

DEADLY HEAT IN U.S. (TEXAS) PRISONS

Opposing the cruel, inhuman, and degrading treatment of Texas inmates through exposure to extreme heat



The grave of Albert Hinojosa, who died of heatstroke in a Texas prison

October 15, 2014

A shadow report of the United States' periodic report, prepared for the United Nations Committee Against Torture on the occasion of its 53rd session

Written by the University of Texas School of Law Human Rights Clinic

This report does not reflect the official position of the School of Law or of the University of Texas. The views presented here reflect only the opinions of the Human Rights Clinic

Image by Lauren Schneider

Executive Summary

The United States continues to violate its obligations under Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”) by failing to prevent and eradicate the cruel, inhuman, and degrading treatment and punishment of inmates in Texas Department of Criminal Justice (“TDCJ”) prisons as well as other state prisons around the nation.¹ In the past seven years, at least fourteen inmates have died as a direct result of extreme heat exposure while incarcerated in TDCJ facilities, where internal summertime heat indices can exceed 149°F (65°C) as early as 10:30AM.² The U.S. has stated that federalism and state sovereignty issues do not override its Convention duty to prevent such treatment or punishment.³ Moreover, the U.S. has formally acknowledged its power to affect change in state prison conditions. In a 1994 report to the Committee Against Torture (“CAT”), the U.S. noted the power of the Department of Justice (“DOJ”) to investigate of state and local human rights violations, “which often result[s] in the jurisdictions taking the necessary remedial measures.”⁴ The U.S., then, by its own admission, has the authority, capacity, and precedent to affect change in state prison conditions, but has so far failed to exercise its authority in the case of Texas prisons, whose conditions fall below the Convention requirements.

Change is certainly needed. As of June 2014, the TDCJ’s inmate population numbered about 151,000 inmates across 109 facilities.⁵ The vast majority of these facilities contain insufficient ventilation and no form of air conditioning in the inmates’ housing areas, which causes suffering and death among TDCJ inmates.⁶ Despite the at least fourteen TDCJ inmates who have died from heat while incarcerated, and in direct contravention of both CAT standards and the 8th Amendment of the United States Constitution, no maximum temperature policy or other effective measures exist to protect Texas inmates from the heat.⁷ By failing to take effective legislative, administrative, judicial or other measures to prevent the cruel, inhuman and degrading treatment of prisoners within its borders, the United States is breaching its Article 16 duties under the Convention.⁸

The Clinic

The University of Texas School of Law’s Human Rights Clinic (“the Clinic”) is comprised of an interdisciplinary group of law students and graduate students, working under the guidance of Clinic Director, Ariel Dulitzky. Students learn substantive human rights law through critical classroom study, discussion, and reflection. This allows students to explore different models for ethical, responsible, and effective promotion and protection of human rights. Working from the advocate’s perspective, students partake in a host of projects and collaborate with human rights organizations worldwide to support human rights claims in domestic and international forums. The Clinic’s work includes investigating and documenting human rights violations, developing and participating in advocacy initiatives before the United Nations and regional and national human rights bodies, and engaging with global and local human rights campaigns.

In April, the Clinic published a report describing violations of the human and constitutional rights of inmates occurring in the state of Texas by exposing them to dangerously high temperatures and extreme heat conditions.http://www.utexas.edu/law/clinics/humanrights/docs/HRC_EH_Report_4-7-14_FINAL.pdf . This shadow report submitted to the Committee Against Torture (“CAT”) complements and expands upon the Clinic’s initial report.

“My dad was supposed to go to jail for four years for drunk driving and the temperatures were so bad that he couldn’t survive four days.”

- Ashley Adams⁹

A. Inhuman, Unhealthy, and Deadly Prison Conditions

Since 2007, at least fourteen inmates in nine different Texas prisons have died from heat-related illnesses.¹⁰ These deaths were preventable. They directly resulted from the failure of Texas and the U.S. to protect its inmates from extreme internal temperatures. Five of the deceased spent less than a single week in custody before succumbing to the dangerously high temperatures in Texas facilities.¹¹ All inmates whose body temperatures were measured at their time of death had body temperatures between 105°F and 109°F (40.6°C and 42.8°C).¹² All fourteen of the deceased suffered from pre-existing medical conditions exacerbated by the heat, and thirteen suffered from medical conditions necessitating medication that heightened their sensitivity to heat.¹³ None of the TDCJ facilities in which inmates died of heat illnesses were equipped with air conditioning for the general inmate population, though the warden and visiting areas are air-conditioned.¹⁴

During the summer months, temperatures in Texas prisons consistently exceed 90°F (32.2°C), and are often combined with humidity levels that can reach 100%.¹⁵ The temperature log of one TDCJ unit documents temperatures ranging from 117°F to over 149°F (47.2°C to over 65°C).¹⁶ In some instances, TDCJ records also show air temperatures outside of TDCJ facilities spiking over 110°F (43.3°C) by 10:30AM;¹⁷ the temperatures can remain like that for several hours. Investigations into heat-related deaths at TDCJ have found temperatures above 90°F (32.2°C) even past midnight.¹⁸ Kellie Buttieri, a former TDCJ prison guard, recalled once seeing a temperature reading of 120°F (48.9°C) inside the prison.¹⁹ Inmate John W. Ford detailed an instance in which the Assistant Warden of his unit measured the metal wall of Ford’s cell with a thermometer that reached 122°F (50°C).²⁰ The TDCJ training manual itself states that the risk of heat stroke begins when temperatures reach 91°F (32.8°C)²¹ – a temperature far cooler than that regularly experienced by TDCJ guards and inmates. Even in victims who survive heat stroke, “a variety of complications ensuing after heat exposure make the choice of treatment . . . difficult[,] enhancing the probability of permanent neurological damage in survivors.”²²

The combination of humidity and heat can be even deadlier. As humidity increases, the chances of heat-related injury rise to dangerous levels, even at relatively low summer temperatures. A National Weather Service (“NWS”) chart (see Figure 1, below) identifies the risks of heat-related injury in different climates, showing a sharp increase in the likelihood of heat-related injury when high humidity coincides with high temperatures. According to a medical textbook, “[h]eatstroke occurs . . . rapidly . . . if heat loss by evaporation cannot occur.”²³ Inmate John Cloud described the heat conditions as having such high humidity that “if you sweat it doesn’t evaporate . . . you don’t get any cooling benefit from it.”²⁴ A regular experience of inmates is waking up in sweat-drenched sheets, and after showers, becoming dry is not possible due to the intense humidity.²⁵ Further, almost half of Texas prisons are built with outer walls partially or fully constructed from metal.²⁶ Inmate Loyd Sorrow, a disabled veter-

an, described experiencing severe headaches from dehydration while incarcerated in what is known as “Boot Camp”, a series of windowless, metal, warehouse-like structures in Terrell unit.²⁷

The NWS recognizes the danger of heat-related injury, calling excessive heat “one of the leading weather-related killer[s] in the United States, resulting in hundreds of fatalities each year.”²⁸ Texas prison staff has recorded prison internal heat indices that fall squarely in the “extreme danger” category identified by the NWS. Further, by NWS standards, TDCJ prison temperatures and humidity levels regularly reach the point at which the likelihood of heat disorders with prolonged exposure is at its highest.²⁹ Nevertheless, the U.S. has failed to adopt any measures to meet CAT standards in Texas prisons.

“I remember when 2011 kicked off I literally had to pray to God to keep me alive . . . I promise you that cell was at least 160 – 165 degrees.”

Freddie Fountain³⁰

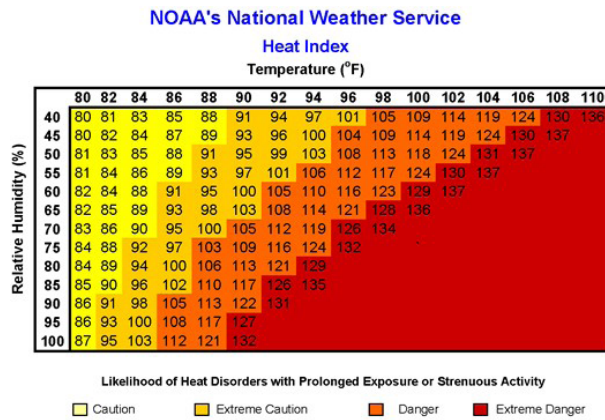


Figure 1:
National Weather Service Heat Index Chart

Medical conditions that can increase a person’s susceptibility to heat illness include such common afflictions as obesity and hypertension.³¹ Additionally, psychotropic medications, which are commonly used to treat most forms of mental illness (such as psychosis, depression, bipolar disorder and anxiety³²), decrease the body’s ability to regulate its own internal temperature.³³ Brad Livingston, the TDCJ Executive Director, has said that approximately 82% of prisoners housed in TDCJ prisons suffer from some form of mental illness.³⁴ Several inmates interviewed by the Clinic confirmed that the overwhelming majority of inmates are especially susceptible to heat injury because they take psychotropic medications.³⁵ William Mayer, director of the California state prison Mental Health Department, noted in 1991 that heat waves provide an incentive for doctors to reduce prisoners’ anti-psychotic medication, which in itself poses risks to guards and prisoners alike.³⁶ Many inmates are completely unaware that heat sensitivity is a side effect of their medication at all: “[t]he guards never tell you the side effects of your medication,” Joshua Nelson Roberts, inmate in TDCJ’s Charles T. Terrell (“Terrell”) unit, said; “I looked mine up myself but most guys here don’t know to do that.”³⁷ Another inmate, John Cloud, confirmed, “[m]ost people don’t know to take heat precautions with their medication, they don’t know it makes them vulnerable. The prisons don’t tell you that’s a side effect when they give it to you.”³⁸

The heat affects even the healthiest of inmates. Keith “Malik” Washington, a 46-year-old former college football player who does not take any medications and describes himself as “blessed with great health” is an archetypal example.³⁹ For two years he was in administrative segregation (a form of solitary confinement in which prisoners are confined to their cells at all times) where his brick cell was situated across from a glass wall in the direct path of the sun. “As a matter of survival,” he said, “you lie on the concrete floor as much as possible.” He put it simply: “[B]ricks...they hold heat. . . they’re not releasing heat into the atmosphere, they’re holding it in so that the people inside [are] basically being cooked.”⁴⁰ Inmate Jessie Hanebuth is 24 years old, lives in administrative segregation, and, according to his wife, Emily Hanebuth, has “woken up puking because of the heat. He said he wanted to die it felt so bad.”⁴¹

Inmates’ accounts of the conditions in the “chow hall”, where TDCJ-provided meals are available, highlight the fact that every inmate is subjected to dangerous, inescapable heat and humidity levels. Like most places in TDCJ prisons, the chow hall is not air-conditioned. Steam pots, heat lamps, and hundreds of inmates’ body heat are gathered in a single, inadequately ventilated room. Keith “Malik” Washington recalled one occasion in which the inmates were “packed in [the chow hall] with all kinds of different individuals, old men, young men, . . . mental health patients,” begging to be let out because the heat and humidity levels were so extreme. “We’re cooking in here . . . we can’t get out.” When the Senior Warden was called in, her response was “shut the f*** up before I gas all of you.”⁴² Several inmates interviewed by the Clinic reported skipping meals



either to avoid the intense heat in the “chow hall” or to avoid getting sick from eating because they were so hot in their cells.⁴³

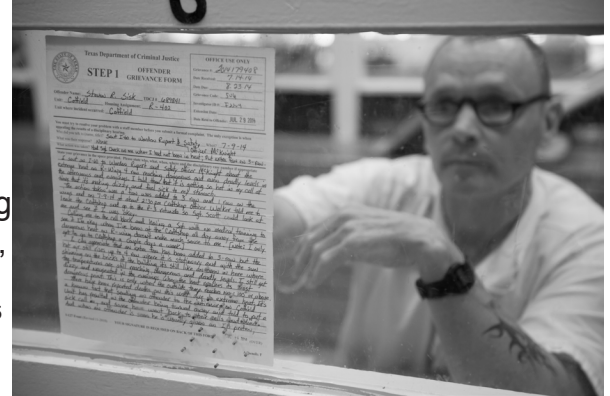
While TDCJ inmates are most consistently subjected to cruel, inhuman and degrading treatment by way of these extremely high temperatures, they are not the only victims. TDCJ staff is subjected to the same dangerous conditions. From 2012 to 2013, there were 147 reports of TDCJ corrections officers suffering illnesses or injuries as a result of their exposure to extreme heat.⁴⁴ One inmate described an incident with a guard: “[t]he first week of May this year, I saw a guard pass out from the heat. Usually I just see them all soaking wet with sweat.”⁴⁵ Numerous inmates at different units reported seeing correctional officers falling unconscious as a result of the high temperatures and humidity while on duty at TDCJ prisons, with one incident ultimately resulting in death.⁴⁶ By October of 2013, guard suffering caused union officials representing corrections officers in Texas prisons to publicly support lawsuits filed by the families of the prisoners who had died from heat exposure.⁴⁷ According to the union, corrections officers in Texas complained of temperatures as high as 130°F (54.4°C) and were outraged that the state of Texas spent \$750,000 on exhaust fans and misters to keep swine cool in pig farms while simultaneously neglecting the human rights of prisoners and prison guards.⁴⁸

“The hogs are better than us. You go ask [TDCJ] why that is.”

Joshua Nelson Roberts⁴⁹

B. Inadequate Measures

The measures adopted by the U.S., and in particular Texas authorities, are completely insufficient to secure inmates' CAT-protected rights. While the TDCJ sells personal fans to inmates and has nominally supplied ventilation in inmate living areas,⁵⁰ the Centers for Disease Control and Prevention ("CDC") has declared such measures ineffective in preventing heat-related injuries in hot and humid conditions.⁵¹ Specifically, the CDC found that while fans may increase comfort when temperatures are below 90°F (32.2°C), they will not protect against heatstroke and heat-related illnesses when temperatures exceed 90°F and humidity exceeds 35%.⁵² John Cloud, who has been in TDCJ custody for multiple decades, noted, "[n]o fan is going to do a dang thing in [older units]."⁵³ Aside from that, at \$20, fans are one of the most expensive items that TDCJ commissaries sell.⁵⁴ Shorts are also sold rather than provided.⁵⁵ This is especially problematic given that 40 – 50% of TDCJ offenders were indigent as recently as 2012.⁵⁶ What is more, the cost to inmates of a year of health service within the TDCJ system has gone up \$97 (from \$3 in 2010 to \$100 in 2011).⁵⁷ Many inmates have less than \$5 in their commissary account, much less this exorbitant amount;⁵⁸ it is common for inmates to forgo clinic visits when they feel ill, from the heat and otherwise, solely to avoid paying this fee.⁵⁹



Texas does not provide enough water to inmates to deal with the intense heat. While a cooler filled with ice is provided between one and two times a day, prisoners attest that it is often dirty and filled with mosquitoes.⁶⁰ In Terrell unit, the water cooler is filled with ice twice a day, and not filled at all after 4PM – “[t]hat’s for 80 inmates.”⁶¹ These coolers of ice are only provided from the end of May until October 1st. Highs for October 1st in cities where some TDCJ prisons are located have ranged from 89°F – 93°F (39°C – 33.8°C).⁶²

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Temperature Log

Unit: H5

7-19-11

Date:	Outside Air Temperature	Humidity or Wind Speed	Heat Index or Wind Chill	Person Recording
9:30 a.m.	99°	64%	120°	BUSBY
10:30 a.m.	112	65%	149° +	BUSBY
11:30 a.m.	124°	65%	149° +	BUSBY
12:30 p.m.	112°	65%	149° +	BUSBY
1:30 a.m.	114°	59%	160° +	BUSBY
2:30 p.m.	104°	48%	117°	SETHAS CAS
3:30 p.m.	105°	45%	117°	SETHAS CAS

Figure 2:
TDCJ Temperature Log

“[W]hen the temperatures are real high, it’s not livable . . . I just really hope they get something in place . . . to deal with the heat, because who knows? It might be my time next.”

– Tavaris Johnson⁶³

Ventilation in prison common areas is also woefully inadequate. The ventilation system uses fans that are too small for the size of the unit and number of inmates and the filters are not cleaned regularly, adding insult to injury in the form of extreme humidity and dirty air.⁶⁴ Inmate Keith “Malik” Washington noted that the large fans in his unit are usually not even on.⁶⁵ He further stated that the fans were only turned on two days before the Clinic arrived to interview him about the heat – a visit his TDCJ unit knew was going to happen a week prior.⁶⁶ Multiple inmates described the efficacy of these common area fans as merely “blowing around hot air.”⁶⁷

Texas’s recent installation of “Cool-Space” evaporative coolers⁶⁸ in seven of its 109 facilities is similarly insufficient in alleviating the heat.⁶⁹ One inmate living in administrative segregation described the evaporative cooler systems as successful.⁷⁰ Nevertheless, the overwhelming majority of inmates and prison personnel remain exposed to dangerous temperatures and humidity levels: only certain units such as the prison hospital, psychiatric units, and warden offices have air conditioning, and the U.S. Department of Energy specifies that evaporative cooler systems are “suitable only for areas with low humidity.”⁷¹ TDCJ’s own temperature log documents morning humidity levels at 64%.⁷² Lance Lowry, union representative for some TDCJ prison workers, has said of the coolers, “I’ve seen them, and it’s not a permanent fix . . . It’s, basically, a big fan blowing hot air through water, and to think you can put one of these in every day room and solve the heat problem is not paying attention to reality.”⁷³

The U.S. and Texas have failed to adopt a clear standard on maximum permissible temperatures. This stands in direct contrast to other states surrounding Texas that experience cooler or similar summertime temperatures. Arkansas mandates that summertime cell temperatures stay between 74°F and 78°F (23.3°C and 25.6°C), and all prisons in Arkansas have been air conditioned since the late 1970s. Arizona requires indoor temperatures of its prison facilities to be maintained at a maximum temperature of 78°F (25.6°C) through the use of mechanical cooling.⁷⁴ Both New Mexico and Oklahoma require prison inmate housing areas to be maintained at temperatures appropriate to summer comfort zones.⁷⁵ In Texas itself, the Texas Administrative Code requires that county and municipal jails maintain “temperature levels . . . between 65 degrees Fahrenheit and 85 degrees Fahrenheit,” echoing similar municipal standards in Tennessee, North Carolina, and Illinois.⁷⁶ Courts in Louisiana and Mississippi have held that extreme temperatures in prisons can constitute “cruel and unusual punishment.”⁷⁷ Even Guantánamo Bay detention camp provides air conditioning to its prisoners.⁷⁸

In addition to the heat itself, TDCJ leaves no room for inmates to seek reform or relief for themselves on the matter of heat. Inmates and former TDCJ guards alike describe the complaint system as non-existent in practice. Inmate accounts of guards’ responses to informal complaints include, “I don’t give a s****”, and “I don’t think you deserve air conditioning.”⁷⁹ It is the rare exception that TDCJ investigates a formal complaint.⁸⁰ A chorus of inmates expressed that they were consistently told that

there wasn't enough evidence to substantiate their claims.⁸¹ As inmate John Cloud put it, "[w]hen you file a [complaint] you get the same response every time: 'every effort is being made.' What's the point?"⁸² Inmate Loyd Sorrow said of TDCJ's formal complaint system, "I'd have better luck hitting my head on that wall."⁸³ He was echoed by another inmate: "I'd have better luck getting the bricks to speak to me [than receive a response from an official TDCJ complaint.]"⁸⁴ Indeed, former TDCJ guards said that these complaint forms are routinely thrown in the trash.⁸⁵

Not only are formal complaints regarding heat conditions ignored, but they also form the basis for retaliation by guards. Inmates have complained of a variety of methods of retaliation, including the water to their cell unit being turned off, removal of privileges, reduction in available methods of coping with heat, including a lower ration of ice, and verbal harassment.⁸⁶ Inmate Freddie Fountain said during his interview, "[t]hey're back there shaking my cell down, tearing it all to s*** because of this [interview about prison heat]. They got three officers [to come] into my cell soon as I came out from the law library." This kind of action is so pervasive that Fountain's reaction to this was, "no big deal, it is what it is."⁸⁷

C. A National Problem

Though the situation in TDCJ prisons is especially egregious, Texas is not alone in this disregard for human rights. Inmate deaths have also occurred as a result of extreme heat in states such as Arizona, California, Florida, New York, and Michigan.⁸⁸ This year in a New York state prison, a mentally ill homeless veteran was "baked to death" in his cell, which reached the temperature of 100°F (37°C).⁸⁹

D. Legal Arguments

1. U.S. Reservations, Interpretations, and Understandings

In a formal reservation, the U.S. declared that it is bound by Article 16 only insofar as "cruel, inhuman, or degrading treatment or punishment" corresponds with the infliction of cruel and unusual punishments prohibited by the 8th Amendment to the U.S. Constitution.⁹⁰ CAT has repeatedly recommended that the U.S. withdraw this reservation,⁹¹ but this reservation has not changed with the U.S.'s most recent CAT report.⁹² The United States is violating both its Article 16 obligations under CAT standards and violating the standards of the 8th amendment.

The U.S. also conditioned its ratification of the Convention on the understanding that CAT standards were to be "implemented by the Federal Government to the extent of its legislative and judicial jurisdiction, and otherwise by the state and local governments."⁹³ However, the U.S. emphasized that federalism does not "limit the substantive obligations of the United States under the Convention, nor does it exempt any state . . . officials from the Convention's requirements regarding the prohibition, prevention and punishment of . . . cruel, inhuman or degrading treatment or punishment."⁹⁴ Both the U.S. and Texas authorities have failed to comply with CAT standards in this area.

2. The U.S. Violates Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Though CAT has never addressed the issue of extreme heat or a lack of proper ventilation in prisons in its Concluding Observations to the United States, it has dealt with the issue in other countries with some frequency. CAT has, on multiple occasions, mentioned “ventilation, heating . . . and access to fresh air” in its list of issues to various countries.⁹⁵ CAT’s concluding observations to Estonia,⁹⁶ Bulgaria,⁹⁷ and Mongolia⁹⁸ note poor ventilation as a sign that prison conditions do not meet CAT standards, and when CAT recommended that the government of Latvia improve its prison conditions, the government reported back that it had added increased ventilation, among other things, to satisfy this requirement.⁹⁹ Hungary, in an addendum to CAT, noted that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“CPT”) found that prison cells in Budapest, “despite having large windows . . . had very poor ventilation, and the vast majority of inmates complained about this state of affairs.”¹⁰⁰ Hungary further noted to CAT that CPT recommended “a permanent solution to this problem be found as a matter of urgency,”¹⁰¹ and remarked that “the hot and airless atmosphere” in the Budapest cells “reached unbearable levels.”

When CAT’s Subcommittee on the Prevention of Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (“the Subcommittee”) visited prisons in Mexico, the report that followed noted that “[i]n order to improve physical conditions in prisons [it is recommended that] . . . [a]ll accommodation provided for the use of prisoners should have adequate ventilation and heating, as appropriate.”¹⁰² The Subcommittee also mentions a lack of ventilation as evidence of poor prison conditions in its report on the Democratic Republic of the Congo.¹⁰³ Specifically, the Subcommittee visited “cells, dormitories, common areas, and kitchen and bathroom facilities” and observed that “[m]ost of the wings did not have . . . proper ventilation and some wings were extremely hot, particularly in San Pedro Sula Prison, where the temperature sometimes rose about 35 degrees [or 95°F].”¹⁰⁴ The Subcommittee also recommended urgent review of the heat conditions in a Benin facility, where heat indices reached between 123.8°F and 129.2°F (51°C and 54°C), and that measures be implemented to reduce the facility’s extreme temperature.¹⁰⁵

The extreme heat within TDCJ and other prisons in the United States, from CAT’s own reports, is on par with a wide number of other countries already deemed in violation of Article 16. Such treatment is a clear violation of the United States’ obligations under the Convention. Extreme heat in prisons is also a violation of numerous other international standards, including those set by the Inter-American Commission on Human Rights and the European Court of Human Rights.¹⁰⁶

■The U.S. Violates the 8th Amendment of the U.S. Constitution’s Prohibition on Cruel and Unusual Punishment

The United States will only acknowledge Article 16 violations of the Convention when such violations also occur under the 8th Amendment. The Supreme Court of the United States (“the Supreme Court”) as well as multiple other competent courts for prison conditions in Texas¹⁰⁷, have held that extreme prison heat can constitute cruel and unusual punishment under the 8th amendment where a prison official “has demonstrated a “subjective, deliberate indifference” to conditions posing a substantial risk of harm to inmates.¹⁰⁸

The extreme heat conditions discussed supra pages 3–8 meet 8th Amendment standards of posing a substantial risk of harm to inmates.¹⁰⁹ The simple fact that 14 inmates have died from preventable extreme heat in nine different TDCJ prisons since 2007, combined with ongoing civil litigation from the families of the deceased against TDCJ and TDCJ’s failure to implement effective heat-mitigating measures in the intervening seven years, establishes its awareness.¹¹⁰ This awareness constitutes the subjective, deliberate indifference to an identifiable human need discussed by the Supreme Court and violates the United States’ 8th Amendment prohibition against cruel and unusual punishment. The U.S. is thus obligated under both its own constitution and Article 16 of the Convention to take action and halt future violations.

E. Conclusion

Inmates both in Texas and numerous states around the U.S. are suffering and dying from extreme heat. Despite awareness of the problem in other countries, the U.S. has largely not addressed the problem in its own borders. This inaction is a flagrant violation of the Convention, the U.S.’s own Constitution, and international standards. The dangerous heat in prisons around the U.S., with Texas as an especially intolerable example, will not disappear on its own.

“A human being’s life is precious, and mine isn’t any less precious because I have on white [prison apparel].”

– Keith “Malik” Washington¹¹¹

F. Recommendations

The University of Texas Human Rights Clinic recommends that CAT take immediate action to stop the ongoing suffering of Texas prisoners in the summer heat. Specifically, the Clinic recommends that CAT:

- Express concern in its concluding observations to the United States with regard to the issue of extreme heat in Texas prisons
- Request that the United States respond with a “Follow-up to the Concluding Observations” on the issue of extreme heat in Texas prisons, and officially acknowledge extreme heat in prisons as an ongoing human rights violation in its borders
- Further request the United States ensure that the Texas legislature allocates enough resources to provide effective air conditioning and/or ventilation systems in all TDCJ units during the upcoming Texas legislative session in January 2015¹¹²
- Recommend that the United States otherwise ensures that Texas implements effective air conditioning and/or ventilation systems in all TDCJ units
- Entreat the United States to use the DOJ to investigate TDCJ prisons and issue letters of finding to the state of Texas on the issue of extreme heat
- Recommend that the United States play an active role in setting maximum temperature standards for state prisons across the United States, with a particular focus on Texas prisons
- Recommend that the United States ensure that Texas takes the preventative measures outlined in page 35 of the Clinic’s report, “Deadly Heat in Texas Prisons.”

¹ See Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 2, Dec. 19, 1984, 1465 U.N.T.S. 85 (“Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”) [hereinafter Convention Against Torture].

² ALBERT SUAREZ IV ET. AL., THE UNIVERSITY OF TEXAS SCHOOL OF LAW HUMAN RIGHTS CLINIC, DEADLY HEAT IN TEXAS PRISONS 10 (2014) (See Annex). The heat index measures air temperature and relative humidity to determine how hot it feels for the human body.

³ U.S. DEP’T OF STATE, INITIAL REPORTS OF STATES PARTIES DUE IN 1995, ADDENDUM, U.S. ¶ 20 (1999), available at <http://2001-2009.state.gov/documents/organization/100296.pdf> [hereinafter “U.S. ADDENDUM”]; U.S. DEP’T OF STATE, CONVENTION AGAINST TORTURE PERIODIC REPORT OF THE U.S. 6 (2013), available at <http://www.state.gov/documents/organization/213267.pdf> [hereinafter PERIODIC REPORT (2013)].

⁴ *Id.* at ¶¶ 312–13. The U.S. reported to CAT that in 1994, the DOJ investigated allegations of constitutional violations in Syracuse, New York prison facilities. The DOJ found constitutional violations that same year, and Syracuse implanted the DOJ’s recommended changes in 1997.⁴ The U.S. specifically cites the DOJ as playing a “central enforcement role in protecting the rights of prisoners throughout the country” through investigating claims of violations and issuing letters of findings “which often result in the jurisdictions taking the necessary remedial measures, but which may also be followed by the Department filing a lawsuit.” *Id.*

⁵ NBC Dallas Forth Worth, Texas News, Prison Crime Holds Steady as Population Declines, June 23, 2014, <http://www.nbcdfw.com/news/local/Prison-Crime-Holds-Steady-as-Population-Declines-264273111.html> (last visited Oct. 15, 2014).

⁶ SUAREZ ET. AL., *supra* note 2, at 18–19.

⁷ *Id.* at 7.

⁸ Convention Against Torture, *supra* note 1, at art. 2.

⁹ Ashley Adams is the daughter of Rodney Adams, a former TDCJ inmate who died as a result of heat-related illness in June 2012. Matt Clark & David M. Reutter, Prison Legal News, Heat-related Deaths in Texas Prisons Lead to Lawsuits, Reluctant Changes, August 8, 2014, <https://www.prisonlegalnews.org/news/2014/aug/8/heat-related-deaths-texas-prisons-lead-lawsuits-reluctant-changes/> (last visited Oct. 15, 2014).

¹⁰ These are only the inmates whose deaths were listed as heat-related by the TDCJ; there is no way of knowing if the heat contributed to other deaths within the TDCJ prison system. Indeed, John H. Cloud, an inmate in Terrell Unit of the TDCJ prison system, suffered a sudden death episode on a particularly hot day when the water had run out of the provided water cooler and was not refilled for several hours; he believes that the heat contributed to his momentary death but, as his body temperature was not taken at the time of hospitalization in TDCJ’s clinic, there is no way to know for sure. Interview with John H. Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

¹¹ SUAREZ ET. AL., *supra* note 2, at 13.

¹² *Id.* at 21.

¹³ *Id.* at 12.

¹⁴ Frequently Asked Questions, Tex. Dep’t of Criminal Justice, https://www.tdcj.state.tx.us/faq/faq_cid.html#air (last visited Feb. 27, 2014).

¹⁵ See Figures 1 and 2, *infra* pp. 4, 6.

¹⁶ See Figure 2, *infra* p. 6.

¹⁷ See Figure 2, *id.*

¹⁸ SUAREZ ET. AL., *supra* note 2, at 9, note 23.

¹⁹ Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014) (Statements by Kellie Buttieri, Former TDCJ Guard and Girlfriend of Inmate).

²⁰ Interview with John W. Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

²¹ Tex. Dep’t of Criminal Justice, May Hot Weather, TDCJ Risk Mgmt.’s Training Circular, May 2013, at 4, available at https://www.tdcj.state.tx.us/documents/training_circular/Training_Circular_2013-05.pdf.

²² NEUROBIOLOGY OF HYPERTHERMIA 482 (Hari Shanker Sharma ed. Elsevier Science 2007).

²³ Claude A. Piantadosi, THE BIOLOGY OF HUMAN SURVIVAL: LIFE AND DEATH IN EXTREME ENVIRONMENTS 75 (Oxford University Press 2003).

²⁴ Interview with John Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

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- ⁵⁸ *Id.*
- ⁵⁹ Interview with John Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).
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- ⁶⁶ Interview with Keith “Malik” Williams, Inmate, Ramsey I Unit, in Rosharon, Tex. (Oct. 9, 2014).
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- ⁹⁰ See, e.g., U.S. ADDENDUM, *supra* note 3 at ¶ 303 (“In the view of the United States, it was necessary to limit United States undertakings under this article primarily because the meaning of the term “degrading treatment” is at best vague and ambiguous. One specific concern involved the possibly extensive reach of governmental obligations under this article, especially in light of the constraints imposed by the federal character of the United States system and the limitations of the “state action” doctrine.”)
- ⁹¹ See, e.g., U.N. Committee against Torture, Concluding Observations concerning the United States ¶180(a), U.N. Doc. No. A/55/44 (May 2000) at 15; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Committee Against Torture, 36th Sess., Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: Conclusions and recommendations of the Committee against Torture, U.N. Doc. No. CAT/C/USA/CO/2 (May 2006) at 10.
- ⁹² US Most Recent CAT report, available at <http://www.state.gov/documents/organization/213267.pdf>
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¹⁰⁰ U.N. Comm. Against Torture (CAT), UN Committee against Torture: Addendum to the Fourth Periodic Reports of States Parties Due in 2000, Hungary, U.N. Doc. CAT/C/55/Add.10 (Feb. 14 2005), available at <http://www.refworld.org/docid/42cd6fb64.html> (last visited Oct. 11 2014).

¹⁰¹ Id.

¹⁰² CAT, Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, Addendum : Second response of Mexico to the recommendations and requests for information made by the Subcommittee in its report on its first periodic visit to Mexico (CAT/OP/MEX/1), 18 February 2013, CAT/OP/MEX/1/Add.2, available at <http://www.refworld.org/docid/52208def4.html> (last visited Oct. 16 2014) at ¶ 198.

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¹⁰⁶ The European Court of Human Rights (“ECtHR”) has said that it is “unacceptable that anyone should be detained in conditions involving a lack of adequate protection against . . . extreme temperatures.”

¹⁰⁶ For example, in *Štrucland others v. Slovenia*, the court considered overcrowding and temperatures averaging 82.4°F (28°C) and sometimes exceeding 86° F (30°C) as factors contributing to conditions that constituted inhuman and degrading treatment under Article 3 of the European Convention. Even without the effects of overcrowding, the temperatures in TDJC prisons are much higher than those the ECtHR has found unacceptable. ¹⁰⁶ The Inter-American Commission on Human Rights considered “oppressive heat” in finding a “suffocating atmosphere” for inmates in Honduras and Suriname, ¹⁰⁶ and, further, has held Jamaica to be “in serious violation of the right to humane treatment” because inmates were exposed to extreme heat without adequate ventilation.

¹⁰⁷ See, e.g., *Valigura v. Mendoza*, No. 07-40284 (5th Cir. 2008), available at <http://docs.justia.com/cases/federal/appellate-courts/ca5/07-40284/07-40284.0.wpd-2011-02-25.pdf?1301264190>; *Smith v. Sullivan*, 553 F. 2d 373, 381 (5th Cir. 1977). See also Report at 22–24 for discussion of *Gates v. Cook* and *Blackmon v. Garza*, in both of which the Fifth Circuit held that extreme heat conditions violated the 8th Amendment; *Ball v. LeBlanc*, 3:13-cv-13-00368-BAJ-SCR 97 (M.D. La. 2013).

¹⁰⁸ *Farmer v. Brennan*, 511 U.S. 825, 828.

¹⁰⁹ *Farmer v. Brennan*, *supra* note 112.

¹¹⁰ Amended Complaint at 14–15, *Adams v. Livingston*, no. 3:13-cv-00217 (S.D. Tex. July 24, 2013).

¹¹¹ Interview with Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014); prisoners in TDCJ prisons wear white uniforms.

¹¹² The 84th Session of the Texas legislature will occur on January 13th, 2015; see Texas Legislative Sessions and Years, available at <http://www.lrl.state.tx.us/sessions/sessionyears.cfm>