

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

United States Courts
Southern District of Texas
FILED

MAR 11 2022

Nathan Ochsner, Clerk of Court

RICHARD SCOTT SHAFER, §

PLAINTIFF, §

VS §

CAUSE NO. _____

SENIOR WARDEN JERRY SANCHEZ, §

DEFENDANT. §

MEMORANDUM OF LAW IN SUPPORT OF PRELIMINARY
AND PERMANENT INJUNCTIONS

TO THE HONORABLE JUDGE OF SAID COURT:

IN SUPPORT OF THE APPLICATION FOR A PRELIMINARY AND
PERMANENT INJUNCTION AGAINST THE DEFENDANT, THE PLAINTIFF
BRINGS THE FOLLOWING MEMORANDUM OF LAW:

LEGAL CLAIMS

1. CONDITIONS OF CONFINEMENT: EXTREME TEMPERATURES

THE DEPRIVATION OF A BASIC HUMAN NEED IS APPARENT IN THIS
CASE BECAUSE THE CONDITIONS THEMSELVES POSE A SERIOUS RISK TO
THE HEALTH AND SAFETY OF THE PLAINTIFF. WHEN INMATES ARE
DEPRIVED OF HUMANE CONDITIONS, A VIOLATION OF THE EIGHTH AMENDMENT
OF THE UNITED STATES CONSTITUTION OCCURS. IN A NUMBER OF
INSTANCES, THE UNITED STATES SUPREME COURT HAS ESTABLISHED THAT
FOR CONVICTED INMATES, THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE
OF THE EIGHTH AMENDMENT IMPOSES A DUTY ON PRISON OFFICIALS TO
PROVIDE "HUMANE CONDITIONS OF CONFINEMENT" AND MUST "TAKE
REASONABLE MEASURES TO GUARANTEE THE SAFETY OF THE INMATES"
FARMER v. BRENNAN, 511 U.S. 825, 832, 114 S.Ct. 1970(1994).

IN THE UNITED STATES DISTRICT COURT

BECAUSE OF THE INFESTATION OF RODENTS AND DISEASE-CARRYING INSECTS ARE CONSISTENTLY EVIDENT, THE DURATION THAT THE PLAINTIFF IS SUBJECTED TO THEM REMAIN CONTINUOUS. TESCH V. COUNTY OF GREEN LAKE, 157 F.3D 465, 476 (7TH CIR. 1998); GRAIG V. EBERLY, 164 F.3D 490, 495 (10TH CIR. 1998). THE SERIOUS DEPRIVATION OF A BASIC HUMAN NEED VIOLATES THE CONSTITUTION EVEN IF IT DOES NOT LAST LONG. GORDON V. FABER, 973 F.2D 686, 687-88 (8TH CIR. 1992); DIXON V. GODINEZ, 114 F.3D 640, 643 (7TH CIR. 1997).

BECAUSE LIVING IN TEXAS SUBJECTS EVERYONE TO THE SAME LEVEL OF HEAT AND HUMIDITY, AND BECAUSE THE OFFICIALS AND DEFENDANT ARE READILY AWARE AND NOTIFIED OF THE ISSUE OF HEAT BEING EXPERIENCED BY INMATES AND CORRECTIONAL OFFICERS, THE DEFENDANT HAS KNOWLEDGE OF THE DEPRIVATION AND HAS FAILED TO RESPOND REASONABLY TO IT. PROOF OF THE DEFENDANT KNOWING ABOUT THE INHUMANE CONDITIONS ARE FOUND DOCUMENTED IN THE COMPLAINTS TO PRISON OFFICIALS. BRADLEY V. PUCKETT, 157 F.3D 1022, 1026 (5TH CIR. 1998); BROWN V. BARGERY, 407 F.3D 863, 865-68 (8TH CIR. 2000); FROST V. AGNOS, 152 F.3D 1124, 1129 (9TH CIR. 1998); PERKINS V. KANSAS DEP'T OF CORRECTIONS, 165 F.3D 803, 810 (10TH CIR. 1999).

PRISON OFFICIALS, LIKE THE DEFENDANT, WHO IGNORE INHUMANE CONDITIONS ARE CONSIDERED DELIBERATELY INDIFFERENT. DIXON V. GODINEZ, 114 F.3D AT 644; WEAVER V. CLARKE, 48 F.3D 1253, 1256 (8TH CIR. 1995); JONES V. CITY AND COUNTY OF SAN FRANCISCO, 976 F.SUPP 896, 908 (N.D. CAL. 1997); COLEMAN V. WILSON, 912 F.SUPP 1282, 1319 (E.D. CAL. 1995). AS THE COURTS HAVE EXPLAINED, "ONCE PRISON OFFICIALS BECOME AWARE OF A PROBLEM WITH PRISON CONDITIONS, THEY CANNOT SIMPLY IGNORE THE PROBLEM, BUT SHOULD TAKE CORRECTIVE ACTION WHEN WARRANTED." WILLIAMS V. GRIFFIN, 952 F.2D 820, 826 (4TH CIR. 1991). ALSO, OFFICIALS MAY NOT DENY AN INMATE HIS RIGHT TO HUMANE CONDITIONS BY FORCING HIM TO CHOOSE BETWEEN HUMANE CONDITIONS AND ANOTHER CONSTITUTIONAL RIGHT. JOLLY V. COUGHLIN, 76 F.3D 468, 481 (2ND CIR. 1996); ALLEN V. CITY & COUNTY OF HONOLULU, 38 F.3D 936, 939-40 (9TH CIR. 1994).

BECAUSE THE INFESTATION OF RODENTS AND DISEASE-CARRYING INSECTS

WITH DEALING WITH THE EXTREME HEAT, COMPOUNDED WITH HIGH LEVELS OF HUMIDITY, EXPOSURE TO IT REPEATEDLY EXPOSES THE PLAINTIFF TO A SERIOUS HEALTH RISK, VIOLATING THE CONSTITUTION. BROCK V. WARREN COUNTY, 713 F.SUPP. 438 (E.D. TENN. 1989); MADISON COUNTY JAIL INMATES V. THOMPSON, 773 F.2D 834, 838 (39 (7TH CIR. 1985); HAMILTON V. LOVE, 328 F.SUPP. 1182, 1190 (E.D. ARK. 1971).

2. CONDITIONS OF CONFINEMENT: PEST INFESTATION

BECAUSE OF THE HEAT AND HUMIDITY INHERENTLY DOMINATING THE McCONNELL UNIT, RODENTS, ROACHES AND OTHER VERMIN THRIVE AND REPRODUCE. THE UNIT'S POLICY OF ATTEMPTING TO TREAT THE HOUSING AREAS ARE DEWASTATINGLY INADEQUATE. THE PIPE CHASES ARE PERFECT ENVIRONMENTS FOR THESE PESTS. ONCE EVERY THREE MONTHS DOES NOT REDUCE THE POPULATIONS, BUT ALLOWS THEM TO THRIE, ESPECIALLY WHEN THE SPRAYING TREATMENTS ARE OFTEN NOT DONE TO THE CELLS. SPACE BETWEEN THE TOILETS AND THE PIPE CHASES ALLOWS THESE PEST TO GET INTO THE CELLS AND DAYROOMS.

THESE PESTS CARRY WITH THEM VIRUSES LIKE ROTO VIRUS, H. PALORI, HEPITITIS, AND A HOST OF OTHER VERY HARMFUL AND LIFE-THREATENING VIRUS. THE PEST CLIMB OVER EVERYTHING IN THE CELL AND THE OFFICIALS DO NOT PROVIDE ADEQUATE AMOUNTS OF CLEANERS TO BE CONSTANTLY TRYING TO COMBAT THE SPREAD OF INFECTIOUS DISEASES. THIS AMOUNT TO AN ISSUE OF UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT, BECAUSE THE OFFICIALS HAVE BEEN REPEATEDLY MADE AWARE OF THE ISSUE AND THE SERIOUSNESS OF IT, THE DEFENDANT SHOULD HAVE TAKEN STEPS TO REMEDY THE ISSUE, CAN CHANGE THE DURATION BETWEEN TREATMENTS TO MORE FREQUENTLY APPLIED TO ACTUALL COMBAT AND DEMINISH THE POPULATION OF THESE HARMFUL PESTS, AS IT STANDS, THERE ARE NO RODEN TRAPS ON THE UNIT, AND THESE RODENTS RUN INDOORS THROUGH THE PIPE CHASES AND VENTILATION DUCTS EXPOSING ME AND OTHERS TO HARM MITES AND OTHER HARMFUL COMPONENTS THAT THESE RODENTS CARRY IN THEIR FUR.

3. CONSTITUTIONAL VIOLATIONS

BECAUSE THE EXTREME-HEAT IS AT LEAST FOUR MONTHS IN DURATION AND THE EXPOSURE TO HARMFUL PESTS IS AT AN UNCONTROLLABLE STATE, IT RISES ABOVE SIMPLY BEING UNCONSTITUTIONAL. BECAUSE THE DEFENDANT HAS ADEQUATE KNOWLEDGE OF THE ISSUES AND CHOOSES TO IGNORE THEM, THE CONTINUAL DEPRIVATION OF CONSTITUTIONAL RIGHTS AND FAILURE TO PROVIDE INMATES WITH HUMANE AND SANITARY CONDITIONS OF CONFINEMENT AMOUNT TO CRUEL AND UNUSUAL PUNISHMENT AND PLACES THE PLAINTIFF AND OTHER INMATES AT RISK OF SERIOUS HARMS.

THE COURT, IN AN OPINION BY JUSTICE SOUTER, EXPLAINED THAT "DELIBERATE INDIFFERENCE DESCRIBES A STATE OF MIND MORE BLAMEWORTHY THAN NEGLIGENCE. [T]HE CASES ARE ALSO CLEAR THAT IT IS SATISFIED BY SOMETHING LESS THAN ACTS OR OMISSIONS FOR THE VERY PURPOSE OF CAUSING HARM OR WITH KNOWLEDGE THAT HARM WILL RESULT." EXPOSURE TO THESE INHUMANE CONDITIONS AMOUNTS TO INTENTIONAL AND MALICIOUS INFLICTION OF INJURY. "A FACT-FINDER MAY CONCLUDE THAT A PRISON OFFICIAL KNEW OF A SUBSTANTIAL RISK FROM THE VERY FACT THAT THE RISK WAS OBVIOUS" GATES V. COOK, 376 F.3D 323, 333 (5TH CIR. 2004). BECAUSE THE DEFENDANT FAILED TO ENFORCE A POLICY WHERE IT IS CRITICAL TO INMATE HEALTH AND SAFETY RISES TO THE LEVEL OF DELIBERATE INDIFFERENCE. DELIBERATE INDIFFERENCE WAS FOUND WHERE PRISON OFFICIALS "FAILED TO ENSURE THAT HIS DIRECT SUBORDINANTS FOLLOWED THE POLICIES HE ESTABLISHED." GOKA V. BOBBITT, 862 F.2D 646, 652 (7TH CIR. 1988). "AN OBVIOUS RISK OF HARM JUSTIFIES AN INFERENCE THAT A PRISON OFFICIAL SUBJECTIVELY DISREGARDED A SUBSTANTIAL RISK OF SERIOUS HARM TO THE INMATE" SCHAUTS V. VON VONWALD, 638 F.3D 905, 915 (8TH CIR. 2011). FOR THE PURPOSES OF DETERMINING THE AVAILABILITY OF PUNITIVE DAMAGES UNDER 42 U.S.C. § 1983, DELIBERATE INDIFFERENCE TO A SUBSTANTIAL RISK OF SERIOUS HARM TO A PRISONER IS THE EQUIVALENT OF RECKLESSLY DISREGARDING THAT RISK. TATSCH-CORBIN V. FEATHERS, 561 F.SUPP. 2D 338 (W.D.PA. 2008). TO SHOW STATE OF MIND, [T]HE PLAINTIFF MUST PROVIDE EVIDENCE THAT THE DEFENDANT HAD "ACTUAL KNOWLEDGE OF IMPENDING HARM, EASILY PREVENTABLE," AND YET FAILED TO TAKE STEPS THAT WOULD HAVE EASILY PREVENTED THAT HARM. ZINGG V. GROBLESKI, 907 F.3D 630, 635 (1ST CIR. 2018).

BECAUSE THE HEA

PRELIMINARY INJUNCTIVE RELIEF

UNDER FEDERAL RULE OF CIVIL PROCEDURE 65(a), A DISTRICT COURT HAS THE POWER TO ENTER A PRELIMINARY INJUNCTION. THIS IS AN ORDER TO PROTECT THE PLAINTIFF ON A TEMPORARY BASIS, BEFORE THE COURT CAN FULLY CONSIDER A REQUEST FOR PERMANENT RELIEF. A PLAINTIFF MUST MEET FOUR CRITERIA: 1) THE PLAINTIFF WILL LIKELY PROVE AT TRIAL THAT THE DEFENDANT VIOLATED A RIGHT; 2) PLAINTIFF WILL LIKELY SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT GRANTED; 3) THE LEVEL OF HARM THE PLAINTIFF FACES OUTWEIGHS ANY HARM THE DEFENDANT WILL BE CAUSED; AND 4) A PRELIMINARY INJUNCTION WILL SERVE THE PUBLIC INTEREST. SEE 18 U.S.C. § 3626(a)(2).

"UNDER THE PLAINTIFF'S INJUNCTIVE RELIEF MUST RELATE CLOSE TO THE IDENTIFIED VIOLATION." ARMSTRONG v BROWN, 768 F.3D 975, 983 (9TH CIR. 2014). THE COURT SAID: "IT WOULD BE ODD TO DENY AN INJUNCTION TO INMATES WHO PLAINLY PROVED AN UNSAFE, LIFE-THREATENING CONDITION IN THEIR PRISON ON THE GROUND THAT NOTHING YET HAPPENED TO THEM." HELLING v. MCKINNEY, 509 U.S. 25, 33, 113 S.Ct. 2475, 125 L.Ed2d 22 (1993). "COURTS REQUIRE 'CLEAR PROOF' THAT AN UNLAWFUL PRACTICE HAS BEEN ABANDONED, AND MUST GUARD AGAINST ATTEMPTS TO AVOID INJUNCTIVE RELIEF 'BY PROTESTATIONS OF REPENTANCE AND REFORM, ESPECIALLY WHEN ABANDONMENT SEEMS TIMED TO ANTICIPATE SUIT, AND THERE IS A PROBABILITY OF RESUMPTION.'" WILK v. AMERICAN MEDICAL ASSOCIATION, 895 F.2D 352, 367 (7TH CIR. 1990).

"THE POINT OF A PRELIMINARY INJUNCTION IS TO MAINTAIN 'THE STATUS QUO' UNTIL THE RESOLUTION OF THE CASE ON THE MERITS. A FINAL DECISION ON THE MERITS THUS 'EXTINGUISHES A PRELIMINARY INJUNCTION.'" THE COURT REVERSED THE DISTRICT COURT'S DENIAL OF A PRELIMINARY INJUNCTION WHERE PLAINTIFF WAS DENIED HIS MEDICALLY PRESCRIBED DIET. THE PLAINTIFF'S PLEADINGS ALLEGED A PATTERN OF KNOWING INTERFERENCES WITH PRESCRIBED MEDICAL CARE FOR HIS DIABETES, DESPITE HIS MULTIPLE COMPLAINTS AND HIS OFFICIAL GRIEVANCE, WHICH WERE ALL ESSENTIALLY IGNORED. TAKING THE PLAINTIFF'S ALLEGATIONS AS TRUE, HE HAD SHOWN A SUFFICIENT LIKELIHOOD OF SUCCESS ON THE MERITS. JONES v. TEXAS DEP'T OF

CRIMINAL JUSTICE, 880 F.BD 756 (5TH CIR. 2018). THE COURTS HAVE NOTED THAT BOTH PRELIMINARY AND PERMANENT INJUNCTIONS REQUIRE A SHOWING OF IRREPARABLE HARM. HOWEVER, THE STANDARD FOR OBTAINING A PRELIMINARY INJUNCTION IS VERTHELESS MORE STRINGENT, BECAUSE THE MOVING PARTY MUST ALSO DEMONSTRATE "IMMINENCE" OF HARM, WHICH IS NOT REQUIRED FOR GRANTING A PERMANENT INJUNCTION. RODRIGUEZ ex Hel. RODRIGUEZ v. DeBUONO, 175 F.BD 227, 235 (2ND CIR. 1999). "AN INJUNCTION SHOULD NOT BE REFUSED UPON THE MERE ipse dixit OF A DEFENDANT THAT, NOTWITHSTANDING HIS PAST MISCONDUCT, HE IS NOW REPENTANT AND WILL HEREAFTER ABIDE BY THE LAW." UNITED STATES v. HUNTER, 459 F.2D 205, 220(4TH CIRU 1972). TO OBTAIN A PRELIMINARY INJUNCTION, THE MOVING PARTY MUST SHOW "THAT HE IS LIKELY TO SUCCEED ON THE MERITS, THAT HE IS LIKELY TO SUFFER IRREPARABLE HARM IN THE ABSENCE OF PRELIMINARY RELIEF, THAT THE BALANCE OF EQUITIES TIPS IN HIS FAVOR, AND THAT AN INJUNCTION IS IN THE PUBLIC INTEREST." WINTER v. NATURAL RES. DEF. COUNCIL, INC., 555 U.S. 7, 129 S.CT. 365, 374, 172 L.ED. 2D 249 (2008).

TEMPORARY RESTRAINING ORDERS

A TEMPORARY RESTRAINING ORDER IS SIMPLY A HIGHLY ACCELERATED AND TEMPORARY FORM OF PRELIMINARY INJUNCTIVE RELIEF. THE PURPOSE OF A TEMPORARY RESTRAINING ORDER IS TO PRESERVE THE STATUS QUO AND PREVENT IRREPARABLE HARM JUST SO LONG AS IS NECESSARY TO HOLD A HEARING, AND NO LONGER. ANY TEMPORARY RESTRAINING ORDER, THEREFORE, IS A TEMPORARY MEASURE TO PROTECT RIGHTS UNTIL A HEARING CAN BE HELD. COMUCOM SYSTEMS v. WJ GLOBAL, LLC, 2014 WL 5032747 (N.D. TEXU 2014). AN APPLICATION FOR A TRO CAN BE FILED WITH A PLAINTIFF'S COMPLAINT OR AS A SEPARATE MOTION. DILLARD v. MERRILL LYNCH, PIERCE, FENNER AND SMITH, INC., 961 F.2D 1148, 1155 (5TH CIR. 1992).


"THE STANDARDS FOR A TEMPORARY RESTRAINING ORDER ARE THE SAME AS THOSE FOR A PRELIMINARY INJUNCTION." BIEROS v. NICOLA, 857 F.SUPP.445, 446 (EUDU PA. 1994); JANVEY v. ALGUIREI, 647 F.BD 585, 595 (5TH CIR. 2011). THE COURT CONCLUDED THAT INTERM RELIEF PRESERVING THE STATUS QUO IS NOT MERIT-BASED AND

ACKNOWLEDGING A TRO AS A "STAY PUT[]" EQUITABLE REMEDY THAT HAS AS ITS ESSENTIAL PURPOSE THE PRESERVATION OF THE STATUS QUO WHILE THE MERITS OF THE CAUSE ARE EXPLORED THROUGH LITIGATION." J.O. ex rel. C.O. v. ORANGE TOWNSHIP BRD. OF EDUCATION, 287 F.3D 267, 273 (3RD CIR. 2002).

CONCLUSION

FROM THE EVIDENCE IN THE AFFIDAVIT, THE COMPLAINT, AND THE CLEAR AND APPLICABLE PROBLEMS ASSOCIATED WITH COLE, et al v. COLLIER, et al, 4:14-cv-01698 THAT ARE HELD IN SIMILARITY TO THE PLAINTIFF'S CASE, A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION NEEDS TO BE GRANTED TO AVOID IRREPARABLE HARMS THAT THE PLAINTIFF WILL IMMINENTLY SUFFER BY THE WILLFUL DISREGARD FOR THE PLAINTIFF'S HEALTH AND SAFETY AT THE HANDS OF THE DEFENDANT AND HIS AGENTS.

EXECUTED THIS THE 5TH DAY OF MARCH, 2022.



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