

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEITH COLE, *et al.*,
Plaintiff,

v.

BRYAN COLLIER, *et al.*,
Defendants.

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Civil Cause No. 4:14-cv-1698

**DEFENDANTS' RESPONSE TO THE COURT'S MEMORANDUM AND OPINION
SETTING OUT FINDINGS OF FACT AND CONCLUSIONS OF LAW**

On July 19, 2017, the Court issued its Memorandum and Opinion Setting Out Findings of Fact and Conclusions of Law (“Order”) regarding Plaintiffs’ pending Motion for Preliminary Injunction (“Motion”). The Court concluded that Defendants must:

- Correct the numerous problems with the existing respite program as identified by the Court in the Order;
- Lower the temperature in the housing areas of heat-sensitive inmates;
- Install window screens, with gauges that block insects, in the windows of the housing areas;
- Develop a heat-wave policy for the Pack Unit; and
- Propose remedies that conform to the Order within 15 days.¹

The Court defines “heat-sensitive inmates” by reference to the “Heat-Sensitive Subclass” referenced on page six of the Order, which includes:

All people who are incarcerated at the Pack Unit, or in the future will be, that are subjected to TDCJ’s policy and practice of failing to regulate high indoor heat index temperatures in the housing areas, and either: (1) have a physiological condition that places them at increased risk of heat-related illness, injury, or death (including, but not limited to,

¹ Dkt. 737 at 98.

suffering from obesity, diabetes, hypertension, cardiovascular disease, psychiatric conditions, cirrhosis of the liver, chronic obstructive pulmonary disease, cystic fibrosis, asthma, sweat gland dysfunction, and thyroid dysfunction); or (2) are prescribed an anticonvulsant, anticholinergic, antipsychotic, antihistamine, antidepressant, beta blocker, or diuretic, or (3) are over age 65.²

The Court left TDCJ discretion in implementing the Order. Regarding housing the “Heat-Sensitive Subclass” in air conditioning, the Court stated:

[T]he Court does not even require any air conditioning of the areas now used to house the heat-sensitive subclass. Defendants may re-configure areas that are currently air conditioned to accommodate the heat-sensitive, or move them to other facilities in Texas.³

After extensive deliberation and consultation, TDCJ has developed the following plans to comply with the Order.

I. RESPITE

The Court emphasized seven of its findings concerning the existing respite program:

1. Inmates (especially those with mobility problems) were forced to move several times to other areas during their respite period;⁴
2. Inmates were forced to stand or sit on the floor;⁵
3. Inmates are not allowed to talk or read in respite;⁶
4. The respite poster is the primary source of information for inmates to get information about respite and it is confusing and unclear, particularly about whether an inmate must feel ill to have access to respite;⁷
5. The other circulars and printed materials regarding respite are confusing and unclear as to how to access it and what the rules in respite are;⁸

² Dkt 737 at 6.

³ Dkt 737 at 97.

⁴ Dkt 737 at 60-61.

⁵ *Id.*

⁶ *Id.*

⁷ Dkt 737 at 57.

⁸ *Id.*

6. There is no training for inmates as to why it is important to access respite on a regular basis during the summer to prevent heat illness before it occurs;⁹ and
7. The barbershop and lower admin hallway were uncomfortable for respite use.¹⁰

In response to these concerns, TDCJ has developed a number of new initiatives regarding the promotion and regularization of respite area use.

SUMMARY OF TDCJ'S RESPITE INITIATIVES:

First, the classrooms and the hallway of the education wing of the Pack Unit will become a dedicated respite area through the summer/heat season. The space will be available at all times for respite, and inmates will know that the education wing, and its dedicated classrooms, is their destination whenever they request access to respite. This will eliminate the Court's concerns about inmates having to move between various respite areas, chair shortages, confusion about respite location and administration, and the merits and demerits of the barbershop and lower administration hallway as respite areas. One classroom will always be reserved for respite; if space for respite beyond that provided by one classroom is needed, a second classroom will be used and classes scheduled for that classroom will be rescheduled in coordination with Windham School District. Four classrooms, the education hallway, and the library will allow for a permanent base for respite that can easily accommodate at least 280 inmates at any given time in a single location.¹¹

Second, a new poster has been prepared, and will be posted prominently in inmate-accessible areas within the Pack Unit. The poster emphasizes that: (1) respite areas are accessible to anyone who wishes to cool down, at any time, regardless of whether he is currently suffering symptoms of heat-related illness or injury; (2) the heat is dangerous and inmates should use respite areas to protect

⁹ Dkt. 737 at 57-58.

¹⁰ Dkt. 737 at 52-54.

¹¹ Fifty-five inmates with chairs in each of four classrooms; forty inmates with chairs in the library; twenty inmates with chairs in the education hallway.

themselves, and seek medical attention if they actually feel ill; and (3) inmates may talk at a reasonable volume, read, or rest in the respite areas.¹²

Third, new training has likewise been initiated to emphasize these same points to inmates and correctional officers alike. The new poster and training are designed to ensure that the Court's concerns about inmates' understanding of the respite program are affirmatively addressed.

RESPITE INITIATIVE SPECIFICS:

Dedicated Respite Areas – Main Unit

The total population of the main unit is approximately 1000 inmates. In a non-emergency situation, the Pack Unit will be able to comfortably accommodate nearly one-third of the inmates (excluding those in the Trusty Camp) in respite at any given time, using the following plan:

Education – the Education Area will become the primary respite area at the Pack Unit, as it has been identified as the largest air-conditioned space in the unit that may be accessed by a large number of inmates without raising significant new security or safety concerns. There are four classrooms that can accommodate roughly 220 inmates at one time. One of the classrooms will be dedicated to respite; class schedules will be shifted to accommodate classes in the remaining classrooms. The “Respite Classroom” will be dedicated for respite at all times and can accommodate up to 55 inmates sitting in chairs. If the Respite Classroom fills up and all other classrooms are being used for classes, the education hallway will be used for overflow until it reaches capacity. No classes will be cancelled unless both the Respite Classroom and the education hallway are full.

Education Hallway – Accommodates 20 inmates sitting and can easily be used for overflow.

Library – Accommodates 40 inmates with tables and chairs. The library is permanently set up with tables and chairs.

¹² See Exhibit 1.

Infirmary – Benches and chairs to accommodate 20 inmates are permanently located in the infirmary area.

Lower Administrative Hallway – Will only be used as a respite location of last resort.

Dedicated Respite Areas – Trusty Camp

Roughly 350 inmates are housed in the Trusty Camp. The respite areas for trusty inmates remain the Trusty education area which accommodates 50-60 and the Trusty administration building, which holds 80. This amounts to accommodating over one-third of the Trusty inmates in respite at one time.

Respite Training and Education

All inmates, both those assigned and not assigned jobs, will be trained on the importance of respite and how to access respite. Training will include:

- Respite means cooling off for a period of time in an air conditioned place;
- Inmates are allowed to access respite 24/7;
- The education wing is now a dedicated respite area;
- Inmates DO NOT need to be sick, injured, or feeling bad to access respite, rather they may do so to cool down whenever they wish;
- To access respite, inmates can make the request to any correctional officer; if there are problems, ask to talk to a ranking correctional officer;
- Impress that no one will be retaliated against for asking for respite; and
- Education about why respite is important to protect one's health.

The training will follow a script and there will be a time for questions from the inmates. A training circular will be distributed that mirrors the respite notice. There will be a sign-in sheet for inmates to confirm training and receipt of the circular.

Also, a new poster has been developed and will further emphasize these same points. The poster will be placed in common areas accessible to inmates. It clearly states that an inmate may

request access to respite areas 24 hours a day, 7 days a week, and is not required to be feeling ill. It further states that if an inmate *is* feeling ill, he should alert staff so that medical assistance can be obtained. The poster also gives the inmates a description of the expectations regarding their behavior in respite, stating that inmates:

- May access respite any time during the day or night;
- Do NOT need to be sick, injured, or feeling bad to access respite, rather they may do so to cool down whenever they wish;
- Should use respite regularly because it helps the body thermoregulate;
- Should be aware that heat is dangerous, and heat illness can occur suddenly when temperatures are high;
- Should ask staff for medical attention if they actually feel ill due to heat;
- May talk quietly in respite;
- May bring reading or writing materials (as allowed in the day rooms);
- May bring a drink or cup to fill with water;
- May bring a cooling towel;
- Will be provided a chair; and must remain seated;
- May not engage in horseplay or arguing;
- May not create disturbances;
- May not save chairs for other inmates; and
- Must be properly dressed (pants and shirt).

II. SCREENS

The Pack Unit has 396 existing metal screens over housing area windows. TDCJ has determined that bidding, procuring, and installing replacement screens that are both secure and compliant with the Court's order cannot be accomplished in an immediate timeframe. For example, pre-made screens

for residential bedroom windows purchased at a home-improvement store do not meet the needs of a maximum security prison unit. TDCJ must install screens that are resistant to breakage and also keep insects out in the fashion ordered by the court, while also continuing to maintain the security needs at the Pack Unit.

Accordingly, TDCJ has developed a short-term solution. It will take approximately 3,682 square feet of small mesh, effective at repelling insects, to cover the existing metal screens. Because the Pack Unit is a maximum security prison unit, TDCJ must ensure that its buildings and parts of its buildings are secure and durable enough to sustain inmate abuse or misuse, in addition to meeting state and federal building requirements.¹³ As a temporary solution to accomplish this, TDCJ will obtain screening material and use tape to secure the screening material to the outside of the existing screens. TDCJ expects this temporary solution to be complete within two weeks of the Court's order following the August 8, 2017 hearing ("the hearing"). Thereafter, TDCJ will maintain the existing hard screens, place new screening on the outside of the hard screen, construct new metal frames that are primed and painted so their longevity is enhanced, install both screens inside of that metal framing, and install the new screens on the Pack Unit windows. This more permanent replacement for the existing screens will be procured, fabricated, and installed within 26 weeks of the Court's order following the hearing. A list of the materials and time required to accomplish the acquisition, preparation, and installation is attached as Exhibit 2.

¹³ For instance, TDCJ, like every state agency, must comply with any standards issued by the State Energy Conservation Office (SECO). Tex. Gov't Code §§ 447.002, .004; 34 Tex. Admin. Code § 19.31. With respect to heating, ventilation, or air conditioning (HVAC) on any new construction or major renovation project, TDCJ must comply with the energy conservation design standard of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standard 90.1-2013. 34 Tex. Admin. Code § 19.32(a)(1). Window screens, however, are not subject to HVAC engineering standards.

III. HEAT POLICY

Pursuant to the Court's order, TDCJ has drafted a heat policy to be implemented at the Pack Unit.¹⁴ The policy prescribes mandatory personnel, administrative, and health-and-safety measures to be taken during various declared heat conditions, and mandates that the Pack Unit Warden immediately implement the measures upon issuance of a National Weather Service excessive heat warning and notification by the TDCJ Incident Manager. Specifically, in these circumstances the Warden is required to: restrict and/or cancel outdoor work and recreation; limit kitchen operations and order cold food to be served; order wellness checks for all inmates during each security round; authorize the utilization and carrying of cooling towels at all times; authorize inmates to sleep on the floor; provide free electrolyte sports drinks to inmates; and operate a full-time respite area with on-request access for all inmates. The Warden is also required to immediately notify his regional director and the deputy director of Prison and Jail Operations of the heat conditions and immediately activate the Incident Command System (ICS); and upon doing so, review and audit conditions at the unit, including an evaluation of shower temperatures, ice, ice machines, fans, ventilation systems, and respite areas, and immediately address any deficiencies.

IV. HOUSING FOR HEAT-SENSITIVE INMATES

TDCJ evaluated all potential measures to expeditiously place all inmates in the heat-sensitive class into housing with temperatures not exceeding 88 degrees Fahrenheit. In so doing, TDCJ was mindful of the Court's instruction that it may use a variety of means to achieve the ordered ends:

[T]he Court does not even require any air conditioning of the areas now used to house the heat-sensitive subclass. Defendants may re-configure areas that are currently air conditioned to accommodate the heat-sensitive, or move them to other facilities in Texas.¹⁵

¹⁴ See Exhibit 3.

¹⁵ Dkt 737 at 97.

Pursuant to the Order, TDCJ will move all members of the heat-sensitive subclass currently at the Pack Unit to other facilities in Texas that are climate-controlled. TDCJ has identified approximately 1,000 inmates who fall into the heat-sensitive subclass. Each of these 1,000 inmates will be moved to an air-conditioned, climate-controlled housing assignment within TDCJ. Approximately 500 inmates will be transferred to the Diboll Correctional Center in Diboll, Texas; approximately 425 inmates will be transferred to the Travis State Jail in Austin. Both of these facilities are air conditioned, and the beds the transferred inmates will occupy are in the air conditioned spaces. Some of the remaining inmates, especially those with more significant medical needs, will be transferred to the Stiles Unit in Beaumont, partly because of its ability to support CPAP machines and other necessary medical devices. The Stiles Unit beds are also air-conditioned. Finally, the remaining heat-sensitive inmates will be transferred to other air-conditioned beds within TDCJ. TDCJ is currently working on a complete list identifying each affected inmate and his transfer destination.

The transfer of Pack Unit inmates to these facilities will require TDCJ to make meaningful adjustments to its operations, but these changes are achievable in the short term. Security and classification concerns are being addressed in several ways. TDCJ will:

- Increase security oversight of the inmates moved to these facilities. For instance, TDCJ may add temporary stationary posts if a facility does not have a necessary picket;
- Add extra mobile patrols;
- Increase security checks;
- Increase special counts;
- Limit work assignments of transferred inmates to prevent their access to less-secure areas of the units; and
- Transfer inmates who display aggression or similar bad behavior.

Transfers to these new housing assignments will begin immediately after the Court's order following the hearing. They should be complete within two weeks, and definitely within three weeks.

Finally, those inmates being displaced by inmates transferred to the Stiles Unit, Travis State Jail, and Diboll Correctional Center will be moved to the Connally Unit, the Dalhart Unit, and the Smith Unit.

Respectfully submitted,

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NOTICE OF ELECTRONIC FILING

I, CRAIG M. WARNER, Assistant Attorney General of Texas, do hereby certify that I have electronically filed this pleading in accordance with the Electronic Case Files System of the Southern District of Texas, on August 3rd, 2017.

/s/ Craig M. Warner

CRAIG M. WARNER

Assistant Attorney General

CERTIFICATE OF SERVICE

I, **CRAIG M. WARNER**, Assistant Attorney General of Texas, certify that a true and correct copy of the foregoing has been served to all attorneys of record by electronic notice in accordance with Rule 5(b)(2) of the Federal Rules of Civil Procedure on the 3rd day of August, 2017.

/s/ Craig M. Warner

CRAIG M. WARNER

Assistant Attorney General

NOTICE TO OFFENDERS

RESPITE AREAS

You may request access to a respite area 24 hours per day, 7 days per week, even if you are not feeling ill at the time of the request, and you may stay as long as necessary. Respite participation may help your body thermoregulate.

****If you are feeling unwell due to heat, please notify a staff member immediately so that medical assistance may be obtained. Heat related illnesses can quickly progress from heat cramps, to heat exhaustion, to heat stroke!****

The warden determines the order of use for respite areas. You may not choose which respite area you will be escorted to.

Respite Area Rules

1. You may talk quietly as long as you do not disturb those around you.
2. No arguing, horseplay, and other types of disturbances.
3. You must remain seated while in respite areas.
4. You may not save chairs for other offenders.
5. You must be properly dressed while in respite areas.
6. You may take the following items to a respite area:
 - One drink or cup of drink;
 - One cooling towel;
 - One newspaper, book, magazine, or reading material;
and
 - Writing materials (paper, pen, or pencil).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KEITH COLE, JACKIE BRANNUM, §
RICHARD ELVIN KING, LAVAR SANTEE, §
FRED WALLACE, and MARVIN RAY §
YATES, individually and on behalf of those §
similarly situated, §
Plaintiffs, §

v. §

No. 4:14-cv-1698

BRYAN COLLIER, in his official capacity, §
ROBERT HERRERA, in his official capacity §
and TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE, §
Defendants. §

**DEFENDANTS' RESPONSE TO THE COURT'S
MEMORANDUM & OPINION**

Exhibit 2

Temporary Solution			
Materials			
Screens	\$1,968.64		
Tape	\$2,082.06		
Total Materials:	\$4,050.70		
Time Required:	2 weeks		
Permanent Solution			
Materials			
Screens			\$1,968.64
2"x2"x1/8" Angle Iron	8,100' @ \$0.95		\$7,695.00
1/4"x1-1/2" SS/ST Security Screw	16,200 ea. @ \$0.24		\$3,888.00
Welding Electrode	150 lb @ \$2.80		\$420.00
Lexel Silicone	30 cs. @ \$85.00		\$2,550.00
Spray Primer	500 ea. @ \$5.99		\$2,995.00
Spray Paint	500 ea. @ \$6.99		\$3,495.00
Plasma Cutter Tip/Complete	3 ea. @ \$63.40		\$190.20
Metal Saw Blade	3 ea. @ \$159.00		\$477.00
		Total Materials:	\$23,678.84
Labor	2 Techs @ 622 hrs - 1244 hrs @ \$25.00		\$31,100.00
Travel	2 Techs @ \$46 ea-\$92 ea @ 136.00		\$12,512.00
		Total:	\$67,290.84
		10% Contingency:	\$6,729.08
		Grand Total:	\$74,019.92
Time Required			
TDCJ Submission and Approvals	1 week		
Procurement	7 weeks		
Construction	18 weeks		
		Total:	26 weeks

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Exhibit 3



TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE
CORRECTIONAL INSTITUTIONS
DIVISION

DATE: August 2, 2017

PAGE: 1 of 3

AUTHORITY: Robert Herrera,
Senior Warden
Wallace Pack Unit

PACK UNIT STANDARD OPERATING PROCEDURE

SUBJECT: HEAT WAVES

REFERENCE: Tex. Gov't Code §§ 493.001, 493.006

AD-10.64, "Extreme Temperature Conditions in the TDCJ;" TDCJ Incident Management Plan; TDCJ *Risk Management Program Manual, Correctional Managed Health Care (CMHC) Policy Manual D-27.2*, "Heat Stress;" TDCJ Annual Heat Message; National Weather Service guidelines

PURPOSE: To establish guidelines for unit operations and actions to be taken during a heat wave.

DEFINITIONS:

"Excessive Heat" occurs from a combination of significantly higher than normal temperatures and high humidity.

"Excessive Heat Warning" is issued by the National Weather Service within 12 hours of the onset of the following criteria: temperature of at least 105°F, or heat index of 113°F or greater for any period of time.

"Heat Advisory" is issued by the National Weather Service within 12 hours of the onset of the following conditions: temperature of at least 103°F, or heat index of 108°F or greater for any period of time.

"Heat Index," also referred to as the "apparent temperature," is a measure of how hot it actually feels when the Relative Humidity (RH) is added to the actual air temperature.

"Heat Wave" is a prolonged period of excessively hot and unusually humid weather that meets the following criteria: temperature of at least 105°F, or heat index of 113°F or greater for any period of time.

PROCEDURES:

Every reasonable effort shall be made to prevent injuries related to extreme heat conditions and heat waves in the TDCJ. The Correctional Institutions Division (CID) Wallace Pack Unit staff shall adhere to the following guidelines during periods of excessive heat and heat waves.

I. DETERMINATION OF EXCESSIVE HEAT AND HEAT WAVE CONDITIONS

When the National Weather Service issues an excessive heat warning for the Grimes County area, the warden receives an email notification from the TDCJ Incident Manager. The warden shall **immediately** implement additional precautionary measures, as outlined in section II of this policy, when the email notification is received.

II. PREVENTIVE CARE AND PRECAUTIONS

In addition to the precautions outlined in AD-10.64, the warden shall instruct the appropriate staff to immediately initiate the following precautionary measures when there is a notification of an excessive heat warning:

- A. The warden shall immediately notify the appropriate regional director and the deputy director of Prison and Jail Operations of the impending heat wave conditions and activate the Incident Command System (ICS). Unit command center staff shall:
 - 1. Coordinate with unit staff regarding conditions throughout the unit, such as shower temperatures, fans, ice, ice machines, ventilation systems, exhaust fans, and respite areas, and immediately address any deficiencies;
 - 2. Note the deployment of offenders and staff throughout the unit;
 - 3. Evaluate any heat-related illnesses. This will include the conditions surrounding the offender or staff member, such as water intake, location, what the offender or staff member was doing prior to becoming ill and document any "cluster illnesses" or illnesses occurring in offenders in the same housing areas;
 - 4. Report this information to the appropriate regional director and the deputy director of Prison and Jail Operations; and
 - 5. Request and deploy additional resources as necessary.
- B. Outside work and recreation shall be restricted and may be cancelled.
- C. Kitchen operations shall be limited. Reduce kitchen and dish room operations as needed. Offenders may be served cold cuts and other food items that do not require heating, as conditions warrant.

- D. During each security round, staff shall conduct wellness checks for all offenders and seek care for offenders requesting medical assistance or exhibiting signs of illness.
- E. Offenders and staff shall be permitted to utilize and carry cooling towels at all times.
- F. Offenders shall be permitted to sleep on the floor.
- G. Offenders and staff shall be allowed access to respite areas during periods of excessive heat.
 - 1. Offenders may request access to a respite area 24 hours per day, 7 days per week, even if they are not feeling ill at the time of the request.
 - 2. Offenders are not required to be seen by medical unless an offender is exhibiting signs or symptoms of a heat-related illness.
 - 3. Offenders shall be permitted to stay in the respite area as long as the offender feels is necessary.
 - 4. Any area with air conditioning may be used for respite, as determined by the warden.
 - 5. The warden or designee shall determine the order of use for respite areas, ensuring areas capable of accommodating the greatest number of offenders are utilized first, while maintaining the safety and security of the unit.
 - 6. Offenders shall not be permitted to choose which respite area they will be escorted to.
- D. One time per day, an electrolyte sports drink shall be offered to offenders. Offenders shall be permitted to purchase additional electrolyte sports drinks from the unit commissary without affecting their spending limit.
- E. When conditions giving rise to the excessive heat warning cease, the warden may deactivate ICS, with approval of the appropriate regional director.

III. POST UNIT COMMAND CENTER EVALUATION

After deactivating ICS for an excessive heat warning, the warden shall conduct a prompt and thorough Administrative Review to evaluate unit operations during the excessive heat warning. This review shall take into consideration any actions that could be taken to improve operations during future incidents of a similar nature, and any identification of training needs.

Robert Herrera, Senior Warden
Wallace Pack Unit