welfare state, stripping entitlements from undeserving citizens.’

Reuben Jonathan Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 MICH. J. RACE & L. 291, 295 (2016) (emphasis added).

55. Miller and Alexander observe:

Carceral citizenship . . . rests on a presumption of action – in this case the presumption that one has broken a law. Therefore, while carceral citizenship interacts with race, and other axes of difference like class and gender in obvious ways, it is not simply one new form of racial domination built in the image of slavery, or a racial project that produces a new racial catego-

ated as the result of carcerality impact individuals because of increased police presence, repeat cycles of arrests and carcerality, the stain of a criminal record limiting mobility, shifting rehabilitative efforts, and changing policy of the reach of the state.⁵⁶ Decades of research illustrate that incarceration is unrelated to crime, but instead is a precision strategy to exclude for political repression purposes.⁵⁷ Poet and scholar, Jackie Wang, considers the widespread efforts that influence carcerality: “anti-black racism, predatory lending, algorithmic policing, privatized prisons, credit scams, data analytics and histories of exclusion.”⁵⁸ People of color have been controlled through mass incarceration from slavery to the New Jim Crow.⁵⁹ Extensive criminological data

ry. Carceral citizenship is instead a novel *social arrangement* produced by crime control *practices* born in the era of mass incarceration and its community analogue, mass supervision. Unlike citizenship under the Fourteenth Amendment, which is based on ancestry (via birthright), it is a new form of citizenship based on the presumed actions of its class. Differential treatment of the carceral citizen is therefore based solely on his or her status as a legal offender, or someone who has been presumed to have broken a law, and is arguably constitutionally justified.

The carceral citizen is *not* a second-class citizen in a traditional sense. Carceral citizenship does not engender a constitutional contradiction, where one’s citizenship rights are not enforced, and he or she may therefore invoke protections from the state based on their right to full social, civic and economic participation. Rather, the carceral citizen has unique rights, responsibilities, and claims that he or she is permitted to make on the state. The carceral citizen, then, does not inhabit a racial category (a category based on perceived ancestry) but an alternate citizenship track and a novel form of citizenship. This is an important distinction. The carceral citizen experiences social, political, and economic life in ways that are unique to members of his or her class, and are not typically shared by even the most marginalized people who have traditionally been marked by their race, religion, ethnicity, or gender. Indeed, the carceral citizen is a novel legal and social category that has emerged in the age of mass incarceration. Carceral citizens face constitutionally justified forms of exclusion based solely on the presumption of legal guilt at some point in their lifetimes.

Reuben Jonathan Miller & Amanda Alexander, *The Price of Carceral Citizenship: Punishment, Surveillance, and Social Welfare Policy in an Age of Carceral Expansion*, 21 MICH. J. RACE & L. 291, 295 (2016).

56. *See id.*

57. *See generally* THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES (Jeremy Travis and Bruce Western, & Steve Redburn, eds., 2014), https://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf.

58. *Carceral Capitalism: An Interview with Jackie Wang*, PRX, <https://beta.prx.org/stories/283003> (last visited Nov. 8, 2020).

59. Dianne Post, *Shelf Life*, WIS. LAW. (Oct. 12, 2018), (reviewing JACKIE WANG, *CARCERAL CAPITALISM* (2018)), <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=91&Issue=9&ArticleID=26634> (“In one of the least violent times in American history, the public is misled to believe we live in a very violent society. The militarization of the police follows and leads to more state violence. Mass incarceration intertwines with the debt society to shore up

suggests racist variables are at play for mass incarceration.⁶⁰ Political scientist Marie Gottschalk observes that “while the prison-industrial complex was not a central factor in constructing the carceral state, it has become a significant factor in sustaining it today.”⁶¹ She notes that the use of “prison guards unions, pri-

consumerism under capitalism and for the production of cheap goods, especially for military and state institutions. As the states fight a fiscal race to the bottom with tax breaks for large corporations that shift the burden down the line to counties and cities and the middle and poor classes, vulnerable individuals become targets for extortion.”); see generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012).

60. See Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1585–86 (2019).

Comparisons to peer European First World/Global North nation-states further indicate that the contemporary U.S. carceral regime may well constitute a singular category of historicized analysis. Professor Franklin Zimring, a renowned criminologist, writes, “the rate of imprisonment achieved by 2007 in the United States was three times that of any fully developed nation at any point in the post World War II era,” while a 2018 report by the Prison Policy Initiative (PPI) notes that the United States imprisons and jails at a rate 500% (United Kingdom) to 1800% (Iceland) higher than any of the other founding NATO member nations. According to the Bureau of Justice Statistics, the United States has retained a population of 2,000,000 or more incarcerated people since the early 2000s. Further, the astronomical growth of the U.S. carceral regime since the 1970s cannot be attributed to any growth in “crime rates” (which have actually declined over the period in question).

A vast archive of criminological data consistently demonstrates that criminal justice-based incarceration is structured in gendered racist state violence. The Sentencing Project has recently summarized the vast asymmetries in the lifetime likelihood of imprisonment for U.S. residents born in 2001: 1 out of 17 for white men, 1 out of 6 for Latino men, and 1 out of 3 for Black men; 1 out of 111 for white women, 1 out of 45 for Latina women, and 1 out of 18 for Black women. Hispanics are incarcerated under state jurisdiction at a rate 170% higher than whites, while “[t]hirty-six states had overrepresentation of Native Americans in prisons, ranging from 1.2 times the rate for Whites in Missouri and Tennessee to 14.5 times the rate for Whites in Nevada.” While rates of incarceration in the United States have slightly declined over the last decade or so and the gap between the number of incarcerated Blacks and whites is shrinking, the Pew Research Center reports that as of 2016, Black people are still subjected to state captivity at a rate more than 500% greater than whites.

Id.

61. Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1700–01 (2006). Gottschalk writes:

It is important to keep in mind that the “race to incarcerate” began in the 1970s at a time when states faced comparably dire financial straits. It was sustained despite wide fluctuations in the crime rate and in public opinion over the next two decades. The economic burden of the burgeoning carceral state was a glaring omission in public policy debates at the time.⁴⁵ In the 1980s, many foes of the prison buildup mistakenly took comfort in the belief that fiscal constraints would curb the number of people sent to prison. Yet as Norval Morris warned in his closing address to a conference on prison overcrowding more than two decades ago, fiscal concerns are “an extraordinarily weak reed to rely on” because “states and the federal government are capable of the most extraordinary absorption of increased numbers.”

vate prison companies, and the suppliers of everything from telephone services to Taser stun guns press on local communities, states, and the federal government” to highlight the trend of maintaining the carceral state.⁶²

The impacts of slavery and mass incarceration carry on over time. Political scientist Naomi Murakawa notes that “racial criminalization means that blacks are marked even without an official criminal record.”⁶³ Murakawa also argues that carceral feminism compounds these concerns, “highlight[ing] the mutually reinforcing dynamics of carceral expansion, coopted resistance, and falsely affirmed state legitimacy.”⁶⁴

Marie Gottschalk, *Dismantling the Carceral State: The Future of Penal Policy Reform*, 84 TEX. L. REV. 1693, 1700–01 (2006).

62. *Id.*

63. Naomi Murakawa, *Racial Innocence: Law, Social Science, and the Unknowing of Racism in the US Carceral State*, 15 ANN. REV. L. & SOC. SCI. 473, 483 (2019). *See id.* (internal citations omitted) (“Sociologist Pager’s (2007) groundbreaking racial audit studies, which assess callback rates for entry-level jobs, found that any kind of criminal record, even a low-level felony conviction without evidence of incarceration, reduces callback rates for white and black applicants. However, white applicants with a criminal record were three times as likely to receive a callback as equally qualified blacks with a criminal record (17% versus 5% called back). Further still, white applicants with a criminal record were just as likely to receive a callback as black applicants without any criminal history (17% versus 14% called back; the difference is not statistically significant). Internet search results are perhaps a more mundane example of reinforcing presumptions of black criminality. Compared with Google searches of white-sounding names (e.g., Geoffrey or Emma), searches of black-identifying names (e.g., DeShawn or Jermaine) are more likely to deliver results suggestive of an arrest record. Results from a potential employer’s Google search may in effect compound racialized wealth inequality, even if based on misinformation.”).

64. According to Murakawa, “‘carceral feminism’ critically names efforts to criminalize away the routine violence of rape, domestic violence, and heteropatriarchy.” Naomi Murakawa, *Racial Innocence: Law, Social Science, and the Unknowing of Racism in the US Carceral State*, 15 ANN. REV. L. & SOC. SCI. 473, 485 (2019). She notes:

As a major “lever of legitimacy for expanding the carceral state,” the Violence Against Women Act (VAWA) delivered unprecedented federal funding for sexual and domestic violence prosecution. VAWA was nested in the omnibus Violent Crime Control and Law Enforcement Act of 1994, which allocated nearly \$10 billion for state prison construction and subsidized local hiring of more police officers. Other manifestations of carceral-feminist expansion include mandatory arrest policies and pro-prosecution protocols. Women who do not “fit the traditional image of the innocent victim”—that is, black women, women of color, poor women, sex workers, lesbians, and trans women—are likely to be criminalized rather than protected through such policies. Much like “hate crime” legislation, carceral feminism builds punitive capacity while enabling lawmakers to stand in disavowal of state-sanctioned racial heteropatriarchy.

B. (IM)MIGRANT CAGES: “STUCK AT THE BORDER”

The conceptualization of the carceral state is further problematized by the expansion of the immigration caging machines, iterated through migrant detention facilities.⁶⁵ Upon visiting a border station in Clint, Texas that houses migrant children, attorney Elora Mukherjee said, “There is a stench. The overwhelming majority of children have not bathed since they crossed the border.”⁶⁶ As director of the Immigrants’ Rights Clinic at Columbia Law School, Mukherjee was part of a group of lawyers allowed access to the facility. They described the horrors unfolding in the U.S. immigration detention facility that was exceeding its intended capacity and capabilities. In May 2019, *The New York Times* reported that the Department of Homeland Security’s inspector general issued an alert of “dangerous overcrowding” for adult migrants held at the border processing center in El Paso, which had upwards of 900 migrants held in a facility that had capacity for 125.⁶⁷ In some instances, cells constructed for thirty-five people held 155 people.⁶⁸ News agencies confirmed suspicions of inhumane conditions in the facility.⁶⁹

Naomi Murakawa, *Racial Innocence: Law, Social Science, and the Unknowing of Racism in the US Carceral State*, 15 ANN. REV. L. & SOC. SCI. 473, 485 (2019) (Internal references omitted).

65. See generally Felipe Hernandez, *Not a Matter of If, But “When”*: Expanding the Immigration Caging Machine Regardless of Nielsen, 22 HARV. LATINX L. REV. 86 (2020).

66. Caitlin Dickerson, *There is a Stench’: Soiled Clothes and No Baths for Migrant Children at a Texas Center*, N.Y. TIMES (June 21, 2019), <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

67. *Id.*

68. *Id.*

69. The N.Y. Times reports:

A chaotic scene of sickness and filth is unfolding in an overcrowded border station in Clint, Tex., where hundreds of young people who have recently crossed the border are being held, according to lawyers who visited the facility this week. Some of the children have been there for nearly a month.

Children as young as 7 and 8, many of them wearing clothes caked with snot and tears, are caring for infants they’ve just met, the lawyers said. Toddlers without diapers are relieving themselves in their pants. Teenage mothers are wearing clothes stained with breast milk.

Most of the young detainees have not been able to shower or wash their clothes since they arrived at the facility, those who visited said. They have no access to toothbrushes, toothpaste or soap.

Caitlin Dickerson, *There is a Stench’: Soiled Clothes and No Baths for Migrant Children at a Texas Center*, N.Y. TIMES (June 21, 2019), <https://www.nytimes.com/2019/06/21/us/migrant-children-border-soap.html>.

Migration centers in Mexico are also facing overcrowding and allegations of human rights abuses. Mexico serves dual roles as both a source and transit country for migrants who are traveling to other North American countries, which has led it to become “one of the most active detaining countries in the world” according to a report by the Global Detention Project.⁷⁰ In January 2020, the National Institute of Migration (INM) issued a decision to suspend “access by all religious associations and NGOs to the country’s migration detention centers.”⁷¹ Hours later, the Ministry of the Interior in Mexico denied the claims.⁷² As a result, Amnesty International and other organizations called for clarity between these conflicting reports.⁷³

The increased frequency and intensity of immigration raids has created uncertainty, fear, and trauma.⁷⁴ For example, in the

70. *Mexico Immigration Detention Profile*, GLOBAL DETENTION PROJECT, <https://www.globaldetentionproject.org/countries/americas/mexico> (last visited Sept. 1, 2020).

71. *Amnesty International Demands NGO Access to Mexico’s Migrant Detention Centers*, AMNESTY INT’L (Jan. 1, 2020), <https://www.amnestyusa.org/press-releases/amnesty-international-demands-clarity-and-guarantees-over-ngo-access-to-migrant-detention-centers/>.

72. *Id.*

73. Erika Guevara-Rosas, Americas director at Amnesty International, said as result of the situation:

The uncertainty generated by the government’s contradictory statements regarding the prohibition of access to migrant detention centers for civil society organizations is very grave. The authorities must not jeopardize the lives and rights of thousands of people in need of protection who are detained in these places.

This arbitrary decision by the National Institute of Migration hinders the fundamental work of legal assistance and verification of the situation of migrants and asylum seekers, and increases the vulnerability of these people, making clear the Mexican government’s intention to evade scrutiny of its compliance with its international obligations to protect human rights.

The Mexican government should promptly provide clear information about the measures taken to protect the rights of migrants and asylum seekers, and publicly recognize the work of organizations that defend their rights, granting them immediate access to all migrant detention centers.

Amnesty International Demands NGO Access to Mexico’s Migrant Detention Centers, AMNESTY INT’L (Jan. 1, 2020), <https://www.amnestyusa.org/press-releases/amnesty-international-demands-clarity-and-guarantees-over-ngo-access-to-migrant-detention-centers/>. Mexican authorities have reportedly deported more than 2,000 people to this country in just nine days. *Id.*

74. Maye Primera, *Months After ICE Raids, an Impoverished Mississippi Community is Still Reeling*, THE INTERCEPT (Oct. 13, 2019), <https://theintercept.com/2019/10/13/ice-raids-mississippi-workers/> (“These people are afraid to talk, to go out, they don’t want to be seen. I am running the risk of talking because I want people to hear us, to realize that we are all going through a very difficult time. Many people may think that now things are calm, but that’s not true,” Elena said

1960s, chicken companies began to bring workers from Mexico and Guatemala to Mississippi.⁷⁵ According to the Pew Research Center, nearly 20,000 undocumented immigrants live in Mississippi, constituting 0.7% of the total state population and thirty-five percent of the immigrant population in 2016.⁷⁶

On the first day of school on August 8, 2019, immigration officials conducted a massive raid, rounding up 680 undocumented workers in seven food processing plants in Mississippi.⁷⁷ Most of the undocumented workers were from villages in Guatemala.⁷⁸ Catholic Cardinal Alvaro Ramazzini traveled to Mississippi to show solidarity with Guatemalan immigrants, who were subjected to the largest state deportation raid in U.S. history.⁷⁹ Cardinal Ramazzini told them: “You are not criminals . . . you are here because your own country was not able to give you what you have the right to have.”⁸⁰ The political and economic conditions in Guatemala have deteriorated over time. In addition to ongoing instability, climate change has emerged as a threat multiplier in Guatemala, leading to drought, famine, and flooding. In fact, according to National Geographic, “Guatemala is consistently listed among the world’s 10 most vulnerable nations to the effects

in recent interview. ‘As things stand, the future is very uncertain for us Hispanics.’”).

75. *Id.* (“At first, most were Mexicans, who eventually moved on to better jobs in Jackson, the state’s capital. In the last 15 years, more Guatemalans have arrived, especially from the San Marcos and Huehuetenango departments, which border Mexico. This immigrant community has been established for four generations, and many of the families had mixed legal status, living always in fear of being separated by deportation. That fear had grown sharper since Trump took office, and the raid confirmed it.”).

76. “According to Pew, 21 percent of undocumented adults in Mississippi have been in the country for five or more years, and their children represent 1.8 percent of elementary and high school students in the state’s public schools.” *Id.*

77. See generally Dianne Gallagher, Catherine E. Shoichet, & Madeline Holcombe, *680 Undocumented Workers Arrested in Record-Setting Immigration Sweep on the First Day of School*, CNN (Aug. 9, 2019), <https://www.cnn.com/2019/08/08/us/mississippi-immigration-raids-children/index.html>.

78. Charles Bethea, *After ICE Came to Morton, Mississippi*, THE NEW YORKER (Oct. 31, 2019), <https://www.newyorker.com/news/dispatch/after-ice-came-to-morton-mississippi>.

79. Christopher White, *Guatemalan Cardinal in Mississippi Brings Hope to Immigrants After Massive Raid*, CRUX (Dec. 26, 2019), <https://cruxnow.com/church-in-the-usa/2019/12/guatemalan-cardinal-in-mississippi-brings-hope-to-immigrants-after-massive-raid/>.

80. *Id.*

of climate change.”⁸¹ Yet, those who are fleeing due to climate-induced events are not given refugee status.⁸² Climate refugees are not recognized under the 1951 Refugee Convention.⁸³

The state’s response to overflowing migrant and refugee populations globally has been to detain, imprison, and deport them back to their home countries where they face increased peril. The World Bank estimated that Latin America, sub-Saharan Africa, and Southeast Asia will produce 143 million more climate migrants by 2050.⁸⁴ A study by the World Food Programme found “a trend of younger and more vulnerable people leaving food-insecure areas, especially in the Dry Corridor, a drought-prone area that crosses [El Salvador, Guatemala, and Honduras].”⁸⁵

The next section considers how the changing climate impacts prison and detention facilities themselves. Those who are already facing starvation and malnutrition will enter systems that cage them from fleeing climate-induced events—both sudden onset and/or slow onset weather disasters. In one moment, climate change is forcing populations into climate cages in the form of prisons and detention centers. In the next moment, these populations face harsh conditions in prison due to inadequate heating and cooling systems in prisons. In this manner, the idea of climate cages demonstrates how overlapping events harm marginalized communities, whether minorities in the United States or lower-income groups in Third World countries. Attorney Eli Keene notes, “anecdotal evidence suggests that discrimination has often forced racial minorities to settle in more flood-prone areas where they are more vulnerable to extreme weather

81. Gena Steffens, *Changing Climate Forces Desperate Guatemalans to Migrate*, NATIONAL GEOGRAPHIC (Oct. 23, 2018) <https://www.nationalgeographic.com/environment/2018/10/drought-climate-change-force-guatemalans-migrate-to-us/> (“Increasingly erratic climate patterns have produced year after year of failed harvests and dwindling work opportunities across the country, forcing more and more people . . . to consider migration in a last-ditch effort to escape skyrocketing levels of food insecurity and poverty.”).

82. *Id.*

83. *Id.*

84. JOHN PODESTA, THE BROOKINGS INSTITUTE, *THE CLIMATE CRISIS, REFUGEES, AND MIGRATION* (2019), <https://www.brookings.edu/research/the-climate-crisis-migration-and-refugees/>.

85. *New Study Examines Links Between Emigration and Food Insecurity in the Dry Corridor of El Salvador, Guatemala and Honduras*, WORLD FOOD PROGRAMME (Aug. 23, 2017), <https://www.wfp.org/news/new-study-examines-links-between-emigration-and-food-insecurity-dry-corridor-el-sa>.

events and sea level rise.”⁸⁶ Legal scholars Jody Freeman and Andrew Guzman observe:

A large, hegemonic player like the United States internalizes a significant fraction of the global gains of climate change abatement, making it worthwhile to bear at least some costs. Although this might result in a less than optimal amount of mitigation, the reductions in emissions could still be significant and meaningful in terms of mitigating impacts.⁸⁷

When members of a marginalized community are held in detention or incarceration, they face a compounded impact of the climate cage. Not only are such persons more likely to be trapped economically and geographically to a certain area that limits mobility due to climate change, but such individuals face more severe and adverse impacts as a result of where they are situated in the carceral system—whether through day-to-day inadequacies of proper heating and cooling systems or through extreme conditions.

C. HEATING AND COOLING IN PRISONS: “STILL NEED WATER”

A number of factors determine how changing atmospheric dynamics will impact how hot and cold weather adversely affects prison conditions. In a study for the Sabin Center for Climate Change, Daniel Holt said: “Rising temperatures and increasingly harsh extreme-heat events will jeopardize the health of inmates and correctional officers alike, and will stress the physical plant of the correctional sector.”⁸⁸

Holt considers the key factors of the correctional sector that will be impacted by climate change:

- **The correctional sector spans diverse jurisdictions, each with its own systems and facilities, laws and policies.** The federal government and all 50 states oper-

86. Eli Keene, *Resources for Relocation: In Search of a Coherent Federal Policy on Resettling Climate-Vulnerable Communities*, 48 TEX. ENVTL. L.J. 119, 141–42 (2018) (“One analysis of cities in the American south showed that African Americans were significantly more likely to live in swampy low-lying areas, except for in coastal and riverine communities where property values were higher despite increased flood risk and did not correlate with a higher percentage minority population.”).

87. Jody Freeman & Andrew Guzman, *Climate Change and U.S. Interests*, 109 COLUM. L. REV. 1531, 1542 (2009).

88. Daniel W.E. Holt, *Heat in U.S. Prisons and Jails: Corrections and the Challenge of Climate Change*, SABIN CENTER FOR CLIMATE CHANGE LAW 1, i (2015).

ate prison systems. Nearly 3,000 individual jurisdictions, including counties, cities, and Indian tribes, operate jails.

- **Correctional facilities vary greatly by size, age, architecture, and security level.** Most prisons and jails were built since the phenomenon of mass incarceration began in the 1980s, but hundreds predate World War II, including around a hundred built in the nineteenth century that still house inmates. Older facilities have been added to and altered in hodgepodge fashion over the decades.
- **Close quarters and mass incarceration mean high population density in correctional facilities.** Overcrowding is a significant problem, with dozens of state prisons and hundreds of jails under court orders or consent decrees to reduce inmate populations.
- **Risk factors for succumbing to heat-related illness, including advanced age, poor mental and physical health, and the use of medications, are prevalent among the 2.2 million US inmates.** The inmate population is graying, with one in ten prisoners now fifty-five or older. Inmates over fifty are generally much less healthy than their peers in the outside world. Mental illness is widespread among inmates of all ages. Obesity, hypertension, and asthma are commonplace. Large numbers of inmates take medications that compromise the body's ability to handle heat.
- **Heat is already causing serious harm to inmates and correctional officers.** Heatstroke and other heat-related illnesses have claimed the lives of numerous inmates in recent years, while correctional officers in several prisons have suffered from heat stress.⁸⁹

Holt's key recommendations include reducing the incarcerated population, reducing susceptibility to heat stress, phasing out of vulnerable facilities, and retrofitting facilities.⁹⁰ These recommendations, though, overlook the possibility of prison abolition as a response to climate change. Part IV of this article considers a

89. Daniel W.E. Holt, *Heat in U.S. Prisons and Jails: Corrections and the Challenge of Climate Change*, SABIN CENTER FOR CLIMATE CHANGE LAW 1, ii (2015).

90. *Id.*

comprehensive response to climate change would be the abolition of prisons, migrant detention centers, and fossil fuel divestment. The purpose of such a radical approach to climate change adaptation would align with the goal of climate justice. Legal scholar Randall Abate notes that “[r]ather than focusing on the climate change phenomenon itself, climate justice focuses on the rights of those disproportionately affected by the impacts of climate change.”⁹¹ The proper response to combat the impacts of climate change on prisons is not merely to improve prisons, but to abolish them.

D. EXTREME WEATHER EVACUATIONS: “THE LIGHTS WAS OFF”

Another instance where the atmospheric dynamic will impact prison populations and the integrity of the prison structure is during extreme weather events. When Hurricane Dorian headed to the Bahamas along Florida’s coast, the Florida Department of Corrections moved more than 4,000 inmates to other facilities to avoid risks from the weather.⁹² Additionally, as a result of

91. Randall S. Abate, *Public Nuisance Suits for the Climate Justice Movement: The Right Thing and the Right Time*, 85 WASH. L. REV. 197, 199 (2010) (“The latest climate change science confirms the importance of an institutionalized climate justice framework as part of the post-Kyoto regime. The United Nations Environment Programme (UNEP) released a report in September 2009 entitled *Climate Change Science Compendium 2009*. This UNEP report underscores the need for immediate action to avoid the catastrophic climate change impacts that are projected by 2100, as well as the dangerous ‘tipping points’ that could be reached within a few decades that would have tragic implications for the world’s major ecosystems, such as the Sahara and the Amazon. The report notes that it still may be possible to avoid many of these catastrophic impacts, but only if there is ‘effective, efficient, and equitable’ action to reduce greenhouse gas emissions and states take proactive measures to assist vulnerable countries adapt to the projected impacts.”).

92. Romy Ellenbogen, *More than 4,000 Prisoners Evacuated Ahead of Hurricane Dorian as Family Members Worry*, MIAMI HERALD (Sept. 2, 2019), <https://www.miamiherald.com/news/weather/hurricane/article234639452.html> (“An inmate at Polk Correctional Institution said he’d been made to work on fixing up toilets, urinals and sinks to prepare for incoming inmates from Largo Road Prison. He said the evacuated men are being kept in an old warehouse that was defunct before the maintenance. He said inmates are sleeping in mats on the floor. One of the evacuated facilities is Tomoka Correctional Institution, which boarded up windows to prepare the building for hurricane winds on Thursday. Inside, inmates complained of excessive heat, according to family members. One woman said her husband compared the interior to a 400-degree oven.”).

damage to prisons during Hurricane Michael in 2018, more than 3,000 inmates were transferred to other facilities.⁹³

In the recent rash of wildfires, inmates were fighting fires for one dollar per hour.⁹⁴ This example shows that inmates who are already imprisoned are being tasked with improving conditions for free persons. To fight the fires, the inmates as a marginalized group enter another layer of climate change when they enter the danger zone of the fires. Not only is their life threatened by fighting the wildfires, but they are also subject to labor exploitation through low wages. More so, in the pandemic environment, inmates who would fight California fires also face higher rates of contracting and spreading COVID-19. In another instance, the U.S. Department of Justice watchdog group indicated that “[t]he federal government badly botched its response to a weeklong power failure amid a cold snap at a federal detention center in New York City last winter, fueling rumors and sparking unrest among shivering inmates.”⁹⁵

III. EXTINCTION REBELLION “STRAIGHT FROM THE GUTTER”

Extinction Rebellion started as a movement in London in 2018 to “[r]ebel for life. For the planet.”⁹⁶ The group promotes “above the ground” mass civil disobedience to create “economic disruption to shake the current political system and civil disruption to raise awareness.”⁹⁷ Considering the variety of events that can lead to marginalized groups entering a climate cage, a region trapped by adverse weather impacts or in a political upheaval, triggered by either slow-onset or sudden-onset disasters, Extinction Rebellion offers a new way of resisting old problems. For example, hydro-meteorological disasters such as flooding, hurri-

93. Ben Conarck, *Officials Confirm Nearly 3,000 Florida Inmates Evacuated Because of Prison Damage*, MIAMI HERALD (Oct. 14, 2018), <https://www.miamiherald.com/article220017375.html>.

94. Abigail Hess, *California is Paying Inmates \$1 an Hour to Fight Wildfires*, CNBC (Nov. 12, 2018), <https://www.cnbc.com/2018/08/14/california-is-paying-inmates-1-an-hour-to-fight-wildfires.html>.

95. *Feds Bungled Response to Week-Long Power Failure at NYC Jail as Inmates Shivered in Freezing Temperatures*, NBC, (Sept. 26, 2019), <https://www.nbcnewyork.com/news/local/feds-bungled-response-to-week-long-power-failure-at-nyc-jail-as-inmates-shivered/1703842/>.

96. *Our Story*, EXTINCTION REBELLION (2020), <https://extinctionrebellion.uk/the-truth/about-us/>.

97. *Id.*

canes, typhoons, cyclones, and mudslides, can cause large-scale displacement.⁹⁸ Toscano notes that “some communities affected by climate change have resorted to adaptive migration in which family members repeatedly leave and return to their homes as a way of mitigating the effects of scant resources.”⁹⁹

Extinction Rebellion provides a contra-response to neoliberal attempts to thwart environmentalism and allow for creeping totalitarianism. While fossil fuel interest may benefit a few, the reach of fossil fuel advocates in politics, media, and law distorts the reality of the negative environmental externalities and harmful public health outcomes. Therefore, movement building of Extinction Rebellion provides a way to hone in on deficits in the public opinion agenda on the need to divest in fossil fuels. U.S. iterations of Extinction Rebellion include Jane Fonda’s arrest as well as the attention generated by protestors charging the field of the Harvard versus Yale football game in 2019.¹⁰⁰ Political philosopher Hannah Arendt recognized that “adherents of movements are not motivated by material interests,” but instead “are obsessed by a desire to escape from reality because in their essential homelessness they can no longer bear its accidental, incom-

98. Julia Toscano, *Climate Change Displacement and Forced Migration: An International Crisis*, 6 ARIZ. J. ENVTL. L. & POL’Y 457, 469–70 (2015) (“A study conducted by Global Reports estimates that between 2008 and 2013, 85% of all human displacement associated with rapid-onset disasters was triggered by weather-related events; “[w]eather-related hazards displaced an average of twenty seven million people each year, with a low of 13.8 million in 2008 and a peak of 38.3 million in 2010.” In 2013, weather-related events were responsible for 94% of human displacements, forcing 20.6 million people to flee their homes that year.¹⁰⁰ In particular, hydro-meteorological events were the cause of almost all weather-related human migration between the years 2008 and 2013. Even though the exact proportions varied annually, floods caused 67% and storms 32% of weather-related human displacement over that six-year period, but the proportions varied from year to year. With sudden-onset disasters, such as Hurricane Sandy, displacement is usually temporary and return is usually a viable solution, but the ability to return to a person’s home “is dependent on the measures adopted for recovery of ‘social, economic and physical characteristics of the affected area.’” For example, in 2005, Hurricane Katrina temporarily displaced 1.5 million people; however, 300,000 residents from Louisiana and Mississippi were permanently displaced by that hurricane.”).

99. *Id.*

100. Sean Collins, *Climate Activists brought Harvard-Yale football game to a stop to protest fossil fuel investments*, VOX (Nov. 23, 2019), <https://www.vox.com/2019/11/23/20979444/fossil-fuel-protest-harvard-yale-football-game>.

prehensible aspects.”¹⁰¹ Legal scholars Kevin Stack and Michael Vandenberg have considered the regulatory implications that they refer to as the “one percent problem” with respect to climate change based on “too many contributors to a regulatory problem are very low percentage contributors to solve the problem, and the relatively small size is still taken as a reason for exempting them from regulation.”¹⁰²

Earlier iterations of Extinction Rebellion include the Valve Turner cases and protests over the Keystone XL pipeline and the Dakota Access Pipeline that resulted in mass arrests and incarceration¹⁰³ In those instances, climate activist protestors were arrested and confined in detention facilities and prisons i.e. climate cages. Section IV concludes that the only possible solutions would be to continue the push for fossil fuel divestment, prison abolition, and the abolition of Immigration and Customs Enforcement (ICE) to eliminate the need for climate cages and redirect resources to finding workable solutions to climate change adaptation versus resources for caging.

IV. NORMATIVE SOLUTIONS “HAD TO GO A LIL’ HARDER”

I’m convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a thing-oriented society to a person-oriented society. When machines and computers, profit motives and property rights are considered more important than people, the giant triplets of racism, militarism and economic exploitation are incapable of being conquered. — Dr. Martin Luther King, Jr.¹⁰⁴

The law has provided tepid solutions to the existential threat of climate change. In fact, the intensity of climate change has added to societal inequality. In the absence of more concrete solutions, I argue that in addition to fossil fuel divestment, abolition

101. Roger Berkowitz, *Why Arendt Matters: Revisiting “The Origins of Totalitarianism”*, L.A. REVIEW OF BOOKS (Mar. 18, 2017), <https://lareviewofbooks.org/article/arendt-matters-revisiting-origins-totalitarianism/>.

102. Kevin Stack & Michael Vandenberg, *The One Percent Problem*, 111 COLUM. L. REV. 1385 (2011).

103. Ahmad, *supra* note 28.

104. *MLK Speech On Vietnam Gripped Washington*, NPR (Feb. 27, 2009), <https://www.npr.org/templates/story/story.php?storyId=101240393>.

of prisons and ICE are crucial for addressing climate justice. The reach of mass incarceration will create climate cages versus workable solutions to climate change. Attorney and activist Shireen Lewis asserts that “[t]here is nothing democratic about the way things currently are in the US, including rising inequality, mass incarceration and a political system corrupted by big money.”¹⁰⁵ In light of the dire predictions of climate change leading to possible extinction of tens of millions of human beings by mid-century, a solution should be for survival, not just construction and fortification of buildings. The lessening of laws that criminalize immigration and imprison frontline communities in disproportionate rates is absolutely essential. Legal scholar Marilyn Averill recognizes that “general ethical principles define general duties that one person holds to others.”¹⁰⁶ She argues, “Law turns duties into rules about how someone can be held responsible in a given context.” This section argues that urgent action for halting extinction include total and absolute divestment from fossil fuel development as well as the abolition of prisons and ICE.

A. FOSSIL FUEL DIVESTMENT

Journalist-activist Bill McKibben founded a campaign for a fossil fuel divestment, in which he makes the “basic moral argument . . . that fossil fuels contribute to climate change and climate change is bad for the environment; therefore, fossil fuel companies are bad and should be divested from.”¹⁰⁷ Fossil Free “makes an equity argument that fossil fuel companies emit carbon dioxide for free, those emissions harm the environment, and the companies should be made to internalize the costs associated with those emissions via a carbon tax.”¹⁰⁸ Fossil fuel reserves

105. Shireen Lewis, *Climate Justice: Blacks and Climate Change*, 46 THE BLACK SCHOLAR, (2016).

106. Marilyn Averill, *Climate Litigation: Ethical Implications and Societal Impacts*, 85 DENV. U.L. REV. 899, 910 (2008).

107. Laura E. Deeks, *Discourse and Duty: University Endowments, Fiduciary Law, and the Cultural Politics of Fossil Fuel Divestment*, 47 ENVTL. L. 335, 369 (2017). “The primary economic argument is that 80% of known fossil fuel reserves must be kept in the ground if the world is to stay below the 2 degree Celsius—or aspirational 1.5 degree Celsius—target agreed upon in the Paris Accord.” Laura E. Deeks, *Discourse and Duty: University Endowments, Fiduciary Law, and the Cultural Politics of Fossil Fuel Divestment*, 47 ENVTL. L. 335, 370 (2017).

108. *Id.* (“Shareholder activism is supposedly impotent because imposing a carbon tax would be against the corporation’s self-interest. While arguing that divestment is necessary to support government imposition of a carbon tax, the campaign also ar-

would become stranded assets that would “incur[] significant write-offs and render[] fossil fuel stocks financial liabilities.”¹⁰⁹ The goal behind McKibben’s Fossil Free is also to create a climate activism movement with specific moral and political aims. Considering the South African resistance model for apartheid, proponents of divestment insist “the most important and influential consequences of divestment are not its direct impacts on share prices, but the message it sends.”¹¹⁰ Law professor Karl Coplan notes that the “civil rights struggle is not the only paradigm for fundamental social and economic change driven by law.”¹¹¹ He cites the following other movements, such as “abolition, prohibition, gender equality, school desegregation, and to a lesser extent, the twentieth century development of the administrative state, the New Deal, and the 1970s environmental law revolution.”¹¹²

B. PRISON ABOLITION

While the abolition of slavery can provide a window for divestment campaigns, the idea that slavery was actually abolished is outdated. Slavery has become institutionalized in the form of mass incarceration. Climate activists, who simply use the model of abolition but fail to see the irony of frontline communities as facing unprecedented rates of incarceration, may not recognize the intersectionality issues. Law professor Dylan Rodríguez ar-

gues that an imminent carbon tax will fatally devalue fossil fuel companies; therefore, endowments must divest to protect themselves.”).

109. Divestment is necessary to protect investors from the imminent massive devaluation. The campaign argues that “no group of shareholders would ever vote for willingly” leaving the reserves in the ground, and therefore insider strategies are pointless. *Id.* at 370. See also Joel Makower, *The growing concern over stranded assets*, GREENBIZ (Sept. 10, 2019), <https://www.greenbiz.com/article/growing-concern-over-stranded-assets>. “A stranded asset is something — a piece of equipment or a resource, for example — that once had value or produced income but no longer does, usually due to some kind of external change, including changes in technology, markets and societal habits.” *Id.*

110. Jonathan M. Gilligan, *Carrots and Sticks in Private Climate Governance*, 6 TEX. A&M L. REV. 179, 190 (2018).

111. Karl S. Coplan, *Fossil Fuel Abolition: Legal and Social Issues*, 41 COLUM. J. ENVTL. L. 223, 272 (2016).

112. *Id.* (“At least one of these social change initiatives (prohibition) was an abject failure, another (abolition) was a complete success. The others have had moderate—but incomplete—success at achieving the degree of social restructuring.”). See also Chloe Farand, *Hundreds of Extinction Rebellion Activities Face Court, in Summer of Prosecutions*, CLIMATE HOME NEWS (July 15, 2019), <https://www.climatechangenews.com/2019/07/15/hundreds-extinction-rebellion-activists-face-court-summer-prosecutions/>.

gues that abolition calls for “a radical reconfiguration of justice, subjectivity, and social formation that does not depend on the existence of either the carceral state (a statecraft that institutionalizes various forms of targeted human capture) or *carceral power* as such (a totality of state-sanctioned and extrastate relations of gendered racial-colonial dominance).”¹¹³ Rodriguez points out that “overlapping criminal justice and policing regimes *systemically* perpetuate racial, sexual, gender, colonial, and class violence through carceral power.”¹¹⁴ Allegra M. McLeod contends:

[P]ositive substitutive abolitionist framework would operate by expanding social projects to prevent the need for carceral responses, decriminalizing less serious infractions, improving the design of spaces and products to reduce opportunities for offending, redeveloping and “greening” urban spaces, proliferating restorative forms of redress, and creating both safe harbors for individuals at risk of or fleeing violence and alternative livelihoods for persons subject to criminal law enforcement.¹¹⁵

Moreover, law professor Dorothy Roberts argues:

[P]risons will only cease to exist when social, economic, and political conditions eliminate the need for them and because installing radical democracy is crucial to preventing another white backlash and reincarnation of slavery-like institutions in response to the abolition of current ones.¹¹⁶

The collapse of the rehabilitative ideal transformed imprisonment into an end in itself. Legal scholar Stephen D. Sowle argues that “the prisoner is banished from society not as a means of transforming him or, by way of example, transforming society more

113. Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword*, 132 HARV. L. REV. 1575, 1576 (2019).

114. *Id.* (“Thus, in addition to being ineffective at achieving their generally stated goals of alleviating vulnerable peoples’ subjection to legitimated state violence, reformist approaches ultimately reinforce a violent system that is *fundamentally asymmetrical* in its production and organization of normalized misery, social surveillance, vulnerability to state terror, and incarceration.”).

115. Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1156 (2015) (“[A]n abolitionist ethic, in virtue of its structural critique of penal practices, is oriented toward displacing criminal law as a primary regulatory framework and replacing it with other social regulatory forms, rather than only or primarily moderating criminal punishment or limiting its scope or focus.”).

116. Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 43 (2019).

generally, but for the sole purpose of removing the criminal from the community.”¹¹⁷ Rikers Island protests provide an example of prison closures as a possibility for climate change mitigation.¹¹⁸ The failure of the current shackling of individuals in climate cages as a solution to the climate crisis is naïve.

As this article prepares to go to press, a worldwide pandemic has quarantined people in their homes with no foreseeable end in sight. Those who are imprisoned are further imperiled. At this historic moment, the question to ask is: why is the U.S. government prioritizing detention of undocumented immigrants and preserving the status quo in prisons? Prisoners at Rikers Island jail complex in New York fear for their lives.¹¹⁹ A routine parole violation is a death sentence.¹²⁰ And as COVID-19 spirals out of control across the country, those incarcerated in cages are most susceptible to the virus because of its nature, close quarters, lack of sanitation, lack of personal hygiene items, lack of water, and the frequency of contact with transitional peoples.¹²¹

C. ICE ABOLITION

The existence of immigration detention facilities also problematizes the existence of the carceral state. Legal scholar Megan Shields Casturo notes, “The conditions in civil detention facilities closely relate to carceral conditions in penal detention facilities, contradicting the well-established principle that immigration detention is civil in nature.”¹²² ICE facilities routinely lack adequate

117. Stephen D. Soble, *A Regime of Social Death: Criminal Punishment in the Age of Prisons*, 21 N.Y.U. REV. L. & SOC. CHANGE 497, 558 (1995).

118. In New York, abolitionists began calls for the city to shut down the notorious Rikers Island jail, “divest entirely from police and prisons,” and redirect those funds to “education, healthcare, housing, and other basic needs.” One of the groups involved in the campaign to shut down Rikers, Critical Resistance, has long been at the forefront of abolitionist organizing. *Introduction*, 132 HARV. L. REV. 1568, 1569–70 (2019).

119. Julia Craven, *Rikers Reports First Coronavirus Death as Legal Aid Calls for Prisoner Release*, SLATE (Apr. 7, 2020), <https://slate.com/news-and-politics/2020/04/the-coronavirus-crisis-among-incarcerated-people-in-new-york-claims-its-second-fatality.html>.

120. *Id.*

121. Josiah Bates, *‘We Feel Like All of Us Are Gonna Get Corona.’ Anticipating COVID-19 Outbreaks, Rikers Island Offers Warning For U.S. Jails, Prisons*, TIME (Mar. 24, 2020), <https://time.com/5808020/rikers-island-coronavirus/>.

122. Megan Shields Casturo, *Civil Immigration Detention: When Civil Detention Turns Carceral*, 122 PENN ST. L. REV. 825, 835 (2018) (“Despite the classification of

medical care.¹²³ The structural problems in funding and due process also hamper justice in the ICE detention process.¹²⁴ Further, not only have adverse impacts on migrants increased, reprisals are ratcheting up against those who provide humanitarian assistance to migrants.¹²⁵

In a South Louisiana ICE Processing Facility, Gretchen Romero, who is a Cuban migrant held in custody for the past eight months since seeking asylum, has said there is no room in her dormitory to practice social distancing while eating, sleeping, and walking.¹²⁶ She has said that more than seventy detainees in the dorm share five bars of soap and that no additional disinfectant or hand sanitizer has been provided where some detainees have already been isolated over fears of coronavirus.¹²⁷ What is so disturbing about this scenario is that ICE has sought to ramp up detention efforts of undocumented immigrants during the pan-

immigration removal proceedings and detention as being civil, immigration detention facilities are notorious for their carceral conditions.”).

123. Carl Kenneth Lipscombe, *Tylenol and an Ice Pack: An Inadequate Prescription for HIV/AIDS in Immigration Detention Centers*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 529, 547–49 (2013) (“Francisco Castaneda, a detainee housed at a San Diego detention facility, spent eleven months in immigration custody suffering from extremely painful lesions on his penis that were increasing in size and were continuously infected. While detained he complained to the medical staff about his problems and occasionally showed correctional officers blood and discharge in his underpants in order to get medical attention. Eventually, Castaneda received authorization to meet with one oncologist and several urologists who concluded that he required a circumcision to alleviate his pain and a biopsy to determine whether he was suffering from penile cancer. Despite these conclusions, the procedures were denied by USPHS and DIHS on the grounds that they were simply “elective” in nature. Several weeks later, with the help of immigration advocates, he was released from the detention facility and able to visit an emergency room for diagnosis and treatment. One week after his release from ICE custody he was diagnosed with penile cancer and admitted to the hospital to have nearly his entire penis surgically removed. Approximately one year after his penis was amputated, Castaneda died.”).

124. Anthony R. Enriquez, *Structural Due Process in Immigration Detention*, 21 CUNY L. REV. 35, 65–68 (2017); see generally César Cuauhtémoc García Hernández, *MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS* (2020).

125. Maria Cramer, *Judge Reverses Convictions of Activists Who Left Water for Migrants*, N.Y. TIMES (Feb. 5, 2020), <https://www.nytimes.com/2020/02/05/us/tucson-border-activists-conviction-reversed.html>.

126. Alan Gomez, Maria Clark, and Rebecca Plevin, *‘Terrified of Dying’: Immigrants Beg to be Released from Immigration Detention as Coronavirus Spreads*, USA TODAY (Apr. 8, 2020), <https://www.usatoday.com/story/news/nation/2020/04/07/covid-19-hits-ice-detention-migrants-say-they-cant-clean-stay-safe/2953170001/>.

127. *Id.*

demic, further compressing already tight systems.¹²⁸ The intensified immigration efforts have also led to life saving personal protective equipment not being available to health care workers, who are actually doing work to save lives.¹²⁹

CONCLUSION

I was on day Day Twenty-Six of social isolation as I completed first draft edits of this article. I entered this social isolation for purposes of self-preservation of my health and that of my family. I kept my kids home from school. Yet as we are isolating ourselves, we cannot ignore those who are incarcerated and will be most susceptible to the coronavirus. I read articles predicting when we would reach one million confirmed cases of COVID-19. Now that we reached that milestone in March of 2020 and have managed to reach six million confirmed cases at the end of August, we need to couch our discussions about coronavirus in the need to protect the most vulnerable.¹³⁰ It is absolute horror to have someone die in Rikers Island from coronavirus, because they were being held for a parole violation. Similarly, in our discussion of climate change, we cannot betray those who are imperiled because of their carceral status and lack of immigration due process. We cannot kill people for crimes of desperation from hunger.

As I enter Week Twelve of social isolation, a police precinct has been burned in Minneapolis in defiance, but also in hurt and rage for the murder of George Floyd. The plumes of fire scorch and rise high like a funeral pyre from ancient times.¹³¹ We need to burn down the edifice of the law as subjugation and subordina-

128. Tom Jawetz & Nicole Prachal Svajlenka, *Data pm the Coronavirus Outbreak in Immigration Detention Offer More Questions than Answers*, CTR FOR AM. PROGRESS: IMMIGRATION (Jun. 16, 2020), <https://www.americanprogress.org/issues/immigration/news/2020/06/16/486338/data-coronavirus-outbreak-immigration-detention-offer-questions-answers/>.

129. Alex Lubben, *ICE Is Asking for 45,000 Surgical Masks When Some Doctors and Nurses Can't Even Find One*, VICE (Mar. 23, 2020), https://www.vice.com/en_us/article/bvgamz/ice-is-asking-for-45000-surgical-masks-when-some-doctors-and-nurses-cant-even-find-one.

130. Richard Harris, *U.S. Records 6 Million Coronavirus Cases*, NPR (Aug. 31, 2020), <https://www.npr.org/2020/08/31/908031866/u-s-records-6-million-coronavirus-cases>.

131. Carlos Barria & Eric Miller, *Minneapolis police precinct burned to the ground in the third night of racially charged violence*, AMNY NEWS (March 29, 2020), <https://www.amny.com/nation/minneapolis-police-precinct-burned-to-ground-in-third-night-of-rationally-charged-violence/>.

tion. From the ashes of the outrage and disdain, we need the audacity to envision abolition of prisons and ICE along a world beyond fossil fuels. We must correct course after this pandemic and see the potentiality for sudden climate change adaptation, let us also see that the carceral state is causing a lag in preparedness. Let us remember the words of 21 Savage and Cicero to protect our most vulnerable.