

# UP THE CREEK WITHOUT A PADDLE: CONSEQUENCES FOR FAILING TO PROTECT PRISONERS DURING A NATURAL DISASTER

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## I. INTRODUCTION

Emergency preparedness in a jail or prison system in the event of a national disaster is a global issue. This is a topic that is often overlooked, but that affects thousands of individuals worldwide. Many examples of emergencies could take place within a correctional facility, such as riots, terrorism, and natural disasters. Each situation requires a set safety plan in order to minimize potential risks and casualties while simultaneously maintaining order within the facility. In 2004, the top ten disasters that affected the largest amount of people were attributed to natural disaster weather emergencies, including floods and storms.<sup>1</sup> This comment will look at the various global concerns with emergency preparedness in correctional facilities, but will be mainly focused on an emergency preparedness plan to help assist in combating natural disasters, primarily within the United States.

There are approximately 2.3 million individuals that are incarcerated within the United States, both on a state and federal level, with these numbers only growing over time.<sup>2</sup> These numbers include not only individuals who have been convicted of a crime, but those awaiting trial.<sup>3</sup> These large populations require specialized attention in the event of an emergency.<sup>4</sup> The California Department of Corrections and

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<sup>1</sup> Disaster Risk Reduction Tools and Methods for Climate Change Adaptation, INTER-AGENCY TASK FORCE ON CLIMATE CHANGE AND DISASTER RISK REDUCTION, <https://perma.cc/MN7S-8A5R> (last visited Jan. 27, 2019).

<sup>2</sup> Peter Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*. PRISON POLICY INITIATIVE. <https://perma.cc/SH7Y-9VEY> (last visited Mar. 17, 2019).

<sup>3</sup> *Id.*

<sup>4</sup> Elaine Rundle, *When Disaster Strikes, Inmates Can Move to the Front Lines of Community Response*, EMERGENCY MANAGEMENT, <https://perma.cc/RT82-DFK7> (last visited Jan. 27, 2019).

Rehabilitation have said that “everything that a city needs to keep operating [in an emergency], a prison also needs.”<sup>5</sup> Disaster planning is a critical part of keeping people safe.<sup>6</sup> Kristian Cadervall Lautu states that “the fact that no [effective legal framework under international disaster law] exists undermines our ability effectively to respond to disasters.”<sup>7</sup>

Several contributing factors exacerbate the danger that is posed in these situations, such as a lack of preparedness and training, underfunding of state and federal programs, and the overcrowding of correctional facilities. Part I of this comment will look at the problems associated with responding to a national disaster, and the technology and communication issues that hinder the progress of this. Part II will examine examples of natural disasters affecting the prison system on a global level, such as the Haiti earthquakes and the Indonesian tsunami. Part III will evaluate natural disasters within the United States, such as Hurricane Katrina, the Puerto Rico earthquakes, and the Polar Vortex. Finally, my proposal to resolving these difficulties will be found in Part IV, which includes legislation to prevent the mandatory incarceration of minor offenses, mandating a training plan for employees, and assembling a voluntary inmate workforce within the prison system, similar to those used to battle the California wildfires.

## II. PROBLEMS FACED

### A. Responding to a Natural Disaster – Governmental Response

Responding to a natural disaster “often presents a completely unique situation that traditional knowledge management systems...are not optimally configured to support.”<sup>8</sup> These disasters often require officials to adopt emergency plans that have not previously been addressed before. According to the National Institute of Corrections, “prisons are not prepared to respond to and recover from natural and manmade disasters.”<sup>9</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Kristen Dale, *Note: The Red Cross and Red Crescent Movement: Power Players in International and Domestic Natural Disaster Law*, 25 *Cardozo J. Int'l & Comp. L.* 111, <https://perma.cc/UV3Y-2MBR> (last visited Jan. 27, 2019).

<sup>8</sup> Dave Yates & Scott Paquette, *Emergency Knowledge Management and Social Media Technologies: A Case Study of the 2010 Haitian Earthquake*, <https://perma.cc/VY63-FCQS> (last visited Sep. 30, 2018).

<sup>9</sup> Melissa Anne Savilonis, *Prisons and Disasters*, <https://perma.cc/VQ6C-UCSN> (last visited Jan. 26, 2019).

The basic, most important role of prison employees and administrators is to maintain routine order and compliance within their facility.<sup>10</sup> Prison systems are “legally responsible for the welfare of prisoners.”<sup>11</sup> Any departure from this order creates not only chaos and a risk to public safety, but also danger to the prisoners’ wellbeing and the potential violation of human and constitutional rights of the inmates.<sup>12</sup> The role of officials in this process is to “coordinat[e] the government’s role in preparing for, preventing, mitigating the effects of, responding to, and recovering from all domestic disasters.”<sup>13</sup>

One way to avoid disorder is to implement a “strategic correctional management goal,” which involves prison administrators maintaining continual alertness and consistently reviewing the potential emergency circumstances to plan ahead for a foreseeable future problem.<sup>14</sup> Such procedures must be implanted relatively quickly in order to respond to a natural disaster.<sup>15</sup> Swift execution is required because a “faster than usual response is needed to stabilize a dangerous situation, prevent further losses, and begin reconstruction.”<sup>16</sup>

Proper funding, training, and communication systems are vital in responding to a natural disaster in order to maintain order in a prison facility.<sup>17</sup> A significant obstacle in achieving an emergency safety plan is the lack of government funding. The Florida Department of Corrections (F.D.C.), advised Florida legislators at the beginning of 2018 that the state correctional facilities were “not adequately funded for the existing inmate population.”<sup>18</sup> The Florida legislature’s planned nine-million dollar budget cuts severely impacted the prison system, which prison officials warned would become “a public safety issue.”<sup>19</sup> Budget cuts in prisons

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<sup>10</sup> Richard H. Rison & Peter M. Wittenberg, *Disaster Theory: Avoiding Crisis in a Prison Environment*. HEIN ONLINE, <https://perma.cc/A3XA-P5FN> (last visited Oct. 29, 2018).

<sup>11</sup> Savilonis, *supra* note 8.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Rison & Wittenberg, *supra* note 9.

<sup>15</sup> *Id.*

<sup>16</sup> Yates & Paquette, *supra* note 7.

<sup>17</sup> *Id.*

<sup>18</sup> Daniel Gross, *For the Families of People in Prison, Hurricanes Bring Extra Panic and Uncertainty*, <https://perma.cc/4GP4-EG8X> (last visited Jan. 26, 2019).

<sup>19</sup> *Id.*

mean not only less resources, but also diminished staffing.<sup>20</sup> Evacuating inmates during a disaster poses its own set of problems, including significant expense, time spent doing so, and the risk of inmates escaping during the process.<sup>21</sup> Because of this, many prison facilities during the 2018 hurricanes on the east coast of the country had no plans to evacuate the inmates from their facilities, even with a projected Category Four hurricane approaching.<sup>22</sup>

### B. Technology Interfaces

Advances in technology has become integral to society.<sup>23</sup> This has resulted in improvements in virtually all aspects of our lives, and has created methods to be able to communicate faster and more efficiently with virtually any person in the world.<sup>24</sup> There is essentially no difference when dealing with emergency preparedness.<sup>25</sup> Proper communication is crucial in handling an emergency situation, but it is difficult to foresee whether these communication devices will be useful in such a circumstance.<sup>26</sup> For example, it is possible that the areas affected by the disaster may have damaged or unavailable communication systems.<sup>27</sup> Many facilities and programs depend on these systems for everyday function, and do not have a backup in place.<sup>28</sup> With faulty or inconsistent communication systems, inmates' records are often misplaced when a facility is evacuated.<sup>29</sup> The new facility often lacks access to these records, which often disrupt the inmate's legal rights.<sup>30</sup> These "knowledge management systems must be flexible enough to handle unexpected situations" but still be stable enough to be utilized in a "degraded" environment.<sup>31</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> Tess Owen, *At Least 650 Inmates in South Carolina Could Be Stranded When Hurricane Florence Hits*, VICE NEWS, <https://perma.cc/T44E-UYMX> (last visited Jan. 27, 2019).

<sup>22</sup> *Id.*

<sup>23</sup> *6 Major Reasons Why Technology is so Important Today*, TECHSPIRIT, <https://perma.cc/CR8C-7T9L> (last visited Jan. 27, 2019).

<sup>24</sup> *Id.*

<sup>25</sup> Yates & Paquette, *supra* note 7.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Savilonis, *supra* note 8.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Yates & Paquette, *supra* note 7.

### III. INTERNATIONAL PERSPECTIVE OVERVIEW

#### A. *The 2010 Haiti Earthquake*

On January 12, 2010, a magnitude 7.0 earthquake affected Haiti.<sup>32</sup> This was the strongest recorded earthquake in Haiti in over 200 years, killing over 230,000 people and injuring approximately 300,000.<sup>33</sup> The earthquake caused extensive damage to both the port and the airport and obstructed disaster recovery efforts from neighboring nations willing to assist in disaster relief.<sup>34</sup> After the 2010 earthquake, all 5,400 inmates in the largest prison in Port-au-Prince had escaped.<sup>35</sup> Eight months later, only 629 had been found.<sup>36</sup>

The overcrowding of prison systems is a major concern in Haiti.<sup>37</sup> The least crowded prison is located in Les Coteaux and is currently at a capacity level of 230 percent.<sup>38</sup> Comparatively, the most overcrowded prison is located in Hinche, containing “more than ten times the number it was designed to hold.”<sup>39</sup> The prisoners largely outnumber the guards, with about twenty guards for the over four thousand inmates at one Haitian facility.<sup>40</sup>

The criminal justice system is also a contributory factor to the overcrowdings. With the justice system being described as “dysfunctional,” nine out of ten prisoners in Haiti have not yet been convicted of a crime, and some inmates have been waiting for six years for their case to go to trial.<sup>41</sup> Haiti uses a code-based system and has not updated this antiquated system since the Criminal Codes of 1835 were passed.<sup>42</sup> However, a shift in their political structure may assist in reforming their criminal justice system. Haiti is moving from a

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Leonard Cavise, *Article: Post-Earthquake Legal Reform in Haiti: In on the Ground Floor*, 38 Brooklyn J. Int'l L. 879 (2013).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Dan Reed, *The Ballad of Haiti Jail: On the Trail of the Fugitive Convicts After the Earthquake Set Them Free*, <https://perma.cc/3K84-4PK6> (last visited Nov. 22, 2018).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

dictatorship system to a “distant form of representative democracy,” but there is potentially a “threat of a return to authoritarian rule.”<sup>43</sup> Since the republic has not completely transitioned into a democracy, the looming fear of the dictatorship returning may cause a halt in plans to reform legislation.

### B. *The 2018 Indonesia Earthquake and Tsunami*

After the 2018 Indonesian 7.5 magnitude earthquake and tsunami, over 1,200 inmates escaped from three prison facilities.<sup>44</sup> The prison facility in Palu, which was only built to hold 120 inmates, had most of its 581 inmates escape after the earthquake crumbled the building.<sup>45</sup> The remaining one hundred prisoners were underfed, with prison supplies dwindling.<sup>46</sup> The “overstretched guards” tried to buy supplies from nearby stores to keep the inmates alive.<sup>47</sup>

Within the nearby Donggola facility, prison guards were unable to keep order, and attempted to “negotiate with prisoners about allowing them to go check on their families.”<sup>48</sup> However, the prisoners eventually set the facility on fire and approximately 343 inmates escaped.<sup>49</sup> Warden Safiuddin, who was stationed inside the Donggola prison, described the scene as pure “anarchy,” with inmates wearing ninja masks and encouraging others to attack the prison workers.<sup>50</sup> Safiuddin eventually had made a decision to open the doors and allow the inmates to escape, rather than risk the lives of the prison guards and remaining prisoners, who chose to stay.<sup>51</sup> The Donggola prison facility is a medium-security facility with no felons.<sup>52</sup> Some of the inmates in this prison were convicted of minor, nonviolent offenses such as falsifying receipts for items such as “chairs and kindergarten toys.”<sup>53</sup>

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<sup>43</sup> *Id.*

<sup>44</sup> *Prison Break: Convicts on the Run After Indonesia Disaster*, <https://perma.cc/D6Y6-STFF> (last visited Nov. 22, 2018).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Julie McCarthy, *Why Inmates Set Free After the Indonesia Quake are Returning to Their Prison*, <https://perma.cc/H8YP-CQYJ> (last visited Nov. 21, 2018).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

#### IV. UNITED STATES PERSPECTIVE

##### A. Hurricane Katrina's Impact on New Orleans Prisoners

The United States is also no stranger to natural disasters. Over 8,000 inmates were incarcerated at Orleans Parish Prison when Hurricane Katrina hit New Orleans in 2005.<sup>54</sup> During a state-wide mandatory evacuation order, these inmates remained in the facility, left to battle the unsafe conditions and after-effects of the storm.<sup>55</sup> Some of these inmates were being held on charges as minor as public intoxication.<sup>56</sup> Additionally, one-third of the inmates housed in the Orleans Parish Prison were awaiting trial, and had not been formally convicted of a crime.<sup>57</sup> Over a thousand inmates were abandoned during the disaster.<sup>58</sup> These individuals were forced to remain in the building for several days, were exposed to high levels of toxic water, a shortage of food and clean drinking water, and the facility had no structure or emergency plan with the prison guards to maintain order or ensure the safety of those involved.<sup>59</sup> The backup generators were no longer functioning, which resulted in the facility having no lights or air circulation, and created “an unbearable stench” due to the toilets backing up.<sup>60</sup> Several inmates broke the windows in order to breathe; some set fire to their bedsheets and made signs to hang out of their windows to get the attention of rescuers, and many tried to escape.<sup>61</sup> At least a dozen inmates tried to escape by breaking windows and jumping out of them.<sup>62</sup> At one point, over five hundred inmates were unaccounted for during the aftermath of the storm.<sup>63</sup>

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<sup>54</sup> Ira P. Robbins, Lessons from Hurricane Katrina: Prison Emergency Preparedness as a Constitutional Imperative. AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, <https://perma.cc/R3QS-5XQM> (last visited Jan. 27, 2019).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Georgina Rannard, *Hurricane Florence: Prisons in Hurricane's Path Not Evacuated*, <https://perma.cc/7MNF-TABN> (last visited Jan. 6, 2019).

<sup>58</sup> Robbins, *supra* note 51.

<sup>59</sup> *Id.*

<sup>60</sup> *New Orleans: Prisoners Abandoned to Floodwaters*, HUMAN RIGHTS WATCH, <https://perma.cc/D4XB-FRDD> (last visited Jan. 27, 2019).

<sup>61</sup> Robbins, *supra* note 51.

<sup>62</sup> *New Orleans, Prisoners Abandoned to Floodwaters*, *supra* note 57.

<sup>63</sup> *Id.*

When the inmates were finally evacuated, they were forced to wait for days on a highway overpass in extreme heat before they were finally able to be transferred to other prison facilities.<sup>64</sup> These evacuations did not occur until September 1, four days after the flooding “had reached chest-level.”<sup>65</sup> Already overcrowded facilities were not prepared to take in additional inmates.<sup>66</sup> There were massive amounts of prisoner-on-prisoner violence, due to the fact that many of these individuals were at one point segregated from the general population and were now able to rejoin other inmates.<sup>67</sup> Prisoners were also subject to beatings and abuse by correctional officers, and many described being “forced to lie in their own vomit.”<sup>68</sup>

Some of the personal stories of the inmates at Orleans Parish Prison outline examples of the harsh and neglectful treatment that these prisoners were exposed to during this time. While the prisoners were trying to escape the flooding waters and lack of power and resources, they were all too aware of the lack of assistance that was being provided.<sup>69</sup> In one of the Orleans Parish Prison buildings, inmates reported that there were no prison guards present to assist with the mayhem.<sup>70</sup> One inmate, Dan Bright, described the moment as “th[e prison guards] left us to die there.”<sup>71</sup> A spokesperson for the prison was not sure if this was accurate, but did not deny that there were no correctional officers present prior to the evacuation of the facility.<sup>72</sup> Other inmates reported seeing bodies floating throughout the facility as they were escaping.<sup>73</sup> Tyrone Lewis, an inmate at the prison, was suffering from a health condition that required a pacemaker.<sup>74</sup> He was transferred to the Winn Correctional Facility, where he complained of chest pains.<sup>75</sup> When he asked the prison guards for assistance, they did not attempt to help him, and did not allow him to be sent to a hospital for two weeks, where he passed away days after being

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<sup>64</sup> Robbins, *supra* note 51.

<sup>65</sup> New Orleans, Prisoners Abandoned to Floodwaters, *supra* note 57.

<sup>66</sup> *Id.*

<sup>67</sup> Robbins, *supra* note 51.

<sup>68</sup> Dreisen Heath, *Caged for the Storm as Hurricane Florence Bears Down*, HUMAN RIGHTS WATCH, <https://perma.cc/KD9F-4CU6> (last visited Jan. 27, 2019).

<sup>69</sup> New Orleans, Prisoners Abandoned to Floodwaters, *supra* note 57.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Robbins, *supra* note 51.

<sup>75</sup> *Id.*

admitted.<sup>76</sup> His family was not notified of his death for over a month, and his body was buried in a “burial ground for unclaimed prisoner remains.”<sup>77</sup>

In the aftermath of Hurricane Katrina, the American Civil Liberties Union of Louisiana requested a copy of the emergency operations plan.<sup>78</sup> When the sheriff finally responded to their request, they were told that “all documents re[garding] evacuation plans were underwater,” and therefore unavailable.<sup>79</sup> Many deputies admitted that there were no evacuation plans at the time of the disaster, and there were no training plans set for the guards in case of such an emergency.<sup>80</sup> Although experts were able to accurately predict the amount of damage and force that the hurricane would damage the state, emergency officials in New Orleans were still not prepared to handle such a disaster.<sup>81</sup> The prison officials stated that there was barely enough food and clean water for the guards alone.<sup>82</sup> The prisoners did not have any food or water available for days.<sup>83</sup>

### B. Puerto Rico Hurricanes

In September 2017, Hurricane Maria rocked Puerto Rico as a Category Five hurricane, with its maximum sustained winds at approximately 155 mph.<sup>84</sup> It brought “catastrophic flooding” to the area,<sup>85</sup> and many were forced to evacuate.<sup>86</sup> In the Bayamón correctional complex, the inmates were not evacuated, and were left incommunicado

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Genevieve E. Maricle, *Prediction as an Impediment to Preparedness: Lessons from the U.S. Hurricane and Earthquake Research Enterprise*, MINERVA, <https://perma.cc/GC6V-NH9V> (last visited Jan. 27, 2019).

<sup>82</sup> Robbins, *supra* note 51.

<sup>83</sup> New Orleans, Prisoners Abandoned to Floodwaters, *supra* note 57.

<sup>84</sup> National Weather Service, *Major Hurricane Maria – September 20, 2017*, <https://perma.cc/V8S4-AH97> (last visited Jan. 20, 2019).

<sup>85</sup> *Id.*

<sup>86</sup> Oliver Laughland, *‘This is Human Trafficking’: After Maria, Puerto Rico to move 3,200 inmates to Arizona*, <https://perma.cc/4M4T-YK6X> (last visited Jan. 20, 2019).

with any outside contacts during this time.<sup>87</sup> Thirteen prisoners escaped from the facility in the midst of the chaos, which was attributed to the loss of power.<sup>88</sup>

One of the inmates in the facility, Joseph Villalobos, described the horrors of the disaster, including the fact that the facility operated without running water or electricity for several weeks. Villalobos, who had already served seven years into a twenty-six year sentence for a kidnapping offense, had originally been placed into a maximum-security facility, with daily twenty-two-hour lockdowns.<sup>89</sup> He was then housed in a minimum security section of the prison, where he participated in a prison work system creating woodwork, and received seventy-five percent of the proceeds to provide for his family.<sup>90</sup> Villalobos' routine lifestyle was certain to change in the months after the hurricane passed.<sup>91</sup>

Approximately six months after Hurricane Maria hit, Puerto Rico's financial oversight board approved a proposal to send one-third of their prison inmate population to private facilities within the United States.<sup>92</sup> This plan, along with other policies within the proposal, was passed intending to save the island approximately four hundred million dollars within four years, to help negate the costs incurred during the mass destruction caused by the hurricane.<sup>93</sup> While this program is intended to be voluntary, it is described as "government sponsored human trafficking" by William Ramirez, the executive director of the Puerto Rico American Civil Liberties Union.<sup>94</sup> Puerto Rico's proposed solution to addressing natural disasters poses lifelong complications for inmates who will be separated from their family, their homeland, and their culture, which could pose further obstacles for any hope of rehabilitation.

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<sup>87</sup> *Id.*

<sup>88</sup> Yolanda Martinez, Anna Flagg, & Andres Caballero, *Prisons and the Deluge*, <https://perma.cc/E48C-DYSW> (last visited Jan. 20, 2019).

<sup>89</sup> Laughland, *supra* note 81.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

C. *The Polar Vortex*

The Polar Vortex that occurred in January 2019 brought record low temperatures of minus sixty degrees to the Midwest United States.<sup>95</sup> The Northeast also experienced a dramatic drop in temperatures, although not as drastic as the Midwest.<sup>96</sup> Located in Brooklyn, New York, the Metropolitan Detention Center houses over 1,600 federal inmates.<sup>97</sup> During the Polar Vortex, New York suffered below-zero temperatures, and this facility was without power for over a week.<sup>98</sup> Inmates were complaining of extreme cold, no hot water or electricity, and no access to computers to contact their family members or their attorneys.<sup>99</sup> They were also unable to access their medication or receive medical assistance, with at least one inmate with an untreated eye infection, and another who was not receiving his required psychiatric treatment.<sup>100</sup>

New York City Council Member, Jumaane Williams told the crowd protesting the detention center's conditions that "[prison officials] in there do not care what is happening...nobody had a plan to make this system run; nobody cared about the people who were in there."<sup>101</sup> Another Council Member, Justin Brannan, tweeted, "these conditions are dangerous [and] inhumane for workers [and] inmates."<sup>102</sup> The Bureau of Prisons cited the electric failure was due to emergency situations with Con Edison, the utility company.<sup>103</sup> In turn, Con Edison reported that the issues that the facility was experiencing were internal, and could be fixed through their own electricians.<sup>104</sup>

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<sup>95</sup> The Weather Channel, *Polar Vortex Triggers Coldest Artic Outbreak in at Least Two Decades in Parts of the Midwest*, <https://perma.cc/K6QF-ZRDF> (last visited Mar. 17, 2019).

<sup>96</sup> *Id.*

<sup>97</sup> Carla Herreria, *'Harrowing' Video Shows Brooklyn Inmates in Freezing Jail Cells Begging for Help*, HUFFPOST, <https://perma.cc/M565-FW8Y> (last visited Mar. 17, 2019).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Nick Pinto, "'Vicious' and 'Brutal'" – *Life Inside a Freezing Federal Prison with No Heat*, THE INTERCEPT, <https://perma.cc/5QXL-949N> (last visited Mar. 17, 2019).

<sup>101</sup> *Id.*

<sup>102</sup> Herreria *supra* note 97.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

## V. THE NEED FOR EMERGENCY PLANNING

There are plenty of reasons for the imminent need for emergency planning in the event of a natural disaster. These purposes include moral, financial, and even constitutional aims. Although ninety-five percent of incarcerated individuals will someday return to regular society, many lawmakers and individual citizens fail to recognize prisoners as human beings who are deserving of essential basic rights and treatment.<sup>105</sup> Because of this, prisoners are often seen as “less than human,” and grouped together as individuals who have committed terrible offenses, even though statistically, forty-eight percent of federal prison inmates were incarcerated for drug-related offenses, and thirty-five percent of inmates were serving time for public-order related offenses.<sup>106</sup> Examples of these offenses are prostitution, disorderly conduct, and public intoxication.<sup>107</sup> Inmates who remained in their cells during Hurricane Harvey in Texas in 2017, described their living conditions within their cells as “covered in mold, urine, and feces.”<sup>108</sup> Across seventeen states, prisoners went on strike to demonstrate the inhumane conditions that they are being exposed to, such as the “overcrowded facilities, unsafe and unsanitary environments, substandard nutrition and substandard medical care.”<sup>109</sup> In an emergency situation, these conditions will predictably deteriorate even further.<sup>110</sup>

In reality, prisoners are considered as part of a “vulnerable population” of our society.<sup>111</sup> Vulnerable populations can be defined as individuals who “are particularly ‘at risk of poor physical, psychological, or social health’ after a disaster.”<sup>112</sup> These individuals are typically those who require “additional needs before, during and after” an incident such as a natural disaster, such as “maintaining independence, communication, transportation, supervision, and medical care.”<sup>113</sup> Prison inmates are completely dependent on correctional administration to take care of their

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<sup>105</sup> Savilonis, *supra* note 8.

<sup>106</sup> *Id.*

<sup>107</sup> Legal Match, *What are Crimes Against Public Order?* <https://perma.cc/G9WU-MK3Q> (last visited Mar. 17, 2019).

<sup>108</sup> Heath, *supra* note 64.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> Sharona Hoffman, *Preparing for Disaster: Protecting the Most Vulnerable in Emergencies*, <https://perma.cc/H9RK-SXWY> (last visited Jan. 26, 2019).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

needs, since they are not able to seek medical assistance, food, water, shelter, or even evacuate independently.<sup>114</sup> By changing the public's attitudes and viewpoints on prison inmates being subhuman, change can be enacted.

*A. The Standard Minimum Rules for the Treatment of Prisoners*

International Human Rights Law supports emergency planning in order to avoid violating prisoners' human rights.<sup>115</sup> The United Nations adopted a Standard Minimum Rules for the Treatment of Prisoners, which was approved in 1957 and in 1977.<sup>116</sup> These rules outline the "essential elements of the most adequate systems of today" and set out a list of minimum guidelines necessary for proper treatment of individuals imprisoned.<sup>117</sup> These rules shape sanitation, proper nutrition and drinking water, and appropriate medical services when necessary. They also set guidelines for the notification of a family member upon death or serious illness or injury to the inmate.<sup>118</sup> Another requirement of the Standard Minimum Rules is that prison staff and leaders are to "be trained and tested regarding their abilities to operate a penal institution humanely and safely."<sup>119</sup> If any of these guidelines are not met, even in the event of a natural disaster emergency, it is seriously violating the rights of those imprisoned.<sup>120</sup>

*B. The United States Constitution*

The Eighth Amendment of the United States Constitution prohibits "cruel and unusual punishment".<sup>121</sup> The failure of prison facilities to implement a disaster plan "that ensures 'the minimal civilized measure for life's necessities'" is a violation of each inmate's Eighth Amendment

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<sup>114</sup> *Id.*

<sup>115</sup> First United Nations Congress, Standard Minimum Rules for the Treatment of Prisoners, <https://perma.cc/297R-SFK5> (last visited Jan. 27, 2019).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Robbins, *supra* note 51.

<sup>120</sup> *Id.*

<sup>121</sup> U.S. Const. amend. VII.

rights.<sup>122</sup> Prison guards and officials are “legally obligated to protect inmates from serious threats of harm and to provide food, water, and medical care.”<sup>123</sup> Prison officials who fail to plan for a natural disaster may have “acted with the ‘deliberate indifference’ necessary for a court to find an Eighth Amendment violation.”<sup>124</sup> Although it is generally understood that these rights may be limited during an active emergency, a prison facility is still responsible for keeping inmates free from “inhumane conditions”, and with the basic necessities required for survival.<sup>125</sup>

The Fourteenth Amendment contains the Equal Protection Clause, which requires that no state should be allowed to “deny to any person within its jurisdiction the equal protection of the laws.”<sup>126</sup> Courts have held the rights of the Fourteenth Amendment should be applied to prisoners to protect them from any discrimination based on “race, sex, religion, age, national origin, and creed.”<sup>127</sup> Some courts have also held that some “penumbral rights,” not specifically mentioned within the Constitution, are still guaranteed to prison inmates.<sup>128</sup> Examples of these rights include the availability of medical treatment.<sup>129</sup> Both state and federal officials can be held liable for violating a prisoner’s constitutional rights.<sup>130</sup>

Finally, the Sixth Amendment of the Constitution guarantees the right to a speedy trial, “without unnecessary delay.”<sup>131</sup> When an emergency situation occurs, and there is no plan to resume operation, prisoners are kept waiting for trial for months and potentially even years, some being far from home with no plan to transport them back within the necessary legal timeframes.<sup>132</sup> Nonexistent record keeping exacerbates this problem, especially when inmates are transported to other locations hastily.<sup>133</sup> Prisoners transported from one location to the next are not always given proper legal documentation, making it difficult for the new

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<sup>122</sup> Robbins, *supra* note 51.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Savilonis, *supra* note 8.

<sup>126</sup> Hoffman, *supra* note 95.

<sup>127</sup> *Prison Law*, <https://perma.cc/7HTK-XQDH> (last visited Jan. 20, 2019).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> Hoffman, *supra* note 95.

<sup>131</sup> U.S. Const. amend. VI.

<sup>132</sup> Robbins, *supra* note 51.

<sup>133</sup> *Id.*

prison to access their sentencing information.<sup>134</sup> Consequently, many prisoners were forced into serving more time incarcerated than their actual sentence mandated.<sup>135</sup> This caused several inmates to file lawsuits against the correctional institute for false imprisonment.<sup>136</sup> When the emergency plan situation is unorganized and chaotic or nonexistent, it becomes difficult to locate these displaced inmates, and this makes their Constitutional rights less of a priority because of the emergency nature of the situation.<sup>137</sup>

Courts in the United States have implemented a two-prong test to evaluate whether the prison system has failed to uphold the minimum standards for living.<sup>138</sup> The first prong of this test evaluates whether “prisoners were deprived of minimal civilized measures of life’s necessities,” and the second prong of the test assesses whether the correctional officer and administrators “were deliberately indifferent to prisoner health and safety.”<sup>139</sup> When applying this test, there are many factors to consider, such as the definition of “deliberate indifference.” The Supreme Court has held that this requires a “finding that the responsible person acted in reckless disregard of a risk of which he or she was aware, as would generally be required for a criminal charge of recklessness.”<sup>140</sup> The standard is different in this situation than it would be for civil suits, which simply requires “disregarding an unjustifiably high risk for harm that should have been known.”<sup>141</sup> This is a difficult burden to prove criminally, and many inmates may instead choose to bring civil lawsuits upon the prison system for a violation of their rights.<sup>142</sup> Courts tend to give “broad deference” in favor of the practices of prison systems regarding inmate’s rights.<sup>143</sup> Therefore, it is usually extremely rare for the courts to get involved in any sort of “judicial oversight” unless it truly feels that a prisoner’s constitutional rights have been violated.<sup>144</sup>

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<sup>134</sup> *Id.*

<sup>135</sup> Savilonis, *supra* note 8.

<sup>136</sup> *Id.*

<sup>137</sup> Robbins, *supra* note 51.

<sup>138</sup> Savilonis, *supra* note 8.

<sup>139</sup> *Id.*

<sup>140</sup> Farmer v. Brennan, 511 U.S. 825 (1994).

<sup>141</sup> *Id.*

<sup>142</sup> Savilonis, *supra* note 8.

<sup>143</sup> Prison Law, *supra* 106

<sup>144</sup> *Id.*

## VI. POTENTIAL SOLUTIONS

It is true that “many complicated ethical decisions could in fact be avoided with appropriate response preparations.”<sup>145</sup> Among the recommended solutions of handling these emergency situations is knowledge management.<sup>146</sup> Managing knowledge is an important tool to handle these emergency situations and is a way to combat the challenges of a natural disaster in a “turbulent, fast changing environment.”<sup>147</sup> This includes having an accurate form of record management that can withstand the common consequences of a natural disaster such as power being out.<sup>148</sup> During an emergency and even in its aftermath, it is fundamental for prison administrators to have constant, updated information on each inmate, including where they are, their medical needs and solutions, and their court case information, including speedy trial dates.<sup>149</sup> Utilizing and enhancing the technology that is already available is a way to achieve this.<sup>150</sup> It is important to educate the community on both information related to predicting and identifying hazards and information on how to reduce the risk of these hazards.<sup>151</sup> With the onset of constant social media and online communication, society is often “constantly bombarded by information.”<sup>152</sup> Because of this, it is imperative to ensure that officials are emphasizing precisely the type of action that needs to be implemented by the community and the legislature, including its officials at pivotal points of disaster planning.<sup>153</sup> One example of this is social media.<sup>154</sup> Through these already extensive social media platforms, various entities can be brought together, regardless of their differing expertise levels.<sup>155</sup>

Incorporation with different agencies is vital in this process, to avoid creating superfluous jobs with “parallel activities,” when more than one agency assists in the same manner.<sup>156</sup> The key is working together across

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<sup>145</sup> Hoffman, *supra* note 95.

<sup>146</sup> Robbins, *supra* note 51.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Disaster Risk Reduction Tools and Methods for Climate Change Adaptation, *supra* note 1.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

platforms and differing agencies to achieve a common goal.<sup>157</sup> “Disaster response...involves a coordinated response between individuals and agencies that...have different functions, expertise, and contexts.”<sup>158</sup> This includes working closely with the private sector.<sup>159</sup> For example, local hospitals often lack the medical supplies that are necessary for treatment after a natural disaster.<sup>160</sup> Oftentimes, private suppliers are able to assist in restocking these, but face challenges, such as federal regulations that serve as roadblocks to assisting the public sector.<sup>161</sup> A multidisciplinary response will help further the common goal without wasting time and resources.<sup>162</sup>

Until about 1990, disaster management was focused on governmental and community response after an emergency took place, including relief efforts.<sup>163</sup> Today, the United States government funds research to predict natural disaster patterns, such as hurricanes, earthquakes, fires, and floods.<sup>164</sup> The purpose of this research is to gather knowledge and information that would assist in better understanding the patterns and formulating a plan to build more “resilient communities,” and ones which are “able to withstand an extreme event an extreme event without outside assistance.”<sup>165</sup> The objective of this research is to better prepare the government for potential situations and build resilience, as opposed to the previous practice of having a simply predictive response.<sup>166</sup>

One example is California. Since the state of California has such a distinct range of weather patterns, the different facilities in the area are all prone to various types of emergencies.<sup>167</sup> For example, the facility in San Quentin is at risk for earthquakes, the facility in Pelican Bay has to watch

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<sup>157</sup> Robbins, *supra* note 51.

<sup>158</sup> Yates & Paquette, *supra* note 7.

<sup>159</sup> Eric Dunne, *The U.S. Needs a Better Response to Natural Disasters, Here's Where to Start*, WASHINGTON EXAMINER, <https://perma.cc/2YJ6-YKWD> (last visited Jan. 21, 2019).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Disaster Risk Reduction Tools and Methods for Climate Change Adaptation, *supra* note 1.

<sup>163</sup> *Id.*

<sup>164</sup> Maricle, *supra* note 76.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Rundle, *supra* note 3.

for tsunamis, and the Tracy prison is predisposed to significant flooding.<sup>168</sup> Since emergencies are often difficult to plan for, the rebuilding and flexibility of society should be a primary focus during research that is conducted.<sup>169</sup>

## VII. PROPOSALS

### A. Background Information on the California Conservation Fire Camps

In 2018, inmate firefighters comprised of almost one-fifth of the emergency force fighting the massive fires that afflicted California.<sup>170</sup> These are referred to as conservation camps, and they support state, local, and federal government agencies in combating natural disasters, such as fires and floods.<sup>171</sup> Conservation camps contribute over 24.5 million hours of emergency assistance each year.<sup>172</sup> This practice has been in place since the 1940s.<sup>173</sup> They take place with participating minimum-security facilities and are jointly operated with the California Department of Forestry and Fire Protection and the Los Angeles County Fire Department.<sup>174</sup> Participation is available to prisoners without a criminal history of “arson, sexual crimes, kidnapping, gang-affiliation, escape attempts,” or inmates who have been sentenced to life in prison.<sup>175</sup> There are forty-four camps in twenty-seven counties nationwide, with 3,700 inmates working on a strictly voluntary basis.<sup>176</sup> Training and minimal compensation are provided to all participating inmates.<sup>177</sup> After a two-

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<sup>168</sup> *Id.*

<sup>169</sup> Maricle, *supra* note 76.

<sup>170</sup> Adesuwa Agbonile, *Inmates Help Battle California’s Wildfires. But When Freed, Many Can’t Get Firefighting Jobs*, <https://perma.cc/DD79-J2ET> (last visited Jan. 21, 2019).

<sup>171</sup> *Conservation (Fire) Camps*, CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, <https://perma.cc/7GJM-4Y8U> (last visited Jan. 27, 2019).

<sup>172</sup> Rundle, *supra* note 3.

<sup>173</sup> German Lopez, *California is Using Prison Labor to Fight its Record Wildfires*, VOX, <https://perma.cc/MY47-MJM9> (last visited Jan. 20, 2019).

<sup>174</sup> *Conservation (Fire) Camps*, *supra* note 155.

<sup>175</sup> Nicole Goodkind, *California Wildfires: Inmates are Risking their Lives Working Alongside Firefighters for \$2 a Day*, NEWSWEEK, <https://perma.cc/36T7-VFPH> (last visited Jan. 20, 2019).

<sup>176</sup> *Conservation (Fire) Camps*, *supra* note 155.

<sup>177</sup> *Id.*

week training period, a physical exam is administered.<sup>178</sup> Once all of these conditions have been satisfied, the participating inmate is sent to live in one of the forty-three low-security camps within California.<sup>179</sup> This program saved taxpayers approximately one hundred million dollars as opposed to hiring civilian firefighters.<sup>180</sup>

Conservation camps are not without controversy.<sup>181</sup> They have been criticized for cruelty to the participants, because of the inmates risking their lives for little pay and long hours.<sup>182</sup> Participants regularly work twenty-four hour shifts for less than one-tenth of the wages of the lowest paid civilian firefighters, and without the benefits that these civilian firefighters would typically enjoy, such as pension, workers' compensation, etc.<sup>183</sup> Inmate firefighters earn two dollars per day, and an extra dollar per hour during active fire situations, in which they are working twenty-four-hour shifts.<sup>184</sup> Inmates are eight times more likely to be injured while fighting these fires compared to civilian firefighters.<sup>185</sup> Controversially, juvenile inmates are permitted to serve on this workforce.<sup>186</sup> These juveniles would not be permitted to assist in these tasks as civilians, but are allowed to fight fires while incarcerated.<sup>187</sup> At least fifty-eight juvenile inmates are enrolled in the program.<sup>188</sup>

Despite these criticisms, one study showed that amongst inmates that participated in a federal prison program, they were twenty-four percent less likely to recidivate and fourteen percent more likely to be employed a year after release.<sup>189</sup> Conversely, in one study conducted, approximately two-thirds of former inmates were rearrested within three years of their release from prison.<sup>190</sup> Statistically, these recidivism rates were

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<sup>178</sup> Goodkind, *supra* note 159.

<sup>179</sup> *Id.*

<sup>180</sup> Conservation (Fire) Camps, *supra* note 155.

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> Abby Vesoulis, *Inmates Fighting California Wildfires Are More Likely to Get Hurt, Records Show*, TIME, <https://perma.cc/2L8H-KJ5L> (last visited Jan. 20, 2019).

<sup>185</sup> *Id.*

<sup>186</sup> Lopez, *supra* note 157.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> Kevin Schnepel, *Do Post-Prison Job Opportunities Reduce Recidivism?* WORLD OF LABOR, <https://perma.cc/3L4F-XFV4> (last visited Jan. 27, 2019).

interrelated with the individual's inability to find stable employment.<sup>191</sup> When individuals have the opportunity to develop skills in the prison system, they are more likely to be able to readjust to regular society.<sup>192</sup> This gives the inmates legitimate methods for earning income, instead of turning to illegitimate means, which can foster further criminal behavior.<sup>193</sup>

*B. Proposal One: Enacting a Voluntary Workforce*

Similar to the California Conservation Fire Camps, my proposal is to enact a voluntary workforce within each major prison facility. This will be available for long-term, minimally supervised inmates with documented good behavior. Similar to the conservation camp requirements, these chosen inmates must be considered "low-level offenders," and those with violent convictions would be excluded from participating.<sup>194</sup> Participating inmates will be responsible for assisting the guards and prison administration in maintaining order and enforcing the safety plan that is already set in place for such an emergency. Selected inmates will participate in a rigid mandatory training program, alongside the prison guards, which will be applicable throughout various emergency scenarios. When an emergency situation arises, this ensures that there will be more individuals that are entrusted to help enforce the emergency plans, which will help alleviate the fear of prison guards being outnumbered by rioting, panicked inmates. By adding a volunteer workforce comprised of prison inmates, the prison system is adding safety in numbers, and having more individuals assist in maintaining order and following the set guidelines.

The emergency safety team would be able to assist in preventative measures, such as boarding windows or collecting supplies, or assisting in executing the evacuation plan to help securely round up the inmates to safety. Not only will this plan assist the prison facility in regulation and implementation aspects, it provides the participating inmates with motivation, and with a sense of pride and purpose.<sup>195</sup> One former inmate described that working while incarcerated "made me feel like I was

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<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> Agbonile, *supra* note 154.

<sup>195</sup> *Id.*

fulfilling my existential duty to society: I was contributing.”<sup>196</sup> Although the pay is not comparable to that of civilian employee, she describes the ability to be able to work while incarcerated as a “lifeline,” and that those who are working within the prison system are “the closest to free that [they] can be, until [they] get out.”<sup>197</sup> A study indicated that federal prisoners were twice as likely as those who violated their parole to report that they had been able to apply the skills that they had learned in their prison-based training in their jobs that they had acquired after being released.<sup>198</sup> Aside from studies suggesting lower recidivism rates amongst participating offenders, inmates are able to earn an income by providing an inexpensive labor source.<sup>199</sup> It is described as “an expression of humanity” to be allowed to work while being incarcerated.<sup>200</sup> Individualizing these prisoners by allowing them to choose whether they want to participate in a program as important is keeping their fellow inmates safe during an emergency, which could have long-lasting positive effects, even after release.

Additionally, one major criticism of the conservation camp was that when the prisoners that participated in the program were released, they were unable to seek employment as professional firefighters, since the conviction typically precluded them from this specific career.<sup>201</sup> However, the skills that are acquired during this proposed plan would be easily transferable to post-release employment. Upon release, inmates could use these planning skills for jobs related to crisis management, safety planning, and similar types of jobs that do not typically require such stringent standards for employment as firefighting would.

Florida has recently begun employing prisoners to clean up debris after a hurricane in some areas.<sup>202</sup> Expanding this practice would help rebuild the destroyed areas around the prison facilities. This would allow for faster restoration at a less expensive price than having to use federal

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<sup>196</sup> Chandra Bozelko, *Think Prison Labor is a Form of Slavery? Think again*, THE LOS ANGELES TIMES, <https://perma.cc/WAA9-JMB8> (last visited Jan. 26, 2019).

<sup>197</sup> *Id.*

<sup>198</sup> Kathleen E. Macguire, Timothy Flanagan & Terence P. Thornberry, *Prison Labor and Recidivism*, JOURNAL OF QUANTITATIVE CRIMINOLOGY, <https://perma.cc/GZA7-YG4W> (last visited Jan. 27, 2019).

<sup>199</sup> *Id.*

<sup>200</sup> Bozelko, *supra* note 178.

<sup>201</sup> Lopez, *supra* note 157.

<sup>202</sup> Martinez, Flagg, & Caballero, *supra* note 83.

aid and resources when other areas of the community could better benefit from it.

### C. Proposal Two: Federal Legislature

Additionally, federal entities should come together proactively to avoid the chaos and disorder that accompanies the aftermath of a natural disaster. Federal guidelines should be passed to mandate human rights laws that are similar to and modeled after the International Human Rights Law and that follow the guidelines that are set out in the United Nations Standard Minimum Rules for the Treatment of Prisoners. Planning for an emergency situation, especially when concerning the needs for those considered to be part of a vulnerable population, will likely only occur if it is enacted by law or statute.<sup>203</sup> Identifying potential issues that could affect prison facilities ahead of time may help alleviate some future problems.<sup>204</sup>

More funding should be allocated to allow prison facilities to properly train staff and inmates for natural disaster emergency preparedness. By mandating training of prison officials, each prison facility would have an emergency plan set in place to reduce confusion. These plans should be made available to all correctional staff, with drills a few times a year in order to ensure compliance and effectiveness. The plans can be tailored to each geographical area. Areas more prone to certain natural disasters, such as hurricanes or earthquakes could have a bigger emphasis on the problems and planning associated with those specific issues.

Finally, by reducing the number of individuals who are actually incarcerated, there would be less need for surplus prison resources and funding to avoid the extra security and planning necessary to prepare for an emergency situation. Paul R. Lepage, the governor of Maine, has undertaken a drive to commute (or reduce) sentences of those at least seventeen prison inmates.<sup>205</sup> All of the sentences that were commuted were of inmates who were serving time for a nonviolent offense, and specifically excluded those who were convicted for offenses involving sex crimes, drug trafficking, and domestic violence.<sup>206</sup> The primary

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<sup>203</sup> Hoffman, *supra* note 95.

<sup>204</sup> *Id.*

<sup>205</sup> Jess Bidgood, *Maine's Governor Wants Inmates to Fill Jobs, Not Prison Beds*, THE NEW YORK TIMES, <https://perma.cc/BE84-FEZL> (last visited Jan. 27, 2019).

<sup>206</sup> *Id.*

purpose of allowing these inmates to be released from their prison sentence early was to assist with the state's unemployment rate of almost three percent.<sup>207</sup> He commissioned Maine's Department of Labor to work with each discharged inmate to assist with finding employment.<sup>208</sup>

Other states have also echoed this practice, such as Texas, through the assistance of its former governor, Rick Perry.<sup>209</sup> Despite being a staunchly conservative state and still remaining tough on violent crime, Perry has worked to reduce the cost of incarceration by enacting specialized court systems, such as drug courts around the state, which help focus on rehabilitation and treatment alternatives for offenders who are addicted to drugs, rather than incarceration.<sup>210</sup> Similarly, following Hurricane Michael in November 2018, the Bay County Jail in Florida released approximately two hundred and fifty inmates due to the damage sustained during the storm.<sup>211</sup> These were offenders who were "carefully chosen and approved by a judge," and were close to being released on their original sentence in any event.<sup>212</sup> Major Rick Anglin, the warden for the facility stated that, "We're not here to necessarily make them comfortable, but we want them to be livable."<sup>213</sup> These initiatives alone will help reduce the prison population and will provide less of a burden on safety planning for the vulnerable population in the event of an emergency situation.

Work release facilities are available in most states. They work closely with the correctional facility and provides a better transition for the individual inmate, while still providing them the skills to be able to function upon their reintegration into society.<sup>214</sup> The Washington Department of Corrections reports that inmates that participate in the program are "more likely to be successful in maintain employment,

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<sup>207</sup> *Id.*

<sup>208</sup> *Id.*

<sup>209</sup> *The Rick Perry Report Card*, TEXAS MONTHLY, <https://perma.cc/L8AE-ABNP> (last visited Jan. 27, 2019).

<sup>210</sup> *Id.*

<sup>211</sup> Olivia Michael, *250 Inmates Released Early Because of Hurricane Michael*, WJHG, <https://perma.cc/ZB6X-TT3N> (last visited Jan. 27, 2019).

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> *How Work Release Programs for Inmates Aid in Rehabilitation*, CONNECT NETWORK GTL, <https://perma.cc/EVJ3-MSZY> (last visited Jan. 27, 2019).

finding stable housing, and pay legal financial obligations.”<sup>215</sup> These programs benefit the individual state by providing income back into the state, in the way of \$3.82 for every dollar that is spent.<sup>216</sup> Inmates typically qualify for these programs once they have six months left in their sentence.<sup>217</sup> Allowing inmates convicted of certain low-level, nonviolent crimes to participate in this program sooner than six months before their sentence is to be completed, and allowing an early release for good behavior, can prevent the overcrowding of prison facilities, which would be considerably helpful during an emergency.

### VIII. CONCLUSION

While emergency situations and natural disasters are rarely foreseeable, there are solutions that can help save lives, safeguard society, maintain order and regulation, and most importantly, protect the rights of those who are incarcerated. Predicting the path and intensity of a storm proves to be extremely difficult, and advance notice and evacuation is not always possible.<sup>218</sup> In those situations, surplus resources need to be made available to those who do not plan to evacuate, and assistance from local taskforces if rescue efforts are necessary. When possible, certain procedures need to be in place in order to facilitate moving a large group of prisoners to another place, while still maintaining order and preventing the escape and endangering lives. This can be done through improving communication and training programs. Many of the casualties and injuries that occur in regular society in the aftermath of a natural disaster can be avoided through proper planning and procedures set out in advance. This is no different in a correctional facility.<sup>219</sup> Just simply having a plan in place can help alleviate many of the issues presented during a natural disaster emergency. As stated by several prison officials during Hurricane Katrina, the only safety plan that existed during that disaster were the ones on the walls that were in place for a fire-related emergency.<sup>220</sup> With the proper planning and guidelines that are made available to prison staff and inmates ahead of time, a safety plan would ensure that even a chaotic situation can be handled more smoothly. Enacting a prison workforce whose sole purpose is to proactively react in

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<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> Maricle, *supra* note 76.

<sup>219</sup> *Id.*

<sup>220</sup> Robbins, *supra* note 51.

such an emergency situation would assist with saving countless lives. This would solve the issue that prisons are not funded enough to staff more prison guards or emergency outreach workers, and that during emergencies, there are often not enough officials present to assist the panicked hordes of inmates. By paying these specialized taskforce inmates to assist in such an emergency, costs could be significantly reduced.

One last point is that it is often a difficult concept for both citizens and lawmakers to treat prisoners as human beings who are deserving of the same rights as those who are not incarcerated during an emergency or natural disaster. It is critical to acknowledge that prisoners are considered a vulnerable subset of the population who are completely disadvantaged during a disaster because they do not possess the autonomy to be able to take care of themselves or evacuate the area independently.<sup>221</sup> Because of this, special accommodations do need to be made for the prison community. It is important to recognize that prisoners are deserving of basic human rights, especially during an active emergency. Enacting legislation that mandates these changes would be a major improvement to influence prison systems into following these guidelines and enacting proactive plans to prevent further damage in such a disaster, as well as penalizing those who do not comply with such standards. Such legislation could be modeled after the Standard Minimum Rules for the Treatment of Prisoners, which provides a more humanitarian view of inmates.

When an emergency situation is not handled in a manner that the public views as efficient, they often turn to the government for answers.<sup>222</sup> In the aftermath of a disaster that was not handled effectively, the general public could lose faith in the government that is responsible for society's welfare and ability to respond to disasters.<sup>223</sup> This would greatly undermine efforts that are made and cause overall mistrust and uncertainty on both the local and federal levels of government. Additionally, the American taxpayers would be forced to absorb the costs of having to assist in a post-emergency programs and lack of "economic productivity."<sup>224</sup> A proactive plan could help build trust in the government and save the American taxpayers millions of dollars.

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<sup>221</sup> Hoffman, *supra* note 95.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

Therefore, the recommendations and collective changes outlined in this comment would help make a significant difference in how correctional facilities handle a natural emergency situation, despite the challenge that often accompanies such unpredictability. With these changes, there should be more of an emphasis on prisoner safety. Prison staff would have more inducement to evacuate their inmates from facilities facing imminent danger “or explain publicly and convincingly why they are certain it is safe.”<sup>225</sup> As further elaborated by Dreisen Heath, “[Prison officials] should also know that they will be held accountable if they gamble with the safety of prisoners only to repeat the mistakes and abuses of the past.”<sup>226</sup> With these suggested changes in place, there should be less guesswork involved with emergency disaster planning. By enacting a solidified plan, these changes would help ensure the safety of the general community, reallocate funding for the prison system, and protect each prisoner’s rights, as well as keep the general population safe.

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<sup>225</sup> *Id.*

<sup>226</sup> *Id.*