No. 20A70

In the Supreme Court of the United States

LADDY CURTIS VALENTINE AND RICHARD ELVIN KING,
INDIVIDUALLY AND ON BEHALF OF THOSE SIMILARLY SITUATED,
Applicants,

v.

BRYAN COLLIER, IN HIS OFFICIAL CAPACITY, ROBERT HERRERA, IN HIS OFFICIAL CAPACITY, AND THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Respondents.

REPLY IN SUPPORT OF EMERGENCY APPLICATION TO JUSTICE ALITO TO VACATE STAY PENDING APPEAL OF PERMANENT INJUNCTION ENTERED BY THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Introduction

The district court entered a permanent injunction based on extensive findings of fact and conclusions of law after an eighteen-day trial. On an emergency motion and without reviewing the entire record, the Fifth Circuit discarded those detailed findings and stayed the injunction pending appeal. Defendants similarly gloss over the district court's factual findings and argue the issues anew. But that is not the standard by which the appellate court should have judged whether to stay the injunction and it is not the standard this Court should now apply. The district court found that the risk to inmates at the Pack Unit is continuing and imminent based on Defendants' past conduct, Defendants' representations about current conduct at a hearing on Defendants' motion to stay, and Defendants' representations during trial about anticipated future conduct. Deference is owed to that finding of irreparable harm and the many other findings that support the injunction.

Remarkably, Defendants nonchalantly proclaim that "[l]ittle has changed since" the preliminary injunction was stayed, "except that Defendants have taken further measures to combat the COVID-19 pandemic" and "the number of infections at the Pack Unit has fallen dramatically." Resp. 1. Over 500 Pack Unit inmates have been infected with COVID-19 during the pendency of this case, leading to dozens of hospitalizations and 19 deaths since the preliminary injunction was stayed. That is a significant change and shows the substantial harm that the Pack Unit inmates face.

As for TDCJ's reported drop in infections, this statistic is unreliable for reasons detailed at length by the district court. Ex. 2, D. Ct. Findings of Fact and Conclusions of Law ("FOF/COL"), at 9–12. For example, Defendants do not count inmates who are

hospitalized or otherwise moved off site, do not count inmates as infected more than once if they are re-infected, and use an "opaque system for determining which inmates are recovered" even though it "conflicts with how TDCJ officially defines recovered inmates." *Id.* The first issue alone gives Defendants the ability to reduce the number of reported cases to zero any time they wish simply by sending sick inmates to the hospital or another facility. And while Defendants represented that there were "zero active COVID-19 cases in the Pack Unit as of the time of" their response, their website reported a new active positive inmate case later the same day and have also reported three active cases among employees.[1]

As for the "further measures" that Defendants tout, these are nothing more than "ad hoc steps in response to litigation proceedings" in an attempt to look more favorable to the court. *Id.* at 13. The district court was skeptical that "Defendants are in fact consistently implementing many of the procedures and policies that they claim to be." *Id*. at 66. And it found that these litigation-related measures were not part of any effort at "effecting long-term changes that will be consistently carried out until the pandemic is under control." *Id.* at 66.

The Fifth Circuit's stay again leaves the almost 1200 elderly and infirm prisoners at the facility—as well as prison staff and the surrounding community—at unnecessary risk of continued infection, hospitalization, and death from COVID-19 due to Defendants' deliberate indifference.

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[1] Texas Department of Criminal Justice, COVID-19 Case Counts, https://txdps.maps.arcgis.com/apps/opsdashboard/index.html#/dce4d7da662945178ad5fbf3981fa35c (visited Nov. 2, 2020).

Plaintiffs respectfully request that this Court vacate the Fifth Circuit's stay of the permanent injunction.

Argument

I. The Stay Imposes a Serious Risk of Irreparable Harm to Plaintiffs

Plaintiffs face an imminent risk of serious harm to their health and safety absent the permanent injunction pending appeal. The last time the Fifth Circuit stayed the injunction the number of active COVID-19 cases in the prison was low too, but it was a sufficient inroad to wreak havoc on the lives of the inmates while the litigation process played out. Over 500 inmates were infected and 19 died while the stay was in effect. Now, after prevailing at a trial on the merits, the geriatric and medically compromised inmates at the Pack Unit are once again left vulnerable to another catastrophic COVID-19 outbreak while the appeal proceeds.

Defendants curiously assert that the serious risk of irreparable harm to Plaintiffs is "speculation" with "no support." Resp. at 12. All the necessary support is found directly in the district court's opinion. "[B]ased on Defendants' past conduct as well as representations made during trial about future conduct," the court found a continuing and imminent health and safety risk to inmates at the Pack Unit. Ex. 2, FOF/COL, at 77. Not only did the court find that Defendants' existing policies were inadequate to protect the inmates going forward, the court did not even have confidence that Defendants would continue to carry out those inadequate policies without an injunction in place. *Id.* at 77–78. Simply put, the "track record at the Pack Unit speaks for itself"—the inmates face a serious risk of irreparable harm with the stay of the permanent injunction left in place pending appeal. *Id.* at 78.

Although Defendants tell the Court they are taking "increasingly effective preventive measures," Resp. at 13, the district court expressly found based on its first-hand experience at trial that "the credibility of representations made by certain TDCJ officials and witnesses has been placed in doubt." Ex. 2, FOF/COL, at 78. Defendants only took certain actions right before, and in apparent response to, hearings or the trial to look more favorable in the court's eyes. *Id*. at 12–13. Though Defendants now allege there are zero active cases among inmates at the Pack Unit, the district court found that Defendants' self-reported infection numbers were unreliable. *Id*. at 9–12. The credibility of the reported number of inmates who tested positive for COVID-19 was undermined, among other things, by Defendants' testing procedures and how they interpreted test results. *Id*. at 10. Furthermore, setting aside the flaws in the data, after Defendants filed their response and proclaimed zero active cases, later that same day, November 2, 2020, there was already at least one new active inmate case.[2] And Defendants seemingly ignored the three active cases among employees. Given how easily and quickly the virus can spread among inmates and employees (as the inmates at the Pack Unit have experienced firsthand), even a seemingly small number of cases must be taken seriously.

Defendants' irreparable harm argument not only understates the risk to Plaintiffs but also sets a legally mistaken baseline against which to measure the harm caused by the Fifth Circuit's stay. This Court's "frequently reiterated standard

[2] Texas Department of Criminal Justice, COVID-19 Case Counts, https://txdps.maps.arcgis.com/apps/opsdashboard/index.html#/dce4d7da662945178ad5fbf3981fa35c (visited Nov. 2, 2020).

requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is likely *in the absence of an injunction*." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (emphasis added; original emphasis omitted). But Defendants erroneously equate an inquiry into what would happen absent an injunction with an inquiry into "the measures Defendants have already put in place." Resp. 12. Thus, they conclude that the injunction is unnecessary "[t]o the extent [it] orders Defendants to carry out their existing policies." *Id.* at 28. To the contrary, PLRA injunctions may impose requirements that prison officials claim they are "already meeting, intending to meet, or attempting to meet," unless Defendants satisfy the "heavy burden" of demonstrating that violations "cannot reasonably be expected to start up again." *See, e.g.*, *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004). Defendants ignore this burden rather than trying to satisfy it in the face of the district court's concern that measures apparently implemented for litigation purposes will be abandoned absent an injunction. *See* Ex. 2, FOF/COL, at 77–78.

The precedents on which Defendants rely to evade their burden actually undermine their position. Defendants cite *Winter* for the proposition that the likelihood of injury "must be judged given the measures Defendants have already put in place." Resp. 12 (citing *Winter*, 555 U.S. at 22–23). But *Winter* did not rely on current measures as a guarantee of voluntary good conduct in the future as Defendants suggest. Instead, it relied on the coercive force of injunctive measures that the defendant did not challenge. *Winter*, 555 U.S. at 22–23 (evaluating likelihood of injury in light of fact that defendant "challenged only two of six restrictions

imposed by the [injunction]"). To the extent Defendants seek to rely on *Winter* in this case, they should accept the injunction as to any measures that are currently in place. Of course, they do not.

Defendants' reliance on *Pennhurst* is similarly misplaced. They cite the case for the proposition that it is unnecessary and improper for a court to order a defendant to carry out its existing policies. Resp. 28 (citing *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 124–25 (1984)). But *Pennhurst* held only that a state prison's violation of state law was not, in itself, a basis for a federal injunction. *Pennhurst*, 465 U.S. at 124–25. The Court's opinion expressly recognized that there is no impropriety where, as here, an injunction grounded in federal law coincidentally requires conduct that is also mandated by state law. *Id.* at 125. Thus, *Pennhurst* recognizes—contrary to Defendants' view—that a federal injunction may be necessary even where it is consistent with state policies that are in place.

Finally, Defendants' argument as to the timing of the Application is simply one more attempt to distract from the district court's findings that the policies currently in place are both legally inadequate and likely to be abandoned absent an injunction.

At bottom, Defendants have not made any effort to show that the district court erred in finding after eighteen days of trial that "the inmates at the Pack Unit continue to be at risk of irreparable harm in the form of serious illness or death, and a permanent injunction is warranted." Ex. 2, D. Ct. FOF/COL, at 79.

II. The Stay Panel Ignored the Facts on the Ground that Established Administrative Remedies Were Unavailable

The district court clearly, and repeatedly, found that the facts demonstrated the grievance process was *unavailable* and incapable of providing even some relief to Plaintiffs, who attempted to use the grievance process before filing suit. Ex. 2, FOF/COL, at 59–61. Tragically, Mr. Norris's death while his grievance went unaddressed "demonstrate[d] unequivocally that the TDCJ grievance process was unavailable and incapable of providing even 'some relief,' as *Ross* requires." *Id*. The trial demonstrated that "for a number of other inmates, there is no doubt that TDCJ was either 'unable' or 'unwilling to provide any relief to aggrieved inmates.'" *Id*. at 60 (quoting *Ross v. Blake*, 136 S. Ct. 1850, 185 (2016)). Those findings fit squarely within the PLRA's textual exception to mandatory exhaustion: "An inmate . . . must exhaust available remedies, but need not exhaust unavailable ones." *Ross*, 136 S. Ct. at 1858. Like the stay panel, Defendants do not actually grapple with the district court's detailed factual findings in this regard.

Defendants also mischaracterize the district court's reference to "extraordinary times" as "a thinly veiled appeal" to the rejected "special circumstances" exception to the PLRA's exhaustion requirement. Resp. 16. Not so. The "special circumstances" exception provided that there "are certain 'special circumstances' in which, though administrative remedies may have been available[,] the prisoner's failure to comply with administrative procedural requirements may nevertheless have been justified." *Ross*, 136 S. Ct. at 1856 (quoting *Giano v. Goord,* 380 F.3d 670, 676 (2d Cir. 2004)). In other words, courts invoked the "special

circumstances" exception even if administrative remedies were in fact available. The district court here did not carve out an exception to the requirement of exhausting available grievance processes; it directly found that the administrative remedies were unavailable according the standards set out in *Ross* as the grievance process was unable to provide relief to inmates facing an imminent risk of serious illness or death and operated as a "simple dead end." Ex. 2, FOF/COL, at 57.

Instead of applying *Ross* to evaluate whether relief was available *through the grievance process*, Defendants ask the Court to follow the stay panel's example and evaluate whether they were capable of offering relief *outside* the grievance process. Resp. 18. They do not dispute that this standard makes the availability exception inoperable by establishing that administrative remedies are unavailable only when a plaintiff lacks standing. *See* Petition 16–17. Instead, they assert that this is "precisely what the PLRA provides." Resp. 18. But the PLRA has a textual availability exception that should not be read out of the statute and that requires evaluation of facts on the ground as found by the district courts.

This Court has "made it clear that lower courts are better positioned to make factual findings regarding the actual availability of administrative remedies under the PLRA." *Shumanis v. Lehigh County*, 675 F. App'x 145, 148–49 (3d Cir. 2017) (citing *Ross*, 136 S. Ct. at 1862). That is because whether administrative relief is available depends on the "facts on the ground." *Ross*, 136 S. Ct. at 1859. The stay panel erred in failing to defer to the district court's findings about the facts on the ground and in reading the availability exception out of the PLRA.

III. The Stay Panel Inappropriately Reweighed Evidence on Deliberate Indifference

At trial, Defendants did not contest that COVID-19 poses a substantial risk to the inmates at the Pack Unit, and the court found that Defendants were aware of that risk. Ex. 2, FOF/COL, at 64. The only question, the court continued, was whether Defendants "'disregard[ed]' that risk—here, 'an excessive risk to inmate health.'" *Id*. (quoting *Farmer*, 511 U.S. at 837). They did, and their conduct demonstrated deliberate indifference to Plaintiffs' medical needs. *Id*. The district court's conclusion was based on: "(1) Defendants' lack of a systematic and sustainable approach to slow the spread of COVID-19; (2) a failure to abide by basic public health guidance including but not limited to the steps outlined in Policy B-14.52; and (3) the ongoing risk to inmates coupled with uncertainty that the existing measures will continue absent a permanent injunction." *Id*. at 66.

Defendants incorrectly state that "the district court altogether failed to analyze Defendants' subjective intent." Resp. 19. To the contrary, the court recognized that the deliberate indifference inquiry "centers around Defendants' mental state." Ex. 2, FOF/COL, at 64. As the stay panel recognized, the district court supported its analysis with "detailed factual findings about TDCJ's response to COVID-19," Ex. 1, Slip. Op. at 10. The stay panel, however, improperly and selectively reweighed that evidence.

In an attempt to find error in the district court's factual findings, Defendants assert that they "implemented measures specific to the Pack Unit" and "created a long-term testing plan for the Pack Unit." Resp. at 20–21. These self-serving

representations are belied by the actual evidence and the district court's findings, which showed that Defendants' plan was "not responsive to the needs of individual units" and lacked any sort of process for measuring or understanding whether the policies were even being followed. Ex. 2, FOF/COL, at 66–67. Indeed, the trial testimony established that there was "consistent non-compliance with basic public health protocols" in the Pack Unit, including "staff members' fail[ing] to wear PPE, a lack of cleaning supplies, the inability to social distance, and exposure to COVID-19 by staff and inmates who had tested positive or were awaiting test results." *Id*. at 68–69. "As revealed at trial, Defendants and other TDCJ officials were well aware of the shortcomings listed above, and nevertheless chose to stay the course, even after a number of inmates died." Ex. 2, FOF/COL, at 69; *cf*. *Hope v. Pelzer*, 536 U.S. 730, 745 (2002) ("The obvious cruelty inherent in this practice should have provided respondents with some notice that their alleged conduct violated [the plaintiff's] constitutional protection against cruel and unusual punishment.").

Eighteen days of evidence proved that Defendants were deliberately indifferent to a substantial risk of serious harm in violation of the Eighth Amendment. The stay panel cast aside the district court's detailed and thorough findings, instead crediting entirely Defendants' unsupported claims despite the district court's repeated finding that Defendants lack credibility. *See, e.g.*, Ex. 2, FOF/COL, at 78 ("[A]lthough the Court comes to this conclusion with the utmost regret, the credibility of the representations made by certain TDCJ officials and witnesses has been placed in doubt."). The Court should vacate the stay panel's

decision because the appellate court's selective reweighing of evidence cannot support the stay.

IV. The Stay Panel Did Not Reach the ADA Claim and Thus It Cannot Support the Stay

Although Defendants attempt to argue that they are likely to succeed on the merits of Plaintiffs' ADA claim, the stay panel expressly declined to "parse an 18-day trial record on an expedited motion for temporary relief" and did not address this issue. Ex. 1, Slip. Op. at 14. Therefore, the ADA claim is no basis to uphold the stay panel's decision even as to the injunction's one provision grounded in the ADA.

V. The Balance of Harms and Public Interest Support the Injunction

The strong interest in promoting public health is served by the injunction rather than by the "flexibility" promoted by a stay. In practice, the flexibility Defendants seek to protect is simply the ability to violate the Eighth Amendment with impunity and so to endanger human lives. Based on current medical guidance as established at trial by public health experts, the measures in the injunction are necessary to protect "not only Plaintiffs but, to a large extent, Defendants as well and the communities in which TDCJ's employees live." Ex. 2, FOF/COL, at 81. Defendants have flexibility to take additional precautions, and flexibility to do less than the injunction requires serves no legitimate public interest. If medical guidance radically reverses itself in the future as Defendants speculate, Resp. 28, the PLRA contains provisions for modifying or even terminating injunctions due to changed circumstances. And the district court has promised to hear any motion to modify the injunction within twenty-four hours. Ex 5, Order Denying Stay, 2. Thus, there is

adequate provision for flexibility in the event of changed circumstances that are not presently at issue. The injunction currently serves to promote public health and will not inhibit any good-faith efforts by the Defendants in the future.

Defendants' asserted interest in preserving their flexibility to execute powers delegated by state law ends where Plaintiffs' constitutional rights begin. Defendants do not dispute that "[i]t is *always* in the public interest to prevent the violation of a party's constitutional rights." *See* Petition at 20 (quoting *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) (emphasis added)); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013) (same); *Melendres v. Arapaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (same); *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (same); *cf. Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) ("[E]nforcement of an unconstitutional law is always contrary to the public interest."). Thus, the fact of an Eighth Amendment violation is dispositive of the public interest analysis, which, as Defendants' acknowledge, merges with the balance of injuries inquiry in this case.

By contrast, the fact that an injunction may limit a state government's ability to enforce its own laws "is not dispositive of the balance of harms analysis." *Latta v. Otter*, 771 F.3d 496, 500 (9th Cir. 2014). While it might otherwise be presumed that "any time a State is enjoined by a court from effectuating statutes enacted by the representatives of its people, it suffers a form of irreparable injury," this interest gives way to the principle that unconstitutional enforcements of the law "is always contrary to the public interest." *Grace v. District of Columbia*, 187 F. Supp. 3d 124 (D.D.C.

2016) (distinguishing *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers)); *see also Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (holding that "injunctions barring the State from conducting this year's elections pursuant to a statute enacted by the Legislature" would constitute irreparable injury "[u]nless that statute is unconstitutional"); *Esshaki v. Whitmer*, 813 F. App'x 170 (6th Cir. 2020) (upholding an injunction against state election laws when the state law burdened the plaintiffs' First Amendment rights).

"Applying the law in a way that violates the Constitution is *never* in the public's interest," and "[n]o statute relieves agencies of their duty to administer the law in accordance with the Constitution." *Minney v. OPM*, 130 F. Supp. 3d 225, 234 n.10, 236 (D.D.C. 2015). The fact that Texas has a strong interest in the administration of its prisons and has delegated prison administration to Defendants does not shield Defendants' use of delegated power from judicial review. Despite these interests, "[c]ourts certainly have a responsibility to scrutinize claims of cruel and unusual confinement." *Rhodes v. Chapman*, 452 U.S. 337, 352 (1981).

Defendants have no cognizable interest in violating the Eighth Amendment, and an injunction to protect constitutional rights and promote public health clearly serves the public interest.

VI. The Court Would Likely Grant Review

As Plaintiffs noted in their Petition, questions related to state and federal inmates' rights in connection with the COVID-19 pandemic are issues of national importance that have split the lower courts and led to a variety of different conclusions. The Court is likely to grant certiorari to determine whether the PLRA

requires an inmate to exhaust an administrative grievance process that, in fact, is a dead end and not capable of providing any remedy to avoid a serious and imminent risk to health and safety. It is also likely to grant certiorari to clarify the deference due to findings of deliberate indifference, the appropriate baseline for measuring the likelihood of irreparable harm, and the extent to which the exigencies of a pandemic may create a public interest that outweighs constitutional rights.

Conclusion

For these reasons, Applicants respectfully request that the stay entered by the United States Court of Appeals for the Fifth Circuit be vacated.

Respectfully submitted,

s/ Brandon W. Duke

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Certificate of Service

I, Brandon W. Duke, a member of the bar of this Court, certify that on November 4, 2020, a copy of the foregoing and the attached exhibits were served on all parties by email and first class mail to the individuals listed below:

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List of Exhibits

5. Order Denying Defendants' Emergency Motion to Stay Pending Appeal (Oct. 2, 2020)

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

LADDY CURTIS VALENTINE, *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:20-CV-01115
	§	
BRYAN COLLIER, *et al*,	§	
	§	
Defendants.	§	

ORDER DENYING DEFENDANTS' EMERGENCY MOTION TO STAY PENDING APPEAL

In response to the COVID-19 pandemic and following an eighteen-day bench trial, the Court entered a permanent injunction on September 29, 2020, regarding policies and procedures at the Pack Unit prison, which is administered by the Texas Department of Criminal Justice ("TDCJ"). (Doc. 409.) The injunction is scheduled to become effective on October 14, 2020. (Doc. 409 at 83.)

On September 29, Defendants filed a notice of appeal (Doc. 411), and on September 30, Defendants filed an Emergency Motion to Stay the Permanent Injunction Pending Appeal. (Doc. 413.) Plaintiffs filed their Response on October 1. (Doc. 419.) On October 2, the Court heard argument by telephone and denied the motion for the reasons stated on the record. (Minute Entry dated October 2, 2020.) The Court writes to further explain its reasons for denying the motion.

The four factors the Court must consider in considering a motion to stay an injunction pending appeal are (1) the movant's likelihood of success on the merits, (2) irreparable injury to the movant absent a stay, (3) injury to other parties interested in the

proceeding, and (4) the public interest. *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013). This Court's conclusions of law underlying the permanent injunction are largely determinative of the pending motion. The Court has already found against Defendants on the merits of Plaintiffs' claims, has found that there is irreparable harm to the inmates at TDCJ absent an injunction, and has found that the balance of harm to the parties and the public interest both favor the granting of an injunction. (Doc. 409 at 62–82.) Nevertheless, the Court recognizes that circumstances at the Pack Unit may have changed since trial and thus sought to understand from Defendants with which parts of the injunction Defendants are in compliance, with which parts of the injunction Defendants are not in compliance, and which parts of the injunction in particular will cause Defendants irreparable harm, as they argue in their motion. (Doc. 413 at 2–3.)

At the hearing, the Court offered Defendants an extension of time to comply with the terms of the injunction. Defendants declined. The Court inquired whether Defendants would agree to a stay of certain measures listed in the injunction while implementing other measures. Defendants declined. When asked about the specific irreparable harm that Defendants would suffer if the injunction went into effect, Defendants stated that they would suffer a lack of flexibility in implementing policies in the future. The Court stated that it would be available to hear modifications to the injunction on 24-hour notice, but Defendants declined, stating that an injunction of any kind would cause them irreparable injury given the need for absolute flexibility. Because the Court has already concluded that the measures in the injunction are both necessary and narrowly tailored to

remedy ongoing constitutional and statutory violations at the Pack Unit, it finds unpersuasive the argument that the harm suffered by Defendants under any injunction whatsoever warrants granting a stay of the injunction. As the Court explained previously, "[t]he difficulties that may be endured by prison authorities are modest relative to the harm to be averted." (Doc. 409 at 82.)

Previously, the Court issued a preliminary injunction in this case, which was vacated by the Fifth Circuit in a per curiam opinion finding that Defendants had "substantially complied with the measures ordered by the district court in its preliminary injunction." *Valentine v. Collier*, 960 F.3d 707, 707 (5th Cir. June 5, 2020). The Court asked whether Defendants were in "substantial" compliance with the current injunction, as Defendants previously argued on appeal, and Defendants did not take a position on that issue.

The Court has described the reasons that it found Defendants' current conduct to constitute deliberate indifference, and the Court has described at length the impact of the pandemic on the Pack Unit, including a minimum of 20 inmate deaths and more than 400 infections. (Doc. 409.) Neither in their Emergency Motion nor during the hearing did Defendants present additional evidence in support of the motion to justify a stay of the injunction pending appeal, nor do Defendants seek a modification of the injunction such as additional time or implementation of some but not all of the policies enumerated therein. The Court is open to entertaining requests to modify the exact contours of the permanent injunction in light of prison administration needs, but at bottom it continues to believe that an injunction is legally necessary for the reasons stated in its post-trial

findings of fact and conclusions of law.

Thus, for the reasons stated on the record and for the reasons above, Defendants' Emergency Motion for a Stay Pending Appeal is **DENIED.**

IT IS SO ORDERED.

Signed at Houston, Texas on October 2, 2020.

Keith P. Ellison
U.S. District Judge