



HUMAN RIGHTS CLINIC

THE UNIVERSITY of TEXAS SCHOOL of LAW

Reckless Indifference

Deadly Heat in Texas Prisons

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Acronyms and Abbreviations

ABA	American Bar Association
ACA	American Correctional Association
ACHR	American Convention on Human Rights
ADRDM	American Declaration of the Rights and Duties of Man
ASHRAE	American Society of Heating, Refrigerating and Air-Conditioning Engineers
CAT	Committee Against Torture
CDC	Centers for Disease Control
CPT	European Committee on the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant of Civil and Political Rights
NWS	National Weather Service
OAS	Organization of American States
OSHA	Occupational Safety and Health Administration
TCJS	Texas Commission on Jail Standards
TDCJ	Texas Department of Criminal Justice
UDHR	United Nations' Universal Declaration of Human Rights
UN	United Nations

Executive Summary

The extreme, suffocating heat in Texas prisons that has claimed the lives of at least fourteen inmates since 2007 does not seem to have an end in sight as both Texas and the United States federal government have failed to take action. Since the publication of its report “Deadly Heat In Texas Prisons”¹ in April 2014, the Human Rights Clinic at the University of Texas School of Law (“Clinic”) visited Texas Department of Criminal Justice (“TDCJ”) prison facilities and conducted interviews with inmates and inmates’ spouses. Its findings support those of the April report regarding the TDCJ’s failure to implement preventative and reactive heat reduction measures. This report highlights the Clinic’s new discoveries regarding extreme heat conditions in TDCJ facilities, the treatment of heat-sensitive individuals, and the failed grievance system employed by the TDCJ. This report also assesses the extreme heat issue within its international context, and sets forth additional recommendations regarding action the TDCJ, Texas, and the United States federal government must take in order to remedy the conditions within its prisons.

Inmates and guards at TDCJ prisons are regularly subjected to extremely high temperatures and humidity levels resulting from Texas summertime conditions and the lack of air conditioning and adequate ventilation in TDCJ facilities. The Clinic has uncovered evidence that the TDCJ is well aware of the extreme heat issues in its prisons, but refuses to act on this awareness and take appropriate measures to protect its inmates and guards. Remedial measures which the TDCJ has taken or proposed to address heat risks are either ignored or improperly implemented—and regardless remain inadequate to sufficiently address the issue.

The TDCJ also fails to provide effective medical care for its inmates. Many inmates are particularly susceptible to heat injury due to prior medical conditions, certain medications, or old age. The TDCJ neither monitors these inmates nor provides them with adequate living conditions to prevent suffering and death during the summer months. Indeed, all fourteen inmates who have died since 2007 under the care of the TDCJ suffered from pre-existing medical conditions exacerbated by the heat, and thirteen suffered from medical conditions necessitating medication that heightened their sensitivity to heat.² Five of the deceased spent less than a single week in custody before succumbing to the dangerously high temperatures in Texas facilities.³ 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).⁴ Even where the TDCJ has issued specific standards to protect heat-sensitive inmates, such as in work or recreation areas, the TDCJ fails to actually implement these standards.

1 The report is available at: https://www.utexas.edu/law/clinics/humanrights/docs/HRC_EH_Report_4-7-14_FINAL.pdf.

2 The University of Texas School of Law Human Rights Clinic, DEADLY HEAT IN TEXAS PRISONS [hereinafter DEADLY HEAT] 10, 12 (2014).

3 *Id.* at 13.

4 *Id.* at 21.

These failures are not limited solely to the care provided to heat-sensitive individuals—rather, the TDCJ’s healthcare system fails even healthy inmates. Inmates report that access to the clinic is difficult, and that their requests to visit the clinic are frequently ignored by guards. When treatment is given, it is often slow and ineffective. Obtaining TDCJ healthcare is also prohibitively expensive for many inmates, who may avoid receiving medical treatment to save money. Accordingly, the health of everyone is affected.

The TDCJ’s grievance procedures are unresponsive to complaints of inhumane living conditions and suffering from extreme heat. The lack of effective grievance procedures, along with both the threat of and actual retaliation, leads many inmates to avoid filing any grievances whatsoever. Those who do file grievances are discouraged by boiler-plate responses that rarely recognize the existence of inhumane treatment and seldom provide a remedy. In some circumstances, inmates who file grievances experience retaliation by TDCJ staff. Retaliation typically includes the confiscation or damage of personal property and restricted access to areas with slightly more ventilation or cooling equipment.

The TDCJ and the state of Texas have turned a blind eye to these issues and thus stand in clear defiance of constitutional and human rights standards. To make matters worse, the conditions detailed in this report violate numerous international standards that are binding on the United States. Thus, although the United States federal government is aware of the inhumane treatment of inmates in Texas prisons, is internationally accountable for the suffering of TDCJ inmates, and has an international duty to protect inmates’ rights affected by extreme heat issues, it has failed to do so.

In particular, the ongoing suffering of the TDCJ’s inmate population and the deaths that have verifiably resulted from heat-related illnesses are clear violations of inmates’ international right to not be subjected to cruel, inhuman, or degrading treatment. The TDCJ’s demonstrated lack of care for its over 150,000 inmates’ medical needs also violates numerous domestic and international standards, most notably the human right to health, and further demonstrates the United States’s violation of international standards protecting inmates’ rights.

The current state of the TDCJ’s grievance procedures similarly does not comply with numerous international standards, all of which require a prompt, impartial, and effective remedy for the inhumane treatment of prisoners. Without immediate reforms, coupled with monitoring of the procedures and retaliation; the unresponsive, discouraging, and frustrating TDCJ grievance procedures will continue to violate these standards.

However, pleas from inmates, international human rights bodies including the Inter-American Commission on Human Rights and the United Nations Committee Against Torture, and civil society have not received any substantive response. This neglects the federal government’s historical role of monitoring prison conditions and developing prison standards in partnership with the states. This is a responsibility the federal government has taken up to great effect in Texas history, leading to significant reforms in the past. It is also a role the federal government currently plays in other states, most notably Louisiana. Indeed, this is the very purpose of the Special Litigation Section of the Department of Justice Civil Rights Division.

Introduction

The Human Rights Clinic at the University of Texas School of Law published its first report, “Deadly Heat in Texas Prisons,”⁵ on conditions in Texas Department of Criminal Justice (“TDCJ”) prisons eight months ago. Despite the Clinic’s report, ongoing domestic litigation related to extreme heat conditions, and documented international concern, the TDCJ continues to violate the human and constitutional rights of its inmates and guards by exposing them to unhealthy and deadly living and working conditions.

As the first report explained, at least fourteen TDCJ inmates have died from extreme temperatures since 2007 and many of them had preexisting health conditions or were taking medications that increased their sensitivity to heat. Following these deaths, the TDCJ did not provide any properly cooled living areas for currently incarcerated or incoming inmates. The heat-relieving measures that the TDCJ has implemented are similarly inadequate. The Centers for Disease Control (“CDC”) has stated that fans such as those installed and sold to inmates by the TDCJ are ineffective at preventing heat-related injuries in heat conditions as extreme as those present in Texas. Despite these findings, air conditioning is largely unavailable for the general inmate population, many of whom are serving time for non-violent offenses. Meanwhile, the TDCJ spends money on air conditioning for its warden offices and for its armories. Additionally, the TDCJ does not observe any maximum temperature policies for its inmate population, in stark contrast to the Texas Commission on Jail Standards and many other state prison standards across the United States. Indeed, the Texas Commission on Jail Standards originally issued its mandate requiring air conditioning in county jails in 1978, at least a decade before most TDCJ prisons had even been built,⁶ meaning that heat-trapping TDCJ prison units were being built concurrently with air conditioned county jails within the state.⁷

The Clinic found that the TDCJ was aware of the problem, chose not to adequately address it, and stood in clear defiance of established human or constitutional standards. Furthermore, when the issue was presented to the Inter-American Commission on Human Rights last October,⁸ the TDCJ refused to discuss its conscious decision to deny prisoners basic protections. The conditions in TDCJ facilities violate many international human rights standards such as the right to health, life, physical integrity and dignity of detainees, as well as the duty to prevent and guarantee freedom from inhuman or degrading treatment of its inmates. The conditions further violate the constitutional rights of the inmates. The United States Court of Appeals for the Fifth Circuit has recognized repeatedly that extreme heat in prisons can

5 The report is available at: https://www.utexas.edu/law/clinics/humanrights/docs/HRC_EH_Report_4-7-14_FINAL.pdf.

6 Over 85 TDCJ prisons were built in the 1980s and 1990s. see Texas Department of Criminal Justice: Unit Directory, available at http://tdcj.state.tx.us/unit_directory/ (last visited Feb. 8, 2015).

7 Because Texas statute mandates that county jails keep temperatures between 65 and 85 degrees inside, they all have air conditioning. The state system has no such requirement.

8 Inter-Am. Comm'n H.R., Thematic Hearing on Persons Deprived of their Liberty (Oct. 27, 2014), <https://www.youtube.com/watch?v=sJAtoqBb3oA>.

constitute a violation of inmates' Eighth Amendment rights.⁹

The Clinic made multiple recommendations to the TDCJ, none of which have been followed. We reiterate those recommendations here:

1. The TDCJ should immediately codify and implement preventative policy measures for the summer months to prevent exposing inmates to extreme heat conditions and, particularly, to prevent heat-related suffering and death. Permanent and adequate measures should, at the least, include installation of air conditioning units to keep temperatures in inmate housing areas below 85°F. The Clinic also recommends the following immediate measures be taken:
 - a. Immediate screening of all new inmates for health conditions or medications that could make them more susceptible to heat-related illness;
 - b. Immediate movement of heat-sensitive new inmates to housing areas that do not have temperatures exceeding 85°F;
 - c. If areas at a safe temperature are not yet available, continuous monitoring of heat-sensitive new inmates should begin immediately after screening;
 - d. Frequent monitoring of all inmates housed in non-air conditioned units when temperatures in inmate housing areas exceed 85°F;
 - e. Provision of constant inmate access to cool liquids and ice in the summer months; and
 - f. Uniform documentation of these practices, including number of inmates classified as susceptible to heat-related illness and quantity of cool liquids provided per inmate.
2. In the long term, either by promulgation of new TDCJ policy or by amendment of the Texas Administrative Code, a maximum temperature standard should be set for all TDCJ facilities. This standard should mirror the standards promulgated by the Texas Commission on Jail Standards and the standards TDCJ currently has in place for the prison workplace. Specifically, the standard should follow widespread precedent and adopt a maximum temperature standard of 85°F throughout its facilities, including in prison cells and inmate housing areas.
3. The TDCJ Board and Texas Legislature should approve funding as necessary for installation of permanent air conditioning at TDCJ prison facilities, as needed, to ensure temperatures do not exceed 85°F.

This follow-up report expands on the findings of the Clinic's first report, examining new facts and information, and addressing new issues relevant to heat conditions in TDCJ prisons. Since the publication of its last report, the Clinic visited TDCJ prison facilities and conducted interviews with inmates and inmates' spouses. This new research supports the April report's findings regarding the TDCJ's failure to implement preventative and reactive heat reduction measures. This report highlights the Clinic's new discoveries regarding the treatment of

⁹ Blackmon v. Garza, 484 Fed. Appx. 866 (5th Cir. 2012); Valigura v. Mendoza, 265 F. Appx. 232, 236 (5th Cir. 2008); Ball v. LeBlanc, 3:13-cv-13-00368-BAJ-SCR 97 (M.D. La. 2013), (most recently, the Middle District of Louisiana issued a decision in 2013 condemning the extreme heat conditions in a Louisiana prison facility similar to those conditions present in TDCJ facilities as a violation of the Constitution. There is therefore clear precedent for denouncing the hot conditions in TDCJ facilities as violating the guarantees and rights of inmates under the Eighth Amendment).

heat-sensitive individuals, details the failed grievance system employed by the TDCJ, and sets the extreme heat issue in an international context. The report concludes with further recommendations as to what action the TDCJ must take to bring a stop to the inhumane conditions in its prisons.

The TDCJ has failed to respect the basic human and constitutional rights of the inmates in its care. The extreme heat conditions are exacerbated by the failure of both the medical and grievance systems. Remedial measures meant to alleviate the trauma are unable to protect inmates. It is imperative that the TDCJ, the Texas legislature, the U.S. government, and the public take action to bring a stop to the inhumane punishment and deaths currently occurring in TDCJ prisons.

Conditions in TDCJ Units

A. Inmates Have No Reprieve

The temperatures that inmates in TDCJ facilities are forced to endure are suffocating. The city of Houston and its surrounding areas, where many TDCJ prison units are located, experience an average high of 95°F and temperatures of 90°F can last for up to 27 days at a time during the month of August.¹⁰ These high temperatures have a direct correlation to internal prison temperatures, especially because many of the prisons in Texas were constructed using materials such as brick, metal, and glass, which conduct and retain heat.¹¹ This results in consistently higher temperatures and a higher heat index (a combination of temperature and relative humidity) in these facilities than facilities made of concrete.¹² These conditions will only worsen in the future: the average temperature has consistently risen over the past three decades, and a federal report predicts that it will continue to do so.¹³

The National Weather Service (“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.¹⁴ Although high temperatures alone can make for a dangerous situation, the combination of high temperatures and high humidity levels sharply increases the likelihood of heat-related injury. Thus, even at relatively low summer temperatures, the chances of heat-related injury rise to dangerous levels as humidity increases. An NWS chart (See Figure 1, below) identifies the risks of heat-related injury in different climates, showing

10 Liz Osborn, *Houston Weather in August*, CURRENT RESULTS, <http://www.currentresults.com/Weather/Texas/Places/houston-weather-in-august.php> (last visited Feb. 8, 2015).

11 Scott Henson, *Lack of AC Chilling for TDCJ Staffing Efforts*, GRITS FOR BREAKFAST (July 6, 2009), <http://grits-forbreakfast.blogspot.com/2009/07/lack-of-ac-chilling-for-tdcj-staffing.html>.

12 Nalbhone, Joseph Torey, *Evaluation of Building and Occupant Response to Temperature and Humidity: Non-Traditional Heat Stress Considerations A Comparison of Different Construction Types Used by the Texas Department of Criminal Justice*, <http://repository.tamu.edu/bitstream/handle/1969.1/1504/etd-tamu-2004C-ITDE-Nalbhone.pdf?sequence=1&isAllowed=y> (last visited Feb. 8, 2015).

13 Randy Lee Loftis, *Worse Global Warming Affects Ahead for Texas, Federal Report Says*, DALLAS MORNING NEWS (May 6, 2014), <http://www.dallasnews.com/news/state/headlines/20140506-worse-global-warming-effects-ahead-for-texas-federal-report-says.ece>.

14 *Heat: A Major Killer*, NAT'L WEATHER SERV. OFFICE OF CLIMATE, WATER, AND WEATHER SERV.S [hereinafter NWS] (Jan. 14, 2014), <http://www.nws.noaa.gov/os/heat/index.shtml> (last visited Feb. 5, 2015).

a sharp increase in the likelihood of heat-related injury when high humidity coincides with high temperatures. Despite these risks, the TDCJ has recorded prison internal heat indices that fall squarely in the “extreme danger” category identified by the NWS.¹⁵ As shown in Figure 2 below, heat indices meeting or exceeding 103°F can lead to dangerous heat disorders when a person has prolonged exposure and/or physical activity in the heat.

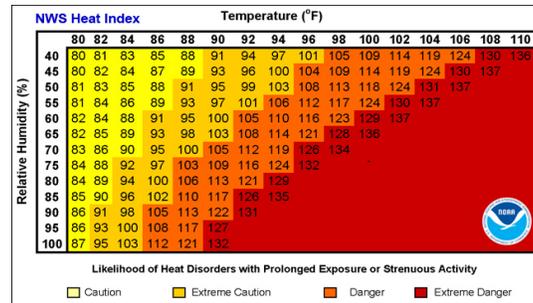


FIGURE 1: NWS Heat Index Chart¹⁶

Inmate Freddie Fountain recalled an officer getting a reading of 137°F from a laser thermometer he was pointing at Fountain’s cell at only 1:45 in the afternoon.¹⁷ The cell will not start to cool off until around 11pm, until which point the heat makes it impossible to fall asleep. Between the schedule inmates must adhere to and the debilitating heat during the day and night, inmates are left with two to three hours of sleep.¹⁸ In some units, many inmates spend the majority of their time inside five by nine foot cells with another prisoner. The small areas, coupled with the extreme temperatures and little to no ventilation, are, as one inmate put it, “basically cooking [the inmates].”¹⁹ Another prisoner told his wife that the heat felt so bad that he wanted to die.²⁰ Often the inmates’ only recourse is to strip down and lay on the ground with a wet towel over them, in front of their personal fan.²¹ Sweating does not help in this situation because the high humidity prevents sweat from evaporating, meaning the inmates do not get any of the cooling benefits from it. This is especially problematic because “[h]eatstroke occurs . . . rapidly . . . if heat loss by evaporation cannot occur.”²²

At mealtime, the chow halls are packed beyond capacity. Like most areas in TDCJ prisons, chow halls are not air conditioned and are typically unventilated. The heat and humidity generated by steam pots, heat lamps, and hundreds of inmates’ bodies create an environment so overwhelming that some inmates decline meals to avoid the hall.²³ Others skip meals to avoid being sick upon returning to the extreme heat in their cells.²⁴ Inmates

15 Figure 2.

16 NWS, *supra* note 14.

17 Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

18 Interview with John Galbraith, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

19 Interview with Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

20 Interview with Jesse Hanebuth, Inmate, TDCJ Jim Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

21 *Id.*

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

23 Interview with Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

24 *Id.*

who cannot afford alternate food from commissary, however, have no choice but to subject themselves to the conditions in the halls.²⁵ Keith “Malik” Washington, a prisoner at Ramsay I Unit, recalled one occasion in which 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.²⁶ Washington said, that when the Senior Warden was called in, her response was to tell the inmates, “shut the f*** up before I gas all of you.”²⁷

The TDCJ has many other practices that similarly exacerbate the extreme heat issue. Several of the units mandate that heat-generating halogen lamps be left on in the dorms throughout the day.²⁸ In some units guards will often practice staging, where inmates are forced to stay in hot areas while passing from one part of the prison to another.²⁹ In others, inmates residing in a given cell block are given ice water to pass down the row of cells, which often leads to violence and hoarding of the vital resource.

Classification	Heat Index	Effect on the body
Caution	80°F - 90°F	Fatigue possible with prolonged exposure and/or physical activity
Extreme Caution	90°F - 103°F	Heat stroke, heat cramps, or heat exhaustion possible with prolonged exposure and/or physical activity
Danger	103°F - 124°F	Heat cramps or heat exhaustion likely, and heat stroke possible with prolonged exposure and/or physical activity
Extreme Danger	125°F or higher	Heat stroke highly likely

Figure 2: NWS Chart showing the effects different heat index temperatures have on the the body.³⁰

B. Guards Not Immune

Guards are similarly exposed to these dangerous conditions. Inmates repeatedly reported seeing guards suffering as a result of working in the extreme heat. One inmate stated that he has “seen [the guards] pass out, taken out in wheelchairs, and things like that because it’s so hot.”³¹ From 2012–13, guards reported over 92 instances of heat injury for workers’ compensation claims.³² Lance Lowry, union representative for some TDCJ prison workers,³³ states that this number represents only a portion of total instances of heat-related injury because many cases are misdiagnosed or unreported.³⁴ In a recent report to the Texas Legislature, work conditions 11

25 Questionnaire with Kirk Northup, Inmate, TDCJ Stringfellow Unit, in Rosharon, Tex. (Dec. 1, 2014).

26 Interview with Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

27 *Id.*

28 Interview with Joshua Roberts Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (May 10, 2014).

29 Interview with James Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex (Oct. 9, 2014).

30 What is the Heat Index?, Nati'l Weather Serv. Weather Forcecase Office, <http://www.srh.noaa.gov/ama/?n=heatindex> (last visited Feb. 20, 2015).

31 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

32 Interview with Lance Lowry, President of the American Federation of State, County, and Municipal Employees union branch in Huntsville, TX. (Oct. 23, 2014).

33 *Id.*

34 Interview with Lance Lowry, President of the American Federation of State, County, and Municipal Employees union branch in Huntsville, TX. (Oct. 23, 2014).

including extreme heat were cited as the second greatest reason for the high turnover rate among TDCJ staff, second only to low pay.³⁵ Complaints about overheating and extreme heat conditions consistently rank among the top four or five workplace complaints from TDCJ correctional staff.³⁶ One inmate reported seeing two instances of guards complaining of pains from the heat and having to take two to three weeks off, a form of respite inmates cannot receive.³⁷ In fact, the heat is so problematic that TDCJ expressly mentions the lack of air conditioning in its job postings, requiring that the applicant be able to “work[] outdoors and indoors without air conditioning.”³⁸

The TDCJ is Aware of the Inhumane Conditions Due to Extreme Heat Problem in Its Prisons

The TDCJ is aware that extreme heat in Texas prisons is an issue, but it refuses to take adequate remedial measures.³⁹ Not only have TDCJ officials received the first report published by this Clinic,⁴⁰ but the TDCJ is also currently involved in litigation regarding fourteen inmate deaths caused directly by extreme heat in TDCJ prisons.⁴¹ Although these deaths are particularly salient examples of the dangers that extreme prison heat poses to inmates, it is important to keep in mind that TDCJ's current inmate population, numbering over 150,000, suffers in this inhumane environment every summer with no recourse. The inmates interviewed by the Clinic all stated that they had filed multiple formal and informal grievances with the TDCJ to no avail. In the rare case of response, there was no investigation into their allegations regarding unbearable heat.⁴²

The TDCJ has even issued several precautionary memoranda and administrative directives warning its staff of the dangers of extreme heat, revealing an awareness of the danger this heat poses.⁴³

TREATMENT AND PREVENTION

TREATMENT OF HEAT ILLNESS (ALL TYPES)

- Move person out of direct sunlight into air-conditioned environment if possible
- Remove clothing, maintaining modesty
- Have them drink water if conscious
- Sprinkle water on them; fan them if there is no breeze
- Get medical attention ASAP

HIGHER RISK FOR HEAT ILLNESS

- Newly assigned to job
- On psychiatric medications
- Over age 60
- High temperature and humidity conditions
- No breeze

PREVENTION OF HEAT ILLNESS

- Drink at least 1/2 cup of water every 15 minutes when working in hot environments
- Take a 5 minute break every 30-60 minutes

This is a memorandum the TDCJ issued warning its officers of the dangers of extreme heat and outlining precautionary measures they should take to prevent heat illness.

12

35 *Id.*

36 *Id.*

37 Interview with Tavaris Johnson, Inmate, TDCJ McConnell Unit, in Beeville, Tex. (Oct. 10, 2014).

38 Texas Department of Criminal Justice: Position Description, providing a positional description of correctional officer IV www.state.tx.us/divisions/hr/pd/033196.pdf.

39 Cameron Langford, *Brutal Heat Kills 14 in Texas Prisons*, COURTHOUSE NEWS SERVICE (Oct. 18, 2014), www.courthousenews.com/2013/10/18/62138.htm.

40 The Clinic's Report was sent to TDCJ, Livingston, and all the Wardens and was widely publicized.

41 These cases are: *Adams v. Livingston*, *Martone v. Livingston*, *McColum v. Livingston*, *Togonidze v. Livingston*, *Webb v. Livingston*, *Hinojosa v. Livingston*, *Kearney v. Stephens*, *In re: Texas Prison Conditions-of-Confinement Litigation*, and *United States Judicial Panel on Multidistrict Litigation*. Each case is brought on behalf of the family of a person whose family member has died in a prison in Texas, and seeks compensatory, punitive, presumed, and nominal damages to which the family member is entitled for the wrongful death of their kin.

42 Grievance procedures are discussed in Section VIII, *infra* pages 28–41.

43 Letter from James Allen Harris, TDCJ Terrell Unit, in Rosharon, Tex. (Nov. 29, 2014).

In 2010, the TDCJ passed out an emergency notification to its staff, advising employees to protect their pets from the extreme summer heat.⁴⁴ The notification recommended various “common sense” heat precautions, including ensuring that pets have access to air conditioning.⁴⁵ The TDCJ continues to deny this “common sense” measure to its inmates and staff. At this time, only 19 of Texas’s 109 state prisons are air conditioned, meaning most of the state’s 150,000 prisoners and prison guards face the summer heat with little to no relief.⁴⁶ Many of the units were constructed using materials such as brick, metal, and glass, which conduct and retain heat.⁴⁷

Through its own memoranda, policies, and notifications, the TDCJ demonstrates awareness of the seriousness of extreme heat; despite this awareness, the TDCJ refuses to take action to protect inmates and guards.

Although key officials are aware of the issue of extreme heat in Texas prisons,⁴⁸ the TDCJ and the Legislature have repeatedly declined to take action. The TDCJ has yet to submit an estimate of what it would cost to install air conditioning in its facilities, and its budget does not include a line that specifically addresses heat related preventive measures. Ramona Hinojosa, mother of an inmate who died due to extreme heat, explained that Texas House Representative Sylvester Turner himself wrote to TDCJ Director Brad Livingston in 2011.⁴⁹ Turner expressed concern about the extreme temperatures in TDCJ prisons and requested that the TDCJ take measures to protect its inmates and guards.⁵⁰ However, Mr. Livingston refused to take action in response,⁵¹ and TDCJ spokesman Jason Clark admitted that no analysis has been conducted regarding the cost of installing air conditioning.⁵² Other members of the Texas legislature have taken a different stance. For instance, state Senator John Whitmire, Chair of the Senate Committee on Criminal Justice, stated that “there’s a lot of other things on my list above the heat [in Texas prisons].”⁵³ The Clinic understands that representatives have many difficult decisions to make, and that is why the Clinic includes recommendations in this report on ways that Texas could free up funds to address these issues in TDCJ facilities.

In October 2014, the Clinic was granted a hearing before the Inter-American Commission on Human Rights (“IACHR” or “Commission”), an organ of the Organization of American States.⁵⁴ The IACHR has the power to examine the human rights situations in member states and make recommendations relevant to the protection of human rights.⁵⁵ Importantly, this

44 SHERILYN EPPERSON, TEX. DEP’T OF CRIMINAL JUSTICE, INJURY PREVENTION—HEAT AWARENESS TRAINING 9, 10 (2010).

45 *Id.*

46 Scott Henson, *Lack of AC Chilling for TDCJ Staffing Efforts*, GRITS FOR BREAKFAST (July 6, 2009), <http://gritsforbreakfast.blogspot.com/2009/07/lack-of-ac-chilling-for-tdcj-staffing.html>.

47 *Id.*

48 Letter from James Allen Harris, TDCJ Terrell Unit, in Rosharon, Tex. (Nov. 29, 2014).

49 *Supra* note 35.

50 *Id.*

51 *Id.*

52 Maggie Kiely, *Citing Health Concerns, Texas Inmates File Lawsuit to Keep Prisons Cool*, THEEAGLE.COM (June 19, 2014), http://www.theeagle.com/news/local/citing-health-concerns-texas-inmates-file-lawsuit-to-keep-prisons/article_ad236249-0cbe-5a36-a487-e68de17191ca.html.

53 Mike Ward, *Lawmakers, Prison Agency Defend Lack of AC in Texas Prisons*, HOUSTON CHRON. (April 22, 2014), <http://www.houstonchronicle.com/news/politics/texas/article/Lawmakers-prison-agency-defend-lack-of-AC-in-5422737.php?t=f2248b48a3b2e7d3f0>.

54 Inter-Am. Comm’n H.R., Thematic Hearing on Persons Deprived of their Liberty (Oct. 27, 2014), <https://www.youtube.com/watch?v=sJAtoqBb3oA>.

55 General Assembly of the Organization of the American States, Statute of the Inter-American Commission

was one of only four hearings the IACHR held on the United States in 2014. Prior to the hearing, the TDCJ, represented by the Office of the Attorney General of Texas, requested the hearing's cancellation on the basis that the Clinic was involved in litigation and that domestic remedies had not been exhausted.⁵⁶ These objections are factually false and legally unsupported. First, the Clinic is not involved in the domestic litigation. Second, the hearing before the Commission was a thematic hearing, meaning that there is no requirement of an exhaustion of domestic remedies. The TDCJ ultimately refused to appear before the Commission despite being called upon by the State Department.⁵⁷ The Commission expressed concern about the situation in TDCJ prisons and regretted that the TDCJ and Texas were unwilling to defend their position before an impartial international body.⁵⁸ This was a missed opportunity for the state of Texas and the TDCJ to appear before an impartial body and justify their policies and actions.



October 2014 hearing before the IACHR

The TDCJ released a memo in the summer of 2014 proposing remedial measures to address the heat risks.⁵⁹ These measures included making ice and water available at all times, allowing additional showers, and offering small fans for purchase.⁶⁰ The majority of these measures are either not followed or not implemented correctly. One inmate described these supposed remedial measures as simply “lies.”⁶¹ However, even if these measures were to be implemented correctly, they are still inadequate to address the issue of extreme heat in an enclosed structure during a Texas summer.

on Human Rights, Oct. 1979, Res. No. 447, available at <http://www.cidh.org/Basicos/English/Basic17.Statute%20of%20the%20Commission.htm>.

56 Letter from the Texas Assistant Attorney General Cynthia Burton, (Oct. 17, 2014). As one example, the TDCJ claimed the Clinic was involved with pending litigation dealing with the extreme heat issues. However, the Human Rights Clinic does not participate in any litigation efforts.

57 *Supra* note 50.

58 *Id.*

59 Memorandum from the TDCJ, “Heat Precaution 2014 – Reminder” (June 10, 2014).

60 *Id.*

61 Interview with Steven Cox, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

Insufficient Remedies

A. Personal Fans

While the TDCJ sells personal fans to inmates and has nominally supplied ventilation in inmate living areas,⁶² the Centers for Disease Control has declared such measures ineffective in preventing heat-related injuries in certain hot and humid conditions.⁶³ Specifically, the CDC found that while fans may increase comfort when temperatures are below 90°F, they will not protect against heatstroke when temperatures exceed 90°F and humidity exceeds 35%.⁶⁴ Conditions in Texas regularly exceed these levels.⁶⁵ John Cloud, who has been in TDCJ custody for multiple decades, noted that “[n]o fan is going to do a dang thing” under such conditions.⁶⁶ Additionally, at \$20, fans are one of the most expensive items that TDCJ commissaries sell. This is especially problematic given that 40–50% of TDCJ inmates were indigent as recently as 2012.⁶⁷ Texas CURE, the local branch of a national prisoners’ rights organization, does provide a program through which fans are donated to indigent inmates, but the process is long; it often takes years for inmates to acquire a fan through this program.⁶⁸

The confiscation of fans can serve as a retaliation mechanism. Officers have unplugged or confiscated inmates’ fans because they complain.⁶⁹ Fans may also be confiscated for not being “official” or for having been modified to improve circulation.⁷⁰ These confiscated fans are then resold at commissary.⁷¹ One inmate reported filing formal grievances regarding the confiscation of his fan, and subsequently being informed by an officer that all of his property would be confiscated if he did not cease his complaints.⁷²

In the summertime, inmates are told that they may wear shorts rather than the standard pants as a part of their uniform. However, merely substituting long pants for shorts is insufficient to eliminate the danger of heat related injury without additional remedial measures such as providing ice and cold water. Shorts, like fans, are sold rather than provided.⁷³

62 Texas Dep’t of Criminal Justice, *Commissary and Trust Fund Price List*, available at http://www.tdcj.state.tx.us/documents/finance/Commissary_Price_List_09-24-2014.pdf.

63 Ctrs. for Disease Control and Prevention, *Heat-Related Illnesses, Deaths, and Risk Factors --- Cincinnati and Dayton, Ohio, 1999, and United States, 1979-1997*, MORBIDITY AND MORTALITY WEEKLY REPORT (JUNE 2, 2000), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm4921a3.htm>.

64 *Id.*

65 See Osborn, *supra* note 6.

66 Interview with John H. Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014). Cloud specifically mentioned “units like Coffield,” an especially old red brick unit, but there are many similar units.

67 Jennifer Erschabek, *The Logic of the \$100 Offender Copay and the Unintended Consequences*, THE LIBERTY BLOG (Mar. 19, 2012), <http://www.aclutx.org/blog/?p=1196>.

68 Interview with Michael Jewell and Joan Covici, Texas CURE, Austin, Tex. (October 16, 2014).

69 Letter from Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (March 23, 2014); Letter from Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (May 10, 2014).

70 Interview with Michael Jewell and Joan Covici, Texas CURE, Austin, Tex. (October 16, 2014).

71 *Id.*

72 Letter from Garrett Cushinberry, Inmate, TDCJ Jim Ferguson Unit, in Midway, Tex. (May 10, 2014).

73 Interview with Joshua Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).



William Nichols, out on parole, stands in front of the Hunstville Unit with his own fan along with other personal items in tow.

B. Ventilation

Other measures employed by the TDCJ have also proven insufficient. This past summer, the TDCJ installed “Cool Space” evaporative coolers in seven of its 109 facilities.⁷⁴ While one inmate described these coolers as extremely successful in keeping temperatures down,⁷⁵ the coolers have only been installed in small areas such as administrative segregation units.⁷⁶ Larger general population units, on the other hand, are too humid for evaporative coolers to be effective, and hold the vast majority of inmates. The U.S. Department of Energy specifies that evaporative cooler systems are “suitable only for areas with low humidity.”⁷⁷ Lance Lowry, union representative for some TDCJ prison workers,⁷⁸ 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 dayroom⁷⁹ and solve the heat problem is not paying attention to reality.”⁸⁰

Similarly, the industrial fans and ventilation systems that the TDCJ has installed do not provide adequate relief. Inmate Keith “Malik” Washington noted that the large fans in his unit are usually not even turned on.⁸¹ Multiple inmates described the efficacy of these common area fans as merely “blowing around hot air.”⁸²

74 Interview with Lance Lowry, President, AFSCME Union, Austin, Tex. (October 15, 2014).

75 *Id.*; See also Interview with Oliver Lister, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

76 *Id.*

77 *Frequently Asked Questions – Correctional Institutions Division*, TEXAS DEPT. CRIM. JUSTICE, http://www.tdcj.state.tx.us/faq/faq_cid.html#air; Jordan Smith, *TDCJ Fails to Protect Prisoners From Extreme Heat: At Least 14 Have Died Since 2007*, AUSTIN CHRONICLE (Apr. 23, 2014), <http://www.austinchronicle.com/daily/news/2014-04-23/tdcj-fails-to-protect-prisoners-from-extreme-heat/>.

78 See Lowry, *supra* note 28.

79 A dayroom is a room in which inmates are permitted to congregate under supervision, for recreational purposes.

80 Mike Ward, *Coolers Installed in Seven Texas Prisons in Summer-Heat Test*, HOUSTON CHRONICLE (June 18, 2014), <http://www.houstonchronicle.com/news/politics/texas/article/Coolers-installed-in-seven-Texas-prisons-in-5562801.php>.

81 Interview with Keith “Malik” Washington, Inmate, Ramsey I Unit, in Rosharon, Tex. (Oct. 9, 2014).

82 *Id.*; Interview with John Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (June 8, 2014); Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (May 10, 2014).

TEXAS DEPARTMENT OF CRIMINAL JUSTICE
Temperature Log

Unit: CT Terrell

7/30/13

Date:	Outside Air Temperature	Humidity or Wind Speed	Heat Index or Wind Chill	Person Recording
6:30 a.m.	73°	93%	73°	JK
7:30 a.m.	77°	93%	78°	JK
8:30 a.m.	83°	81%	92°	JK
9:30 a.m.	88°	72%	101°	JK
10:30 a.m.	93°	59%	104°	JK
11:30 a.m.	103°	44%	120°	SW

Daily Temperature Log from the TDCJ Terrell Unit on July 30, 2013

C. Ice and Cold Water

Ice and cold water are an efficient means of lowering internal body temperatures out of danger zones, and adequate hydration is important for preventing heat stroke. However, the TDCJ fails to provide an adequate supply of ice and water. Ice is generally provided only in the morning, and is not replenished during the hottest hours of the day. The TDCJ is supposed to bring ice water directly to the inmates in their cells, but this often does not happen.⁸³ Ice, when it is provided, is sometimes filled with dirt and mosquitos;⁸⁴ no attempt is made to fix ice makers when they break or to provide clean ice.⁸⁵ In many units, one five- or ten-gallon cooler of ice water is provided in the dayroom for up to 140–150 inmates at a time.⁸⁶ Steven Cox, an inmate at Estelle unit in Huntsville, Texas, explained that the sign on the unit's dayroom wall places maximum capacity at 76 persons, but the TDCJ will bring in 126 people at a time.⁸⁷ Furthermore, these coolers are only provided from the end of May until October 1st. This is troublesome as temperature highs for October 1st in cities where some TDCJ prisons are located have ranged from 89–93°F.⁸⁸

83 Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).
 84 Interview with Clifford Fairfax, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).
 85 Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (June 8, 2014); Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (May 10, 2014).
 86 Interview with John Galbraith, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014); Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).
 87 Interview with Steven Cox, Inmate, Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).
 88 Weather History for Beeville, TX, Month of Oct., 2014, WEATHER UNDERGROUND, <http://www.wunderground.com/history/airport/KBEA/2014/10/11/MonthlyHistory.html#calendar> (last visited Oct. 16, 2014); Weather History for Dallas Love, TX, Month of Oct., 2014, WEATHER UNDERGROUND, <http://www.wunderground.com/history/airport/KDAL/2014/10/11/MonthlyHistory.html#calendar> (last visited Oct. 16, 2014); Weather History for Huntsville, TX, Month of Oct., 2014, WEATHER UNDERGROUND, <http://www.wunderground.com/history/airport/KUTS/2014/10/11/MonthlyHistory.html#calendar> (last visited Oct. 16, 2014).

In some units, inmates have reported reduction and outright denial of ice rations.⁸⁹ An inmate in Estelle explained that officers did not even make ice water available until he and other prisoners submitted formal grievances regarding the issue only last year.⁹⁰ The availability of ice water is also inconsistent.⁹¹ In fact, ice is so scarce that when it is made available, inmates will buy it off of each other.⁹² One inmate who has lived in several of the TDCJ's units flatly stated that the weak, frail, and elderly will not get ice water at all.⁹³ Another inmate who has also lived in several TDCJ units recalled especially poor practices at the Stringfellow, Beto, and Stiles units, where he was afforded neither ice nor cold water for days at a time.⁹⁴ He further reported that he was retaliated against after submitting a formal grievance regarding the lack of ice.⁹⁵



“Strong people get two or three glasses [ice-water], the weak get none.”

-Freddie Fountain

D. Showers

The TDCJ has failed to follow its own commitment to provide access to more showers.⁹⁶ At Coffield unit, inmate Freddie Fountain explained the TDCJ “absolutely does not allow any such ‘extra’ showers.”⁹⁷ Indeed, showers at Coffield have only been allowed three times a week for over three years.⁹⁸ The TDCJ attributed this reduction to a maintenance problem,⁹⁹ yet inmates who work are allowed to shower every day upon finishing their shifts, contradicting TDCJ’s claims of drainage issues.¹⁰⁰ Furthermore, at Estelle unit, the water had been shut off for nearly an entire week shortly before the Clinic visited to conduct interviews.¹⁰¹

Inmates at the Jim Ferguson and Estelle units are similarly not allowed extra showers, but can typically shower once a day.¹⁰² Oliver Lister, an inmate at Estelle, described filing grievances regarding the lack of additional showers in the summer, explaining that it was in

89 Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (June 8, 2014); Letter from TDCJ Inmate, TDCJ Lynaugh Unit, in Ft. Stockton, Tex. (May 10, 2014); Letter from Kirk Northup, TDCJ Stringfellow Unit, in Rosharon, Tex. (June 23, 2014).

90 Interview with Oliver Lister, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

91 *Id.*

92 Interview with John Galbraith, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

93 Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

94 Questionnaire with Kirk Northup, Inmate, TDCJ Stringfellow Unit, in Rosharon, Tex. (Dec. 1, 2014).

95 *Id.*

96 See Heat Memo, *supra* note 59.

97 Freddie Fountain, Manifesto, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 8, 2014).

98 *Supra* note 93.

99 *Id.*; Interview with Steven Sisk, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

100 Interview with Steven Sisk, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

101 *Supra* note 92.

102 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with Jessie Hanebuth, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with John Galbraith, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014); Interview with Oliver Lister, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014).

TDCJ's heat stress medical policy that more showers are to be allowed when temperatures exceed 100°F.¹⁰³ The TDCJ blamed the issue on a lack of staff.¹⁰⁴ Lister pointed out, however, that lack of staff does not prevent the TDCJ from performing its other internal duties,¹⁰⁵ suggesting that this is not as much an explanation for the problem as it is an unfounded excuse.

At transfer facilities, inmates are not allowed to shower at all during the daytime.¹⁰⁶ Officers will order those who attempt to do so out of the shower, and may even bring a disciplinary case against them.¹⁰⁷ Indeed, inmates in many TDCJ units are often disciplined for attempting to take advantage of extra showers.¹⁰⁸ Inmates also reported that the showers themselves were used by the guards to effect retaliation. At Coffield unit, inmates often break open glass windows during the summer in an attempt to gain relief from the heat.¹⁰⁹ This, in turn, leads to other dangers in the winter; the windows remain broken, and prisoners are forced to take freezing showers at 3 or 4am. Furthermore, while the prisoners are still in the showers, the officers will abruptly change the temperature setting to scalding water, causing severe burns.¹¹⁰

"The temperatures, you know, when you combine a bunch of men in the showers, water a hundred and five degrees, it's hot in here. They run 200 naked men in there [...] it's a shame. [...] it's hot. And then once you get in and get your shower, you're sweating before you get back out."

-Steven Cox



Even if extra shower measures were implemented, they would still be insufficient to address the heat issue. Immersion in cold water to reduce body temperature has been cited as the "gold standard" for treating those suffering heat stroke.¹¹¹ Cold water plays a similar role in combating less extreme effects of exposure to high temperatures. Cold showers during peak temperature hours could be effective in alleviating the effects of extreme heat conditions in TDCJ prisons. However, the showers that the inmates are permitted to take are often allowed only in the mornings or at night—the coolest times of the day. At Ferguson and Coffield units, showers are allowed only in the morning,¹¹² sometimes as early as 4am.¹¹³ The

103 *Supra* note 90.

104 *Id.*

105 *Id.*

106 *Supra* note 93.

107 *Id.*; Interview with James Allen Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 8, 2014).

108 Interview with Clifford Fairfax, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with James Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

109 *Supra* note 93.

110 *Id.*

111 Douglas J. Casa et al, *Cold Water Immersion: The Gold Standard for Exertional Heatstroke Treatment*, 35 EXERCISE & SPORT SCI. REVS. 141, 141–49 (2007).

112 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with Jessie Hanebuth, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

113 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with Steven Sisk, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014).

water temperature mirrors the morning temperature outside: in the winter the water is cold, and in the summer it is hot, providing little (if any) relief for suffering inmates¹¹⁴

Medical Standards and Healthcare

A. Statistics of Suffering: A Substantial Portion of TDCJ Inmates are Heat Vulnerable

Although all TDCJ inmates suffer from extreme heat exposure during the summer, a substantial portion of these inmates are particularly susceptible because of certain medical conditions including complications from old age, obesity, hypertension, diabetes, and the use of prescription psychotropic medications.¹¹⁵ These inmates face a higher risk of heat-related injury and death than healthy inmates. In fact, all fourteen inmates who died from heat-related illness in TDCJ prisons since 2007 were medically susceptible to heat.¹¹⁶ Obesity slows the escape of heat from the body,¹¹⁷ while diabetes causes nerve damage to sweat glands in 60-70% of sufferers, preventing the body from regulating its own internal temperatures.¹¹⁸ Many medications for hypertension—also called “beta blockers”—decrease blood flow to the skin, preventing the body from sweating and therefore inhibiting the body’s ability to cool itself down.¹¹⁹

Psychotropic medications, used to treat most forms of mental illness, decrease the body’s ability to regulate internal temperatures by inhibiting the ability to sweat.¹²⁰ The TDCJ’s Executive Director Brad Livingston noted that approximately 82% of prisoners housed in TDCJ facilities suffer from some form of mental illness.¹²¹ 80% of mentally ill inmates cared for by the TDCJ’s healthcare provider, the University of Texas Medical Branch (“UTMB”), were treated with psychotropic medications.¹²² In 2009, more than 864,000 prescriptions for psychotropic

114 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with Jessie Hanebuth, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

115 DEADLY HEAT, *supra* note 2 at 24.

116 Matt Clarke & David M. Reutter, *Heat-related Deaths in Texas Prisons Lead to Lawsuits, Reluctant Changes*, PRISON LEGAL NEWS (Aug. 8, 2014), <https://www.prisonlegalnews.org/news/2014/aug/8/heat-related-deaths-texas-prisons-lead-lawsuits-reluctant-changes/>.

117 MARION EUGENE ENSMINGER & AUDREY H. ENSMINGER, FOODS & NUTRITION ENCYCLOPEDIA, TWO VOLUME SET, 308 (1993).

118 Anahad O'Connor, *The Claim: Diabetes Makes You Sensitive to Heat*, N.Y. TIMES (June 28, 2010), http://www.nytimes.com/2010/06/29/health/29real.html?_r=0.

119 Huong Le et al., CAUTION: SOME DRUGS MIGHT MAKE YOU MORE SENSITIVE TO HEAT, Consumer Health Information Corp. (2010), <http://www.consumer-health.com/services/CautionSomeDrugsMightMakeYouMoreSensitivetoHeat.php>.

120 Illnesses for which psychotropic medications are typically prescribed include psychosis, depression, bipolar disorder and anxiety. KAPLAN & SADOCK’S POCKET HANDBOOK OF PSYCHIATRIC DRUG TREATMENT 1 (Benjamin Sadock ed., Lippincott Williams & Wilkins 4th ed. 2005); THE HANDBOOK OF MEDICINE IN PSYCHIATRY 27 (Dr. Peter Manu et al. eds., American Psychiatric Publishing 2006) (“Drug-induced hyperthermia is a common side effect of psychotropic drugs”).

121 Jennifer Carreon, *Monitor the Administration of the Correctional managed Health Care System and Examine Forecasts for Short and Long-term Criminal Justice Populations and Health Care Cost Trends*, TEXAS CRIM. JUSTICE COALITION (May 28, 2014), <http://www.texasjc.org/texas-correctional-managed-health-care-system>.

122 See Ben G. Raimer et al., *Health Care in the Texas Prison System: A Looming Fiscal Crisis 2–6* (2010), <http://www.utmbhealth.com/doc/Page.asp?PageID=DOC000496>.

medications were filled for TDCJ offenders, an increase of nearly 114% since 2002.¹²³ Several inmates interviewed by the Clinic confirmed that the overwhelming majority of inmates are especially susceptible to heat injury because they take psychotropic medications.¹²⁴ The UTMB is well aware that such medications cause heat-sensitivity; indeed, the UTMB Health Care Policy Manual, which establishes guidelines for preventing and monitoring heat illness, specifically contains a list of such medications in reference to their effects on bodily temperature regulation.¹²⁵ Despite this awareness, neither the UTMB nor the TDCJ provides successful monitoring of these heat-sensitive individuals.

Age itself can increase heat-sensitivity.¹²⁶ A manual on geriatric rehabilitation notes that elderly individuals who cannot afford air conditioning in their homes are 50% more likely to die from heat stroke than those who can.¹²⁷ The manual continues, “[e]ven when healthy and mentally alert, the elderly are less able to sense changes in skin temperature and this makes them more susceptible to thermoregulatory problems.”¹²⁸ Another guide instructs, “air conditioning is the best defense [for the geriatric] against heat stress.”¹²⁹ The elderly are also more likely to be on some form of medication that causes additional thermoregulatory problems.¹³⁰ This means that even when the elderly can open their windows, venture into air conditioning, take more showers, or drink additional fluids—which TDCJ inmates cannot—they are still disproportionately susceptible to heat.

According to a TDCJ report, elderly inmates represent the fastest growing population in the TDCJ system.¹³¹ As a result of the high number of prisoners with previous substance abuse issues and the systemic lack of preventive care, inmates suffer from what the TDCJ refers to as “early aging.” This means that inmates “tend to have health problems more common in people ten years older.”¹³² The TDCJ therefore considers inmates aged 55 and older to be geriatric.¹³³ As of 2010, 6% of TDCJ inmates fell within this category.¹³⁴ Furthermore, over 10,980 TDCJ inmates are currently serving sentences between 40 and 60 years, and 6,434 are serving life sentences.¹³⁵ Many of these individuals will face increasing risk of heat-related injury and death each summer as they age in prison.

B. Absence and Apathy: The TDCJ Fails to Provide Effective Medical Care for Heat-Vulnerable Inmates

The TDCJ health care system provides inadequate monitoring for heat-sensitive inmates despite possessing the medical knowledge to do so. Together, TDCJ, UTMB, and the Texas

123 *Id.* at 5.

124 Interview with Loyd Sorrow, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John H. Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

125 University of Texas Medical Branch, *Correctional Managed Health Care Policy Manual*, no. B-15.2, at 6.

126 TIMOTHY L. KAUFFMAN ET AL., *GERIATRIC REHABILITATION MANUAL*, 55–56 (2d ed. 2007).

127 *Id.* at 55.

128 *Id.*

129 JOSEPH KANDEL & CHRISINE A. ADAMEC, *THE ENCYCLOPEDIA OF ELDER CARE* 107 (2009).

130 KAUFFMAN ET AL., *GERIATRIC REHABILITATION MANUAL* 55.

131 TONY FABELO, *ELDERLY OFFENDERS IN TEXAS PRISONS 2* (1999), http://www.lbb.state.tx.us/public_safety_criminal_justice/reports/elderlyoffenders.pdf.

132 *Id.*

133 *Id.*

134 TDCJ, *Fiscal Year 2012, Statistical Report* (2012), http://www.tdcj.state.tx.us/documents/Statistical_Report_FY2012.pdf.

135 *Id.*

Tech University Health Science Center (“TTUHSC”) oversee almost all of TDCJ’s health care service programs. UTMB provides service for inmates in the eastern and southern areas of Texas, and TTUHSC manages western Texas.¹³⁶ UTMB is responsible for approximately 78% of TDCJ inmates, with TTUHSC taking responsibility for 20%.¹³⁷ Both UTMB and TTUHSC are responsible for maintaining accredited staff.¹³⁸

The TDCJ is aware of each patient’s incoming medical status and prior diseases. All inmates in the TDCJ system undergo 60-minute standardized medical and mental health evaluations at the time of intake.¹³⁹ These evaluations consist of a detailed medical and mental health history, a “comprehensive physical examination,” and a number of diagnostic procedures.¹⁴⁰ Despite awareness of prior medical conditions, and despite access to a knowledgeable medical staff, the TDCJ does not ensure that heat-sensitive inmates receive the attention they need.

“I witnessed an inmate in serious difficulty from the heat, asking the guard to get some help. The guard said ‘fall over and I’ll get someone’.”

-John H. Cloud

The TDCJ does not monitor heat-sensitive inmates and refuses to adopt the required accommodations to which these inmates should be entitled. For instance, Joshua Nelson Roberts, an elderly inmate in the Terrell unit, suffers from diabetes, obesity and hypertension. He said of his experience, “I’m s*** out of luck if I have a heat episode. I have to take all the responsibility on myself. [The] TDCJ won’t help me.”¹⁴¹ He further recounted, “I tried to get a second fan because I’m on a breathing machine and the heat is too much for me. My letter to the warden about that got intercepted, and they just cussed me out. I still don’t have a second fan.”¹⁴² Michael Martone, a heat-sensitive inmate who died of heat-related illness while in TDCJ custody, suffered symptoms of heat stroke for two days before his death; these symptoms included obvious disorientation and an inability to speak.¹⁴³ However, despite these symptoms, and with knowledge of his medical history, TDCJ guards and nurses did not monitor him, assist him, or even take his temperature.¹⁴⁴ In fact, as discussed in this Clinic’s previous report, many of the fourteen inmates who died from heat injury in TDCJ prisons were heat-sensitive individuals who the TDCJ failed to specially monitor.¹⁴⁵

136 Amy J. Harzke et. al., *Prevalence of Chronic Medical Conditions Among Inmates in the Texas Prison System*, 87 J. URBAN HEALTH 486 (2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2871081/>.

137 Legislative Budget Board, *Correctional Managed Health Care for State Incarcerated Adult Offenders in Texas: Legislative Policy Report 5–6* (2013), http://www.lbb.state.tx.us/PubSafety_CrimJustice/Reports/255_Correctional%20Managed%20Health%20Care.pdf

138 Correctional Managed Health Care Committee (CMHCC), TDCJ, <http://tdcj.state.tx.us/divisions/cmhc/index.html>.

139 Harzke et. al, *supra* note 137.

140 *Id.*

141 *Id.*

142 Interview with Joshua Roberts Nelson, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014)

143 Roxanne Martone v. Brad Livingston, Civil Action no. 4:13-CV-3369, available at http://www.gpo.gov/fdsys/pkg/USCOURTS-txsd-4_13-cv-03369/pdf/USCOURTS-txsd-4_13-cv-03369-1.pdf

144 *Id.*

145 DEADLY HEAT, *supra* note 2 at 4.

The TDCJ also fails to alert inmates who take psychotropic medications of the associated risk of heat-related injury. Many inmates are completely unaware that heat-sensitivity is a side effect of their medication at all. Inmate Roberts said on this point, “I looked [up the side effects of my medications] myself but most guys here don’t know to do that.”¹⁴⁶ Another inmate and former psychiatrist, John Cloud, confirmed that “[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.”¹⁴⁷ By not informing inmates of their own sensitivities and failing to monitor them, the TDCJ increases inmates’ risk of heat episodes.

Even where the TDCJ and its health care providers have standards for heat-sensitive individuals, they do not follow them correctly. UTMB’s health policy mandates that inmates who are medically heat-sensitive should not be allowed to work or recreate in areas where temperatures exceed 95°F.¹⁴⁸ “Recreation” is defined by the TDCJ Rules Manual as any activity within the “dayroom, gymnasium, and outdoor recreation yard.”¹⁴⁹ Tavaris Johnson, an inmate in McConnell unit, told the Clinic he was present in the outdoor recreation yard when a fellow inmate died of heat stroke. This fellow inmate had a medical condition increasing his susceptibility to heat, but he was not successfully monitored while recreating outside during the summer.¹⁵⁰ Further, in the case concerning Michael Martone’s death in Huntsville unit, the complaint describes conditions in the day room as “stifling”; Michael Martone was in this common area an hour before his death, mumbling to himself and appearing disoriented, yet an officer who observed him “did nothing further [than ask one question] to assist Mr. Martone.”¹⁵¹ However, it is important to note that the preventative measures are critical at all times, not only when an inmate is on the verge of a heat related injury. It is important to constantly monitor inmates who are at increased risk of such injury.

The TDCJ also violates its own internal standards for monitoring inmates while they work.¹⁵² In 2008, the TDCJ issued an Administrative Directive establishing policies and procedures regarding extreme temperature-related injuries in the workplace.¹⁵³ The Directive requires wardens to ensure that “appropriate measures” are instituted in order to prevent injury to offenders, and stipulates that heat-sensitive inmates are to be closely monitored while working.¹⁵⁴ However, that same TDCJ Administrative Directive contained a statement that runs counter to this policy, stipulating that “TDCJ offenders are, at times, required to work in conditions of . . . extreme heat. Frequently, situations may occur requiring specific work be completed regardless of the temperature or weather conditions.”¹⁵⁵ As former guard Sarah Kendrick explained, the TDCJ does not see inmates as people needing help;¹⁵⁶ rather, they are merely “bodies” to

146 Interview with Joshua Roberts Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

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

148 University of Texas Medical Branch, *Correctional Managed Health Care Policy Manual*, no. B-15.2, at 6

149 Texas Dep’t Crim. Justice Correctional Insts. Div., *Disciplinary Rules and Procedures for Offenders* para. 3(a) (2012), available at http://www.tdcj.state.tx.us/documents/cid/Disciplinary_Rules_and_Procedures_for_Offenders_English.pdf.

150 Interview with Tavaris Johnson, Inmate, McConnell Unit, in Beeville, Tex. (Oct. 10, 2014).

151 *Martone v. Livingston*, Civil Action No. 4:1-cv-3369 (July 16, 2014), available at http://www.gpo.gov/fdsys/pkg/USCOURTS-txsd-4_13-cv-03369/pdf/USCOURTS-txsd-4_13-cv-03369-1.pdf.

152 Texas Dep’t Crim. Justice Administrative Directive: Temperature Extremes in the TDCJ Workplace, AD-10.64 (rev. 6) (Nov. 10, 2008), <http://tifa.org/wp-content/uploads/2013/09/TDCJ-Heat-Directive.pdf>.

153 *Id.*

154 *Id.*

155 *Id.*

156 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

“deal with.”¹⁵⁷ Kendrick and Kellie Buttieri, another former TDCJ guard, confirmed that many heat-sensitive inmates are assigned to work in the kitchen and the laundry room, both of which are sweltering environments due to the steam intrinsic to their operation.¹⁵⁸ Inmates have also reported that prison staff refuses to accommodate heat-sensitive individuals in the workplace. One inmate found himself physically unable to work in extreme heat conditions due to a medical heat-sensitivity and asked to be transferred to a less extreme environment.¹⁵⁹ His request was denied, and he was punished for subsequently refusing to work.¹⁶⁰ Inmate Brian Lawson, who is on medication that makes him heat-sensitive, was assigned to work in the kitchen.¹⁶¹ During his shift, Lawson vomited, became pale, and ultimately fainted.¹⁶² The TDCJ on at least that one occasion prioritized inmate work over inmate health.



“They’ve got fans that are supposed to be pointed at the inmates but the guards point it on themselves.”

-Steven Cox

The TDCJ provides inadequate medical care for heat-related illnesses. When one is suffering from a heat illness, time is crucial. Heat stroke develops quickly, and is directly influenced by the temperature or weather¹⁶³ However, according to inmate and former psychiatrist Cloud, “[r]equests to the clinic are a difficult process. You need to be able to verbalize your emergency to a guard, then the guard speaks to the clinic, and then a wheelchair comes. Guards usually just don’t entertain it.”¹⁶⁴ Several other interviewees confirmed this institutionalized apathy. Former guard Kendrick stated bluntly, “[m]edical won’t do anything unless you’re bleeding out.”¹⁶⁵ According to inmate Steven Sisk, “[w]hat happens on Coffield and a good reason why so many have died is a prisoner has to have a heat-stroke, pass-out, or die before being taken to the medical dept.”¹⁶⁶ Inmate Loyd Sorrow described a waiting period of at least 30-40 minutes before the medical department responds to a guard’s request for emergency care.¹⁶⁷ Another inmate recalled how he fainted in the recreation area and was informed by a nurse that he had suffered a heat stroke.¹⁶⁸ He received only one half-gallon of ice water as treatment, and was left feeling lethargic for several days afterward.¹⁶⁹

The TDCJ may not even respond to a medical request or notify the medical unit at all. One prisoner stated that a friend of his “went to medical eight times and was rejected each time. They told him ‘there’s nothing wrong with you.’ The last time [medical] pushed him out, he

157 *Id.*

158 *Id.*

159 Letter from Mark Lee Bolton, Inmate, TDCJ Hughes Unit, in Gatesville, Tex. (Aug. 11, 2014).

160 *Id.*

161 Interview with Keith “Malik” Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

162 *Id.*

163 CAROLINE BUNKER ROSDAHL & MARY T. KOWALSKI, TEXTBOOK OF BASIC NURSING 465 (2011).

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

165 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

166 Letter from Steven R. Sisk, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Sep. 2, 2014).

167 Interview with Loyd Sorrow, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

168 Interview with James Allen Harris, Inmate, TDCJ Terrell Unit in Rosharon, Tex. (Oct. 9, 2014).

169 *Id.*

died on the way back to his cell.”¹⁷⁰ Garrett Cushinberry, an inmate in Jim Ferguson unit, wrote to the Clinic that when he suffered a heat illness, they simply told him to drink water.¹⁷¹ A year or so later, he noted, a doctor informed him he had actually been having a stroke.¹⁷² According to a grievance filed by inmate Sisk, the TDCJ failed to notify medical of his heat illnesses so that he could receive treatment.¹⁷³ In response, the TDCJ agreed that “medical was never notified of any heat related issues [he] was having” but offered no further solution.¹⁷⁴ Inmate James Allen Harris filed a similar grievance at a different TDCJ unit complaining that when he was suffering heat exhaustion, the officer observing him neither aided him nor informed the medical center of his illness.¹⁷⁵ Because immediate attention is needed to combat heat illness, the TDCJ’s clear pattern of not responding to inmate requests could be, and indeed has been, deadly.



“We Beto Unit Offenders have suffer[ed] from heat strokes... by these history record 100 degrees...”

-Cifford Fairfax

Many inmates are reluctant to even request a visit to the medical center. In the last few years, the cost of a trip to the clinic has risen from a \$3 copay per visit to a \$100 payment for an entire year of services, charged in full upon the first visit.¹⁷⁶ This increase is due to a new law, House Bill 26, which amends several sections of the Texas Government Code, including Section 501.063, governing inmates’ healthcare fees.¹⁷⁷ Though the law specifically states that the TDCJ cannot refuse medical service to inmates, the payment can only be avoided if prisoners do not go to the medical center at all.¹⁷⁸ The high fee incentivizes inmates to avoid the clinic, particularly in light of the high rate of inmate indigence.¹⁷⁹ If there is not enough money in an inmate’s account at the time of his first visit, “50 percent of each deposit to the offender’s [account] must be applied to the amount owed until the total amount is paid.”¹⁸⁰ One prisoner’s son stated, “[b]ecause [inmates] get so little commissary money, they try to avoid going to medical treatment at all costs.”¹⁸¹ Thus, even if inmates are able to notify medical and receive care, many of them (rightly) feel unable to do so due to the cost of treatment.

170 *Supra* note 143.

171 Letter from Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

172 *Id.*

173 Annex A for Grievance Form.

174 *Id.*

175 Annex A for Grievance Form.

176 Tex. Gov’t Code § 501.063 (2012).

177 *Id.*

178 Maurice Chammah, *Some Inmates Forego Health Care to Avoid Higher Fees*, TEXAS TRIB. (Oct. 16, 2012), <http://www.texastribune.org/2012/10/16/tdcj-inmates-paying-100-fee-health-care/>.

179 THE UNIVERSITY OF TEXAS SCHOOL OF LAW HUMAN RIGHTS CLINIC, SHADOWREPORT: DEADLY HEAT IN U.S. (TEXAS) PRISONS 56 (2014), available at http://tbineternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_CSS_USA_18574_E.pdf.

180 *Supra* note 179.

181 *Id.*

C. Domestic Standards and the TDCJ: The TDCJ's Failure to Provide Adequate Medical Care for its Inmates Violates Numerous Domestic Standards

Various domestic standards set for the rights of prisoners affirm the TDCJ's wrongdoing. The American Bar Association sets Standards on the Treatment of Prisoners ("ABA Standards"), a form of 'black letter law' that was written over five years by numerous delegates for the purposes of "shap[ing] the institutions of government in such a fashion as to comply with the laws and the Constitution" and providing guidelines to "shape the fair and humane development of the...criminal justice system."¹⁸² "The ABA Standards note that "[i]f medical science has determined the appropriate treatment for a given illness, that treatment is no less appropriate in prison."¹⁸³ The ABA standards expressly state that prisoners should not be charged fees for necessary healthcare.¹⁸⁴ The TDCJ's policy of charging prisoners an annual fee runs contrary to this directive.¹⁸⁵ The guidelines further require correctional authorities to implement a system allowing each prisoner, regardless of security classification, to communicate healthcare needs in a "timely and confidential manner to qualified health care professionals... [n]o correctional staff member should impede or unreasonably delay a prisoner's access to health care staff or treatment."¹⁸⁶ By contrast, most inmates interviewed by the Clinic reported experiencing difficulty in securing recognition of their health care needs, both from the guards and the medical staff.¹⁸⁷ Inmates also described instances of guards ignoring health complaints or telling inmates to "f*** off" in response.¹⁸⁸

The American Public Health Association ("APHA"), a professional organization dedicated to strengthening public health through education and advocacy¹⁸⁹, affirms that health care requests should be submitted "to health care staff whether the request is made in writing or verbally or whether the request is made by the prisoner or through other prisoners... [or] family members[,] . . . requests that do not arrive in the standard format must be reviewed and addressed." Several wives of prisoners requested the TDCJ take care of their loved one's health needs, especially in relation to the heat, but were ignored and dismissed.¹⁹⁰ When the water to Jessie Hanebuth's cell was turned off as a form of punishment, his wife Emily unsuccessfully requested numerous times that it be turned back on.¹⁹¹ At another unit, inmate Steven R. Sisk noted in a grievance form that five of his relatives had complained to the TDCJ about its failure to provide him with medical treatment to no avail.¹⁹²

In *Estelle v. Gamble*, the Supreme Court of the United States stated that failure to provide medical care constitutes a violation of the Eighth Amendment's prohibition on cruel and

182 AMERICAN BAR ASS'N., ABA STANDARDS FOR CRIMINAL JUSTICE: TREATMENT OF PRISONERS 1–5 (2011)

183 *Id.* at 149.

184 *Id.* at 153.

185 *Supra* note 166.

186 *Id.* at 157.

187 See e.g., Interview with James Allen Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

188 Interview with Joshua Roberts Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Keith "Malik" Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John W. Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Freddie Fountain, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 10, 2014); Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

189 Am. Pub. Health Ass'n, About APHA, available at <http://www.apha.org/about-apha>.

190 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

191 *Id.*

192 See Annex A for Grievance Forms.

unusual punishment if correctional officers or their designees have demonstrated a deliberate indifference to a prisoner's serious medical needs. Such indifference can be manifested by "prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed."¹⁹³ TDCJ guards' demonstrated lack of care for inmates with heat-sensitive medical conditions could constitute this deliberate indifference, making them liable under the Eighth Amendment.

The TDCJ continues to ignore the recommendations of the U.N. Committee Against Torture and this Clinic on extreme heat in TDCJ prisons by failing to install air conditioning. Heat-sensitive inmates constitute a large portion of the TDCJ's prison population, and the TDCJ is well aware of this. However, in contrast to both numerous domestic standards and the TDCJ's own healthcare standards, the TDCJ declines to monitor these inmates, provide adequate care for them, or respond to requests for assistance. Indeed, to reiterate, at least fourteen heat-sensitive inmates have died in the TDCJ's care since 2007, and many more inmates attest to being assigned to work in extremely hot environments or are not provided sufficient cooling measures.¹⁹⁴ Even for inmates who are not heat-sensitive, the TDCJ's medical care is slower than it is effective, and is furthermore prohibitively expensive for a large portion of the inmate population. These issues exacerbate the TDCJ's refusal to provide air conditioning, and leave many inmates without recourse.

They know and They Disregard

A. TDCJ Greivance Procedures and Inadequate Remedies

A chorus of inmates interviewed by the Clinic described the TDCJ's inmate grievance procedure as frustrating and indeed futile.¹⁹⁵ When inmate John Ford entreated a guard at Terrell unit for relief from the heat, the response he received was simply, "I don't give a s***."¹⁹⁶ Sorrow, an inmate at the same unit, stated that "I'd have better luck hitting my head on [the] wall."¹⁹⁷ A third inmate reported that officers in Coffield unit refused to respond to informal complaints in a meaningful manner.¹⁹⁸ Instead, the officers said that there was nothing they

¹⁹³ Estelle v. Gamble, 429 U.S. 91, 104–05 (1976).

¹⁹⁴ Interview with Joshua Roberts Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John W. Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

¹⁹⁵ Interview with Keith "Comrade Malik" Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Loyd Sorrow, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with John W. Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with James Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex (Oct. 9, 2014); Interview with Joshua Roberts Nelson, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014) (statement by Emily Hanebuth, wife of Jessie Hanebuth); Interview with John H. Cloud, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Clifford Fairfax, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview of Jessie Hanebuth, Inmate, TDCJ Wynne Unit, in Huntsville, Tex. (Oct. 9, 2014); Interview with Tavaris Johnson, Inmate, TDCJ McConnell Unit, in Beeville, Tex. (Oct. 10, 2014).

¹⁹⁶ Interview with John W. Ford, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

¹⁹⁷ Interview with Loyd Sorrow, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).

¹⁹⁸ Questionnaire from Christopher Beshirs, Inmate, TDCJ Coffield Unit, in Tennessee Colony, Tex. (Oct. 16, 2014).

could do about the dangerous heat conditions.

Inmates, their families, and civil society organizations all use formal and informal channels to notify the TDCJ of the suffering and ill-treatment its inmates experience. As discussed in Section I, the TDCJ is aware of the dangers posed by the extreme heat. Despite this awareness, the TDCJ refuses to respond to individual grievances and fails to carry out prompt and impartial investigations into grievance claims. Inmates reported that their grievances are investigated only in rare cases, and expressed frustration with boilerplate responses and long delays between when a complaint is filed and when a response is received.

I-127 Grievance Form

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Even if an individual claim is addressed, the issue may not receive an impartial investigation. All formal complaints follow a two-stage internal process, neither of which allows for effective, independent and impartial third-party oversight. This lack of oversight means that the very staff members responsible for an inmate's grievance are often the same staff members who respond to the grievance. Furthermore, the TDCJ does not interview inmates when investigating an inmate's formal complaint. Instead, investigations are grounded solely in TDCJ records and the word of TDCJ staff.²⁰⁰ One inmate said, "no matter how it turns out, there was nothing to substantiate your allegations. Always. That's just like a rubber stamp."²⁰¹ In a letter to the Clinic, another prisoner wrote, "I can only say that I have a wealth of information on the grievance issue, yet to compile them all in one word, they are pointless."²⁰²

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The frustration that inmates and their friends and family frequently experience has led petitioners to seek outside assistance from informal channels. In one case, a grievance over the unplugging of personal fans was resolved thanks to the work of prisoner's rights group Texas CURE, which brought the case directly before Brad Livingston, Director of the TDCJ.²⁰³ While such alternative channels have yielded some successful results, many inmates are unaware of these organizations or simply do not have the means to contact them; also, these third-party involvement should not be regarded an appropriate remedy. When prisoners feel their

199 Offender Grievance.

200 See Annex A for I-127 and I-128 Forms, where the officer reviewing the form was also the individual who failed to respond to Steven Sisk's informal complaint.

201 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

202 Letter from James Allen Harris, TDCJ Terrell Unit, in Rosharon, Tex. (Nov. 29, 2014).

203 Keith "Comrade Malik" Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

grievances are “pointless”, the TDCJ has clearly failed in its duty to address each individual grievance in a prompt, impartial, and effective manner, as discussed in this section. A de facto reliance on third-party civil society organizations both misplaces this duty and fails to address the TDCJ’s neglect of its prisoners’ rights.

B. Running in Circles: the Informal and Formal Grievance System

Before an inmate can file a formal grievance, he or she must first pursue informal complaint resolution. This usually consists of speaking with the guards in the unit where the inmate is located,²⁰⁴ and therefore whether the complaint receives a response hinges on the judgment of the officers within each unit. Although some officers can and do respond, “most of the complaints fall on deaf ears.”²⁰⁵ Inmates stated that even when officers do agree to investigate, they rarely offer any resolution for the grievance.

If an inmate fails to pursue an informal resolution, his formal grievance will not be considered.²⁰⁶ This forces inmates to confront the individual who caused the grievance—an approach unlikely to lead to a resolution of the issue. Any confrontation can expose inmates to further retaliation, and ultimately delays the grievance process as a whole.

If an inmate complains informally and is unsatisfied with the result, he or she is permitted to subsequently file a formal grievance. This procedure involves two forms: the I-127 Grievance Offender Form, or the ‘Step 1 Grievance,’ and the I-128 Grievance Offender Form, or ‘Step 2 Grievance.’²⁰⁷

The Step 1 Grievance is the initial formal petition for inmates. It is usually reviewed by a Unit Grievance Investigator who obtains records and interviews staff about the substance of the complaint. The time for investigation is usually set at one and one-half months,²⁰⁸ but in reality inmates often wait anywhere from three weeks to over two months for a response. If the Step 1 Grievance yields unsatisfactory results, the Step 2 Grievance provides inmates with a formal appeal. This appeal is sent to the TDCJ Central Grievance Office, located in Huntsville, Texas. In the case of health-related concerns, the appeal is sent to the Step 2 Medical Grievance Program in the TDCJ’s Health Services Division. After the TDCJ responds to the Step 2 Grievance, inmates have exhausted their administrative remedies and the TDCJ considers their grievance resolved.²⁰⁹ Often this process ultimately results in a “rubber stamp” acceptance of the guards’ statements at Step 1, and in the TDCJ stating that there was a lack of evidence to substantiate the claim at Step 2.²¹⁰ In other case, inmates’ grievance forms are returned without any resolution if they are submitted within seven days of prior submission. In other words, despite of the fact that extreme heat and poor conditions give rise to daily

204 Interview with Clifford Fairfax, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014); See Annex A for I-127 and I-128 Forms. The I-127 Form states, “You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.”

205 Interview with Inmate James Allen Harris in Rosharon, Tex. (Oct. 9, 2014).

206 See Annex A for I-127 and I-128 Forms.

207 See Annex A for examples of I-127 and I-128 Forms.

208 See Annex A for examples of I-127 and I-128 Forms.

209 See Annex B, Texas Dep’t of Criminal Justice, Offender Grievance Pamphlet.

210 Interview with Steven Cox, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014); Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014); Interview with Oliver Lister, Inmate, TDCJ Estelle Unit, in Huntsville, Tex. (Oct. 9, 2014); Interview with James Allen Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014). See Annex A, Offender Grievance Form for Kirk Northrup.

grievances, inmates are limited to filing one grievance after seven days pass.²¹¹



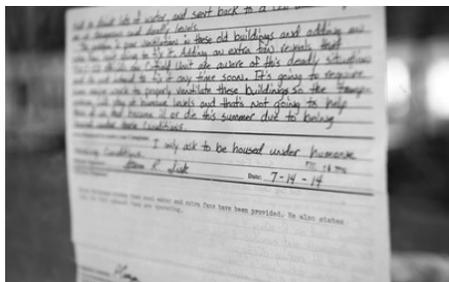
“The Administration and staff DO NOT use the “Heat & Humidity Matrix;” and thus, DO NOT determine the actual indoor temperature”

-Clifford Fairfax

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The lack of transparency in the investigation phase leaves prisoners at the mercy of TDCJ staff. The forms inmates receive in response to their grievances detail neither the investigation of their claims nor the evidence collected. One inmate, Kirk Northup, filed a complaint alleging that the TDCJ once withheld ice from him in retaliation for a prior formal grievance he had filed.²¹³ Although he claimed that other dorms had received ice, the staff informed him they were still “waiting to get some [ice].”²¹⁴ In response to a grievance on this issue, he received only a brief statement signed by the Warden. The message read, “Investigation into your complaint did not reveal evidence of staff misconduct. Ice was passed out as soon as it was available. No corrective action was warranted.”²¹⁵ While this response admitted the shortage of ice, no steps were taken to inquire into why Kirk Northup's dorm was denied ice while the rest of his unit was not. Moreover, there was no response to Northup's claim that he had suffered retaliation for a prior grievance, and no evidence that the Warden had investigated the issue at all.

Northup subsequently filed a Step 2 Offender Grievance Form in an appeal of this response. He received another brief reply, stating “[t]his was not an intentional act meant to cause you harm; as stated in the Step 1 [grievance form], [ice] was passed out to your housing area as soon as it was available. No evidence of agency policy violation. No further action warranted.”²¹⁶ At this stage, the TDCJ considered Northup's claims resolved even though neither of the responses he received directly addressed the issue of retaliation. Northup eventually received the ice he needed to cool down in the sweltering prison, but the central concern of Northup's grievance—retaliation by TDCJ guards—remains unresolved.



“There was no evidence to substantiate your allegations of agency policy violations. No further action warranted.”

-Grievance Response to Clifford Fairfax

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- 211 See Annex A for I-127 Grievance Form.
- 212 Clifford Fairfax's Offender Grievance Form (Jan. 15, 2015)
- 213 See Annex A, Offender Grievance Form for Kirk Northup.
- 214 *Id.*
- 215 *Id.*
- 216 Annex A, Offender Grievance Form for Kirk Northup.
- 217 Clifford Fairfax's Offender Grievance Form (Oct. 30, 2014). See James A. Harris's Offender Grievance

In spite of reviewing dozens of I-127 and I-128 forms, the Clinic has not discovered any favorable responses to the heat related grievance. Unsurprisingly, responses to grievances stating that no further action is warranted are common.²¹⁸ Steven Sisk, an inmate who suffers from dizziness, disorientation, vomiting, and chest pains from extreme heat, filed a Step 1 Form that was reviewed by Practice Manager Pam Pace, who had previously denied his request for medical information.²¹⁹ According to Pace's response to the Form, investigation into Sisk's grievance consisted solely of a review of his medical chart. Pace took no steps to notify the medical department of Sisk's heat illness, and declined to examine the conditions that had caused it.²²⁰

Several former TDCJ guards confirmed to the Clinic that tampering with the investigation process and failing to carry out objective inquiries into inmates' grievances are commonplace in the TDCJ system.²²¹ During grievance-related investigations, TDCJ staff are encouraged to provide testimony that is unfavorable to inmates' grievances.²²² Formal complaints are also routinely thrown out.²²³ Such behavior is rewarded within the TDCJ, where officers who are perceived as being the most "hardcore" are the ones who migrate to higher positions.²²⁴

As a result, the formal grievance mechanisms are ultimately a revolving door. Prisoners file formal complaints regarding the same issues repeatedly, as each cycle of grievances fails to provide an adequate remedy. The Step 1 and Step 2 Forms are the only formal mechanism available to inmates, yet each receives minimal investigation and provides little to no remedy for inmates' grievances.

C. Retaliation for Filing Grievances

Inmates who file grievances risk exposing themselves to retaliation by TDCJ staff. Retaliation can involve the confiscation of personal property, restriction from access to recreation and common areas,²²⁵ and searches of inmates' cells resulting in the destruction and damage of inmate property.²²⁶ Prisoners also reported twenty-four hour periods of sleep deprivation, reductions in the few available methods of coping with the heat (including lower rations of ice), and being targeted by officers with citations for frivolous matters. Commenting on retaliation, Loyd Sorrow said that "[t]hey've hurt me enough so I don't feel it no more [sic]."²²⁷ It is clear that the TDCJ has not taken adequate measures to protect against ill-treatment or intimidation.

Form (Sep. 02, 2014) ("There was no evidence to substantiate your allegations. No further action warranted."); Kirk Northup's Offender Grievance Form (Aug. 27, 2014) (on file with the Clinic) ("No evidence of agency policy violation. No further action warranted.").

218 Letter from James Allen Harris, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Nov. 29, 2014).

219 See Annex A, Offender Grievance Form for Steven R. Sisk.

220 *Id.*

221 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014) (statement by Sarah Kendrick and Kellie Buttieri, former TDCJ guards at Powledge and Polonski Units, respectively, stating that officers were told to change their stories to disfavor inmate testimony to grievances, and that some formal complaints were thrown away).

222 *Id.*

223 *Id.*

224 Interview with Michael Jewell and Joan Covici, Texas CURE, in Austin, Tex. (Oct. 8, 2014).

225 Interview with Keith "Comrade Malik" Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

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

227 Interview with Loyd Sorrow, Inmate, TDCJ Terrell Unit, in Rosharon, Tex. (Oct. 9, 2014).



“It’s real [retaliation]. You can suffer some very severe repercussions as far as filing complaints about certain things.”

-Garrett Cushinbery

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Inmates will often refrain from airing their complaints for fear of further retaliation from TDCJ staff, especially if they request help beyond formal or informal procedures within the TDCJ. One inmate asked his wife to refrain from petitioning the Warden of the prison for better treatment. Her requests to the TDCJ had resulted in her husband’s placement in “Prehearing Detention,” pending investigation for charges of offenses committed within the prison.²²⁹ Other inmates’ wives shared similar stories, stating, “if [our husbands] weren’t so afraid of retaliation, they would speak out more.”²³⁰

D. The TDCJ Ombudsman Cannot Address Grievances Adequately

The TDCJ Ombudsman offers an alternative avenue for friends and families of inmates to air grievances on behalf of their loved ones. The Ombudsman’s goal is to gather inquiries and to investigate “within the Agency to provide concise answers to an inquiry, thereby eliminating the need for the requestor to contact different areas of TDCJ.”²³¹

Despite this stated aim, the Ombudsman does not provide a prompt or adequate response to inquiries. Several inmates’ wives reported that their petitions to the Ombudsman were returned with no investigation or substantive result.²³² When Steven Sisk suffered from chest pains and disorientation as a result of the heat, his family notified the Ombudsman of his heat-related suffering. However, the Ombudsman failed to notify the prison officials in Coffield Unit, where Sisk was staying. Responding to Steven Sisk’s formal grievance form, the official in charge of Sisk’s grievance noted only that “the medical department was never notified of heat related issues.”²³³

According to the Annual Ombudsman Report published on December 1, 2014, among the 142 types of inquiries the Ombudsman has received, heat related issues account for a significant portion of the filed grievances.²³⁴ Inquiries related to heat issues were the 17th most reported.²³⁵ The Ombudsman’s common response was merely “general info provided/policy or process explained,” “investigated – no corrective action necessary,” or “other action taken.”²³⁶

228 Interview with Garrett Cushinberry, Inmate, TDCJ Ferguson Unit, in Midway, Tex. (Oct. 9, 2014).

229 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

230 *Id.*

231 Annex B. See also TEX. DEP’T CRIM. JUSTICE, TDCJ OMBUDSMAN OFFICE, https://www.tdcj.state.tx.us/documents/Ombudsman_Brochure_English.pdf.

232 Interview with Sarah Kendrick et. al, Wives and Girlfriends of TDCJ inmates, in Clute, Tex. (Oct. 9, 2014).

233 Annex A, Offender Grievance Form for Steven R. Sisk.

234 Texas Department of Criminal Justice Office of the Ombudsman, Annual Ombudsman Report (Dec. 1, 2014), http://tdcj.state.tx.us/documents/SB1_Rider_58_Ombudsman_Report.pdf.

235 *Id.*

236 *Id.* at 14.

How does an offender seek problem resolution?

The Offender Grievance Program was developed to enhance lines of communication between staff and offenders by providing a resource within the TDCJ for resolving concerns of offenders affecting their incarceration.

The grievance process provides the offender an opportunity for problem resolution at two distinct administrative levels.

Step 1 allows the offender to request relief from unit administration. **Step 2** affords the offender an appeal process to Central administrative staff. The offender completes a grievance form and submits the completed form to the Unit Grievance Investigator. Offenders receive a written response which they may appeal to Step 2 if desired.

By encouraging offenders to utilize this process, you provide them an opportunity for enhancing their skills in responsible problem resolution.

HOW TO CONTACT A TDCJ OMBUDSMAN

Please submit inquiries in writing

For expediency, it is best to attempt to resolve issues and obtain information at the unit or supervising parole office. However, if this is not possible, contact one of the following:

TDCJ Ombudsman Office
 General issues concerning the agency's operation, policies and procedures. Issues from the public relating to secure facilities (prison units, state jails, and substance abuse felony punishment facilities), and any specific concerns regarding offenders confined in these types of facilities.

P.O. Box 99, Huntsville, TX 77342-0099
 (936) 437-4927 ~ (936) 437-4930 fax
ombudsman@tdcj.texas.gov

Bilingual Staff Available –Se habla Español

...

TDCJ Parole Division Ombudsman
 Issues from the public relating to parole supervision. May also respond to concerns from offenders on parole or mandatory supervision.

P.O. Box 13401, Austin, TX 78711
 (512) 406-5795 ~ (512) 406-5858 fax
parole.div@tdcj.texas.gov

...

General offender status information may be obtained at www.tdcj.texas.gov

Agency Toll-Free Telephone Number
 1-800-535-0283

Texas Department of Criminal Justice



TDCJ Ombudsman Office



Authority
*Texas Government Code
 Section 493.016, Chapter 552*

TDCJ Pamphlet Describing the TDCJ Ombudsman Office

Furthermore, while the Ombudsman is empowered to hear inquiries, it does not have any power to review TDCJ policies. Although the purpose of the Ombudsman is to “provide a resolution regarding written complaints from families and friends of offenders,” it may not “override decisions made by appropriate authorities.”²³⁷ This mechanism, the mission of which is explicitly to provide an adequate response to inquiries, has no power to address the underlying issue that gave rise to the inquiry in the first place.

E. Department of Justice Must Intervene to Prevent More Deaths

The Department of Justice (“DOJ”) must play a role in preventing any further deaths or suffering from extreme heat. It must intervene in ongoing federal litigation, set temperature standards for Texas prisons, and oversee that these standards are met. Intervention by DOJ and cooperation with the Texas government and civil society organizations will be essential in setting new and humane living standards for prisons in Texas.

This is not a new role for the DOJ. The DOJ, along with its resources and power, was essential to reform efforts for Texas prison conditions in the past. In Texas’s landmark case on prison reform, *Ruiz v. Estelle*, arising from a prisoner’s handwritten note to William Wayne Justice regarding inhumane conditions in the prisons, the DOJ intervened to assist plaintiffs petitioning for improved prison conditions after Judge Justice requested that the DOJ appear

237 Annex B. See also TEX. DEP’T CRIM. JUSTICE, TDCJ OMBUDSMAN OFFICE, available at https://www.tdcj.state.tx.us/documents/Ombudsman_Brochure_English.pdf.

as amicus curiae.²³⁸ Through this intervention, the DOJ carried out an investigation that exposed the unconstitutional living conditions in Texas prisons at the time. This in turn contributed to statewide reform and improvement in the administration of, work and living conditions within, and medical care provided by Texas prisons. In a series of litigation following *Ruiz*, plaintiffs, including the Special Litigation Section of the DOJ's Civil Rights Division, uncovered sixteen instances of heat-related injury, including three deaths.²³⁹

The DOJ continues to play this role in other states. In the past year, the DOJ announced an expanded budget for prison oversight and reforms.²⁴⁰ The DOJ also litigates issues involving state prisons through its Special Litigation Section.²⁴¹ For example, beginning in 2012, the DOJ placed mandates on the Orleans Parish Prison in New Orleans, Louisiana, demanding that the Sheriff's Office provide for improved living conditions and new staff, including a grievance coordinator.²⁴²

In current litigation on deaths in TDCJ prisons, so far the DOJ has declined to file as amicus curiae or intervene as they once did in the *Ruiz* case.²⁴³ One group, the M.I.S.S. (Mothers of Incarcerated Sons Society, Inc.), wrote the DOJ in a plea for them to investigate the extreme heat conditions that are causing so much suffering and death in Texas prisons. The Special Litigation Section of Department of Justice's Civil Rights Division responded with a form letter that was unresponsive to any allegations made by M.I.S.S. concerning the specific conditions in Texas prisons; the letter stated only that "[w]e will review your letter to decide whether it is necessary to contact you for additional information."²⁴⁴ However, no subsequent response was received.

238 Tarlton Law Library Jamail Center For Legal Research, *Prison Reform: Ruiz v. Estelle*, THE WILLIAM WAYNE JUSTICE PAPERS, http://tarlton.law.utexas.edu/exhibits/ww_justice/ruiz_v_estelle.html.

239 *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 904 (S.D. Tex. 1999).

240 Sari Horwitz, *Justice Dept. Budget Focuses on Criminal Justice, Prison Reform*, THE WASHINGTON POST (March 4, 2014), <http://www.washingtonpost.com/blogs/federal-eye/wp/2014/03/04/justice-dept-budget-focuses-on-criminal-justice-prison-reform/>.

241 *About the Special Litigation Section*, THE UNITED STATES DEP'T OF JUSTICE, <http://www.justice.gov/crt/about/spl/>.

242 Randi Rousseau, *Orleans Parish Sheriff's Office, City Reach Partial Agreement on Consent Decree*, WDSU NEWS (Apr. 17, 2014), <http://www.wdsu.com/news/local-news/new-orleans/orleans-parish-sheriffs-office-city-reach-settlement-on-consent-decree/25530714>.

243 Letter from Department of Justice to Kate Sheehy (Sept. 12, 2014).

244 *Id.*



Letter from the Department of Justice to Kate Sheehy

The DOJ's inaction must end. The *Ruiz* case demonstrated that the DOJ can substantially improve the living conditions of prisoners when it decides to intervene. However, the DOJ has not continued its historical oversight over TDCJ.

F. The TDCJ has a Duty to Investigate Ill-Treatment of Its Inmates

International human rights standards establish that in preventing ill-treatment of inmates, States have a minimum duty to carry out prompt and impartial investigations of allegations regarding torture and cruel, inhuman, and degrading treatment.²⁴⁵ In addition to independent, impartial, and effective State-initiated investigations, access to grievance procedures and freedom from retaliation are fundamental human rights.

Prompt, impartial, and effective grievance procedures are important not only for the rights of prisoners, but also because they contribute to the safety and order of the prison.²⁴⁶ Indeed, when inmates feel they cannot express their concerns, they may resort to more extreme actions, which could threaten the security of the prison.²⁴⁷ Moreover, adequate administrative procedures are cost effective.²⁴⁸ Prompt, impartial, and effective investigations and responses to grievances identify weaknesses in the prison administration to which prison officials can then respond. An effective grievance system would allow the TDCJ to respond to allegations of ill-treatment and raise prison standards without the temporal and financial burdens of passing legislation.²⁴⁹

245 Office of the United Nations High Commissioner for Human Rights, *Human Rights and Prison: Manual on Human Rights Training for Prison Officials*, para. 29 (2005), <http://www.ohchr.org/Documents/Publications/training11en.pdf>.
246 SUSAN EASTON, *PRISONER'S RIGHTS: PRINCIPLES AND PRACTICE* 129 (2011).
247 *Id.*
248 *Id.*
249 *Id.*



“[I] explain my situation (heat exhaustion) and tell him I needed medical attention. [The Officer] did not say word to me, and actually told me to leave the same table he was sitting at.”
-James A. Harris

250

The TDCJ offers avenues for inmates to file grievances through its formal and informal grievance procedures. However, the resolution of these grievances rarely culminates in prompt or impartial investigations. The frustration experienced by inmates who rely on the I-127 and I-128 grievance forms and the lack of solutions to heat-related issues in the grievances exemplify the TDCJ's continued failure to meet international human rights standards in the administration of its prisons.

i. A Duty to Investigate

Under the Convention Against Torture, States have an obligation to investigate acts of torture promptly and impartially.²⁵¹ These standards also create a duty to investigate in accordance with the language of Article 16, the obligations found in Articles 12 and 13 are applied equally to cruel, inhuman, or degrading treatment or punishment as they are to torture.²⁵²

Committee Against Torture (“CAT”) decisions clarify the nature of these obligations. CAT specifically recommended the U.S. to investigate the deaths in Texas. Article 12, expanded by the language found in Article 16, creates a burden for States to investigate whether ill-treatment has occurred whenever there is a reasonable ground to believe such acts have transpired.²⁵³ Reasonable belief is established through victim's complaints, reports from witnesses to the acts, or reports from third party groups, such as NGOs or organs within national governments.²⁵⁴

The State has a minimum duty of carrying out a prompt and impartial investigation.²⁵⁵ A duty to initiate an investigation can arise from several sources, including an employee's report of the detainee's complaints of ill-treatment.²⁵⁶ Any suspicion of torture or ill-treatment requires investigation regardless of the substantiation.²⁵⁷ In *Blanco Abad v. Spain*, a forensic physician filed five reports of the detainee's complaints of ill-treatment.²⁵⁸ Even though the physician found no outward evidence of harm, the failure to respond to these reports constituted a

250 James A. Harris's Offender Grievance Form (June 23, 2014).

251 Convention Against Torture art. 12, Dec. 10, 1984, 1465 U.N.T.S. 85.

252 “In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.” *Id.* art. 16.

253 MANFRED NOWAK & ELIZABETH McARTHUR, OXFORD COMMENTARIES ON INTERNATIONAL LAW: THE UNITED NATIONS CONVENTION AGAINST TORTURE: A COMMENTARY 413 (2008).

254 *Id.* at 431.

255 *Id.* at 435.

256 *Id.* at 432–33; *Blanco Abad v. Spain*, No. 59/1996, Comm. against Torture, U.N. Doc. CAT/C/20/D/59/1996, at §8.2 (2008), available at <http://www1.umn.edu/humanrts/cat/decisions/59-1996.html>.

257 NOWAK & McARTHUR, *supra* note 254, at 435.

258 *Blanco Abad v. Spain*, at para. 8.3.

violation of Article 12.²⁵⁹

The obligation is triggered as soon as there is a reasonable basis for believing that some act of torture or ill-treatment has occurred, which includes formal and informal complaints from prisoners. In *Thabti v. Tunisia*, CAT noted that an inmate's hunger strikes and his protests of ill-treatment should have triggered an investigation by the State.²⁶⁰ The State's failure to move to investigate constituted a violation of Article 12.²⁶¹

TDCJ grievance procedures, on their own, do not initiate an investigation in response to inmate's formal complaints. As long as the TDCJ ignores these allegations of ill-treatment and refrains from conducting investigation into allegations of cruel, inhuman, or degrading treatment, the TDCJ will be neglecting its duty to investigate, and failing to meet its burden under international human rights standards.

ii. Prompt and Impartial Grievance Systems

In addition to the State's duty to investigate, international standards also require that inmates be provided a forum to complain about ill treatment.

Paragraphs 35 and 36 of the U.N. Standard Minimum Rules establish the requirements for both informal and formal systems of requests or complaints within a prison system, and the state's responsibility to deal with each grievance promptly and without delay.²⁶²

Article 13 of the Convention Against Torture establishes similar obligations for prompt and impartial investigations of complaints. A "mere allegation" by a victim of torture can create the duty to investigate.²⁶³ At a minimum, even if the allegations ultimately prove baseless, the authorities have an obligation to hear the complainant and to verify the veracity of the complaint. Writing on this subject, CAT has said, "for proper examination, it was essential to hear the detainee's complaints, to allow the doctor to produce findings and to ascertain whether the findings were consistent with the complaints."²⁶⁴ While the language of the Convention refers to torture, Article 16 expands the obligation to investigate complaints to

²⁵⁹ *Id.*

²⁶⁰ *Thabti v. Tunisia*, No. 197/2001, Comm. Against Torture, U.N. Doc. CAT/C/31/D/187/2001, at para. 10.5 (2003), available at <http://www1.umn.edu/humanrts/cat/decisions/tunisia187-2001.html>.

²⁶¹ *Id.*

²⁶² Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663C, Annex 1, at para. 36, U.N. Doc.A/CONF/611 (July 31, 1957), amended by E.S.C. Res. 2076, at 35, U.N. Doc. E/5988 (May 13, 1977). The Standard Minimum Rules state that:

(1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.

(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

²⁶³ NOWAK & McARTHUR, *supra* note 250, at 450.

²⁶⁴ Summary Record of the First Part (Public) of the 203rd Meeting, Comm. Against Torture, 13th Session, Nov. 22, 1994, U.N. Doc. CAT/C/SR.203, at para. 38.

include allegations of cruel, inhuman, or degrading treatment.

Principle VII of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas delineates the rights that prisoners shall have when petitioning their grievances. Consistent with the standards under the Convention Against Torture, States bear the burden of initiating a prompt and impartial investigation into allegations of torture and ill-treatment,²⁶⁵ which duty cannot be mitigated by any domestic legislation or act. At a minimum, individuals have the right to lodge grievances with and “receive a prompt response” from the State party,²⁶⁶ as well as the right to “lodge communications, petitions, or complaints with the national human rights institutions...”²⁶⁷

The language of Principle VII explicitly separates the right of individual and collective petition from judicial and administrative remedies, stating, “Persons deprived of liberty shall have the right of individual and collective petition and the right to a response before judicial, administrative, or other authorities.”²⁶⁸ This language clarifies that the right to petition shall not be limited only to judicial and administrative procedures. Inmates must be allowed alternative channels through which they can voice concerns and grievances.

TDCJ’s continued failure to provide prompt and impartial investigations, or even to respond to inmate’s grievances, demonstrate a failure to abide by established human rights standards for the treatment of prisoners. TDCJ’s limitation of administrative remedies to the formal I-127 and I-128 grievance forms limits the rights held by all persons deprived of their liberty.

iii. Effective Remedies

265 Organization of American States, Inter-American Convention to Prevent and Punish Torture art 8, Dec. 9, 1985, O.A.S.T.S no. 67, available at <http://www.oas.org/juridico/english/treaties/a-51.html>; *Servellón-García v. Honduras*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 152, para 119 (Sept. 21, 2006), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_152_ing.pdf (citing *Montero-Aranguren and others v. Venezuela*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser.C) No. 150, para. 79 (July 5, 2006), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_150_ing.pdf; *Ximenes-Lopes v. Brazil*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 149, para. 148 (July 4, 2006), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_ing.pdf; *Ituango Massacres v. Colombia*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, para. 296 (July 1, 2006), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_148_ing.pdf).

266 Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Mar. 3–14, 2008), <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>; The European Prison Rules, derived from U.N. standards, also require the provision of formal request and complain mechanisms against prison administrators, staff, and responsible medical personnel. Competent authorities should deal with requests and complaints promptly, and should make clear whether action will be taken and what sort of action this will be. If a complaint is turned down, the prisoner shall be provided a reason and the prisoner shall have a right to appeal to an independent body. COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, EUROPEAN PRISON RULES 83–84 (2006) (Specifically, these rules may be found in Rules 70.1 and 70.2). Furthermore, the Council of Europe has suggested a mediation mechanism, since complaints can antagonize the relationship between guards and staff, where a third party can serve as a first line before a formal complaint is lodged. Complainants must be allowed to communicate with independent authorities. COUNCIL OF EUROPE, COMMITTEE OF MINISTERS, EUROPEAN PRISON RULES 84 (2006).

267 Inter-American Commission on Human Rights, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Mar. 3–14, 2008), <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>.

268 *Id.*

Under international human rights law, States have a duty to ensure that victims of ill-treatment receive an effective remedy.²⁶⁹ Such effective remedies include a right to impartial hearings,²⁷⁰ and offer a layer of protection in addition to the duty to provide access to complaint procedures and to investigate allegations of ill-treatment.

The Inter-American Court on Human Rights (IACtHR) has discussed its standard for remedies for ill-treatment in numerous cases, and has stated repeatedly that any procedural remedy for human rights abuses, like ill-treatment, must be effective.²⁷¹ The effectiveness requirement for remedial procedures guarantees victims some recourse for suffering ill-treatment and insures that basic human rights are protected.²⁷²

The seminal case *Velásquez Rodríguez v. Honduras* stated that remedies, like the grievance procedure provided by the TDCJ, bear a standard of effectiveness. The Court stated that in order for remedies to be effective, any such remedies must not be illusory.²⁷³ When developing adequate procedures to respond to allegations of ill-treatment, States have a duty to ensure that their remedies are not illusory or lacking the “due process of the law.”²⁷⁴ If facing a defective remedies system, victims bear no burden to pursue flawed remedies.²⁷⁵

Elaborating on the *Velásquez Rodríguez* standard, another IACtHR case, *Cabrera García and Montiel Flores v. Mexico*, declared that an effective remedy for torture and ill-treatment included a guarantee of substantive action in the case that ill-treatment has occurred.²⁷⁶ The Court stated that remedies “must provide results or answers to the violations of rights enshrined in the Convention, in the Constitution, or in the law . . . the remedy must be appropriate to combat the violation and . . . must be applied effectively by the competent authorities.”²⁷⁷

Gonzalez Medina v. Dominican Republic stated that State investigations into complaints

269 Convention Against Torture art. 14; General Comment No. 3 of the Committee against Torture, para. 2, CAT/C/GC/3 (Nov. 19, 2012), available at http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf; International Covenant on Civil and Political Rights art. 2, para 3, Dec. 16, 1966, 999 U.N.T.S. 171; Human Rights Committee, General Comment 20, art. 7, para. 15, U.N. Doc. HRI/GEN/1/Rev.1 (1994), available at <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>; Organization of American States, American Convention on Human Rights art. 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123; Inter-American Convention to Prevent and Punish Torture art. 6, Dec. 9, 1985, O.A.S.T.S. No. 67.; Council of Europe, European Convention on Human Rights art. 13, June 1, 2010.

270 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V.

271 The Inter-American Court has stated that an *effective* remedy “constitutes one of the basic pillars, not only of the American Convention, but also of the Rule of Law...it is not enough that recourses exist formally, but that they must be effective... in other words, the persons must be offered the real possibility of filing a simple and prompt recourse.” *Cantos v. Argentina*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No 97, para. 52 (Nov. 28, 2002), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_97_ing.pdf; See also *Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, para. 116 (Nov. 27, 2003), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_103_ing.pdf; *Juan Humberto Sánchez v. Honduras*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 99, para. 121 (June 7, 2003), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_99_esp.pdf.

272 *Cantoral-Benavides v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, para 163 (Aug. 19, 2000), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_69_ing.pdf.

273 *Velásquez Rodríguez v. Honduras*, Preliminary Objections, Judgment, (ser. C) No. 30, paras. 91, 93 (June 26, 1987), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_01_ing.pdf.

274 *Id.* at para. 91.

275 *Id.*

276 *Cabrera Garcia and Montiel Flores v. Mexico*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, (ser. C) No. 220, para 142 (Nov. 26, 2010), http://www.corteidh.or.cr/docs/casos/articulos/seriec_220_ing.pdf.

277 *Id.*

of human rights abuses need to be “diligent and effective.”²⁷⁸ The Court clarified that the diligence and effectiveness requirement does not include a predetermined obligation to offer results to alleged victims, but rather is an “obligation of means...not as a mere formality preordained to be ineffective.”²⁷⁹ One of the primary objectives of this duty is the prevention of repeated human rights violations, like ill-treatment.²⁸⁰

The TDCJ fails to offer effective remedies for individuals who suffer from extreme heat. This failure arises from the TDCJ’s lack of responsiveness to allegations of ill-treatment in the very complaint procedures that the TDCJ itself established. Inmates rely on the informal and formal grievance process provided for through the TDCJ, but do not receive any substantive response or, in some cases, even any evidence of investigation into their grievance.

At a very minimum, the duty to provide effective remedies means that TDCJ must carry out investigations that all parties find equitable. The TDCJ is aware of the danger that inmates face each summer. The TDCJ’s own grievance process and administration of its prisons, as well as lawsuits and other advocacy alleging abuse establish this awareness. Even further, such awareness triggers a duty to investigate and, in the case that ill-treatment as a result of extreme heat has taken place, to take measures to stop the ill-treatment and to prevent others from suffering the same fatal conditions.

Although available, grievance procedures offer little hope for inmates, who see their complaints inadequately responded to or not responded to at all, and who meet a self-defeating process at each stage of petition. Every summer, more inmates die from extreme heat, and yet TDCJ still fails to offer any effective means of widespread relief.

iv. Freedom from Retaliation

Human rights standards protect individuals against retaliation. Article 13 of the Convention against Torture provides that “steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”²⁸¹

Inmates and family members have refrained from filing grievances for fear of retribution. Some inmates have suffered actual instances of retaliation, including disruptive searches, confiscation of personal property, and restricted access to cooler areas with slightly more ventilation like indoor and outdoor recreation areas.

The TDCJ, the state of Texas, and the United States government have demonstrated extreme indifference toward the health of TDCJ inmates and guards. Besides the inmate and guard deaths verifiably caused by internal prison temperature conditions, the over 150,000 inmates currently housed in TDCJ prisons continue to unnecessarily suffer in violation of binding domestic and international standards. For inmates, this ongoing suffering is magnified by the TDCJ’s inadequate healthcare and futile grievance systems. The TDCJ’s refusal to effectively regulate its prisons’ internal temperature and/or provide meaningful healthcare and grievance

278 González Medina and Family v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 240, para 127 (Feb. 27, 2012), available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_240_ing1.pdf.

279 *Id.* at para. 203.

280 *Id.*

281 Rule 70.4 of the European Prison Rules holds that any punishment for complaining shall be prohibited.

procedures to its inmates violates numerous, binding domestic and international standards. By not acting to protect the human rights of TDCJ inmates, the United States is liable for violating the international standards discussed herein.

Violations of International Law

A. The Right to Health

Several international human rights instruments establish States' duties to protect all individuals' right to health. This obligation is owed to all individuals, including to prison inmates, and stems from a duty to respect the dignity inherent in all human beings. At a minimum, the obligation requires the United States, Texas and the TDCJ to ensure that living conditions in prisons are not life-threatening, or harmful to their physical integrity, and that all individuals have access to proper, adequate and timely medical care.²⁸² However, through the TDCJ, both Texas and the United States have shown indifference to the health of inmates by maintaining prison facilities that are verifiably hazardous.

Each summer, the heat and humidity described in TDCJ prisons violate inmates' rights to health.²⁸³ Furthermore, as the Clinic documented in its previous report, these conditions have claimed at least 14 lives.²⁸⁴ The remedial measures the TDCJ has implemented, such as the installation of evaporative coolers and the provision of ice water are insufficient to protect the health of inmates. This section is intended to give an overview of the sources of international law that obligate the governments of Texas and the United States to ensure inmates' right to health.

i. The United Nations

The right to health encompasses an obligation to address prisoner health, the right to "which include[s] adequate housing and living conditions."²⁸⁵ Article 25 of the Universal Declaration of Human Rights ("UDHR") likewise guarantees "everyone...a standard of living adequate for...health."²⁸⁶ The *Standard Minimum Rules for the Treatment of Prisoners* further reinforces this notion, stating that "[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climactic conditions and particularly to cubic content of air... lighting, heating and ventilation."²⁸⁷ The ventilation systems in TCDJ units are often not regularly cleaned, and—

282 U.N. Economic and Social Council, *The Right to the Highest Attainable Standard of Health*, General Comment 14, paras. 1, 36 (2000) [hereinafter General Comment 14].

283 Prison Crime Holds Steady as Population Declines, NBC DALLAS FORT WORTH, TEXAS NEWS (June 23, 2014), <http://www.nbcdfw.com/news/local/Prison-Crime-Holds-Steady-as-Population-Declines-264273111.html> (last visited Oct. 15, 2014).

284 DEADLY HEAT, *supra* note 2.

285 *Supra* note 279 at 6.

286 Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III), art. 25 (Dec. 10, 1948).

287 U.N. Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 2076 (LXII), para. 10 (May 13, 1977).

given the size of the units and the number of inmates housed—not only does the TDCJ fall well below the standard of paying “due regard”, they fail to tackle the problems of the heat index.



UN Photo/Jean-Marc Ferré

Both the International Covenant of Civil and Political Rights (“ICCPR”) and the UDHR recognize “the inherent dignity . . . of all members of the human family.”²⁸⁸ In light of this precept, the Human Rights Committee, the body responsible for monitoring States’ compliance with the ICCPR, has interpreted States’ obligations under the ICCPR to include “the provision of adequate medical care during detention.”²⁸⁹ Also, the United Nations Basic Principles for the Treatment of Prisoners states that, “[p]risoners shall have access to the health services available in the country without discrimination on the basis of their legal situation.”²⁹⁰ Therefore, as demonstrated in *supra* pages 20-27, the health services currently available to TDCJ inmates simply cannot comply with these United Nations standards. Accordingly, the United States has failed, and continues to fail, to fulfill its duty to protect the right.

The TDCJ routinely disregards inmates’ rights to health, and the TDCJ, Texas and the United States, though aware of the problem, have not made efforts to improve the situation.²⁹¹ The TDCJ is a governmental agency of the state of Texas; the United States has explicitly acknowledged the power of the Department of Justice (“DOJ”) to affect change in state prison conditions.²⁹² The United States can use this power to improve the life-threatening living

288 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. Doc. A/6316, Preamble (Dec. 10, 1948); Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/Res/217(III), Preamble (Dec. 10, 1948).

289 Communication No. 232/1987, *Pinto v. Trinidad and Tobago*, Views adopted on 20 July 1990, para. 12.7; Communication No. 253/1987, *Kelly v. Jamaica*, Views adopted on 8 April 1991, para 5.7.

290 Basic Principles for the Treatment of Prisoners. G.A. Res. 45/111, no. 9 (Dec. 14, 1990).

291 See E.g., in the Clinic’s hearing before the Inter-American Commission on Human Rights, the United States was present and held to answer for its failure to take an active role in remedying the deadly conditions in TDCJ prisons. Inter-Am. Comm’n H.R., Thematic Hearing on Persons Deprived of their Liberty (Oct. 27, 2014), <https://www.youtube.com/watch?v=sJAtoqBb3oA>.

292 U.S. DEP’T OF STATE, INITIAL REPORTS OF STATES PARTIES DUE IN 1995, ADDENDUM, U.S. ¶¶ 312–13 (1999), available at <http://2001-2009.state.gov/documents/organization/100296.pdf>. 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. 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

conditions that inmates face every summer, and indeed has a duty to do so.

The Office of the U.N. High Commissioner on Human Rights (OHCHR) published the Manual on Human Rights Training for Prison Officials as a practical guide for state parties' compliance with Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.²⁹³ Specifically, the OHCHR cites Rule 10 of the Standard Minimum Rules for the Treatment of Prisoners: "All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, ... heating and ventilation."²⁹⁴ Indeed, the OCHR lists adequate temperatures and ventilation among "certain basic standards" for prison accommodations, the absence of which is a violation of international law.²⁹⁵ Again, the TDCJ violates these standards by not providing "basic" and adequate climatic conditions for inmates under its care.

As described earlier in this report, during the summer months TDCJ inmates are detained in living conditions without adequate medical care. Although it is not an international human rights body, the World Health Organization's ("WHO") guide to health in prisons sets standards the TDCJ consistently violates: [w]hen a state deprives a person of their liberty, it takes on a responsibility to look after their health in terms of both the conditions under which it detains them and of the individual treatment that may be necessary.²⁹⁶ Further, although the TDCJ does examine the health of each inmate each inmate and is aware of each inmate's health history in line with WHO standards,²⁹⁷ it neither adequately monitors heat-vulnerable inmates nor assures that they will work in environments appropriate for their health conditions.²⁹⁸

ii. The Organization of American States

Like the UDHR and the ICCPR, the American Declaration on the Rights and Duties of Man ("ADRDM") acknowledges a basic, unalienable dignity and right to health as fundamental rights possessed by every person.²⁹⁹ The Inter-American Commission on Human Rights has expressed concern over extreme prison conditions in its Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, stating that "persons deprived of liberty shall have adequate floor space, daily exposure to natural light, appropriate ventilation and heating, according to the climactic conditions of their place of deprivation of liberty."³⁰⁰ The situation in TDCJ units just discussed clearly violates these standards.

often result in the jurisdictions taking the necessary remedial measures, but which may also be followed by the Department filing a lawsuit." *Id.*

293 Office of the United Nations High Commissioner For Human Rights, Human Rights and Prisons: Manual on Human Rights Training for Prison Officials, iii, (2005), <http://www.ohchr.org/Documents/Publications/training11en.pdf>, at iii.

294 *Id.* at 49.

295 *Id.* at 49–50.

296 Health in Prisons 7, WORLD HEALTH ORGANIZATION EUROPE, (2007), http://www.euro.who.int/__data/assets/pdf_file/0009/99018/E90174.pdf.

297 *Id.* at 24.

298 *Supra* pages 20-27.

299 American Declaration on the Rights and Duties of Man, Ninth International Conference of American States (1948), OEA/Ser.L.V/II.82, doc. 6 rev. 1, Preamble, Art. XI (1992).

300 Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Inter-Am. Comm'n H.R., Res. 1/08, Principle XII (March 13, 2008), http://www.cidh.oas.org/pdf%20files/RESOLUTION%201_08%20-%20PRINCIPLES%20PPL%20FINAL.pdf.



Credit: www.oas.org

B. The Prohibition of Cruel, Inhuman, and Degrading Treatment

The United States has obligated itself under several international human rights instruments to treat inmates with the respect and inherent dignity of a human being. The international community has taken the firm and consistent position that extreme heat, such as that to which Texas prisoners are subjected every summer, surpasses the threshold for cruel, inhuman, and degrading treatment. Indeed, the conditions in TDCJ prisons violate standards established by every organization that has explicitly considered the issue of regulating inmates' exposure to extreme temperatures.

i. The United Nations

Article 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment obligates member states to “undertake to prevent in any territory under [their] jurisdiction... acts of cruel, inhuman or degrading treatment or punishment which do not amount to [intentional torture], when such acts” are attributable to a public official or person acting in an official capacity.³⁰¹ CAT has frequently addressed the issue of extreme prison temperatures in other countries. On multiple occasions, CAT specifically mentioned “ventilation, heating...and access to fresh air” in its list of issues to various signatory countries around the world.³⁰² Its Concluding Observations to Estonia,³⁰³ Bulgaria,³⁰⁴ and Mongolia³⁰⁵ note poor ventilation as a sign that prison conditions do not meet CAT standards. CAT also

301 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 16, Dec. 10, 1984, G.A. Res 39/46, U.N. Doc. A/39/51.

302 U.N. Comm. Against Torture, *List of Issues Prior to the Submission of the 2nd Periodic Report of Kyrgyzstan*, 42d Sess para. 20, U.N. Doc. CAT/C/KGZ/Q/2 (June 23 2009), available at <http://www.refworld.org/docid/521f21784.html>.

303 Committee Against Torture, *Concluding Observations on the 5th Periodic Report of Estonia*, 50th Sess. para. 17, U.N. Doc. CAT/C/EST/CO/5 (June 17 2013), <http://www.refworld.org/docid/51dfe0564.html>.

304 Committee Against Torture, *Concluding Observations of the Committee against Torture: Bulgaria*, 47th Sess. para. 22, U.N. Doc. CAT/C/BGR/CO/4-5 (December 14 2011), available at: <http://www.refworld.org/docid/4f1d594a2.html>.

305 Committee Against Torture, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention - Mongolia*, 45th Sess. para. 16, U.N. Doc. CAT/C/MNG/CO/1 (January 20 2011), available at: <http://www.refworld.org/docid/4ef095f02.html>.

recommended urgent review of the conditions in a Beninese facility, where heat indices exceeded 120°F., and advised that remedial measures be implemented there.³⁰⁶

In its most recent Concluding Observations to the United States, CAT addressed the issues of extreme heat and lack of proper ventilation in U.S. prisons for the first time:

“The Committee is particularly concerned about reports of inmate deaths occurred as a result of extreme heat exposure while imprisoned in unbearably hot and poorly ventilated prison facilities in... Texas.

The Committee urges the State party to investigate promptly, thoroughly and impartially all deaths of detainees, assessing the health care received by inmates as well as any possible liability of prison personnel, and provide, where appropriate, adequate compensation to the families of the victims.

The State party should adopt urgent measures to remedy any deficiencies concerning the temperature, insufficient ventilation and humidity levels in prison cells, including death row facilities.”³⁰⁷³⁰⁸

ii. The Organization of American States

On October 27, 2014, the Clinic argued before the Inter-American Commission on Human Rights (“IACHR”) that the U.S. had failed in its obligation to prevent cruel, infamous, or degrading treatment or punishment of TDCJ prisoners. Despite awareness of the issue and prior notification of the hearing, representatives from Texas and the TDCJ refused to attend. Representatives from the The United States Department of State listened to the Clinic’s presentation but were unable to contest the facts. IACHR President Felipe González expressed regret that representatives from Texas did not participate in the hearing and described the state of TDCJ prisons as a “situation ... of extreme concern”³⁰⁹.

306 U.N. Subcomm. on Prevention of Torture, *Report on the Visit of the Subcomm. on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Benin*, paras. 180, 190, U.N. Doc. CAT/OP/BEN/1 (2011), available at <http://www.refworld.org/docid/522073524.html>.

307 Committee Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of the United States of America*, para. 22, U.N. Doc. CAT/C/USA/3-5 (Nov. 20 2014), available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_COC_USA_18893_E.pdf.

308 The Human Rights Clinic's October 2014 Shadow Report, available online, provides a full analysis of how TDCJ prison conditions and the United States government are similarly violating CAT standards. It is available at http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_CSS_USA_18574_E.pdf.

309 Inter-Am. Comm’n H.R., Thematic Hearing on Persons Deprived of their Liberty (Oct. 27, 2014), <https://www.youtube.com/watch?v=sJAtoqBb3oA>.



IACHR Hearing Heat in Prison Oct. 27, 2014

According to the IACHR's recent press release on the matter³¹⁰, the Commission expressed the "need to investigate the deaths of inmates", and to "establish mechanisms to monitor general conditions and address the problems". The Commission also stated that it would "follow up on the situation". In similar investigations in the past, the IACHR has found that a lack of ventilation and "oppressive heat" in Honduras and Suriname created a "suffocating atmosphere" for inmates.³¹¹ It has also found to be "in serious violation of the right to humane treatment" because its inmates were exposed to extreme heat without adequate ventilation.³¹² The Inter-American Court has further held that a failure to provide inmates with adequate measures for alleviating extreme temperatures violates Article 5 of the American Convention.³¹³ In light of these previous findings, the Commission's intent to further investigate into TDCJ facilities shows considerable promise.

310 Inter-Am. Comm'n H.R., Report on the 153rd Session of the IACHR (Dec. 29, 2014), http://www.oas.org/en/iachr/media_center/PReleases/2014/131A.asp

311 Report on the Human Rights of Persons Deprived of Liberty in the Americas, Inter-Am. Comm'n H.R., OEA/Ser.L/V/II., doc. 64 paras. 228, 402 (Dec. 31, 2011), available at <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf>.

312 Report on the Situation of Human Rights in Jamaica, Inter-Am. Comm'n H.R., OEA/Ser/L/V/II144, doc. 12 para. 201 (Aug. 10, 2012), available at <https://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>.

313 Miguel Castro-Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 181 (Nov. 25, 2006) (State's failure to provide warm clothes to inmates where temperatures fell below zero violated Article 5).

Conclusions & Recommendations

It is clear that the conditions in TDCJ prisons fall well below the established standards expected against cruel, inhuman, or degrading treatment. Specifically, the Clinic's findings regarding TDCJ prisons' internal temperatures, the pervasive lack of air conditioning, inmates' increased risk of heatstroke and death, and the inadequacies of the TDCJ's heat-relieving measures far surpass conditions that have already been held to violate member state obligations by several bodies as discussed³¹⁴. In addition to that, the TDCJ fails to provide sufficient health care for heat-vulnerable inmates despite being well aware of their conditions. This report has also demonstrated how the current system in place for responding to inmate grievances is wholly inadequate, and in some cases has actually created a culture where inmates are deterred from filing such grievances.

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

– Keith "Malik" Washington

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Indeed, conditions in Texas prisons parallel those the United States has consistently condemned worldwide. Each year, the U.S. Department of State submits Country Reports on Human Rights Practices to the U.S. Congress.³¹⁶ These reports are mandated by Congress in an effort to inform U.S. policy and foreign assistance.³¹⁷ The Reports cover all countries receiving assistance from the U.S. as well as all U.N. member states.³¹⁸ In these Reports, the State Department has cited high temperatures and inadequate ventilation or cooling in prisons across the globe as a key factor in determining prison conditions to be harsh and life threatening, or otherwise insufficient to meet international standards.³¹⁹ Countries in which the State Department recently reported such conditions include the Bahamas,³²⁰ Pakistan,³²¹

314 *Id.*

315 Interview of Keith "Comrade Malik" Washington, Inmate, TDCJ Ramsay I Unit, in Rosharon, Tex. (Oct. 9, 2014).

316 U.S. Dep't of State, *Human Rights Reports*, <http://www.state.gov/j/drl/rls/hrrpt/>.

317 Press Release, U.S. Dep't of State, 2013 Country Reports on Human Rights Practices (Feb. 27, 2014), available at <http://www.state.gov/r/pa/prs/ps/2014/02/222640.htm>.

318 U.S. Dep't of State, *Human Rights Reports*, <http://www.state.gov/j/drl/rls/hrrpt/>.

319 Country Reports on Human Rights Practices for 2013: Secretary's Preface, Bureau of Democracy, Human Rights and Labor, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#section1prisonand>.

320 U.S. DEP'T OF STATE, BAHAMAS 2013 HUMAN RIGHTS REPORT 2–3 (2013), available at <http://www.state.gov/documents/organization/220627.pdf>.

321 U.S. DEP'T OF STATE, PAKISTAN 2013 HUMAN RIGHTS REPORT 10–11 (2013), available at <http://www.state.gov/documents/organization/220614.pdf>.

Senegal,³²² Chile,³²³ China,³²⁴ Japan,³²⁵ and Madagascar.³²⁶ Texas does not fare better than these countries on the issue of living conditions within prisons. Even Guantánamo Bay, a US facility designed to deal with the most serious of offenders, provides air-conditioned cells for its detainees³²⁷.

The State of Texas, TDCJ, and the United States must respond to the ongoing human rights violations occurring within their scope of responsibility. The Clinic makes the following recommendations to prevent further inhumane treatment of inmates and further suffering by inmates and TDCJ staff.

To prevent not just further inmate deaths, but the continuing violation of inmates' right to health, dignity, physical and moral integrity, the State of Texas, through the Texas Legislature, the Texas Department of Criminal Justice (TDCJ), and any related agencies must take immediate measures to institute policies in the prisons. This should be done through implementation of the following suggestions:

Housing Conditions:

1. Establish a temperature range from 65°F to 85°F throughout TDCJ facilities, including in prison cells and inmate housing areas. Additionally, the heat index (a combination of temperature and relative humidity) should never exceed 90°F to ensure that the risk level inmates and guards are exposed to never exceeds the "caution" level displayed in Figure 2 on page 11 of the report;
2. Approve and allocate all necessary funds for installation of permanent air conditioning in all areas of all TDCJ prison facilities;
3. Adopt all necessary preventive measures to avoid heatstroke and heat related injuries. This could include, but is not limited to:
 - a. Allowing inmates to take as many showers as necessary throughout the day to alleviate the risk of heat related injury;
 - b. Ensure that all cells have cooling fans in addition to A/C if necessary;
 - c. Allow inmates to queue for all windows (such as medication stations) inside in air conditioned areas;
 - d. Provide inmates with transit buses that have air conditioning; and
 - e. Implement standards recommended by organizations such as:
 - i. The Centers for Disease Control (CDC) which recommends, among other things, the frequent replacement of fluids (giving inmates access to ice and cool water), and taking breaks from prolonged

322 U.S. DEP'T OF STATE, SENEGAL 2013 HUMAN RIGHTS REPORT 3 (2013), available at <http://www.state.gov/documents/organization/220363.pdf>.

323 U.S. DEP'T OF STATE, CHILE 2013 HUMAN RIGHTS REPORT 3–4 (2013), available at <http://www.state.gov/documents/organization/220640.pdf>.

324 U.S. DEP'T OF STATE, CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) 2013 HUMAN RIGHTS REPORT 6–7 (2013), available at <http://www.state.gov/documents/organization/220402.pdf>.

325 U.S. DEP'T OF STATE, JAPAN 2013 HUMAN RIGHTS REPORT 2–3 (2013), available at <http://www.state.gov/documents/organization/220409.pdf>.

326 U.S. DEP'T OF STATE, MADAGASCAR 2013 HUMAN RIGHTS REPORT 3–4 (2013), available at <http://www.state.gov/documents/organization/220342.pdf>.

327 Press Release, U.S. Dep't of State, 2013 Country Reports on Human Rights Practices (Feb. 27, 2014), available at <http://www.state.gov/r/pa/prs/ps/2014/02/222640.htm>.³⁰² U.S. Dep't of State, Human Rights Reports, <http://www.state.gov/j/drl/rls/hrrpt/>.

- ii. exposure to extreme heat and humidity; and
- ii. The Occupational Safety and Health Administration (OSHA) which recommends, among other things, that even workers involved in light, sedentary work (such as writing or knitting) should avoid continuous work in temperatures higher than 87°; that ample supplies of liquids should be made available to these workers, and that workers should drink small amounts frequently (such as one cup every twenty minutes) to replace lost fluids; and that efforts at climate control like proper ventilation, air conditioning, and fans should be used to avoid heat-related injury ;
- 4. Make available the same standards for inmates' living areas and cells that the TDCJ already have for inmates in working conditions. This would require:
 - a. Prison staff to promote high water intake when the temperatures reach 110°F; and
 - b. Prison staff to promote "excessive" water intake when the temperatures reach 130°F;
- 5. Any newly constructed prison buildings must be built with air conditioning, and the TDCJ can only contract with prisons that already have air conditioning installed.

Grievance Procedures, Investigations and Remedies:

- 1. Ensure that all inmate complaints receive a complete and impartial investigation by an independent investigator (i.e., someone outside the unit where the complaint is filed). Additionally, the inmate who filed the complaint and any relevant witnesses should be interviewed;
- 2. Ensure that inmates are protected from retaliation by TDCJ employees for filing grievances. TDCJ must give effect to Article 13 of the UN Convention Against Torture which gives detainees protection against ill-treatment or intimidation as a consequence of their complaint or evidence being given;
- 3. Promptly, thoroughly and impartially all deaths of detainees in TDCJ facilities, and to carefully assess the health care received by inmates;
- 4. Create a public index of grievances and responses in TDCJ facilities similar to that of the Federal Bureau of Prisons. This would make such information available to the public without the use of names; and
- 5. Grant the Ombudsman broad jurisdiction to receive, process, and directly investigate claims, rather than merely responding to the claims by inmates and their families. These powers include, but are not limited to:
 - a. The authority to investigate anonymous complaints;
 - b. The authority to initiate sua sponte investigations to protect inmates from retaliation; and
 - c. The capacity to interview inmates and guards to follow up on these investigations to ensure that the situation is being handled properly.

Health of Inmates:

- 1. Immediate screening of all new inmates for health conditions or medications that could make them more susceptible to heat-related illness;
- 2. Establish a clear procedure to increase monitoring for heat-sensitive individuals;
- 3. Immediate movement of heat-sensitive new inmates to housing areas that do not have temperatures exceeding 85°F. If air conditioning is not yet available,

- the inmate should be transferred to a different unit. If that is not possible, the heat-sensitive new inmates should be continuously monitored;
4. Frequent monitoring of all inmates housed in non-air conditioned units when temperatures in inmate housing areas exceed 85°F;
 5. Uniform documentation of the above recommendations, including number of inmates classified as susceptible to heat-related illness, and quantity of cool liquids provided per inmate;
 6. Establish a training program for medical personnel that focuses specifically on heat related injuries, including, but not limited to:
 - a. Recognizing what inmates are at an increased risk of suffering a heat related injury;
 - b. Understanding the heat-related side effects of certain medical conditions and medications; and
 - c. Establishing protocols for monitoring the inmates and properly treating them;
 7. Establish a training program for non-medical personnel to recognize when someone is at risk of suffering from a heat related injury, as well as when to alert medical staff about possible heat related injuries;
 8. Proper identification of heat related injuries and deaths in the TDCJ's medical records; and
 9. Implement the recommendations made by the UN Committee Against Torture (CAT) to investigate promptly, thoroughly and impartially all deaths of detainees in TDCJ facilities, and to carefully assess the health care received by inmates.

In pursuit of these reforms, The United States Department of Justice and Department of State must intervene to assist the State of Texas in achieving these recommendations. The United States carries a burden to prevent inhuman treatment under the Constitution and international law. Civil society and international organizations are prepared to assist in complying with these standards and prevent further injuries and deaths. Specifically, the United States Department of Justice and Department of State should:

1. Invite the Inter-American Commission on Human Rights to conduct an on-site visit and issue a report on extreme temperatures in Texas prisons;
2. Oversee and monitor the TDCJ and The State of Texas to ensure their compliance with these recommendations and those of international institutions. This could be achieved by implementing a training program to ensure that the TDCJ adheres to international standards;
3. Attend any hearings held by the Inter-American Commission on Human Rights on this issue, and secure the TDCJ and State of Texas' attendance as well; and
4. Implement the recommendations made by the UN Committee Against (CAT) Torture. These are to:
 - a. Investigate heat-related deaths;
 - b. Assess health care standards and liability of medical and prison staff for heat related injuries;
 - c. Provide adequate compensation for individuals who have suffered from heat related injuries and to families whose loved ones who have died from the heat; and
 - d. Establish a prompt, impartial, and effective grievances procedure for inmates.

The Human Rights Clinic is aware that implementation of these suggestions would require financial resources. But the TDCJ is already incurring great expenses on this issue currently. Such costs include the costs of treating heat related injuries, litigation costs in the wrongful death suits and costs associated with the injuries of the guards. But the greatest cost they are incurring are the lives and dignity of the inmates, and so The State of Texas and the TDCJ must find a financially viable way to deal with this issue. To achieve these recommendations, one such proposal would be to consider reforming the Penal Code in Texas to reduce the general prison population. This could be done in many ways, one example being classifying all non-violent offences carrying sentences of two years or less as misdemeanors requiring probation rather than jail time. Thus, not only would such a reform of the Penal Code mean that there would be fewer inmates overall, but there would also be more funds to go towards improving the appalling conditions in Texas prisons.

I also believe that if any of these TDCJ-ID Officials reported my heat related incidents and illness to the Cottfield Unit Medical staff, then said Medical staff had a duty to provide Medical care.

The heat about did me in on R-wing this summer and my coordination hasn't been right since enduring severe heat related symptoms. I'm not asking for medical records and just want to know if the TDCJ-ID officials I notified of my heat illness, notified the Cottfield Unit medical department of what the heat was doing to me Yes or NO? SEP 11 2014

Action Requested to resolve your Complaint. Yes or No? Was Cottfield Medical department notified by TDCJ-ID officials of my heat illness.

Offender Signature: _____

Grievance Response:

Per chart review, medical was never notified of any heat related issues you were having. If you are having any issues submit a sick call request.

Signature Authority: Pam Pace

Pam Pace
Practice Manager

Date: 10-21-14

If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. *
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments. *
- 5. No documented attempt at informal resolution. *
- 6. No requested relief is stated. *
- 7. Malicious use of vulgar, indecent, or physically threatening language. *
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # _____
- 10. Illegible/Incomprehensible. *
- 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 nd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3 rd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F

2) I-127 and I-128 Offender Grievance Forms



Texas Department of Criminal Justice
STEP 1 OFFENDER GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #:	[REDACTED]
Date Received:	[REDACTED]
Date Due:	[REDACTED]
Grievance Code:	[REDACTED]
Investigator ID:	[REDACTED]
Extension Date:	[REDACTED]
Date Ret'd to Offender:	JUN 23 2014

Offender Name: [REDACTED] TDCJ # [REDACTED]
 Unit: Terrell Housing Assignment: [REDACTED]
 Unit where incident occurred: Terrell

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? Ms. Raven / Lieutenant When? 6/7/14
 What was their response? " I'll think about it "
 What action was taken? informal resolution of case

State your grievance in the space provided. Please state who, what, when, where and the discipline imposed.
 On 6/7/14 @ 15:30 C.O. Kuti was assigned to Echo dormitories 2. Kuti gave me a direct unlawful order to quit "showering". After this unlawful order I motioned to Kuti to address me. While officer Kuti believed I was showering, my body due to heat exhaustion. I was dressed in shorts. I needed medical attention. Kuti did not say one word to me, and I asked for medical help but Kuti made no effort to help or contact the infirmary. I also now that Kuti is in possession of a notification card provided by supervisors on the extreme heat conditions and what to watch for, such as heat exhaustion and heat stroke. This card does not tell Kuti how to recognize heat strokes and exhaustion, as well as I notified him I was suffering from one. Also this card tells officers treatment and prevention of such conditions and I will note them below. " move person out of direct sunlight into air-conditioning if possible" 2014

An investigation has been conducted regarding your complaint. Investigation revealed insufficient evidence to support your allegation of staff misconduct by Officer Kuti on the alleged date. No further action is warranted.

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JUN 23 2014 (OVER)

[FACT] - BASED ON THE FACT THIS (TDCJ - CID) Agency DOES [NOT] HAVE AN ESTABLISHED Policy for an inmate (C-DORM) THAT WE ~~HAD~~ [NOT] GOTTEN ANY ICE FOR OUR (COOLER). HE STATED [HE] WOULD GET US SOME (NOTE: THANKS TO THE (SR. WARDEN) C-DORM FINALLY GOT ICE AT 1:10 PM)

VIOLATION(S)

I BELIEVE THAT (C-DORM) WAS DENIED/DEPRIVED [ICE] ON 7/28/2014, WHEN (A-DORM, B-DORM AND THE DAY ROOM) WERE ALL AFFORDED [ICE] AT 11:30 AM. WHICH IS A VIOLATION OF (AD-03.02) II.(C) (SPECIAL PRIVILEGES) DUE TO MY PREVIOUS (GOOD FAITH) USE OF FILING GRIEVANCE # 2014161308 CONCERNING [ICE] DISTRIBUTION FOR ICE WATER IN THESE (EXTREME HOT SUMMER TEMPS) TO COOL DOWN WITH. IN VIOLATION OF MY (1ST AND 14TH) U.S. CONST. AMEND. [RIGHTS]. A VIOLATION OF - (BP-03.77) (A.D-03.82) IV. (BP-03.81) AND TEX. GOV. CODE § 501.008 (UNDER-REPRISALS) FOR SUCH RETALIATION / REPRISALS TO (STOP) DUE TO MY (GOOD FAITH) EFFORT IN FILING GRIEVANCES NAMELY (GRIEVANCE #2014161308) TO BE AFFORDED THE SAME - SPECIAL PRIVILEGES OF ICE AS A-DORM AND B-DORMS GET [DAILY 1ST & 2ND SHIFTS]

Offender Signature: _____
 Grievance Response: _____

Investigation into your complaint did not reveal evidence of staff misconduct. Ice was passed out as soon as it was available. No corrective action is warranted.

WARDEN KENNETH JOLLEY



Date: **AUG 21 2014**

Signature Authority: _____
 If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. *
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments. *
- 5. No documented attempt at informal resolution. *
- 6. No requested relief is stated. *
- 7. Malicious use of vulgar, indecent, or physically threatening language. *
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # _____
- 10. Illegible/Incomprehensible. *
- 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

I-127 Back (Revised 11-2010)

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
1 st Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 nd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____

Appendix F

SEP 07 2014



Texas Department of Criminal Justice
STEP 2 OFFENDER
GRIEVANCE FORM

OFFICE USE ONLY	
Grievance #:	[REDACTED]
UGI Recd Date:	[REDACTED]
HQ Recd Date:	[REDACTED]
Date Due:	[REDACTED]
Grievance Category:	[REDACTED]
Investigator:	[REDACTED]
Extension Date:	_____

Offender Name: [REDACTED] TDCJ # [REDACTED]
 Unit: Terrell K3 Housing Assignment: [REDACTED]
 Unit where incident occurred: Terrell

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). *I am dissatisfied with the response at Step 1 because...*
 I am dissatisfied with my step one due to the fact I am always told I have insufficient evidence. The real reason is because there is never a true investigation done. If I have no evidence, what happened to the disciplinary case that Lt. Raven informally resolved. That case should be filed and held for review at later dates. If there was an investigation this would have been seen and given some weight in my complaint. It just never happened, or as other records staff simply destroys it. Also, all I asked for is posting of policies on the A "extreme heat" conditions from June 1st to October 1st. That should have been a notification on this unit.

Step 1 response appropriate. Please refer to that response. There was no evidence to substantiate your allegations. No further action warranted.

[FACT] - BASED ON THE FACT THIS (TDCJ - CID) AGENCY DOES **[NOT]** HAVE AN ESTABLISHED POLICY (IE... BP, AD, UNIT POLICY, ETC...) CONCERNING **[ICE]** FOR (ICE WATER COOLERS IN THESE EXTREME HOT SUMMER TEMPERATURES). AFFORDS THE (TDCJ - CID) AND "ADMINISTRATORS" TO **[DISREGARD]** THE RISK TO HUMAN LIVES (DUE TO THE FACT THEY JUST DO NOT CARE WHETHER INMATES LIVE OR DIE.) SINCE ICE WILL ONLY BE PASSED-OUT IF/WHO'S AVAILABLE id GRIEVANCE # 20116130? AS IN THIS CASE - if you file A GRIEVANCE AGAINST SUCH YOU (YOUR DORM) ^{WILL} SUFFER **[REPRISAL]**

Offender Signature: _____

Grievance Response: _____

This was not an intentional act meant to cause your harm; as stated in the Step 1, it was passed out to your housing area as soon as it was available. No evidence of agency policy violation. No further action warranted.

STEVE MASSIE
ASST. REGIONAL DIRECTOR

Signature Authority: _____

Date

SEP 17 2014

Returned because: *Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible.*
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments.*
- 5. Malicious use of vulgar, indecent, or physically threatening language.
- 6. Inappropriate.*

CGO Staff Signature: _____

OFFICE USE ONLY

Initial Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
2nd Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
3rd Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	

3) I-127 and I-128 Offender Grievance Form

*** SPECIALTY GRIEVANCE ***

Texas Department of Criminal Justice

STEP 1 OFFENDER GRIEVANCE FORM

Offender Name: [REDACTED]

Unit: Stringfellow Housing Assignment: [REDACTED]

Unit where incident occurred: Stringfellow TIC (TRUSTEE CAMP)

OFFICE USE ONLY

Grievance #: [REDACTED]

Date Received: [REDACTED]

Date Due: [REDACTED]

Grievance Code: [REDACTED]

Investigator: [REDACTED]

Extension Date: [REDACTED]

Date Ret'd to Offender: AUG 22 2014

You must try to resolve your problem with a staff member before you submit a formal complaint. The only exception is when appealing the results of a disciplinary hearing.

Who did you talk to (name, title)? (SGT) Ryschenique T. Davis When? July 28th 2014 (11:30 AM)

What was their response? "THE TIC KITCHEN NOR THE MAIN BLDG HAS ICE, I'M WAITING TO GET SOME."

What action was taken? [RETIATION/REPRISAL] DUE TO PRIOR GRIEVANCE # 2014161308

State Grievance Response in the space provided. Please state who, what, when, where and the disciplinary case number if appropriate

Grievance Response: GRIEVANCE CODE(S) INVOKED
TO A GRIEVANCE (CODE 804) (RETIATION/
AND (CODE 005) (SPECIAL PRIVILEGE
TO THIS GRIEVANCE [.]

Investigation into your complaint did not reveal evidence of staff misconduct. Ice was passed out as soon as it was available. No corrective action is warranted.

(TDCJ) - EXECUTIVE DIRECTOR
 AND WILLIAM STEPHENS (REGION III DIRECTOR)
 SR. WARDEN - FRANKIE L. REESCANO, ASST. WARDEN - [REDACTED]
 (TIC) TRUSTEE CAMP SUPERVISORS / RANK (1ST & 2ND SHIFTS)

FACT(S)

FOR WEEKS NOW THIS (TIC) SUPERVISING STAFF (i.e. SGT'S & UP) HAVE NEGLIGENTLY - DENIED / DEPRIVED US (TIC) OFFENDERS AND (STAFF ON THE DORMS WORKING) ICE FOR ICE WATER IN THOSE EXTREME HOT SUMMER TEMPERATURES. ON EITHER (1ST OR 2ND SHIFTS OR BOTH).

TODAY ON JULY 28th 2014 - ICE WAS ONLY AFFORDED TO (A DORM - B-DORM, AND THE DAYROOM TIC) NONE WAS AFFORDED TO C-DORM ON THIS (1ST SHIFT). I WENT AND SPOKE TO THE (SGT - DAVIS) AND ASKED (WHY?) WE (C-DORM) OFFENDERS DID NOT GET ANY ICE FOR OUR ICE COOLER. (SGT - DAVIS) STATED "ONLY THE DAYROOM GOT ICE IN THEIR COOLER," WHEN I TOLD HER THAT (A-DORM AND B-DORM) (BOTH) GOT ICE FOR THEIR COOLERS (SGT. DAVIS) STATED "THE TIC KITCHEN NOR, THE MAIN BLDG HAS ICE I'M WAITING TO GET SOME." (STRANGE THE OTHER DORMS & DAYROOM GOT ICE).

AT 12:20 PM. THE (SR-WARDEN - REESCANO) CAME OVER TO (C-DORM) - (TO DELIVER A BOTTLE OF COLD WATER TO THE (C/O WORKING C-DORM) WHEN I TOLD THE SR. WARDEN

I-127 Front (Revised 11-2010) YOUR SIGNATURE IS REQUIRED ON BACK OF THIS FORM (OVER)

NOTE: IT'S AMAZING THAT THIS (TIC) (CRANKING STAFF) THINK MY HEALTH AND SAFETY AS WITH THEIR (SUBORDINATES - HEALTH AND SAFETY) IS SOME KIND OF JOKE WHILE THEY GET TO SIT IN NICE A/C OFFICES AND HAVE ACCESS TO ICE.

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"Remove clothing but maintain modesty", " have person drink water if concious" , "sprinkle water on them and fan them if no breeze" , "get medical attention ASAP". Kuti did none of this! I was not in direct sunlight, I was out of most of my cloths except my shorts and shoes, i was drinking water and I did sprinkle water on my body under a breeze. The only other thing was Kuti needed to contact medical but did not do so since he believed I was violating a rule. Also there is no rule or lawful order to not bath in the "bathroom"! Verbal order is superceeded by written policy, so to say Kuti was right about not bathing, Standards and Behavior chapter three in offender handbook says we must maintain hygeine at all times! In closing, I was suffering and in pain and danger of collapsing from heat but Kuti did not comply with my request for medical help or support. That is mistreatment of offenders and substandard duty performance. JUL 23 2014

Action Requested to resolve your Complaint. Policies posted on extreme heat conditions and to not be mistreated by C.O Kuti again, as well as speak with witnesses of staff members.

Offender Signature: [Redacted] Date: 6-11-2014
 Grievance Response: [Redacted]

An investigation has been conducted regarding your complaint. Investigation revealed insufficient evidence to support your allegation of staff misconduct by Officer Kuti on the alleged date. No further action is warranted.

Signature Authority: [Redacted] Date: JUL 23 2014
 If you are dissatisfied with the Step 1 response, you may submit a Step 2 (I-128) to the Unit Grievance Investigator within 15 days from the date of the Step 1 response. State the reason for appeal on the Step 2 Form.

Returned because: *Resubmit this form when the corrections are made.

- 1. Grievable time period has expired.
- 2. Submission in excess of 1 every 7 days. *
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments. *
- 5. No documented attempt at informal resolution. *
- 6. No requested relief is stated. *
- 7. Malicious use of vulgar, indecent, or physically threatening language. *
- 8. The issue presented is not grievable.
- 9. Redundant, Refer to grievance # _____
- 10. Illegible/Incomprehensible. *
- 11. Inappropriate. *

UGI Printed Name/Signature: _____

Application of the screening criteria for this grievance is not expected to adversely affect the offender's health.

Medical Signature Authority: _____

OFFICE USE ONLY	
Initial Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
2 nd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____
3 rd Submission	UGI Initials: _____
Grievance #:	_____
Screening Criteria Used:	_____
Date Recd from Offender:	_____
Date Returned to Offender:	_____



Texas Department of Criminal Justice

STEP 2

OFFENDER GRIEVANCE FORM

2A42

Offender Name: [REDACTED] TDCJ # [REDACTED]
Unit: STRAUSFELLOW (P2) Housing Assignment: [REDACTED]
Unit where incident occurred: STRAUSFELLOW UNIT (TRUSTEE CAMP)

OFFICE USE ONLY

Grievance #: [REDACTED]
UGI Recd Date: [REDACTED]
HQ Recd Date: [REDACTED]
Date Due: [REDACTED]
Grievance Code: [REDACTED]
Investigator: [REDACTED]
Extension Date: [REDACTED]

You must attach the completed Step 1 Grievance that has been signed by the Warden for your Step 2 appeal to be accepted. You may not appeal to Step 2 with a Step 1 that has been returned unprocessed.

Give reason for appeal (Be Specific). I am dissatisfied with the response at Step 1 because...

THIS IS AN APPEAL FROM GRIEVANCE # 2014190962 DUE TO THE FOLLOWING:

FACT - THAT ON July 28th, 2014 ICE WAS ONLY AFFORDED B-DORM. AND THE DAY ROOM) NONE AFFORDED

FACT - THE ONLY REASON C-D FRANKIE REESCAJO

FACT - IT WAS NOT AN INTENTIONAL ACT MEANT TO CAUSE YOUR HARM; AS STATED IN THE STEP 1, IT WAS PASSED OUT TO YOUR HOUSING AREA AS SOON AS IT WAS AVAILABLE. NO EVIDENCE OF AGENCY POLICY VIOLATION. NO FURTHER ACTION WARRANTED.

FACT - CLEAR/OBVIOUS (MOTIVATED - RETALIATION) BY STAFF TO PROVE GRIEVANCE # 2014161308 (ie. PROOF OF STAFF MISCONDUCT)

FACT - IT IS A VIOLATION OF THE (1ST) AMENDMENT TO THE U.S. CONSTITUTION PLUS A VIOLATION OF ESTABLISHED FEDERAL LAW - TITLE 18 U.S.C.S 1513 - (RETALIATING-AGAINST WITNESS, VICTIM OR INFORMANT) SEE ALSO: TEXAS PENAL CODE - SEC. 36.06. (TDCJ-cid) Policy (BP-03.81), (AD-03.82) X REPRISAL. AND THE (PD-22 RULE # 41).

FACT - HOW COME THE SR. WARDEN - FRANKIE REESCAJO. DID NOT ANSWER (1) - THE (OG-01 GRIEVANCE INVESTIGATION WORKSHEET) OR (2) THE (OG-009 - FACT SHEET FOR OIG INVESTIGATION) AS PER POLICY (AD-03.82) VII (A)(3) - "GRIEVANCES ALLEGING - HARASSMENT / RETALIATION FOR EXERCISING ACCESS TO COURT RIGHTS (IE... GRIEVANCE(S) ETC...) SHALL BE GIVEN PRIORITY ATTENTION AND SHALL BE COORDINATED WITH THE OIG." (OBVIOUS FOR A SEPARATE INDEPENDANT INVESTIGATION TO BE DONE BY THE OIG) HOW COME THIS WAS NOT DONE? TO WHICH I HAD (REESCAJO) BEEN (ORDERED TO ANSWER) WOULD HAVE SUBSTANTIATED MY CLAIMS ON 7/28/14.

NOTE - SINCE FILING THIS GRIEVANCE # 2014190962 ON (JULY 28th 2014) HERE ARE SOME FURTHER (ATROCITIES) - (AUGUST 5th 2014 (NO ICE) 1ST SHIFT) AT 10:00AM IT WAS 89°. 70-90 HUMIDITY, 104 HEAT INDEX; 8/12/14 (NO ICE) TILL 1:00PM. 8/13/2014 (NO ICE) AT ALL TILL 1:30 PM. AND (NO ICE AT ALL)

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Offender Signature: _____

Grievance Response: _____

Step 1 response appropriate. Please refer to that response. There was no evidence to substantiate your allegations. No further action warranted.

STEVE MASSIE
ASST. REGIONAL DIRECTOR
[Signature]

Signature Authority: _____ Date: _____

Returned because: *Resubmit this form when corrections are made.

- 1. Grievable time period has expired.
- 2. Illegible/Incomprehensible.*
- 3. Originals not submitted. *
- 4. Inappropriate/Excessive attachments.*
- 5. Malicious use of vulgar, indecent, or physically threatening language.
- 6. Inappropriate.*

CGO Staff Signature: _____

OFFICE USE ONLY	
Initial Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
2nd Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	
3rd Submission	CGO Initials: _____
Date UGI Recd: _____	
Date CGO Recd: _____	
(check one) <input type="checkbox"/> Screened <input type="checkbox"/> Improperly Submitted	
Comments: _____	
Date Returned to Offender: _____	

