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Andrea C. Armstrong  
*Loyola University*

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# Death Row Conditions Through an Environmental Justice Lens

Andrea C. Armstrong\*

## I. INTRODUCTION

Glenn Ford<sup>1</sup> lived on death row at Louisiana State Penitentiary for twenty-nine years, three months and five days. Typically, he was confined in his cell for at least twenty-three hours of a given day, seven days a week.<sup>2</sup> Glenn was convicted of the armed robbery and murder of Isadore Rozeman.<sup>3</sup> After prosecutors Martin Stroud and Carey Schimpf used six of their eight peremptory challenges to exclude African-Americans from the jury venire, Glenn was sentenced to death in 1984 by an all-white jury.<sup>4</sup> He was a devoted friend to many and, to the extent possible given his incarceration, a committed father and grandfather. Glenn Ford was released in March 2014 after the state **conceded** that he was wrongly convicted of armed robbery and murder.<sup>5</sup> During his decades on death row, he was involuntarily exposed to hazardous chemicals, sewage, toxic mold, excessive heat, rust, and lead.<sup>6</sup>

Interviewer: How often did you GI the tiers?

Mr. Ford: Well supposedly they did it once a week, but it depends on the individual at the time. When they call

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\* Professor of Law, Loyola University New Orleans College of Law. Yale Law School (J.D.); Princeton University (M.P.A.). Thanks to Emma Douglas and McKayla Smith for their tremendous research efforts, to Robert Verchick for his environmental expertise, and to the Loyola Center for Environmental Law and Land Use for financial assistance during the writing of this paper. This Article could not have been written without the friendship and trust of Glenn Ford.

1. I am also the executor of Glenn Ford's estate. The opinions in this Article reflect solely the views of the author and should not be attributed to the estate.

2. Complaint and Jury Demand at 2, Ford v. Caddo Par. Dist. Attorney's Office, No. 15-cv-00533 (W.D. La. 2015).

3. State v. Ford, 489 So. 2d 1250 (La. 1986).

4. *Id.* at 10.

5. *Id.* at 13-14.

6. Complaint and Jury Demand at 12, Ford v. Cain, No. 15-cv-00136 (M.D. La. 2015).

themselves GI, what actually is GI, and they would take all the slime, from in between both cells and pipes, which consist of human waste, old toilet paper, and what not, and they would run all that junk down the tier.

Interviewer: Really?

Mr. Ford: Yes.

Interviewer: Wait, they would take the sewage and stuff and they would run it down the . . .

Mr. Ford: Run it down the tier, because it hadn't been, uh, the way the drainage was, uh, made within that particular floor it was in front.

Interviewer: Huh.

Mr. Ford: The way they would come out of the pipe chase is in the back of the tier. And them freemen don't want that shit out where he was at, so they washed it down the tier where death row was at.

Interviewer: And how close did that get to you?

Mr. Ford: It would come all the way up in the cell.

Interviewer: Yeah.

Mr. Ford: And it's on you to get it out.

John Thompson: Get it up, get up, get your broom, get your stuff off the floor.

Mr. Ford: Umhm, and get to sweeping and mopping, hollerin' for water and everything else.

Interviewer: Did they, um, were they doing that close to the time that you left? Or was that only in the early days?

Mr. Ford: It was part of the routine.

Interviewer: So they still did that when you left?

Mr. Ford: Yeah.<sup>7</sup>

Glenn Ford died of cancer on June 29, 2015, fifteen months after his release from Louisiana State Penitentiary (also known

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7. Interview by William Most with Glenn Ford (Mar. 1, 2015).

as Angola).<sup>8</sup> He strongly believed that death row killed him, even though his legal death sentence had been rescinded by the court.

Interviewer: Do you think there is anything at the prison that could have caused your lung cancer?

Mr. Ford: Quite a few things . . . From the way the food is prepared, to all the rust around . . . quite a few things could've did it.

Interviewer: Were you . . .

Mr. Ford: Yeah, the drinking water had something like, at one point they said the Angola drinking water had something like twenty-seven different particles in it.

Interviewer: Wow . . . Were you breathing . . . uh . . . were you smoking during your time in prison?

Mr. Ford: No.

Interviewer: Did you also . . . uh, breathe in the second hand smoke of other people?

Mr. Ford: Hm, Second hand smoke, second hand gas, second hand pepper spray and everything else they put on somebody there.

Interviewer: Yeah.

Mr. Ford: To the harsh chemicals they put on the floor.

Interviewer: Do you know how many times you were exposed to pepper spray?

Mr. Ford: In the whole thirty year period?

Interviewer: Yeah, just even approximately.

Mr. Ford: About twenty.

Interviewer: Twenty.

John Thompson: Did you ever get any treatment?

Interviewer: Hum.

Mr. Ford: No.

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8. Matt Schudel, *Glenn Ford, Wrongfully Convicted in Louisiana Murder Case, Dies at 65*, WASH. POST (July 4, 2015), [https://www.washingtonpost.com/national/glenn-ford-wrongfully-convicted-in-louisiana-murder-case-dies-at-65/2015/07/04/0dfa3cec-2266-11e5-84d5-eb37ee8eaa61\\_story.html?utm\\_term=.c23ff4002fdc](https://www.washingtonpost.com/national/glenn-ford-wrongfully-convicted-in-louisiana-murder-case-dies-at-65/2015/07/04/0dfa3cec-2266-11e5-84d5-eb37ee8eaa61_story.html?utm_term=.c23ff4002fdc) [https://perma.cc/6NUY-G4BD].

John Thompson: After you was sprayed, or was it you being sprayed or someone else being sprayed?

Mr. Ford: It was someone else being sprayed.

Interviewer: Were you ever sprayed yourself?

Mr. Ford: No.

Interviewer: What did you do after you got sprayed to try and take care of yourself?

Mr. Ford: You'd try and cover up with a towel . . .

Interviewer: Yeah.

Mr. Ford: Cough – choke until it's past.

Interviewer: Wow.

Interviewer: Did you . . . uh, where would you be exposed to other people's, uh, cigarette or tobacco smoke?

Mr. Ford: Just the open tier, there's nothing in front of the tier but bars . . . and the ventilation is already poor as it is, and actually the ventilation sucks the stuff, the smoke into your cell.

Interviewer: So, you'd be in your cell and the smoke from other people's cell would be comin' in, into yours, ok.

Mr. Ford: Uhm, the smoke of whatever they'd decide to burn . . .

Interviewer: Right.

Mr. Ford: [A]nd then they had that trash, the . . . um . . . what'd they call . . . the dump.

Interviewer: Oh, yeah.

Mr. Ford: Where they burn, um, wood shavings and stuff like that from the wood shop. Sometimes they'd do it with trash, sometimes they don't.

Interviewer: And that smoke could come into your cell?

Mr. Ford: Yep, the wind blowin' just right it will.

Interviewer: Was that, uh, a trash incinerator for the prison? Like was that, was that . . .

Mr. Ford: For the main prison? No it was the dump site for the camp that we was in.

Interviewer: Ok, but it was part of the Angola . . .

Mr. Ford: Trash dump?

Interviewer: Yeah.<sup>9</sup>

Glenn's story of the conditions on death row is a story about environmental justice. His accounting forces us to see prisons as involuntary homes, where residents are held captive to environmental harms. Yet, the experience of Glenn and others sentenced to live on death row are largely excluded from environmental justice conversations.<sup>10</sup>

The U.S. Environmental Protection Agency (EPA) itself has acknowledged that carceral facilities present environmental challenges.<sup>11</sup> In 2007, the EPA noted that “[p]otential environmental hazards at federal prisons are associated with various operations such as heating and cooling, wastewater treatment, hazardous waste and trash disposal, asbestos management, drinking water supply, pesticide use, and vehicle maintenance.”<sup>12</sup> Yet, the EPA, which is the lead federal agency for environmental justice, completely excluded jails and prisons from its 2011 planning document for addressing environmental justice through 2014.<sup>13</sup> Similarly, the EPA's 2020 Action Agenda for environmental justice does not even mention carceral facilities, much less recognize prisons and jails as environmentally “overburdened communities.”<sup>14</sup>

Only a few non-governmental actors have addressed the intersection of the environment and carceral conditions. Even these approaches are limited, however, to contesting land-use

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9. Interview by William Most with Glenn Ford (Mar. 1, 2015).

10. *See infra* Section IV.

11. Donna Heron, *Federal Prisons to Get Environmental Checks*, EPA (July 24, 2007),

[https://archive.epa.gov/epapages/newsroom\\_archive/newsreleases/ac0e8764a666f41685257323006756ab.html](https://archive.epa.gov/epapages/newsroom_archive/newsreleases/ac0e8764a666f41685257323006756ab.html) [<https://perma.cc/83DU-KY8H>].

12. *Id.*

13. *See generally* OFFICE OF ENVTL. JUST., EPA, PLAN EJ 2014 (2011) (discussing the plans for environmental justice and failing to discuss or mention prisons or jails).

14. *See generally* OFFICE OF ENVTL. JUST., EPA, ACTION AGENDA 2020 (2016), [https://www.epa.gov/sites/production/files/2016-05/documents/052216\\_ej\\_2020\\_strategic\\_plan\\_final\\_0.pdf](https://www.epa.gov/sites/production/files/2016-05/documents/052216_ej_2020_strategic_plan_final_0.pdf) [<https://perma.cc/S8VR-FS9W>]

(discussing the plans for environmental justice and failing to discuss or mention prisons or jails).

decisions<sup>15</sup> and heat conditions<sup>16</sup> in carceral facilities. Land use decisions focus on external environmental threats to carceral facilities, rather than environmental threats emanating from within the facility or facility grounds.<sup>17</sup> For example, the Abolitionist Law Center, after a year-long investigation, concluded that the Fayette prison in Pennsylvania is “[s]urrounded by about 40 million tons of waste, two coal slurry ponds, and millions of cubic yards of coal combustion waste.”<sup>18</sup> Similarly, a recent study of New Jersey prisons found that seven out of thirteen state facilities were located on toxic sites.<sup>19</sup> The incarcerated themselves are also part of growing attention to the location of environmentally hazardous industries. Bryant Arroyo, incarcerated in Pennsylvania, organized prisoners to disrupt the plans to build a new major coal to liquid gas project next to the Mahanoy prison, literally “300 feet from the center point of the prison yard.”<sup>20</sup> These efforts and studies are important because they are emblematic of how we co-locate

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15. See Lauren Kirchner, *Environmental Justice for Prisoners*, PAC. STANDARD MAG. (July 30, 2015) <https://psmag.com/environmental-justice-for-prisoners-7dbd47433a1c#.eumq896m4> [<https://perma.cc/R6VF-KT34>]. In a recent round of comments on the EPA’s environmental justice initiative, prisoners’ rights activists pushed for incarcerated populations to be included in the impact assessment of new prison constructions. See *id.*

16. See Daniel W. E. Holt, *Heat in US Prisons and Jails: Corrections and the Challenge of Climate Change* (Aug. 2015) (unpublished manuscript) (on file with Saban Ctr. for Climate Change Law, Colum. Law School), [https://web.law.columbia.edu/sites/default/files/microsites/climate-change/holt\\_-\\_heat\\_in\\_us\\_prisons\\_and\\_jails.pdf](https://web.law.columbia.edu/sites/default/files/microsites/climate-change/holt_-_heat_in_us_prisons_and_jails.pdf) [<https://perma.cc/9J7E-2BHS>].

17. See Brenna Helppie-Schmieder, *Toxic Confinement: Can the Eighth Amendment Protect Prisoners from Human-Made Environmental Health Hazards?*, 110 NW. U. L. REV. 647, 664-68 (2016) (focusing on human-made environmental hazards and the location of prisons).

18. *Report Finds Disturbing Pattern of Illnesses at Southwestern PA Prison Surrounded by Coal Ash Dump*, ABOLITIONIST L. CTR. (Sept. 2, 2014) (internal quotations omitted), <https://abolitionistlawcenter.org/2014/09/02/report-finds-disturbing-pattern-of-illnesses-at-southwestern-pa-prison-surrounded-by-coal-ash-dump/> [<https://perma.cc/4XSL-PTW8>].

19. Panagioti Tsolkas, *Contaminated Sites and Prisons in New Jersey*, PRISON LEGAL NEWS (July 6, 2016), <https://www.prisonlegalnews.org/news/2016/jul/6/contaminated-sites-and-prisons-new-jersey/> [<https://perma.cc/C875-U4A3>].

20. Bryant Arroyo, *Bend the Bars Radio Address*, PRISON RADIO (Aug. 26, 2016), <https://player.fm/series/prison-radio-audio-feed/bend-the-bars-address-834-bryant-arroyo> [<https://perma.cc/T599-MPFF>].

“undesirable” facilities—prisons and toxic industries—with little regard for the people who involuntarily live in those areas.

In the limited instances where internal prison conditions are examined from an environmental lens, the litigation and advocacy thus far has focused on heat conditions.<sup>21</sup> Climate change has led to longer and more severe heat conditions, which is particularly problematic in overcrowded and, in some cases, dilapidated carceral facilities.<sup>22</sup> In a landmark decision, a federal judge found that heat conditions on death row at Louisiana State Penitentiary (LSP) are cruel and unusual and therefore violate the Eighth Amendment.<sup>23</sup> Death row inmates were subjected to heat indices over 100 degrees, often over consecutive days.<sup>24</sup> Though the remedy was ultimately ruled overbroad by the United States Court of Appeals for the Fifth Circuit, the finding of excessive heat conditions as to the three death row inmates was affirmed.<sup>25</sup> Though the litigation did not invoke environmental law in its claims, the case represents an important advance toward recognizing the environmental hazards unique to death row inmates.

This Article attempts to paint a broader picture of the environmental dangers for individuals incarcerated on death row by applying an environmental justice lens to the experience of Glenn Ford during his time on death row at Angola. Much of the analysis will be applicable to other individuals housed on death row, although there is some variety in death row conditions among states.<sup>26</sup> Some of the analysis may also be applicable to non-death sentenced inmates, although in some ways death row may be unique because inmates are usually confined to their cells for extended periods of time for decades.

The focus on Glenn Ford’s experience on death row is not intended to minimize or exclude environmental justice concerns throughout carceral facilities affecting detainees and prisoners not housed on death row. Climate change concerns, for example, are particularly relevant to detained populations.

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21. See Helppie-Schmieder, *supra* note 17, at 658.

22. See Holt, *supra* note 16, at 2.

23. See Ball v. LeBlanc, 988 F. Supp. 2d 639, 672 (M.D. La. 2013), *aff’d in part, vacated in part*, 792 F.3d 584 (5th Cir. 2015).

24. *Id.* at 664.

25. See Ball v. LeBlanc, 792 F.3d 584, 589 (5th Cir. 2015).

26. See *infra* Section III.



Changing weather patterns have contributed to the flooding of prisons and jails, which are often located on less desirable land parcels.<sup>27</sup> Flooding creates unique risks for all inmates, regardless of whether or not they are housed on death row, because inmates are solely dependent on the facility administrators to timely and securely evacuate incarcerated populations.<sup>28</sup> Similarly, hazardous working conditions for inmate workers—who by law may be forced to work without pay—can create situations ripe for abuse because traditional Office of Safety and Health Administration (OSHA) regulations may not clearly apply.<sup>29</sup> More broadly, incarcerated populations are excluded from voting and through their political disenfranchisement, prohibited from utilizing the ballot box to voice their concerns.<sup>30</sup> But given the absence of existing academic literature applying environmental justice concepts to the conditions of incarceration, this Article focuses on the experience of Glenn Ford as an involuntary resident on death row as an important first prelude to a more sustained academic inquiry.

## II. ENVIRONMENTAL JUSTICE

The term “environmental justice” (EJ) is often used to identify and discuss distinct undesirable land uses and hazardous conditions that create socio-economic disadvantages, particularly impacting low-income communities and communities of color.<sup>31</sup> The U.S. EPA defines environmental

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27. See Nathalie Prescott, *Prisoner (In)consideration in Environmental Justice Analyses*, GEO. ENVTL. L. REV. (May 31, 2016), <https://gelr.org/2016/05/31/prisoner-inconsideration-in-environmental-justice-analyses/> [<https://perma.cc/C569-H577>].

28. See *id.*

29. See 29 U.S.C. § 652(6) (2012). Inmates are not considered “employees” under OSHA Section 3 standards, but the standards may govern when an inmate performs work similar to that performed outside of the facility walls. See *OSHA Technical Manual: Section III*, [https://www.osha.gov/dts/osta/otm/otm\\_iii/otm\\_iii\\_3.html#3](https://www.osha.gov/dts/osta/otm/otm_iii/otm_iii_3.html#3) [<https://perma.cc/JWR5-MT86>].

30. See Daniel C. Wigley & Kristin S. Shrader-Frechette, *Environmental Racism and Biased Methods of Risk Assessment*, 7 RISK 55, 56-57 (1996); see also Jean Chung, *Felony Disenfranchisement: A Primer*, SENTENCING PROJECT (May 10, 2016), <http://www.sentencingproject.org/wp-content/uploads/2015/08/Felony-Disenfranchisement-Primer.pdf> [<https://perma.cc/HZQ8-A892>] (noting that only Maine and Vermont allow people currently serving a sentence for a felony conviction to vote).

31. See Alice Kaswan, *Environmental Justice: Bridging the Gap Between Environmental Laws and “Justice”*, 47 AM. U. L. REV. 221, 228-230 (1997).

justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>32</sup> The agency’s explicit adoption of an EJ approach builds on the intersection of various environmental movements and civil rights movements beginning as early as the 1950s.<sup>33</sup>

The environmental justice movement is in many ways an umbrella term that incorporates tactics and concerns of several previously unconnected movements culminating in deliberate organization in the 1990s. Though EJ includes the tactics of direct protest in the civil rights arena, grassroots organizing of the anti-toxics movement, academic research, and sovereignty arguments by tribal advocates, a common theme among all is recognition of the disproportionate environmental harms and the empowerment of impacted communities.<sup>34</sup> These concerns gained national currency in 1994 with the signing of Executive Order 12898 by President Bill Clinton.<sup>35</sup> The order required all federal agencies to identify and address agency actions that foster disproportionate environmental hazards on low income and minority populations, as well as develop strategies to implement environmental justice within their area of agency expertise.<sup>36</sup>

While scholars have debated the theoretical underpinnings of EJ, EJ includes, at a minimum, elements of distributional and equity concerns.<sup>37</sup> Unequal exposure to environmental harm “flows directly from a failure to consider the experiences and values” of the impacted groups.<sup>38</sup> As to distribution, EJ focuses on the disproportionate share of environmental hazards in low

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32. EPA, *Learn About Environmental Justice*, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice> [<https://perma.cc/9GUF-ZUPZ>].

33. See LUKE COLE & SHEILA FOSTER, FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 20-27 (2001) (discussing the EJ movement as the coalescence of other movements).

34. See *id.* at 20-26, 31.

35. Exec. Order No. 12898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

36. *Id.* at 7630.

37. See Shannon M. Roesler, *Addressing Environmental Injustices: A Capability Approach to Rulemaking*, 114 W. VA. L. REV. 49, 56 (2011).

38. Robert R.M. Verchick, *In a Greener Voice: Feminist Theory and Environmental Justice*, 19 HARV. WOMEN’S L.J. 23, 37 (1996).

income and minority communities and focuses on empowering those communities to shape decision-making.<sup>39</sup> But as with any distribution-based theory, the equal distribution of harms does not mean that those harms are experienced equally. Thus, EJ also incorporates equity concerns by acknowledging that individuals, because of who they are within a broader socio-political context, may be uniquely vulnerable to certain environmental harms.<sup>40</sup>

Incarcerated populations, and death row inmates in particular, should be considered a distinctly vulnerable community from an EJ perspective. The criminal system in the U.S. disproportionately incarcerates African-American and Latinx individuals compared to White individuals.<sup>41</sup> African-Americans and Latinx comprise fifty-six percent of the incarcerated population nationwide, but only represent thirty percent of the total U.S. population.<sup>42</sup> Moreover, people who live in poor communities have substantially higher rates of incarceration than other groups.<sup>43</sup> The racial disparities in incarceration prompted Loïc Wacquant to argue that the term “mass incarceration” shrouds the “hyperincarceration” of primarily poor African-American men from urban areas.<sup>44</sup> Distributionally, prisons and jails are concentrated spaces holding historically disadvantaged populations.

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39. See COLE & FOSTER, *supra* note 33, at 24.

40. See Roesler, *supra* note 37, at 56.

41. See Leah Sakala, *Breaking Down Mass Incarceration in the 2010 Census: State-by-State Incarceration Rates by Race/ Ethnicity*, PRISON POL’Y INITIATIVE (May 28, 2014), <https://www.prisonpolicy.org/reports/rates.html> [<https://perma.cc/SXQ2-VA3J>].

42. See Nicole D. Porter, *Unfinished of Civil Rights in the Era of Mass Incarceration and the Movement for Black Lives*, 6 WAKE FOREST J.L. & POL’Y 1, 6 (2016).

43. NAT’L RESEARCH COUNCIL OF NAT’L ACAD., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 5 (Jeremy Travis et al. eds., 2014) [hereinafter *GROWTH OF INCARCERATION*]; see also Karen Dolan & Jodi L. Carr, *The Poor Get Prison: The Alarming Spread of the Criminalization of Poverty*, INST. FOR POL’Y STUD. 1, 6 (2015), <http://www.ips-dc.org/wp-content/uploads/2015/03/IPS-The-Poor-Get-Prison-Final.pdf> [<https://perma.cc/N8Z8-U2QN>].

44. Loïc Wacquant, *Class, Race & Hyperincarceration in Revanchist America*, 140 DAEDALUS 74, 78 (2010).

The demographics of death row are consistent with the characteristics of the broader incarcerated population.<sup>45</sup> “The death penalty is imposed in the United States upon the poorest, most powerless, most marginalized people in the society.”<sup>46</sup> As of July 2016, there are 2,947 individuals nationwide who are sentenced to death, but have not yet been executed.<sup>47</sup> The majority of death row inmates are members of U.S. minority groups.<sup>48</sup> Forty-two percent of death row inmates are African-American, thirteen percent are Latinx, two percent are Asian-American, and one percent are Native-American.<sup>49</sup> Stephen Bright, an expert on the death penalty, argues that individuals sentenced to death are overwhelmingly poor, in part because they cannot afford competent counsel to defend them.<sup>50</sup>

To date, incarcerated populations have been largely omitted from the environmental justice framework. The Human Rights Defense Center, a non-profit advocating for prisoners’ rights, has been at the forefront of calling for the integration of the views and vulnerabilities of incarcerated populations into EJ evaluations.<sup>51</sup> Claims for inclusion have been loudest in addressing the construction and placement of new prisons, combining traditional environmental advocates with campaigns

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45. See NAACP LEGAL DEF. & EDUC. FUND, INC., THE CRIMINAL JUSTICE PROJECT, DEATH ROW U.S.A. 1 (Summer 2016), [http://www.deathpenaltyinfo.org/documents/DRUSA\\_Summer\\_2016.pdf](http://www.deathpenaltyinfo.org/documents/DRUSA_Summer_2016.pdf) [<https://perma.cc/U2ES-ZMXXS>].

46. Stephen B. Bright, *Imposition of the Death Penalty upon the Poor, Racial Minorities, the Intellectually Disabled and the Mentally Ill*, in MOVING AWAY FROM THE DEATH PENALTY: ARGUMENTS, TRENDS AND PERSPECTIVES 99, 99 (Ivan Simonovic ed., 2014).

47. See NAACP LEGAL DEF. & EDUC. FUND, INC., THE CRIMINAL JUSTICE PROJECT, DEATH ROW U.S.A. 1, 37-38 (Winter 2016), [http://www.naacpldf.org/files/publications/DRUSA\\_Winter\\_2016.pdf](http://www.naacpldf.org/files/publications/DRUSA_Winter_2016.pdf) [<https://perma.cc/S6DH-YSDL>].

48. *Id.*

49. *Id.*

50. See Bright, *supra* note 46, at 102.

51. See Email from Paul Wright, Exec. Dir., Human Rights Def. Ctr., to Charles Lee, Deputy Assoc. Assistant Adm’r for Env’tl. Justice, 1, 2-5 (July 14, 2015), <https://www.humanrightsdefensecenter.org/media/publications/EJ%202020%20HRDC%20Prison%20Ecology%20comment%20to%20EPA%20with%2091%20sign%20ons%20FINAL.pdf> [<https://perma.cc/NTC8-BV6Z>].

to limit the expansion of incarceration.<sup>52</sup> But it is worth thinking about to what extent environmental laws could also be applied within the prison walls and whether an EJ perspective could prompt greater reform of death row conditions.

### III. DEATH ROW CONDITIONS

#### A. Generally

Due to their extended time-in-cell, individuals on death row may be subject to distinct and separate environmental hazards compared to the general prison population. Death row inmates may also be uniquely vulnerable because as a sub-population within prisons, these individuals may be deemed morally and practically less deserving of improved conditions.

Data on conditions within carceral facilities is generally not available,<sup>53</sup> and even when it is available, the data is rarely complete. But several attempts to collect this data indicate that the majority of jurisdictions hold death-sentenced prisoners in isolated conditions. With the exception of two states, an individual's prison housing assignment is determined primarily by his or her capital sentence in death penalty jurisdictions.<sup>54</sup>

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52. See, e.g., Candice Bernd, *Environmental Justice Activists Fight Plans for Federal Prison on Mountaintop-Removal Site*, TRUTHOUT (June 17, 2016), <http://www.truth-out.org/news/item/36471-environmental-justice-activists-fight-plans-for-federal-prison-on-mountaintop-removal-site> [https://perma.cc/GYW5-LJ92] (detailing an environmental justice advocacy campaign to keep prison from being built on toxic site that could harm prisoners); *Tell the EPA that Prisoners Deserve Environmental Justice*, PRISON ECOLOGY PROJECT, <https://actionnetwork.org/letters/environmental-justice-doesnt-stop-at-the-prison-gates> [https://perma.cc/T676-QKTD] (calling for individuals to write letters to stop the expansion of prisons on harmful sites).

53. See Andrea Armstrong, *No Prisoner Left Behind? Enhancing Public Transparency of Penal Institutions*, 25 STAN. L. & POL'Y REV. 435, 463-64 (2014) (listing how various categories of prisoner data are nonexistent or incomplete).

54. See ASS'N OF STATE CORR. ADM'R, INMATES SENTENCED TO DEATH HOUSING POLICY 3-4 (Feb. 22, 2013), <http://www.asca.net/system/assets/attachments/5520/WA%20-%20Death%20Penalty%20Housing.pdf?1362689706> [https://perma.cc/U2J7-BXK5] (noting two states, Maryland and Missouri, house death-sentenced inmates in general population); Ian Simpson, *Maryland Becomes Latest U.S. State to Abolish Death Penalty*, REUTERS (May 2, 2013, 5:15 PM), <http://www.reuters.com/article/us-usa-maryland-deathpenalty-idUSBRE9410TQ20130502> [https://perma.cc/NA59-VQZB] (reporting Maryland has abolished the death penalty).

But states do differ in the degree of isolation imposed on death row inmates.<sup>55</sup>

In a 2013 survey, the ACLU concluded that “93 percent of [the 26 responding] states lock up their death row prisoners for twenty-two or more hours per day.”<sup>56</sup> The isolation of death row inmates is rarely required by statute or regulation.<sup>57</sup> Three states (Idaho, Pennsylvania, and Wyoming) require “solitary confinement” of death row prisoners and an additional three states require confinement in “single-cells.”<sup>58</sup> In Louisiana, inmates sentenced to death row remain in their single cells for twenty-three hours a day.<sup>59</sup> Death row prisoners are allowed outdoors four times per week for exercise in “recreation cages.”<sup>60</sup> Despite the clear harms of solitary confinement,<sup>61</sup> prison administrators argue that extended time-in-cell for death row inmates is necessary given the gravity of the capital crime for which the prisoner is sentenced.<sup>62</sup>

Moreover, the extended time-in-cell of twenty-two hours a day is imposed in some jurisdictions until the prisoner is

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55. See ASS'N OF STATE CORR. ADM'R, *supra* note 54 (noting different systems of housing death row inmates).

56. ACLU, DEATH BEFORE DYING: SOLITARY CONFINEMENT ON DEATH ROW 5 (July 2013), [https://www.aclu.org/sites/default/files/field\\_document/deathbeforedying-report.pdf](https://www.aclu.org/sites/default/files/field_document/deathbeforedying-report.pdf) [<https://perma.cc/9E6N-2WH7>].

57. ARTHUR LIMAN PUB. INTEREST PROGRAM, YALE LAW SCHOOL, RETHINKING ‘DEATH ROW’: VARIATIONS IN THE HOUSING OF INDIVIDUALS SENTENCED TO DEATH 5 (July 2016), [https://www.law.yale.edu/system/files/documents/pdf/Liman/deathrow\\_reportfinal.pdf](https://www.law.yale.edu/system/files/documents/pdf/Liman/deathrow_reportfinal.pdf) [<https://perma.cc/3KVT-UKCR>].

58. *Id.* at 4.

59. Brentin Mock, *Death Row Inmates Sue Louisiana Facility for Cruel and Unusual Heat Conditions*, COLORLINES (June 11, 2013, 4:03 PM), <https://www.colorlines.com/articles/death-row-inmates-sue-louisiana-facility-cruel-and-unusual-heat-conditions> [<https://perma.cc/63SU-JQQ2>].

60. See *Ball v. LeBlanc*, 988 F. Supp. 2d 639, 648 (M.D. La. 2013).

61. See, e.g., R. George Wright, *What (Precisely) Is Wrong with Prolonged Solitary Confinement?*, 64 SYRACUSE L. REV. 297 (2014).

62. See ACLU, *supra* note 56, at 2.

executed, a process that can extend for decades.<sup>63</sup> In 2013, the U.S. Department of Justice calculated that on average, 186 months separated a death penalty sentence from the actual execution of the defendant.<sup>64</sup> The delay between issuance of a capital sentence and execution continues to grow, as states like Louisiana attempt to find legal and “humane way[s]” to execute death row prisoners.<sup>65</sup> The delays are also attributable to lengthy appellate and post-conviction review processes that each death row defendant is constitutionally entitled to.<sup>66</sup> Thus, a death row defendant is likely to be housed separately from other inmates, in extended time-in-cell, for a period averaging 15.5 years before they are executed.<sup>67</sup>

Depending on the state, the solitary confinement environment for death row inmates varies. The cells may include solid steel doors without access to natural light, minimal ventilation, lack of artificial temperature controls, and limited

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63. See, e.g., Frank R. Baumgartner & Tim Lyman, *Louisiana Death-Sentenced Cases and Their Reversals 1976-2015*, S.U. J. RACE GENDER & POVERTY 59, 62 (2016) (describing the increasing reversal rate the longer a person sits on death row); see also Emanuella Grinberg, *Life After Death Row: Helping Break the ‘Jailhouse Mentality’*, CNN (Apr. 5, 2014, 12:10 PM), <http://www.cnn.com/2014/04/04/us/death-row-stories-thompson/> [<https://perma.cc/K6SL-2XJA>] (highlighting the Louisiana case of John Thompson); Bill Whitaker, *30 Years on Death Row*, CBS 60 MINUTES (Oct. 11, 2015), <http://www.cbsnews.com/news/30-years-on-death-row-exoneration-60-minutes/> [<https://perma.cc/H3EB-VRN4>] (highlighting the Louisiana case of Glenn Ford).

64. TRACY L. SNELL, U.S. DEP’T OF JUSTICE, CAPITAL PUNISHMENT, 2013-STATISTICAL TABLES 14 (2014), <https://www.bjs.gov/content/pub/pdf/cp13st.pdf> [<https://perma.cc/LH8Y-2LUH>].

65. See Della Hasselle, *Death-Penalty Study Suggests Using Nitrogen to Carry Out Executions*, LENS (Mar. 4, 2015, 1:52 PM), <http://thelensnola.org/2015/03/04/death-penalty-study-suggests-using-nitrogen-to-carry-out-executions/> [<https://perma.cc/54PB-9SSU>] (noting that Louisiana H.R. 142, which passed in 2014, mandated that a special committee conduct a study to find “the most humane way to administer the death penalty in Louisiana”).

66. See Julie B. Richardson-Stewart, *One Full Bite at the Apple: Defining Competent Counsel in Texas Post-Capital Post-Conviction Review*, 9 TEX. WESLEYAN L. REV. 221, 224 (2003) (noting that prisoners have a constitutional right to habeas corpus review); see also Kara Sharkey, Comment, *Delay in Considering the Constitutionality of Inordinate Delay: The Death Row Phenomenon and the Eighth Amendment*, 161 U. PA. L. REV. 861, 871-72 (2013) (stating that post-conviction review contributes to the delay between sentencing and execution).

67. See *infra* Part III.A.

access to water or ice.<sup>68</sup> Death row cells are on average the size of a typical bathroom and range from thirty-six to 100 square feet.<sup>69</sup> In Louisiana, death row inmates are housed in single concrete cells with security bars facing a common hallway.<sup>70</sup> The cells on death row do not have individual windows or fans; rather, a two-by-four louver window and a non-oscillating fan are approximately nine feet from the security bars for each pair of single-occupancy cells.<sup>71</sup> The louvers on each window can only be opened up to forty-five degrees.<sup>72</sup> “[E]ach cell contains a vent, measuring approximately six inches by eight inches, through which air from the window on the other side of the tier is drawn into the cell, and then into the vent, and then into the housing wing’s exhaust system, and then to the outside.”<sup>73</sup> Prolonged confinement in these types of environments may also amplify the impact of certain environmental conditions, such as artificial light and sound. These impacts may also lead to real costs in terms of inmates’ physical and mental health and financial resources of the inmates, their families, and the carceral facilities themselves.

Based on Glenn Ford’s experience, the conditions on death row in Louisiana can be grouped into the following environmental hazards: indoor air pollution, water pollution, hazardous waste, and exposure to lead.<sup>74</sup>

## 1. *Indoor Air Pollution*

### a. *Smoke*

The lack of ventilation in Louisiana death row cells created a closed environment for continued exposure to various

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68. See ACLU, THE DANGEROUS OVERUSE OF SOLITARY CONFINEMENT IN THE U.S. 3 (Aug. 2014), [https://www.aclu.org/sites/default/files/assets/stop\\_solitary\\_briefing\\_paper\\_updated\\_august\\_2014.pdf](https://www.aclu.org/sites/default/files/assets/stop_solitary_briefing_paper_updated_august_2014.pdf) [<https://perma.cc/4NEV-5Z4B>]; see also Interview by William Most with Glenn Ford (Mar. 1, 2015).

69. ACLU, A DEATH BEFORE DYING: SOLITARY CONFINEMENT ON DEATH ROW 4 (July 2013), <https://www.aclu.org/files/assets/deathbeforedying-report.pdf> [<https://perma.cc/A7UU-ZK5Z>].

70. See *Ball v. LeBlanc*, 988 F. Supp. 2d 639, 647 (M.D. La. 2013).

71. See *id.* at 647-48 (stating that the fans are shared by two inmates).

72. *Id.* at 648.

73. *Id.*

74. See Interview by William Most with Glenn Ford (Mar. 1, 2015).



pollutants. Inmates on death row were allowed to smoke inside so tobacco smoke entered each cell through the front security bars.<sup>75</sup> Glenn was also continually exposed to smoke from burning trash.<sup>76</sup> At the “dump” located right outside of death row, the prison would burn trash and wood chips, flooding the cells with smoke.<sup>77</sup>

### b. Chemicals

Over the course of almost 30 years, Glenn was likely exposed to pepper spray twenty times from its use on neighbor inmates.<sup>78</sup> Pepper spray causes uncontrollable coughing by inflaming the airways, forces the subject’s eyes to close, causes a loss of body motor control, and creates an intense burning sensation on the skin and especially the eyes.<sup>79</sup> Additionally, death row prisoners received “extra strength” detergent to clean the rust off of their cell walls, with little ventilation.<sup>80</sup> The detergent would bubble when mixed with water and would turn the gray cement white.<sup>81</sup>

### c. Mold

From 1985-1989, Glenn lived on death row, which was then housed in an old camp on the hill at LSP.<sup>82</sup> In that camp, there were sections of pipe that had fallen out of the wall, exposing the interior walls full of mold.<sup>83</sup> There was also mold on the walls where the wall met the bars to each cell.<sup>84</sup>

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75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. See C. Gregory Smith & Woodhall Stopford, *Health Hazards of Pepper Spray*, 60 N.C. MED. J. 268, 269 (1999).

80. See Interview by William Most with Glenn Ford (Mar. 1, 2015).

81. See *id.*

82. See *id.*

83. See *id.*

84. See *id.*; see also Clean Air Act, 42 U.S.C. § 7414(a) (2013).

## 2. *Water Pollution: Rust and Contaminated Drinking Water*

Glenn saw rust everywhere—on the walls, on the pipes—and he believes it was in the water as well.<sup>85</sup> This was the same water that was used for bathing, drinking, and for the main kitchen preparing meals.<sup>86</sup> Angola drinking water—the only source available to Glenn Ford—had twenty-seven different particles in it.<sup>87</sup>

## 3. *Hazardous Waste: Sewage and Wastewater*

To clear the drains, guards would “wash[] raw sewage down the tier” approximately once a week up until Glenn was released from Angola in March 2014.<sup>88</sup> The sewage entered each cell and death row prisoners were responsible for cleaning their cell after each incident.<sup>89</sup>

## 4. *Lead Exposure*

Camp J, the former home of Louisiana’s death row at Angola, used lead paint for interior paint in the single cells.<sup>90</sup> Glenn was confined to his cell for twenty-three hours a day.<sup>91</sup>

# IV. AN ENVIRONMENTAL JUSTICE APPROACH?

There are a number of ways to think about the value of adopting an environmental justice lens to conditions on death row, both practically and conceptually. First, an EJ approach could provide new and different tactics to prisoner advocates and their allies. If we understand death row inmates to be a particularly vulnerable population, could the EPA itself become more involved in monitoring conditions, and if so, what are the benefits or risks of such an approach? In addition, claims based on environmental law may surmount evidentiary challenges of

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85. See Interview by William Most with Glenn Ford (Mar. 1, 2015).

86. See *id.*

87. See *id.*; see also Clean Water Act, 33 U.S.C. § 1318(a) (2012).

88. See Interview by William Most with Glenn Ford (Mar. 1, 2015).

89. See *id.*; see also 42 U.S.C. § 6927(a) (2012).

90. See Interview by William Most with Glenn Ford (Mar. 1, 2015).

91. See Whitaker, *supra* note 63; see also Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9604(e) (2012).

proving intent inherent in constitutional claims. Second, and more broadly, adopting an environmental justice approach could shape how we conceptualize death row and the prisoners sentenced to live there. Instead of environmentally invisible spaces, death row should be viewed as involuntary state homes and therefore particularly deserving of attention and regulation.

### 1. *New Tactics?*

Although the source of the EPA's authority to address environmental concerns is dependent on the relevant environmental act, there are overarching similarities between the relevant statutes.<sup>92</sup> Throughout each of these Acts, the EPA's unique powers can be characterized as (1) information gathering, and (2) enforcement actions.<sup>93</sup> The EPA's tools apply to carceral facilities as they would any other business or agency. By statute, the EPA has the authority to enter and inspect facilities, to request information, and assist facilities in developing or remediating violations.<sup>94</sup> The entry and inspection authority includes the power to copy records, look at internal reports, require installation of and reports from monitoring equipment, and collect samples.<sup>95</sup> "EPA enforcement staff generally takes the position that any refusal to grant access for a warrantless inspection constitutes a violation of the relevant

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92. The statutes are more fully discussed later in the paper and include the Clean Air Act, 42 U.S.C. §§ 7401-7671 (2012); Clean Water Act, 33 U.S.C. §§ 1251-1387 (2012); Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992 (2012); and Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675 (2012).

93. See Enforcement and Compliance History Online, *Frequently Asked Questions*, EPA, <https://echo.epa.gov/resources/general-info/echo-faq> [https://perma.cc/V8M2-6CDT].

94. See Clean Air Act, 42 U.S.C. § 7414(a) (2012); Clean Water Act, 33 U.S.C. § 1318(a) (2012); Resource Conservation and Recovery Act, 42 U.S.C. § 6927(a) (2012); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9604(e) (2012).

95. See Clean Air Act, 42 U.S.C. § 7414(a) (2012); Clean Water Act, 33 U.S.C. § 1318(a) (2012); Resource Conservation and Recovery Act, 42 U.S.C. § 6927(a) (2012); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9604(e) (2012).

statute.”<sup>96</sup> The EPA does not need to disclose why the information is gathered or whether it will be used in any kind of enforcement proceeding,<sup>97</sup> and a refusal to provide the information can be a violation itself, ensuring compliance with requests.<sup>98</sup> Unlike private citizens, the EPA’s information gathering authority is not limited to judicial proceedings and formal discovery limitations.<sup>99</sup>

Individual EPA offices have at times attempted to examine the conditions of incarceration at several federal facilities, primarily through information gathering. For example, under an agreement between the EPA and the federal Bureau of Prisons (BOP) in 2007, over a dozen facilities were audited for environmental hazards.<sup>100</sup> These consent arrangements can promote environmental improvement by limiting the potential sanctions for discovered violations. In the EPA and BOP agreement, BOP could reduce or avoid potential sanctions so long as “(1) the violations cause[d] no direct harm to public health or the environment; (2) violations [were] corrected immediately; and (3) the facility ha[d] an overall good track record.”<sup>101</sup>

When information gathering tools fail, the EPA has also filed suit to enforce environmental laws against state carceral facilities. For example, in 2010, the EPA sued the state of Pennsylvania for violations of the Clean Air Act at four different facilities.<sup>102</sup> The facilities at issue all used coal-fired boilers, which resulted in visible and particulate matter emissions.<sup>103</sup> A settlement agreement was entered in 2011, based on violations that began as early as 2004.<sup>104</sup>

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96. JOSEPH GUIDA & JEAN FLORES, FROM HERE TO A PENALTY: ANATOMY OF EPA CIVIL ADMINISTRATIVE ENFORCEMENT 5, [http://www.guidaslavichflores.com/uploads/file/NPRA%20Paper%202011%20-%20Final%208\\_30.pdf](http://www.guidaslavichflores.com/uploads/file/NPRA%20Paper%202011%20-%20Final%208_30.pdf) [<https://perma.cc/G5XW-L2UU>].

97. *Id.*

98. *Id.* at 8.

99. *Id.* at 7.

100. *See* Heron, *supra* note 11.

101. *Id.*

102. Complaint at 21-22, *United States v. Commonwealth of Pennsylvania*, No. 4:10-cv-02672 (M.D. Pa. Mar. 10, 2011).

103. *See id.*

104. Consent Decree & Judgment at 60, *United States v. Commonwealth of Pennsylvania*, No. 4:10-cv-02672 (M.D. Pa. Mar. 10, 2011); Complaint at 21-22, *United States v. Commonwealth of Pennsylvania*, No. 4:10-cv-02672 (M.D. Pa. Mar. 10, 2011).

The EPA's broad authority, however, does not necessarily translate into enhanced transparency or accountability. For example, the EPA's findings are kept confidential when there is a "satisfactory showing" that the information would divulge methods, processes, etc. that are either "trade secrets"<sup>105</sup> or otherwise protected by Section 1905 of Title 18.<sup>106</sup> In addition, the relevant statutory authority often precludes private individual litigation.<sup>107</sup> Each of the relevant acts includes a nearly identical portion that precludes individual suits in certain instances.<sup>108</sup> Each requires the individual litigant give sixty days notice to relevant parties (statute-dependent) before initiating an action.<sup>109</sup> Even after those sixty days, a private individual is precluded from bringing suit where the EPA (or often state or other administrative bodies) has "commenced action" and is "diligently prosecuting the violation."<sup>110</sup> Whether that action must be in civil or criminal court, and whether an administrative action is sufficient to block an individual lawsuit are both statute-dependent and varies within circuit courts.<sup>111</sup>

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105. 42 U.S.C. § 7414(c) (2012); 33 U.S.C. § 1318(b) (2012).

106. *See* 42 U.S.C. § 6927(b) (2012); 42 U.S.C. § 9604(e) (7). 18 U.S.C. § 1905 (2012) provides in relevant part:

Whoever, being an officer or employee of the United States or of any department or agency thereof . . . publishes, divulges, discloses, or makes known in any manner . . . any information coming to him in the course of his employment or official duties . . . which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; . . . shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

107. *See* Justin Vickers, Comment, *Res Judicata Claim Preclusion of Properly Filed Citizen Suits*, 104 NW. U. L. REV. 1623, 1630-31 (2010).

108. *See id.* at 1631.

109. *See* Clean Air Act, 42 U.S.C. § 7604(b) (2012); Clean Water Act, 33 U.S.C. § 1365(b) (2012); Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)-(c) (2012); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659(d)-(e) (2012).

110. *See, e.g.*, Clean Water Act, 33 U.S.C. § 1365(b) (2012).

111. *See* Clean Air Act, 42 U.S.C. § 7604 (2012) (civil); Clean Water Act, 33 U.S.C. § 1365 (2012) (civil or criminal); Resource Conservation and Recovery Act, 42 U.S.C. § 6972 (2012) (civil or criminal); Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9659 (2012) (action undefined); *see also* Vickers, *supra* note 107, at 1630, 1632.

Moreover, enforcement is only as good as the authority it invokes. While certain statutes clearly apply to prisons and jails, as they would to any state agency, in some cases, prisons and jails are excluded. The EPA does not consider prisons and jails, for example, to be covered by the Renovation, Repair and Painting rule, because prisons and jails are not considered target housing:<sup>112</sup>

Target housing means any housing constructed prior to 1978. Certain parts of prison facilities and juvenile detention centers that house incarcerated persons are housing. However, as a practical matter, EPA believes that the most parts of prisons and juvenile detention centers that would be considered housing are also zero bedroom dwellings (i.e. a residential dwelling in which the living area is not separated from the sleeping area) and therefore not subject to the RRP Rule.<sup>113</sup>

Thus, prisons and jails are exempt from federal rules that require certain standards in work practices and certification of renovation personnel.<sup>114</sup>

Adopting an environmental justice lens could also change how we litigate conditions on death row. Traditional prison conditions litigation involves surmounting doctrinal obstacles that often require subjective intent to do harm. Unlike traditional tools to advance prison condition claims, such as the Eighth Amendment's ban on cruel and unusual punishment or the Equal Protection Clause,<sup>115</sup> prohibiting certain types of discrimination, environmental law may not require proof of subjective intent.<sup>116</sup> In traditional prisoner advocacy alleging Eighth Amendment violations, a plaintiff must prove not only

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112. See 15 U.S.C. § 2681(17) (2012) (defining the term "target housing").

113. EPA, *Frequent Questions*, <https://toxics.zendesk.com/hc/en-us/articles/211664278-Are-prison-facilities-and-juvenile-detention-centers-built-before-1978-considered-target-housing-> [https://perma.cc/MDP9-BLZP].

114. EPA, *Frequent Questions*, <https://toxics.zendesk.com/hc/en-us/articles/211664878-What-does-the-Renovation-Repair-and-Painting-RRP-Rule-require-> [https://perma.cc/G2BR-AX4X] (summarizing requirements of the RRP rule for renovators).

115. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993) (discussing Eighth Amendment scrutiny of prison conditions); see also *Johnson v. California*, 543 U.S. 499, 507-09 (2005) (discussing strict scrutiny of racial classifications in prisons).

116. See A.B.A. STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS 63-69 (3d ed. 2011).

that the conditions were “cruel and unusual” but also that individual defendants were “deliberately indifferent” to the harm imposed.<sup>117</sup> This entails proving a subjective intent through evidence an official was “aware of facts from which the inference could be drawn that a substantial risk of serious harm exists” and “he must also draw the inference.”<sup>118</sup> In equal protection claims, a plaintiff has to prove discriminatory intent even in cases of clear discriminatory impact.<sup>119</sup> There is at least the possibility that environmental laws may prove to be as potent a tool for prison reform advocates as the Americans with Disabilities Act, a generally applicable statute regulating treatment and access of the “disabled.”<sup>120</sup>

## 2. New Concepts

The doctrinal potential, while important, is symbolic of a broader shift possible through an EJ lens, namely a focus on structural bias in the institutions of prisons themselves. Perhaps because we think people who commit crimes are morally inferior (and therefore are less willing to invest financial resources in addressing the criminal behavior or live next to these facilities), we locate prisons on undesirable land and in remote locations. Or perhaps we isolate our death-sentenced prisoners because we think those individuals are beyond redemption.

Through an environmental justice lens, we may see patterns that were previously hidden. Unlike traditional prisoner advocacy tools, environmental assessments include cumulative impacts over time and in context, rather than single isolated acts.<sup>121</sup> Glenn Ford did not believe that he was intentionally

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117. See *Farmer v. Brennan*, 511 U.S. 825, 837-38 (1994).

118. *Id.* at 837.

119. See *McCleskey v. Kemp*, 481 U.S. 279 (1987).

120. See Betsy Ginsberg, *Out with the New, in with the Old: The Importance of Section 504 of the Rehabilitation Act to Prisoners with Disabilities*, 36 FORDHAM URB. L.J. 713, 720-21 (2009); see also *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206, 209 (1998).

121. Rose Braz & Craig Gilmore, *Joining Forces: Prisons and Environmental Justice in Recent California Organizing*, 96 RADICAL HIST. REV. 95, 107 (2006).

singled out to die of cancer from his incarceration.<sup>122</sup> Instead, he thought about his diagnosis in light of others, similarly incarcerated, who had also been diagnosed with cancer.<sup>123</sup> Individual and even class action lawsuits based on a prison's failure to provide medical care may address the impact of a prison environment, but the root causes of the illness may remain untouched. A pattern-based approach may help to discern the underlying factors that result in diagnoses like Glenn's.

An EJ approach fundamentally centers the voices of the impacted and allows for contextual reasoning. Although carceral facilities, and death row in particular, are externally perceived as sites of punishment, incarcerated people may have a different view. Glenn Ford's cell, where he was confined days at a time, was his involuntary home. Viewing jails and prisons as homes illuminates the humanity of the people who live there. Understanding these spaces as homes underlines the need for carceral facilities to be safe and for individuals to be protected from all types of harm, environmental and otherwise.<sup>124</sup> Moreover, these involuntary homes are built, maintained and operated by federal and state government actors or their agents. This intersection of government action and vulnerable populations is what motivated, in part, passage of the Civil Rights of Institutionalized People Act (CRIPA).<sup>125</sup>

The procedural commitment of EJ to include impacted voices could also enable a platform for prisoner input in

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122. Ken Daley, *Mourning Friends of Glenn Ford, Exonerated Death Row Inmate, Say 'All He Wanted Is Justice'*, TIMES-PICAYUNE: GREATER NEW ORLEANS (July 1, 2015, 6:18 AM), [http://www.nola.com/crime/index.ssf/2015/06/all\\_he\\_wanted\\_is\\_justice\\_mourn.html](http://www.nola.com/crime/index.ssf/2015/06/all_he_wanted_is_justice_mourn.html) [<https://perma.cc/UU4H-FRYL>].

123. *Id.*

124. See A.B.A. STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS, *supra* note 116, at 63-69. Although beyond the scope of this discussion, it is worth noting that prisoner advocacy may also add to and enhance environmental justice approaches. For example, our pollution guidelines may be premised on the idea that individual exposure is limited because people are assumed to change locations within 24 hour periods as they go to work and care for their children. But these guidelines are ill-equipped to address the situations of the involuntarily detained or even home-bound, who may then suffer additional exposure. See Verchick, *supra* note 38, at 35-50.

125. S. REP. NO. 96-416, at 1 (1980), *reprinted in* 1980 U.S.C.C.A.N. 787, 788. The Senate report noted, "One measure of a nation's civilization is the quality of treatment it provides persons entrusted to its care" in describing the purpose of CRIPA. *Id.*



decision-making within facilities themselves. While certain security-related decisions may not be appropriate for prisoner decision-making, experts agree that prisoner input can be important in standard-setting, given a prisoner's unique residential perspective.<sup>126</sup> Recognizing the contributions that prisoners can make may also support the safety and security of the institution itself by enhancing prisoner perception of the legitimacy of facility administrative decisions.<sup>127</sup>

At a minimum, an environmental justice approach starts with the premise of public disclosure of costs and benefits.<sup>128</sup> Given that the operations of carceral facilities, such as jails, prisons, and immigration detention centers, are shrouded and hidden behind claims of risk, security, and apathy towards the incarcerated populations, even identifying the full costs of environmental conditions for death row inmates may be a significant step forward.<sup>129</sup>

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126. See, e.g., John J. Gibbons & Nicholas De B. Katzenbach, *Confronting Confinement*, 22 WASH. U. L. & POL'Y 385 (2006) (final report of the Commission on Safety and Abuse in America's Prisons).

127. *Id.* at 414-22.

128. See Armstrong, *supra* note 53, at 470.

129. *Id.*