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Heat Camps: Juvenile Curfews, Extreme Heat & the Eighth Amendment

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Heat Camps: Juvenile Curfews, Extreme Heat & the Eighth Amendment

Norrinda Brown*

Abstract

For decades, in the summertime, America has confined certain of its youth in what are essentially open-air heat camps. In city after city, camp-form is established through the enactment of warm-weather juvenile curfews which keep the youth at home or in state-sponsored centers during summer nights and, increasingly, during days as well. Local governments justify these curfews with general notions of “public safety,” including to protect the youth they confine. But the laws are not benevolent. Reducing youth mobility by curfew results in exclusion, oversurveillance, and potentially lethal heat punishment of the youth, possibly in violation of the Eighth Amendment. As the Anthropocene Era progresses, governments will need to reconsider how to protect their youth from physical harm and heat without putting their humanity at risk.

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INTRODUCTION

There, the children know they are free.

Airea D. Matthews¹

This is the last line of a photo essay, “*The Magical Space Where Fun is Every Child’s Birthright*,” published in the New York Times (NYT) in August 2023.² The “there” being referred to is the City of Philadelphia’s recreation centers, which according to Aira D. Matthews, a Black mother living in Philadelphia and the city’s poet laureate, have “powerfully disrupted the unjust socioeconomic logic that recreation is a luxury that poor people couldn’t afford and didn’t deserve.”³ Alongside Matthews’s words were ten perfectly lit pictures of Black children at “play” at the recreation centers.⁴ The pictures taken by Haitian photographer Adrian Eli René capture the

1. Aira D. Matthews, *The Magical Space Where Fun is Every Child’s Birthright*, N.Y. TIMES (Aug. 2, 2023), <https://perma.cc/GTK2-MYMW>.

2. *Id.*

3. *Id.* Recreation centers were “critical developments in the cultural life of poor urban neighborhoods. Equipped with an array of otherwise scarce facilities—basketball courts, fields, art studios—these spaces enshrined play as a means of not only strengthening communal ties but also affirming the community’s collective humanity.” *Id.*

4. *Id.*

sun hitting the children's faces at just the right angle.⁵ Matthews's words have an assuredness to them that belie the similarity between the type of leisure offered at "the recs" and that found in juvenile detention facilities.⁶ René's photographic genius almost obscures the fact that in all but one of the pictures, the children were surrounded by chain-link fencing.⁷ And nowhere is there evidence that Philadelphia, one of the worst "urban heat islands" in the country, was in the middle of a string of heat waves that would last until late September and cause the public schools to close just as soon as they had opened for the new school year.⁸

All of this was a reminder that, yearly, America confines certain of its youth in what can only be described as open-air heat camps with more aggression and little resistance.⁹ These

5. *Id.* (describing photographer Adrian Eli René as "a young Haitian American photographer who moved to Philadelphia in 2020 and soon set out to get to know his city through the lens of his camera").

6. *See id.* ("At the rec, children can exercise creative agency, often deciding on their own how to use the space. . . . They give children a place to work through, as my own children did, their triumphs and losses; innocence, immaturity and growth are valued.")

7. *Id.*

8. *See* Jeremy S. Hoffman, Vivek Shandas & Nicholas Pendleton, *The Effects of Historical Housing Policies on Resident Exposure to Intra-Urban Heat: A Study of 108 US Urban Areas*, CLIMATE, Jan. 2020, at 2 ("This urban heat island effect can cause temperatures to vary as much as 10°C within a single urban area . . .").

9. "Camp-form" is a way of geographically contextualizing confinement for the purpose of rights reduction. *See* ACHILLE MBEMBE, *NECROPOLITICS* 123–24 (Nancy Rose Hunt & Achille Mbembe eds., Steven Corcoran trans., 2019) (discussing "camp-form" in the context of colonialism); *see also* Antonio Pele, *Achille Mbembe: Necropolitics*, CRITICAL LEGAL THINKING (Mar. 2, 2020), <https://perma.cc/F6EX-L55E> (explaining how "[t]he colony in general and the slavery plantation in particular have given birth to those necropolitical practices" that continue today through "the *confinement of certain populations* in particular spaces: campsites"); *see also* MBEMBE, *supra*, at 92 (defining necropolitics as "contemporary forms of the subjugation of life to the power of death"). Mbembe identifies refugee camps, prisons, banlieues, suburbs and favelas all as "camp-form" and suggests camp has become a prevailing way of governing unwanted populations. *Id.* at 34

Historically, one of the strategies of the dominant states has always consisted in spatializing and discharging that terror by confining its most extreme manifestations in some racially stigmatized third place—the plantation under slavery, the colony, the camp, the compound under apartheid, the ghetto or, as in the present-day United States, the prison.

youth, most often low income and Black, are confined at or near home during hot-weather months through the enactment of warm-weather juvenile curfew laws.¹⁰ Home confinement in extreme heat, in some cases, can jeopardize the health of the youth.¹¹ The neighborhoods where poor, Black youth live are some of the hottest.¹² While the entire United States is getting hot quickly, it is now well understood that some places are hotter than others.¹³ Extensive research suggests Black and Brown neighborhoods are most vulnerable to extreme heat.¹⁴ Take Philadelphia, where “roughly 447,000 of the close to 2.5 million Philadelphia-area residents in the study area live in census tracts that are at least 9 degrees hotter due to the urban heat island effect, and more than 1,000 people live in tracts that are at least 12 degrees hotter.”¹⁵ And those people

Mbembe’s necropolitical theory explores “an unequal redistribution of capacities for mobility, and in which the only chance of survival, for many, is to move and to keep on moving.” *Id.* at 3. The urban Black neighborhood itself takes camp-form. The recreation centers Matthews writes of are also camp-like. See Matthews, *supra* note 1 (describing how recreation centers provide camps and other activities for children).

10. See, e.g., Khiree Stewart, *Baltimore Summer Youth Curfew Takes Effect Memorial Day Weekend*, WBAL-TV 11 BALT. (May 26, 2023), <https://perma.cc/65VK-TBGG> (reporting on the 2023 juvenile curfew in Baltimore).

11. See Tyra Bryant-Stephens, *Asthma Disparities in Urban Environments*, 123 J. ALLERGY CLIN. IMMUNOL. 1199, 1199 (2009) (describing increased asthma hospitalizations among black youth in urban areas).

12. Hoffman, Shandas & Pendleton, *supra* note 8 (“Emerging research suggests that many of the hottest urban areas also tend to be inhabited by resource-limited residents and communities of color . . .”).

13. See Jeff Masters & Bob Henson, *The Scorching Summer of 2023 Reaches ‘Mind-Blowing’ High Temperatures*, YALE CLIMATE CONNECTIONS (July 17, 2023), <https://perma.cc/XT8A-EV4N> (describing record heat waves across the United States and the globe).

14. See Hoffman, Shandas & Pendleton, *supra* note 8, at 11 (“We found that in nearly all cases, those neighborhoods located in formerly redlined areas—that remain predominantly lower income and communities of color—are at present hotter than their non-redlined counterparts.”).

15. Sophia Schmidt, *Some Philly Neighborhoods Can Be up to 12 Degrees Hotter Due to the Built Environment, New Study Shows*, WHYY (July 27, 2023), <https://perma.cc/8Y2A-NTM8>; *Urban Heat Island Map*, CLIMATE CENT., <https://perma.cc/V4QH-CHFG> (last visited May 18, 2025) (depicting an urban heat index map for Philadelphia).

are congregated in just a handful of low-income neighborhoods.¹⁶

Youths are not immune to extreme heat.¹⁷ All of the ills that can befall the adult human body when exposed to extreme heat can also affect the youth.¹⁸ Some illnesses, like asthma, worsen in children during extreme heat.¹⁹ In *Alex A. ex rel. Smith v. Edwards*,²⁰ the U.S. District Court for the Middle District of Louisiana suggested that the youthfulness of confined persons is not a defense to claims charging the existence of unlawful conditions in imprisonment, including heat.²¹ This Essay borrows the reasoning in *Alex A.* to suggest that confining the youth in the hottest neighborhoods, especially as the frequency and duration of periods of extreme heat increases, can violate the Eighth Amendment’s cruel and unusual punishments clause.²²

I. JUVENILE CURFEWS

Outside of emergencies and political unrest, curfews have most commonly been used to curb the free movement of the youth. At the end of the nineteenth century, at least 3,000

16. See Schmidt, *supra* note 15 (describing the impacted neighborhoods and explaining that formerly redlined neighborhoods are more vulnerable to heat).

17. *Heat Waves and How They Impact Children*, UNICEF, <https://perma.cc/VP68-HRCH> (last visited May 18, 2025) (finding that “[c]hildren are more vulnerable to the short[] and long-term effects of heat stress”).

18. *Id.*

19. *Clinical Overview of Heat and Children and Teens with Asthma*, CDC (June 18, 2024), <https://perma.cc/B2D4-GZXY>.

20. No. 22-573, 2023 WL 5984280 (M.D. La. Sep. 14, 2023), *vacated as moot sub nom.*, *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119 (5th Cir. 2023).

21. See *id.* at *8–9 (recognizing the “unique nature of the juvenile system” and finding that the treatment of children in a Louisiana juvenile facility was both “untenable and constitutionally intolerable”), *vacated as moot sub nom.*, *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119 (5th Cir. 2023); see also *id.* at *7 n.43 (citing *Ball v. LeBlanc*, 792 F.3d 584, 595–96 (5th Cir. 2015) which “affirm[ed] [a] finding of deliberate indifference to the risk of heat injury, despite prison officials’ provision of awnings, misting, fans, access to ice water, and daily showers”), *vacated as moot sub nom.*, *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119 (5th Cir. 2023).

22. See *infra* notes 158–178 and accompanying text.

communities had juvenile curfew ordinances.²³ Juvenile curfews would expand and wane for the next century.²⁴ In 1975, the first federal case concerning juvenile curfews, *Bykofsky ex rel. Bykofsky v. Borough of Middleton*,²⁵ was heard.²⁶ In *Bykofsky*, a mother and her twelve-year-old son challenged the constitutionality of a nocturnal juvenile curfew ordinance in Middleton, Pennsylvania.²⁷ The federal district court held that the ordinance itself was constitutional though some of the language in the exceptions was vague and should be struck.²⁸ The circuit court affirmed and the Supreme Court denied *certiorari*, leaving the circuits “fragmented over the constitutionality” of juvenile curfews.²⁹ The federal judiciary continued to struggle with the constitutionality of juvenile curfew laws after *Bykofsky* resulting in inconsistent rulings surrounding questions not only about the freedoms that were at issue and how fundamental those freedoms were but also what level of scrutiny should be applied to laws that burden them.³⁰ Even courts that were hostile to non-emergency juvenile curfews were unwilling to go as far as to consider them as inherently unconstitutional.³¹ The question that the

23. Katherine P. Hazen & Eve M. Brank, *Juvenile Curfews*, in THE ENCYCLOPEDIA OF JUV. DELINQ. & JUST. 470, 471 (Christopher J. Schreck ed., 2018).

24. See *id.* at 471 (outlining sporadic efforts to control juvenile delinquency in the twentieth century).

25. 401 F. Supp. 1242 (M.D. Pa. 1975).

26. *Id.* at 1245.

27. *Id.* at 1245–46.

28. *Id.* at 1250–53, 1266.

29. *Bykofsky v. Borough of Middleton*, 535 F.2d 1245 (3d Cir. 1976), *cert. denied*, 429 U.S. 964 (1976); *Juvenile Curfews and the Major Confusion over Minor Rights*, 118 HARV. L. REV. 2400, 2400 (2005) (discussing the inconsistent treatment of the federal circuits on juvenile curfews)

30. *Juvenile Curfews and the Major Confusion over Minor Rights*, *supra* note 29, at 2400–01 (discussing various cases in which the federal circuits differed in their analysis of juvenile curfews). Compare *Hutchins v. District of Columbia*, 188 F.3d 531, 538–39 (D.C. Cir. 1999) (finding that the juvenile curfew survived rational basis scrutiny), with *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 847 (4th Cir. 1998) (finding that the juvenile curfew survived intermediate scrutiny).

31. *Juvenile Curfews and the Major Confusion over Minor Rights*, *supra* note 29, at 2401; see, e.g., *Ramos v. Town of Vernon*, 353 F.3d 171, 186 (2d Cir. 2003) (finding that the Town’s ordinance was unconstitutional but

courts were debating was what distinguished a constitutional juvenile curfew from an unconstitutional one.³²

In the 1990s, the number of juvenile curfews surged once more.³³ In the summer of 1991, Dallas enacted a juvenile curfew ordinance that prohibited youth under the age of seventeen from being in a public place or establishment between the hours of 11:00 p.m. and 6:00 a.m. on weeknights and between midnight and 6:00 a.m. on weekends.³⁴ There were exceptions, including being on an errand with parents or guardians, interstate travel, school or religious functions, and First Amendment protected activity.³⁵ Two weeks after the passage of the law, Elizabeth Qutb and three other parents filed a lawsuit challenging the constitutionality of the ordinance.³⁶ The district court held the law was unconstitutional.³⁷ The scope of a constitutional juvenile curfew became clearer after the Fifth Circuit decided *Qutb v. Strauss*.³⁸ The Fifth Circuit reversed and found the juvenile curfew law constitutional because the interest—reducing juvenile crime and promoting juvenile safety—was compelling.³⁹ The court also found that the ordinance was narrowly tailored to achieve the compelling interest and that it used the least restrictive means of accomplishing the goals.⁴⁰

declining to find that the Equal Protection Clause completely prohibited the enactment of a juvenile curfew ordinance).

32. *Juvenile Curfews and the Major Confusion over Minor Rights*, *supra* note 29, at 2401.

33. See Hazen & Brank, *supra* note 23, at 471 (discussing the “renewed focus on juvenile crime and political support for curfews” during the 1990s); see, e.g., *Qutb v. Strauss*, 11 F.3d 488, 490 (5th Cir. 1993) (providing an example of city ordinance about juvenile curfews).

34. *Qutb*, 11 F.3d at 490 (describing the provisions of the Dallas ordinance).

35. *Id.*

36. *Id.* at 491.

37. *Id.* at 490 (“The district court ruled for the plaintiffs, holding that the ordinance violated both the United States and the Texas Constitutions, and permanently enjoined enforcement of the ordinance.”).

38. 11 F.3d 488 (5th Cir. 1993).

39. *Id.* at 492.

40. *Id.* at 493 (“The ordinance contains various ‘defenses’ that allowed affected minors to remain in public areas during curfew hours.”).

Post-*Qutb*, Dallas' curfew became a model for other cities.⁴¹ In just the month after the decision was issued Denver, Orlando, Cedar Hill (a Dallas suburb), Fort Worth, New Orleans, Columbus, Springfield, Washington, and Houston all moved to create juvenile curfews of their own.⁴² By 1995, 77% of cities with populations greater than 200,000 and 73% of cities with populations greater than 100,000 had some form of juvenile curfew.⁴³ And by 1997, 80% of communities with populations of 30,000 had curfews.⁴⁴ Juvenile curfew laws significantly restrict young people's access to public spaces at night, effectively excluding them from nighttime activities.⁴⁵

All juvenile curfews prevent the youth from being away from home at night or risk a wide range of potential penalties. Juvenile curfews in some urban centers, however, are notoriously more extreme than others, targeting minority youth and imposing harsh fines on their parents. The District of Columbia, Baltimore, Newark, New Orleans, and Philadelphia, for example, have been among the cities with the most restrictive curfews due to duration and/or the extremity of the penalties imposed.⁴⁶ A look at curfews in these cities reveal the penal character of juvenile curfews.

A. *Baltimore*

Juvenile curfews are less about public safety and more about punishment. Baltimore's juvenile curfew runs from the start of summer until Labor Day.⁴⁷ It covers teenagers aged

41. David G. Savage, *Supreme Court Upholds Curfew on Dallas Youths*, L.A. TIMES (June 1, 1994), <https://perma.cc/7T36-48DD> (writing about "a boost to the growing number of cities that enforce[ed] curfews" after the Supreme Court rejected a challenge to Dallas' juvenile curfew); *Qutb*, 11 F.3d at 493–94, *cert denied sub nom.*, *Qutb v. Barlett*, 511 U.S. 1127 (1994).

42. William Ruefle & Kenneth Mike Reynolds, *Keep Them at Home: Juvenile Curfew Ordinances in 200 American Cities*, 15 AM. J. POLICE 63, 81 (1996).

43. *Id.* at 74–76.

44. Patrick Kline, *The Impact of Juvenile Curfew Laws on Arrests of Youth and Adults*, 14 AM. L. & ECON. REV. 44, 45 (2011).

45. *See id.* at 49 (providing an example of police using the ordinance as a rationale for arresting young people).

46. *See infra* notes 59–89 and accompanying text.

47. Stewart, *supra* note 10.

fourteen, fifteen, and sixteen on weekends and holidays from 11:00 p.m. to 6:00 a.m., and for those thirteen and younger, the curfew starts at 9:00 p.m.⁴⁸ Exceptions are made for “children with their parent or guardian, and youths traveling to or from a job or city-sponsored event.”⁴⁹ The youth are invited to use two “late-night” youth centers in Baltimore, if they want to be out at night unsupervised.⁵⁰ The centers have supervision while children may “play, eat[,] or sleep” while they await “pickup.”⁵¹ The Baltimore Police Department is responsible for enforcing the curfew with a focus on groups of ten or more young people.⁵² There are supposed to be no “pat-downs” but there is a loophole for when “safety is an issue.”⁵³ Officers are also not supposed to engage at all until a “youth connection” worker is at the scene.⁵⁴ “Police are being instructed to verbally command the group to disperse.”⁵⁵ Violators of Baltimore’s juvenile curfew are issued a written notice and warning for the first offense, “a \$50 fine or family counseling for a second offense and a fine of up to \$500 or community service for the parent/guardian for a third offense.”⁵⁶

B. Newark

Juvenile curfews penalize parents and caregivers. Newark, New Jersey’s juvenile summer curfew prohibits the youth from being more than one hundred yards from their place of residence.⁵⁷ The Newark ordinance dates back to 1943, and back to 1992 in its current form.⁵⁸ Since then, it has technically been illegal for children to be more than one hundred yards away from home during prohibited hours, but enforcement has

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. Eric Kiefer, *Kids Out Late: Do You Support a Youth Curfew in Newark?*, PATCH (July 17, 2015), <https://perma.cc/BDD8-H83G>.

58. *Id.*

shifted over the years.⁵⁹ In the 2015 version of the ordinance curfew, violators were taken to designated houses of worship where the youth could engage in “positive evening activities” and receive counseling.⁶⁰ If the child was never picked up or there were signs of abuse or neglect, the police were required to notify the State Division of Youth and Family Services for further action.⁶¹ The first time curfew was violated resulted in a warning.⁶² A second infraction would result in the arrest of the child.⁶³ And a third infraction would result in having to appear before a court.⁶⁴ When updating the curfew in 2018, Newark’s mayor stated that “[w]e want the children of our city to enjoy the summer months safely by limiting the opportunity for them to come in contact with criminal activity.”⁶⁵

C. *New Orleans*

Juvenile curfews are covering greater and greater areas of the city. New Orleans’s curfew law was first passed in 1994.⁶⁶ The curfew resumes annually on June 1 each year and lasts through August 31.⁶⁷ The curfew is enforced between 9:00 p.m. and 6:00 a.m. from Sunday through Thursday, and 11:00 p.m. to 6:00 a.m. Friday and Saturday.⁶⁸ The French Quarter has a year-round juvenile curfew from 8:00 p.m. to 6:00 a.m.⁶⁹ The New Orleans Police Department (NOPD) enforces the curfew

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Newark Curfew for Unaccompanied Minors Takes Effect Friday*, NEWARK SPEAKS (July 6, 2018), <https://perma.cc/JAJ4-SH5Z>.

66. Kevin Litten, *As New Orleans Begins Youth Curfew, Questions About Effectiveness Persist*, NOLA.COM (June 3, 2019), <https://perma.cc/8NC5-63LJ>.

67. NEW ORLEANS, LA., CODE OF ORDINANCES ch. 54, art. VI, div. 4 § 414(b)(1)(b) (2025).

68. *Id.* § 414(b)(1)(b), (d).

69. *Id.* § 414(b)(1)(e) (applying the restriction to the “area bounded by both sides of the following streets: Canal Street, North Rampart, Elysian Fields Avenue, and the Mississippi River”).

with the help of state troopers.⁷⁰ NOPD is supposed to make an attempt to locate the parents of any unsupervised youth.⁷¹ If no parent or guardian is able to be located, the youth will be brought to the city's "curfew center" until reunification with a parent or guardian is possible.⁷² Parents or legal guardians face penalties if a youth is determined to have violated curfew three times in a calendar year.⁷³ And a summons to juvenile court is also issued after a third violation of the curfew law.⁷⁴

D. Philadelphia

Juvenile curfews are covering longer parts of the year. Philadelphia's juvenile curfew is now all-year-round after years of only being implemented in the summertime.⁷⁵ Philadelphia has had a version of a juvenile curfew since 1955.⁷⁶ Prior to 2022, sixteen-year-olds had to be inside by midnight, fourteen to fifteen-year-olds had to be inside by 10:00 p.m., and children thirteen years of age and younger had a 9:30 p.m. curfew.⁷⁷ But in 2022, the City Council implemented a permanent 10:00 p.m. curfew for individuals under the age of eighteen in Philadelphia.⁷⁸ Brian Lemon, a fourteen-year-old living in the North Philadelphia section, was detained for curfew violations six times in the first year of the new ordinance.⁷⁹ Brian reported being stopped walking home from a friend's house "less than 30 seconds after the 10 p.m.

70. *Id.* § 414(d)(1)–(2).

71. NOPD Public Affairs, *NOPD Announces Return of Juvenile Curfew for Summer Months*, NOPDNEWS (June 2, 2022), <https://perma.cc/6S8A-6YLB>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *See City Council Approves 10 p.m. Curfew for Philly Children and Teens*, NBC10 PHILA. (Dec. 1, 2022), <https://perma.cc/95T4-RDJZ>.

76. PHILA., PA, CODE § 10-303(1) (2021).

77. Josiah Bates, *Cities Keep Enforcing Curfews for Teens, Despite Evidence They Don't Stop Crime*, TIME (Sep. 22, 2022), <https://perma.cc/T972-L9NU>.

78. PHILA., PA, CODE § 10-303(1) (2022) (mandating a 10.00 p.m. curfew every day for minors fourteen or older and a 9:30 p.m. curfew for minors thirteen and under).

79. Bates, *supra* note 77.

curfew,” on one of those occasions.⁸⁰ “They grabbed me like I killed somebody, like they saw me with a gun or something,” he said.⁸¹ On most of those occasions the officers took him home, “but twice police issued \$500 fines to his mother for allowing her son to be out late.”⁸² Brian noted that the fine had been hard to get reversed and that in general, it was draconian.⁸³ “That’s enough money for food in the fridge and clothes on our backs,” he’s quoted as saying.⁸⁴ A handful of youth centers where kids can hang out after curfew were also opened.⁸⁵

E. *District of Columbia*

Juvenile curfews are intensifying rapidly. Washington, D.C., was a testing ground for state power in the summer of 2025. On August 11, the federal government declared a “crime emergency” in the District of Columbia that mobilized the D.C. National Guard for thirty days.⁸⁶ Demonstrators took to the streets of the Capital to oppose the occupation.⁸⁷ Advocacy groups like “Free DC” called on D.C. lawmakers to “do everything in [their] power to end the occupation of Washington, D.C., as swiftly as possible.”⁸⁸ Free DC described the occupation as a “direct threat to democracy in the United States and the governing power of the U.S. Congress.”⁸⁹ On September 4, the District of Columbia filed a lawsuit against the Trump

80. *Id.*

81. *Id.*

82. *Id.*

83. *See id.* (discussing the punitive nature of the fine).

84. *Id.*

85. CITIZENS POLICE OVERSIGHT COMM’N, CURFEW ENFORCEMENT EXPLAINER 2–3 (2024), <https://perma.cc/6S6E-M4D6> (PDF) (“Community Evening Resource Centers (CERCs) are community run facilit[ies] designed to give young people a fun, free & safe space to congregate between the hours of 7 p.m. and 2 a.m.”).

86. Erin Doherty, *DC Sues Trump Administration over National Guard Deployment*, CNBC (Sep. 4, 2025), <https://perma.cc/8948-2BLX>.

87. Beatrice Peterson, *Washington, DC, Residents Press Congress to End Trump’s Federal Law Enforcement Surge*, ABC NEWS (Sep. 5, 2025), <https://perma.cc/AQM3-7K6Z>.

88. *Id.*

89. *Id.*

Administration for disregarding D.C.'s powers of local self-government in violation of established federal law and the Constitution.⁹⁰

What was less remarked upon was the fact that the District of Columbia's youth were already under occupation. One month earlier, D.C.'s Mayor, Muriel Bowser, engaged in her own experiment with extending state power by signing into law a "temporary expansion of the youth curfew."⁹¹ The enlarged curfew made a gathering of nine or more youth under the age of eighteen illegal after 8:00 p.m. in certain parts of the city.⁹² Announcing the curfew on her Facebook page, Mayor Bowser stated that she "look[ed] forward to continuing to work with The Council of the District of Columbia to prioritize the safety of [the] city and the well-being of our young people."⁹³ But many of the young people, their parents, and advocates reported feeling decidedly less safe.⁹⁴

Under the curfew, the youth can be taken to a police station or a Department of Youth Rehabilitation Services facility, ordered to perform twenty-five hours of community service, and their parent or guardian can be fined up to \$500.⁹⁵ All of this was against the backdrop of consecutive heat waves. By August 9, D.C. had already experienced six heat waves.⁹⁶ The neighborhoods that are most vulnerable to heat-related illness are concentrated in Wards 5, 7, and 8 where residents are lower

90. Doherty, *supra* note 86.

91. Muriel Bowser, FACEBOOK (July 7, 2025), <https://perma.cc/99BC-FGWD>.

92. *DC Curfew Law*, METRO. POLICE DEP'T D.C., <https://perma.cc/EN8D-RJKJ> (last visited Sep. 8, 2025).

93. Bowser, *supra* note 91.

94. Ariel Edwards-Levy, *DC Residents Feel Less Safe After Trump Takeover: Poll*, CNN (Aug. 20, 2025), <https://perma.cc/4VHX-QS2E> ("Notably, more than half of those living in the capital city have noticed the increased federal presence and 61% of those people feel less safe as a result of Trump's action.").

95. Martin Austermuhle, *D.C. Wants to Stop Kids from Gathering at Night*, THE 51ST (July 17, 2025), <https://perma.cc/P6GU-PG49>.

96. Tyler Thrasher, *DC Heat Wave: 8th-Warmest Year on Record, 12th-Hottest Summer*, FOX5 WASH. DC (Aug. 9, 2025), <https://perma.cc/534W-7835>.

income and may be living with chronic health conditions, like asthma, that make it more difficult to withstand heat.⁹⁷

II. JUVENILE CURFEWS ARE CARCERAL

Warm-weather juvenile curfews are ostensibly designed to keep the youth safe. Local governments, like Mayor Bowser and the District of Columbia, assert health and safety claims to justify juvenile curfews.⁹⁸ Some rely on statistics of youth violence escalating in warm weather.⁹⁹ Opponents of curfew laws argue these justifications fall apart when probed.¹⁰⁰ First, opponents note that juvenile curfews violate young people's rights, particularly the right to free movement and the right to privacy in ways that mirror the carceral state.¹⁰¹

Freedom of movement is constituted of three separate rights: (1) to leave your present location; (2) travel undeterred across various boundaries; and (3) to settle in the place that you choose and remain there.¹⁰² Though not explicitly appearing in the Constitution or the Bill of Rights, the right to free movement has been continuously acknowledged by the courts and has been cast in broad terms.¹⁰³ Faced with the

97. James Jarvis, *Which D.C. Blocks Bake the Hottest? City Officials Are Creating a New Map to Find Out*, THE 51ST (Sep. 4, 2025), <https://perma.cc/78Q9-33SQ>.

98. See, e.g., PHILA., PA. CODE § 10-301(1)(b) (2022) (“The increase in juvenile delinquency has been caused in part by the large number of minors who are permitted to remain in public spaces . . . during night hours without adult supervision . . .”).

99. See, e.g., Arianna Johnson, *Here's Why Warm Weather Causes More Violent Crimes—From Mass Shootings to Aggravated Assault*, FORBES (July 6, 2023), <https://perma.cc/2B4E-Z2VQ> (discussing a study's finding that “mass shootings increase during the summer months”).

100. See Bates, *supra* note 77 (“[R]esearchers say that there is no evidence that curfews reduce crime.”).

101. Sarah Zimmerman, Comment, *Freedom of Movement, Compulsory Attendance, and the Search for a Federal Right to Education*, 94 TEMP. L. REV. 313, 320 (2022).

102. Sheldon Elliot Steinbach, *Constitutional Protection for the Freedom of Movement: A Time for Decision*, 57 KY. L.J. 417, 418 (1969).

103. See *id.* at 421 (noting that the freedom to move is not granted specific protections). The right to free movement is not explicitly articulated in the Constitution which makes it arguably less absolute than the rights to free speech or freely practice religion. U.S. CONST. amend. I (memorializing the rights to speech and the free practice of religion). And yet, the modern

question of the legality of a vagrancy ordinance, in *Papachristou v. City of Jacksonville*,¹⁰⁴ the Supreme Court held the law was unconstitutional and affirmed the right to travel locally.¹⁰⁵ The Court opined that wandering and strolling, were “historically part of the amenities of life” and protected by the constitutional right to free movement.¹⁰⁶ More recently, in *Michael H. v. Gerald D.*,¹⁰⁷ the Court again endorsed this view that there is a right to move freely intrastate.¹⁰⁸ Justice Scalia writing for the Court in *Michael H.* opined that the Due Process Clause substantively protects unenumerated rights so rooted in the “traditions and conscience of our people as to be ranked as fundamental.”¹⁰⁹ Applying Scalia’s reasoning, the Third Circuit, in *Lutz v. City of York*,¹¹⁰ held that “the right to move freely about one’s neighborhood or town,” certainly by foot, but “even by automobile,” is one such right “implicit in the concept of ordered liberty” while holding that a cruising ordinance burdened the right to travel.¹¹¹ The right of minors to travel, however, is not thought to be coextensive with that of adults.¹¹² The public and courts are comfortable with limiting the right of the youth to move even when the state’s justifications appear weak.

Court has continued to endorse the right to move within a single state. *Kent v. Dulles*, 357 U.S. 116, 125 (1958) (“The right to travel is a part of the ‘liberty’ of which the citizen cannot be deprived without due process of law under the Fifth Amendment.”); *see also* *Lutz v. City of York*, 899 F.2d 255, 268 (3d Cir. 1990) (upholding the right to move freely within a town).

104. 405 U.S. 156 (1972).

105. *See id.* at 162–64 (finding the ordinance void for vagueness and noting that it made “criminal activities which by normal standards are normally innocent”).

106. *See id.* at 164 (“They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence . . .”).

107. 491 U.S. 110 (1989).

108. *See id.* at 121 (“It is an established part of our constitutional jurisprudence that the term ‘liberty’ in the Due Process Clause extends beyond freedom from physical restraint.”).

109. *Id.* at 122.

110. 899 F.2d 255 (3d Cir. 1990).

111. *Id.* at 268.

112. Zimmerman, *supra* note 101 (“As the Supreme Court has explained, minors often lack the right to come and go at will.” (internal quotation omitted)).

Warm-weather juvenile curfews also impair the right to privacy. For warm-weather juvenile curfews to be enforced, neighborhoods and the people living in them must be surveilled. Warm-weather juvenile curfews bring Black youth who otherwise would be out of sight into the state's view. In her essay *Dismantling the "Black Opticon: Privacy, Race, Equity, and Online Data-Protection Reform*, Professor Anita Allen calls attention to the unique vulnerabilities to discriminatory oversurveillance on Black communities under the panopticon.¹¹³ Allen extends philosopher Jeremy Bentham's panopticon theory.¹¹⁴ The panopticon as an architecture is a central tower surrounded by cells filled with prisoner, workers *or children* (depending on the building's purpose) with a watchman observing.¹¹⁵ As a theory, the panopticon represents the idea that individuals internalize the potential for surveillance and will regulate their own behavior as a result of this internalization.¹¹⁶ Michel Foucault, building on Bentham's panopticon theory, suggested that the process of internalization is actually critical to maintaining the social order.¹¹⁷ In his pieces *From Decarceration to E-Carceration* and more recently in *Black Lives Monitored*, Professor Chaz Arnett picks up on these themes revealing how surveillance practices are "deeply racialized and divorced from genuine claims of

113. Anita L. Allen, *Dismantling the "Black Opticon": Privacy, Race, Equity, and Online Data-Protection Reform*, 131 YALE L.J.F. 907, 907 (2022) ("African Americans online face three distinguishable but related categories of vulnerability to bias and discrimination that I dub the 'Black Opticon': discriminatory oversurveillance, discriminatory exclusion, and discriminatory predation.").

114. *Id.* at 913 ("African Americans dwell under the attentive eye of a Black Opticon, a threefold system of societal disadvantage comprised of discriminatory oversurveillance (the panopticon) . . ." (citing JEREMY BENTHAM, *Panopticon, or, the Inspection House*, in THE PANOPTICON WRITINGS 10, 11 (Miran Božovič ed., Verso Books 1995) (1791)).

115. JEREMY BENTHAM, *Panopticon, or, the Inspection House*, in THE PANOPTICON WRITINGS 10, 11 (Miran Božovič ed., Verso Books 1995) (1791) (discussing concepts surrounding surveillance and social control).

116. MICHEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 202–03 (Alan Sheridan trans., Vintage Books 1995) (1975).

117. *Id.* at 216 ("It assures an infinitesimal distribution of the power relations.").

public safety.”¹¹⁸ What we see happening with warm-weather juvenile curfews reflects Allen and Arnett’s observations—that is, a state apparatus, in this case the juvenile curfew, being employed to articulate and protect a preferred social order in certain geographic spaces.

Opponents of juvenile curfews believe the laws are punitive and not truly designed to reduce crime. Youth advocates argue that juvenile curfew laws (1) are ineffective at reducing crime since juvenile crime often takes place outside of curfew hours; (2) punish non-criminal behavior; (3) do not target the populations committing the most crime; and (4) are applied in a discriminatory manner that disproportionately affects people of color.¹¹⁹ On this last point, in some cities evidence suggests that juvenile curfews are discriminatorily enforced. New Orleans’s juvenile curfew, for example, was found to be racially biased—targeting poor, Black children.¹²⁰

118. Chaz Arnett, *Black Lives Monitored*, 69 UCLA L. REV. 1384, 1390 (2023); see also Chaz Arnett, *From Decarceration to E-Carceration*, 41 CARDOZO L. REV. 641, 679–80 (2019) (discussing the connection between surveillance, social exclusion, and race). Others that have written in this space are Bennett Capers in his piece *Race, Policing, and Technology*, Ruha Benjamin’s work on resisting technological borders and Michelle Alexander who sounded this alarm back in 2018 in her NYT Opinion piece *The Newest Jim Crow* who all study the surveillance state and have broadened our understanding of the harms of surveillance technologies, including harm to the right to movement and the right to privacy in Black neighborhoods. Bennett Capers, *Race, Policing, and Technology*, 95 N.C. L. REV. 1241, 1272 (2017) (explaining that surveillance cameras “tend to be clustered in communities that are poor, black and brown”); RUHA BENJAMIN, RESISTING BORDERS AND TECHNOLOGIES OF VIOLENCE 1390 (Mizue Aizeki, Matt Mahmoudi & Coline Schupfer eds., 2024); Michelle Alexander, *The Newest Jim Crow*, N.Y. TIMES (Nov. 8, 2018), <https://perma.cc/LA8P-CTHY> (discussing how some states use algorithms to determine “whether a person who’s been arrested should be released,” which use factors that are “highly correlated with race and class”).

119. See, e.g., Kaya-Nadine Edmondson-Deigh, *Have Youth Curfew Laws Failed in Their Purpose? Arguments Against Youth Curfew Laws and Recommendations for Alternatives*, COAL. JUV. JUST. (Jan. 9, 2023), <https://perma.cc/3JN9-P5SB> (“[Y]outh crime and victimization rarely occur during the hours of curfew . . . [and] African American youth are 19x more likely to be arrested for a curfew violation than Caucasian youth . . .”).

120. See Ramon Antonio Vargas, *New Orleans’ Curfew Enforcement Is Racially Biased, Ineffective, Critics Say; but NOPD Chief Disagrees*, NOLA.COM (Mar. 15, 2023), <https://perma.cc/2YVL-UDHU> (reporting that “93 percent of youths detained at the city’s curfew center were African-American” in 2011).

During the years 2009 to 2011, the number of cited youth in New Orleans grew significantly—from 1,673 to 2,101 to 2,541.¹²¹ In 2011, 93% (704 of 754 detentions) of the children detained in New Orleans’s curfew center were Black, which was fifteen times more violations than for white youth.¹²² And the highest numbers of these violations came from just two districts—the 7th and 8th.¹²³

Finally, recall that violations of juvenile curfews are handled in consistently carceral manners. Violations often come with forced, physical confinement in carceral-like facilities with actual law enforcement officers as in the case of Philadelphia.¹²⁴ Fees and fines may be charged as in Baltimore where financial penalties for curfew violations could range from between \$50 for a first violation to \$500 for a third violation.¹²⁵ And sometimes an appearance in court is required for a violation of the juvenile curfew like in some instances under New Orleans law.¹²⁶

III. WARM-WEATHER JUVENILE CURFEWS THREATEN PUBLIC HEALTH

Warm-weather juvenile curfews put the health of the youth at risk by keeping them confined in extreme heat.¹²⁷

121. *Id.*

122. Richard A. Webster, *Statistics Show 93% of NOPD’s Curfew Detainees Are Black*, NEW ORLEANS CITY BUS. (Mar. 21, 2012), <https://perma.cc/3ZZT-AN7E>.

123. The 8th District encompasses the touristy French Quarter and Frenchmen Street and saw the most arrests by a wide margin. In the one-year period between January 2012 and January 2013, 794 New Orleans youth were arrested for violating curfew. Vargas, *supra* note 120.

124. John L. Micek, *Philly Made its Tough Youth Curfew Permanent. Will it Actually Work?*, PA. CAP.-STAR (Dec. 5, 2022), <https://perma.cc/56RZ-QUN4> (“In Philadelphia, children picked up by police for violating curfew will first be taken home If there’s no one home, the young people will be transferred to the local police district or one of the city’s community resource centers”).

125. *See supra* note 56 and accompanying text.

126. *See supra* note 74 and accompanying text.

127. *See* Tara Francis Chan, *Youth Curfews Feed Kids into the Criminal System. But Cities Keep Expanding Them*, THE APPEAL (Nov. 23, 2022), <https://perma.cc/B5RP-74PV> (noting that out of 11,650 youths arrested in

Extreme heat can be deadly.¹²⁸ Heat kills more people than any other climate related catastrophe.¹²⁹ Heat waves are arriving earlier in each new calendar year,¹³⁰ occurring at greater frequency and higher intensity.¹³¹ In the Anthropocene era,¹³² days are hot during heat waves as would be expected, but nights are now as well.¹³³ In fact, nights (when juvenile curfews are in place) are warming at a slightly higher rate than days in most parts of the United States, according to the National Climate Assessment.¹³⁴ The kind of intense

2019 for curfew violations “nearly thirty percent of those children were Black”).

128. Kristie L. Ebi et al., *Hot Weather and Heat Extremes: Health Risks*, 398 THE LANCET 698, 698 (2021) (discussing how higher temperatures are associated with increased mortality as well as adverse pregnancy outcomes and negative effects on mental health).

129. See A.M. Vicedo-Cabrera et al., *The Burden of Heat-Related Mortality Attributable to Recent Human-Induced Climate Change*, 11 NATURE CLIMATE CHANGE 492, 498 (2021) (finding that a substantial portion of total and heat-related deaths can be attributed to heat exposure and climate change); see also Jennifer K. Balch et al., *Warming Weakens the Night-Time Barrier to Global Fire*, 602 NATURE 442, 447 (2022) (“The increase in the frequency of very warm nights has outpaced that of very warm days for much of the globe.”).

130. A heat wave refers to “[a] persistent period of unusually hot days.” *Climate Change Indicators: Heat Waves*, EPA, <https://perma.cc/ZZW8-XKX8> (last updated Apr. 18, 2025). High heat days are arriving at least a week earlier on average than 50 years ago. Anna Phillips et al., *Summer in America Is Becoming Hotter, Longer and More Dangerous*, WASH. POST (July 2, 2022), <https://perma.cc/B7YR-XFMB>. Phoenix’s hot season, which once started in May, now arrives in April. *Barely into Spring, Phoenix Flirts with First Triple-Digit Heat Day of 2025*, AP (Mar. 25, 2025), <https://perma.cc/U6YS-XVPR> (reporting that Phoenix faced triple-digit temperatures in late March of 2025).

131. *Climate Change Indicators: Heat Waves*, *supra* note 130.

132. The Anthropocene is a geological epoch marketed by human-driven planetary changes that reflects systemic alterations to Earth’s Climate, ecosystems, and biogeochemical cycles. John P. Rafferty, *Anthropocene Epoch*, BRITANNICA (Apr. 12, 2025), <https://perma.cc/9Z6D-U6GP>.

133. Jacob Knutson, *Nights Are Warming Faster Than Days in the U.S.*, AXIOS (July 9, 2021), <https://perma.cc/QVA6-YQYT> (noting that more areas in the United States are reporting record-high overnight temperatures); S.E. Perkins, L.V. Alexander & J.R. Nairn, *Increasing Frequency, Intensity and Duration of Observed Global Heatwaves and Warm Spells*, GEOPHYSICAL RSCH. LETTERS, Oct. 28, 2012, at 1, 4–5 (noting the increase in frequency of warm nights is outpacing warm days for much of the globe).

134. ALEXA K. JAY ET AL., FIFTH NATIONAL CLIMATE ASSESSMENT 1–16 (Emily K. Laidlaw, ed., 2023), <https://perma.cc/X35L-C24W> (PDF). The Earth

temperatures during the day and hot nights that are associated with heat waves prevent people from cooling down and result in increased numbers of emergency room admissions, heat-triggered illnesses,¹³⁵ and heat-related deaths.¹³⁶ Extreme heat also makes preexisting conditions worse.¹³⁷ For example, the combination of extremely high temperatures and humidity can trigger severe asthma symptoms¹³⁸ which scores of Black youth living in urban areas suffer from.¹³⁹ In Newark, for example, 25% of the children, three times the state rate, suffer from asthma.¹⁴⁰ All year these children suffer from asthma so severe that they are hospitalized at thirty times the rate as children in other parts of the country.¹⁴¹ Extreme heat makes this situation worse for some. One study in Maryland found that “[e]xposure to extreme heat and extreme precipitation events, particularly during summertime, is associated with increased risk of

is just extremely hot. See Julia Jacobo, *Earth Reaches Hottest Day Ever Recorded Four Days in a Row*, ABC NEWS (July 7, 2023), <https://perma.cc/2X6D-VMDR> (describing that for four days in a row Earth reached dangerous levels of heat). On July 4, 2023, Earth reached an average global temperature of 17.18 degrees Celsius making it the hottest day ever recorded. *Id.* Day time temperatures are cooling more slowly overnight. See JAY ET AL., *supra* (noting that nighttime temperatures are warming).

135. *Climate Change Indicators: Heat-Related Illnesses*, EPA, <https://perma.cc/MXM4-SM4D> (last updated Apr. 18, 2025).

136. *Climate Change Indicators: Heat-Related Deaths*, EPA, <https://perma.cc/XP6P-QKGV> (last updated Feb. 26, 2025).

137. *Id.* (“[P]re-existing medical conditions can significantly increase an individual’s susceptibility to heat.”).

138. This is because the combination of heat and humidity prevents air from circulating and traps pollutants that irritate the airway making it overall more difficult for people to breathe. Marlene Cimon, *How to Combat Urban Heat Islands*, JOHNS HOPKINS MAG. (2021), <https://perma.cc/LB23-3S6G>.

139. Bryant-Stephens, *supra* note 11, at 1199–206 (describing increased asthma hospitalizations among Black youth in urban areas).

140. *Community Air Monitoring Where You Live in EPA Region 2*, U.S. ENV’T PROT. AGENCY (last visited May 18, 2025), <https://perma.cc/N7JY-H5RZ>.

141. Max Rivlin-Nadler, *Hell on Wheels: Port Authority’s Broken Promise Is Choking Newark’s Kids*, THE VILL. VOICE (May 3, 2016), <https://perma.cc/2UEQ-T7U8> (“One in four Newark children suffers from asthma; the hospitalization rate is 150[%] greater for kids living in the city than in the rest of the state, and more than thirty times the rate nationwide.”).

hospitalization for asthma.”¹⁴² The results of the Maryland study suggested that “projected increases in frequency of extreme heat and precipitation event[s] will have significant impact[s] on public health.”¹⁴³ Heat-related emergency room visits are increasing each year.¹⁴⁴ Heat-related hospitalizations have also increased throughout the country as the temperatures have risen each year.¹⁴⁵ And heat-related deaths have been steadily on the rise, crescendoing in 2020.¹⁴⁶ Heat-related deaths have not just intensified in the southern and southwestern states. The north half of the country is also experiencing rises in morbidity and mortality rates due to heat.

So everywhere is getting hot quicker but not equally so. Some places even within the same metropolitan area are significantly hotter than others by sometimes up to thirty degrees and that those ultra-hot temperatures create what is called a heat island effect.¹⁴⁷ When you map heat islands, they mirror redlining maps.¹⁴⁸ “Redlining” is a now unlawful

142. Sutyajeet Soneja et al., *Exposure to the Extreme Heat and Precipitation Events Associated with Increased Risk of Hospitalization for Asthma in Maryland, U.S.A.*, ENV'T HEALTH, Apr. 27, 2016, at 1. Other studies found similar results. See Firdian Makrufardi et al., *Extreme Weather and Asthma: A Systematic Review and Meta-Analysis*, EUR. RESPIRATORY REV., June 2023, at 1 (“[E]xtreme weather events were associated with increasing risks of general asthma . . . Thunderstorms increased the risk ratio of asthma events by 1.24 fold . . .”); Huanchun Huang et al., *Influencing Mechanisms of Urban Heat Island on Respiratory Diseases*, 48 IRAN J. PUB. HEALTH 1636, 1636 (2019) (“UHI [Urban Heat Island] causes a higher mortality of respiratory diseases because it increases daily average air temperature in summer.”).

143. Soneja et al., *supra* note 142.

144. Penelope Dring et al., *Emergency Department Visits for Heat-Related Emergency Conditions in the United States from 2008–2020*, 19 INT'L J. ENV'T RSCH. & PUB. HEALTH 14781, 14781 (2022) (“An overall increase in heat-related [emergency department] visits for heat-related emergency conditions was found during the past decade across the United States, affecting patients in all regions and during all seasons.”).

145. *Id.*

146. *Climate Change Indicators: Heat-Related Deaths*, *supra* note 136.

147. See Hoffman, Shandas & Pendleton, *supra* note 8 (“Urban landscapes amplify extreme heat due to the imbalance of low-slung built surfaces to natural, non-human manufactured landscapes.”).

148. Susanne Amelie Benz & Jennifer Anne Burney, *Widespread Race and Class Disparities in Surface Urban Heat Extremes Across the United States*, AGU, July 13, 2021, at 12 (“In the US, in particular the legacy of

practice of refusing home loans to entire neighborhoods based on racially motivated discrimination,¹⁴⁹ and is often attributed with the formation of the microclimates that lead to heat islands. Newark, New Jersey's Ironbound neighborhood, for example, is more than 70% minority population.¹⁵⁰ The Ironbound also received a Home Owners' Loan Corporation (HOLC) grade of D in 1939, the worst grade in the scale meaning it was labeled as "Hazardous."¹⁵¹ The same appears to be true in other cities with the most severe urban heat island effects. New Orleans is considered the worst heat island in the country due to its albedo and impervious surfaces.¹⁵² Sixty-two neighborhoods were rated by the HOLC when New Orleans

redlining looms large—previous studies have shown that among 108 cities with historic redlining, 94% have higher LST [‘Land Surface Temperature’] in the formally redlined areas.”); Carolyn B. Swope, Diana Hernández & Lara J. Cushing, *The Relationship of Historical Redlining with Present-Day Neighborhood Environmental and Health Outcomes: A Scoping Review and Conceptual Model*, 99 J. URB. HEALTH 959, 975 (2022) (finding an association between redlining and poorer health outcomes); Mitchell Manware et al., *Residential and Race/Ethnicity Disparities in Heat Vulnerability in the United States*, AGU, Dec. 1, 2022, at 1 (finding that historically redlined “communities of color were found to be associated with increased vulnerability to heat”).

149. Manware et al., *supra* note 148, at 2 (describing the concept and process of redlining in the 1930s).

150. Using the unique zip code assigned to the Ironbound in Newark, New Jersey, one will find on the United States Census Bureau website that 9.3% of the Ironbound population is white alone, not Hispanic or Latino, leaving 90.7% of the population to be of a minority background. *QuickFacts, Newark City, New Jersey*, U.S. CENSUS BUREAU, <https://perma.cc/ZX99-8Q75> (last visited Feb. 16, 2025).

151. Kenneth T. Jackson, *Race, Ethnicity, and Real Estate Appraisal: The Home Owners Loan Corporation and The Federal Housing Administration*, 6 J. URB. HIST. 419, 428 (1980) (“The well-maintained and attractive working-class sections of Roseville, Woodside, and East Vailsburg were given Third grade or C ratings; the remainder of the city, including immigrant Ironbound and every black neighborhood, was written off as ‘hazardous.’”); ANA ISABEL BAPTISTA, *Environmental Justice Tours: Transformative Narratives of Struggle, Solidarity, and Activism*, in TOXIC HERITAGE: LEGACIES, FUTURES, AND ENVIRONMENTAL INJUSTICE 281, 283–84 (2023) (discussing the HOLC’s history).

152. Tegan Wendland, *New Orleans Ranks as Worst Heat Island in U.S.*, NEW ORLEANS PUB. RADIO (July 15, 2021), <https://perma.cc/MW3Y-MC8F> (noting that much of the heat retention of the city is due to the buildings with black tar shingles and blacktop pavement).

was redlined in the 1930s.¹⁵³ Of those neighborhoods, almost half, 47%, were given the lowest rating possible, or Grade D.¹⁵⁴ Today, in New Orleans, 74% of its population is living with heat island effect where they experience a temperature of eight degrees more heat.¹⁵⁵ Or one could look at New York City.¹⁵⁶

A US Environmental Protection Agency (EPA) report from 2021 found that there are populations that face disproportionate exposure to extreme heat in forty-nine major US cities due to climate warming.¹⁵⁷ Specifically, “the EPA found that Black and African American individuals are 40% more likely than non-Black and non-African American individuals to live in areas with the highest projected increases in extreme temperature related mortality with 2°C of global warming.”¹⁵⁸ Redlining is also responsible for the increased likelihood of Black people suffering from pre-existing conditions that make living in heat islands more deadly.¹⁵⁹ For example, the siting of hundreds of toxic sites in Newark, New

153. Laurel Mire, *The Fate of Redlined Neighborhoods in New Orleans*, ARCGIS (May 10, 2021), <https://perma.cc/23UE-MLWG>.

154. *Id.* Enslaved and free Black residents lived in every ward of New Orleans in regular proximity to white residents prior to and during the Civil War. *City Snapshot: New Orleans*, OTHERING & BELONGING INST., <https://perma.cc/HVJ7-2H5M> (last visited Apr. 6, 2025). In the years postbellum, de facto and de jure discrimination, including exclusionary zoning, redlining, neighborhood covenants and Jim Crow laws, would separate neighborhoods where Black New Orleanians lived from whites. *Id.* A trend that continues to the present day, New Orleans became more segregated between 2000 and 2010 as fifty-two census tracts were gentrified. *Id.*; Mire, *supra* note 153.

155. *Urban Heat Hotspots*, CLIMATE CENT. (Jul. 26, 2023), <https://perma.cc/DG77-QKRT>. The index scores represented an average for each city and ranged from five degrees Fahrenheit to nine degrees Fahrenheit. *Id.* For instance, Climate Central found that Baltimore may be up to seven degrees Fahrenheit warmer on average within the city. *Id.* It is important to note, though, that residents living near green space may be much cooler than that average temperature and residents living near a highway may be much warmer. *Id.*

156. *Id.* (noting that New York City has the highest average urban heat island index per capita at nine and a half degrees).

157. U.S. ENV'T PROT. AGENCY, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS, 33–36 (2021), <https://perma.cc/5LHX-ZJ7M> (PDF).

158. *Id.* (internal quotations omitted).

159. *See supra* notes 149–154 and accompanying text.

Jersey's Ironbound neighborhood, has made it one of the worst urban heat islands in the country.¹⁶⁰ The average land surface temperature in certain neighborhoods in Newark, including the Ironbound, can reach up to fifteen degrees higher than the citywide average.¹⁶¹

The correlation between extreme heat, morbidity, and mortality is well understood.¹⁶² Following the St. Louis heat wave in 1980, sociologist Karen Smoyer found that "low-mortality tracts were predominantly in the cooler, more affluent and more stable south and west sections of the city."¹⁶³ The high mortality tracts were concentrated around the warm central business district and the declining neighborhoods with low housing density and depleted population bases.¹⁶⁴ Smoyer's work was consistent with some earlier studies that associated heat-wave-vulnerable neighborhoods with poverty/low-quality housing.¹⁶⁵ This means that through the entire peak in the

160. See *Toxic Sites in Newark: Ironbound is the Sacrifice Zone*, N.J. PBS (Oct. 12, 2020), <https://perma.cc/T29R-M42E>

If you travel down a one-mile stretch of Doremus Avenue in Newark, New Jersey, you pass a natural gas plant next to a sewage treatment facility next to an animal fat rendering plant next to a series of . . . chemical storage containers behind acres of fencing . . .

This stretch is known as Chemical Corridor, and it's located just down the road from schools and apartment buildings. It borders Newark's Ironbound neighborhood, where Portuguese, Brazilian, Central American and African American residents are separated from toxic substances by little more than a railroad track. An area of extreme environmental neglect like this is called a "sacrifice zone," and it is all too common that the people living in these unhealthy areas are low income, immigrants, or non-white, or all three.

see also *Life in an Industrial Wasteland*, TALKING EYES, <https://perma.cc/Y9BP-CVN8> (last visited Oct. 3, 2023).

161. SUSTAINABLE JERSEY AND THE SUSTAINABILITY INST. & THE COLL. OF N.J., CITY OF NEWARK URBAN HEAT ISLAND ASSESSMENT 1 (2018), <https://perma.cc/2CFU-WH7G> (PDF).

162. E.P. Petkova, H. Morita & P.L. Kinney, *Health Impacts of Heat in a Changing Climate: How Can Emerging Science Inform Urban Adaptation Planning?*, 1 CURRENT EPIDEMIOLOGY REPS. 67, 68 (2014).

163. Karen E. Smoyer, *Putting Risk in its Place: Methodological Considerations for Investigating Extreme Event Health Risk*, 47 SOC. SCI. & MED. 1809, 1817 (1998).

164. *Id.*

165. See, e.g., Colleen E. Reid et al., *Mapping Community Determinants of Heat Vulnerability*, 117 ENV'T HEALTH PERSPS. 1730, 1733 (2009) (showing

proliferation of warm-weather juvenile curfews in urban heat islands the information has been available to suggest that these neighborhoods were more lethally hot than their surroundings and that the temperatures in them would exacerbate pre-existing conditions of the residents, including the youth. But we have not stopped confining the youth at night.

Mobility enables the human body to withstand extreme weather.¹⁶⁶ And this brings us to the Eighth Amendment. At least one court has rescued confined youth from extreme heat. In *Alex A v. Edwards*, the U.S. District Court for the Middle District of Louisiana suggested that the youthfulness of confined persons is not a defense to claims charging the existence of unlawful conditions in prison.¹⁶⁷ Angola Prison in Louisiana has a notoriously storied history. The former slave plantation was converted in the Civil War to a prison for the Confederacy¹⁶⁸ and then became one of the most notorious prisons in the country, considered unsuitable by many advocates to hold convicted adults.¹⁶⁹ Against this troubling backdrop in 2022, Louisiana's Office of Juvenile Justice (OJJ) decided to move the youth in its custody to Angola's former

environmental vulnerability factor correlations to houses with no central air conditioning or no air conditioning at all).

166. Rania Sarshr, *As Extreme Weather Spurs Global Displacement, Migration is Part of the Solution*, IOM MIGRATION (Mar. 19, 2024), <https://perma.cc/4MH6-YZAR> ("Human mobility, encompassing migration, relocation, and displacement, is one of the solutions when it comes to adapting to the impacts of climate change such as . . . extreme weather events.").

167. *Alex A. ex rel. Smith v. Edwards*, No. 22-573, 2023 WL 5984280, at *8–9 (M.D. La. Sep. 14, 2023) (recognizing the "unique nature of the juvenile system" and finding that the treatment of children in a Louisiana juvenile facility was both "untenable and constitutionally intolerable"), *vacated as moot sub nom.*, *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119 (5th Cir. 2023).

168. JOANNE RYAN & STEPHANIE L. PERRAULT, *ANGOLA: PLANTATION TO PENITENTIARY 7–8* (2007), <https://perma.cc/58ND-YXXA> (PDF) (detailing the conversion of the Angola property to that of a prison).

169. Elizabeth Weill-Greenberg, *133 Degrees and No AC: Kids at Angola Prison Kept in Potentially Deadly Heat*, THE APPEAL (July 18, 2023), <https://perma.cc/4WP4-H72H> ("The ACLU and other legal advocates sued in August to stop the transfers to Angola due to what they said were inhumane conditions inside the facility.").

death row building.¹⁷⁰ These were children involved in delinquency proceedings who had not been convicted of any crime.¹⁷¹ Most of them were Black and “some were as young as 14.”¹⁷² Louisiana’s Constitution calls for rehabilitation and not punishment of citizens under eighteen years of age.¹⁷³ And yet the evidence in *Alex* revealed the children were being held in solitary cells with no windows or air conditioning even though the heat index was consistently over eighty-eight degrees, were held in confinement for seventy-two hours upon arrival, and then isolated at other times for twenty-three hours at a time.¹⁷⁴ Excessive force was used, education was denied, and the use of handcuffs, shackles, and chemical agents was also common.¹⁷⁵ All of this amounted to unconstitutional conditions in violation of the Eighth Amendment’s cruel and unusual punishments clause, as some of the children and their parents argued through counsel.¹⁷⁶ The children attempted for a second time to enjoin the state from confining them in Angola at all, or in the alternative, to order the State to cease using solitary confinement, mandate the implementation of exercise, and the implementation of a heat-remediation plan, including the provision of potable drinking water.¹⁷⁷ Finally, in September 2023, the district court ordered all children held at Angola be transferred out.¹⁷⁸ The State appealed and the Fifth Circuit, in a unanimous panel, denied the appeal.¹⁷⁹

After *Alex A.*, we have some indication that state confinement, in extreme heat, of youth alleged to have

170. *Id.*

171. *Alex A. v. Edwards*, ACLU, (last updated Sep. 28, 2022), <https://perma.cc/65YL-S9ND>.

172. *Id.*

173. LA. CONST. art. V, § 19.

174. *First Day of Hearing in Angola Prison Case Highlights Abusive Conditions Youth Endure*, ACLU LA. (Aug. 16, 2023), <https://perma.cc/5878-MGBY>.

175. *Alex A.*, 2023 WL 5984280, at *1–6.

176. *Id.* at *6.

177. Plaintiffs’ Motion for Preliminary Injunction at 2, *Alex A. ex rel. Smith v. Edwards*, No. 22-573, 2023 WL 5984280, at *8–9 (M.D. La. Sep. 14, 2023).

178. *Alex A.*, 2023 WL 5984280, at *10.

179. *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119, 1127 (5th Cir. 2023).

committed no criminal acts is constitutionally impermissible. And it may indicate that juvenile curfews, which do the same, are unconstitutional as well—especially as the climate warms.

CONCLUSION

Legislating the confinement of the youth in heat islands during the hottest times of day, like what the District of Columbia did in the summer of 2025, is punishing. The risks are increasing. The District of Columbia historically averages less than ten days a year of over 95-degree heat.¹⁸⁰ But the city is expected to have more than twenty annual days over 95-degrees by the 2030s.¹⁸¹ And by the 2080s, the District of Columbia could have almost 70 days per year of over 95-degree heat, including “weeks-long stretches of extreme heat.”¹⁸² This provides further evidence that warm-weather juvenile curfews are not keeping the youth safe. Rather, warm-weather juvenile curfews are being used as a surveillance technology meant to bring children and their parents/guardians into view of the carceral state for non-criminal behavior. Hyper-surveillance in neighborhoods where heat curfews are most intensely enforced intersects with climate warming in a way that transforms the curfews into group-level punishment. On very hot nights, punishing the youth through curfew may violate the Eighth Amendment in a way that is not dissimilar to Angola Prison in Louisiana when it was being used to house non-offending youth in extreme heat—a practice the U.S District Court found to be unconstitutional.¹⁸³

180. *Jarvis*, *supra* note 97.

181. *Id.*

182. *Id.*

183. *See Alex A.*, 2023 WL 5984280, at *8–9 (M.D. La. Sep. 14, 2023) (recognizing the “unique nature of the juvenile system” and finding that the treatment of children in a Louisiana juvenile facility was both “untenable and constitutionally intolerable”), *vacated as moot sub nom.*, *Smith ex rel. Alex A. v. Edwards*, 88 F.4th 1119 (5th Cir. 2023).