

No. - _____

In the Supreme Court of the United States

GARY WESTCOTT, ET AL.,
Petitioners,

v.

VOICE OF THE EXPERIENCED, ET AL.,
Respondents.

GARY WESTCOTT, ET AL.,
Petitioners,

v.

VOICE OF THE EXPERIENCED, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under this Court’s longstanding precedents, an otherwise-moot dispute is “not moot [if] it falls within a special category of disputes that are ‘capable of repetition’ while ‘evading review.’” *Turner v. Rogers*, 564 U.S. 431, 439 (2011). A dispute evades review if it “is ‘in its duration too short to be fully litigated’ through the [lower] courts (and arrive here) prior to its ‘expiration.’” *Id.* at 440. Applying that rule, the Court has held that periods of one year, one-and-a-half years, and even two years are “too short” for a dispute to be fully litigated. *Id.*

In this litigation, the district court entered three preliminary injunctions, each of which expired by operation of law after 90 days—all while Louisiana’s appeals of the injunction orders were pending. The Fifth Circuit dismissed the three appeals as moot under *Smith v. Edwards*, 88 F.4th 1119 (5th Cir. 2023), which holds that 90 days is sufficient for “meaningful review,” at least by the Fifth Circuit. App.16a (Wilson, J., respecting the denial of rehearing en banc). By the Fifth Circuit’s lights, these disputes do not “evade review,” and thus the mootness exception for issues capable of repetition yet evading review does not apply. That position splits with decisions from this Court and nearly every federal court of appeals.

The questions presented are:

1. Whether, under this Court’s precedents applying the mootness exception for issues capable of repetition yet evading review, a 90-day period is too short to fully litigate an issue.

2. Whether the review relevant to the mootness exception for issues capable of repetition yet evading review is plenary merits review by this Court.

PARTIES TO THE PROCEEDING

This “single petition for a writ of certiorari” arises from “two ... judgments” in the Fifth Circuit that “involve identical or closely related questions.” Sup. Ct. R. 12.4. As described further below, those two judgments are colloquially known as *VOTE II* and *VOTE III*, and they arise from the same lawsuit in the district court. Therefore, in the proceeding in this Court and as to both *VOTE II* and *VOTE III*:

Petitioners are Gary Westcott, Secretary of the Louisiana Department of Public Safety and Corrections; Darrel Vannoy, Warden of the Louisiana State Penitentiary; and the Louisiana Department of Public Safety and Corrections. Petitioners were the defendants-appellants below.¹

Respondents are the Voice of the Experienced, a membership organization on behalf of itself and its members; Myron Smith, individually and on behalf of all others similarly situated; Damaris Jackson, individually and on behalf of all others similarly situated; Nate Walker, individually and on behalf of all others similarly situated; Darrius Williams, individually and on behalf of all others similarly situated; Kevias Hicks; Joseph Guillory; and Alvin Williams (all plaintiffs-appellees below).

¹ Secretary Westcott’s predecessor (Secretary James LeBlanc) and Warden Vannoy’s predecessor (Warden Tim Hooper) were named defendants in their official capacities. Secretary Westcott and Warden Vannoy have substituted in as defendants in their official capacities. *See* Sup. Ct. R. 35.3.

STATEMENT OF RELATED CASES

Voice of the Experienced v. LeBlanc, No. 25-30478 (5th Cir.). Judgment entered Nov. 21, 2025; order denying rehearing en banc entered Feb. 27, 2026.

Voice of the Experienced v. LeBlanc, No. 25-30322 (5th Cir.). Judgment entered Aug. 28, 2025; order denying rehearing en banc entered Mar. 5, 2026.

Voice of the Experienced v. Westcott, No. 24-30420 (5th Cir.). Judgment entered Aug. 5, 2025.

Voice of the Experienced v. LeBlanc, No. 23-cv-1304 (M.D. La.). Preliminary-injunction orders entered July 2, 2024; May 23, 2025; and Aug. 22, 2025. Judgment entered May 26, 2026.

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PETITION FOR WRIT OF CERTIORARI

This is a straightforward candidate for summary reversal. For decades, this Court has held that an otherwise-moot dispute is “not moot [if] it falls within a special category of disputes that are ‘capable of repetition’ while ‘evading review.’” *Turner v. Rogers*, 564 U.S. 431, 439 (2011). A dispute evades review if it “is ‘in its duration too short to be fully litigated’ through the [lower] courts (and arrive here) prior to its ‘expiration.’” *Id.* at 440. Periods of up to two years are “too short” for a dispute to be fully litigated. *Id.* And that includes, the Court recently emphasized, a period of “three months,” which is “too short to complete judicial review[.]” *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 671 n.1 (2025) (citation omitted).

The question in this case is whether 90 days is sufficient to obtain plenary merits review by this Court. *Consumers’ Research* just said no—and so the mootness exception for issues capable of repetition yet evading review should apply. The Fifth Circuit, however, has binding precedent—applied in the decisions below—that holds otherwise. *See Smith v. Edwards*, 88 F.4th 1119 (5th Cir. 2023). *Smith* reasons that 90 days is potentially sufficient for *the Fifth Circuit* to provide “meaningful review,” thereby foreclosing any application of the mootness exception for issues capable of repetition yet evading review. App.16a (Wilson, J., respecting the denial of rehearing en banc).

Smith is the reason Louisiana lost the same mootness issue on appeal three different times in the same

lawsuit. This lawsuit challenges prison conditions at Louisiana's largest prison. The district court entered serial preliminary injunctions aimed at controlling operations at the prison. Louisiana immediately appealed each injunction. But, under the Prison Litigation Reform Act (PLRA), 18 U.S.C. § 3626, each injunction automatically expired by operation of law 90 days after its issuance. Citing *Smith*, the Fifth Circuit three times dismissed Louisiana's appeals as moot, and declined to address Louisiana's merits arguments concerning the district court's PLRA violations.

Smith was wrongly decided, as Judge Jones and others recognized in dissenting from the Fifth Circuit's 11-6 decision to deny rehearing en banc. That is so in two respects. *First*, *Turner* and *Consumers' Research* (and a host of court of appeals decisions) hold that—for purposes of determining whether the mootness exception for issues capable of repetition yet evading review applies—periods as short as 90 days are insufficient to fully litigate a dispute. *Smith* was wrong to say otherwise. *Second*, *Turner* (and a host of court of appeals decisions) holds that the proper question is whether *this Court*, not a court of appeals, can conduct plenary merits review within the given time period. *Smith* was wrong to focus instead on the Fifth Circuit's review.

Summary reversal is thus plainly warranted—and this is the right vehicle for such reversal. This is because, if *Smith* stands in the Fifth Circuit, it effectively insulates preliminary injunctions in prison-conditions cases from appellate review. The PLRA's 90-day expiration clock always will be available to moot out pending appeals challenging such injunctions.

Given Congress’s desire to curb district courts’ equitable discretion through the PLRA, it makes no sense to foreclose appellate review that otherwise would ensure district courts’ faithful compliance with the PLRA. That especially matters to Louisiana in this case, which arises from a judicial district reflecting a high volume of prison litigation—Louisiana has a profound interest in district courts getting the law right and the Fifth Circuit confirming as much.

This is an easy case because the error below is clear and this Court’s precedents already have answered the relevant questions. Accordingly, Louisiana respectfully asks the Court to summarily reverse the decisions below or, alternatively, grant plenary review.²

OPINIONS BELOW

The Fifth Circuit’s *VOTE III* panel opinion (App.18a–31a) is available at 2025 WL 3252638. The Fifth Circuit’s *VOTE II* panel opinion (App.32a–41a) is available at 2025 WL 2481382. The Fifth Circuit’s order denying the petition for rehearing en banc and dissenting opinions in *VOTE III* (App.3a–17a) are available at 168 F.4th 339. The Fifth Circuit’s order denying the petition for rehearing en banc in *VOTE II* is reproduced at App.1a–2a.

² As explained above, *supra* p. iii, this “single petition for a writ of certiorari” arises from “two ... judgments” in the Fifth Circuit that “involve identical or closely related questions.” Sup. Ct. R. 12.4. As described further below, those two judgments are colloquially known as *VOTE II* and *VOTE III*, and they arise from the same lawsuit in the district court.

The district court's *VOTE III* order (App.42a–51a) is available at 2025 WL 2427692. The district court's *VOTE II* order (App.52a–93a) is available at 2025 WL 2501299.

JURISDICTION

The Fifth Circuit issued its panel decision in *VOTE III* on November 21, 2025, App.18a–31a, and denied the petition for rehearing en banc on February 27, 2026, App.3a–17a. The Fifth Circuit issued its decision in *VOTE II* on August 28, 2025, App.32a–41a, and denied the petition for rehearing en banc on March 5, 2026, App.1a–2a. On May 22, 2026, Justice Alito extended the time to file a petition for a writ of certiorari until June 29, 2026. *See Westcott v. Voice of the Experienced*, No. 25A1288 (U.S.). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3626(a) provides:

(1) Prospective Relief.

(A) Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right. The court shall give substantial weight to any adverse impact on public

safety or the operation of a criminal justice system caused by the relief.

(B) The court shall not order any prospective relief that requires or permits a government official to exceed his or her authority under State or local law or otherwise violates State or local law, unless—

- (i) Federal law requires such relief to be ordered in violation of State or local law;
- (ii) the relief is necessary to correct the violation of a Federal right; and
- (iii) no other relief will correct the violation of the Federal right.

(C) Nothing in this section shall be construed to authorize the courts, in exercising their remedial powers, to order the construction of prisons or the raising of taxes, or to repeal or detract from otherwise applicable limitations on the remedial powers of the courts.

(2) Preliminary Injunctive Relief.

In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm. The court shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief and shall respect the

principles of comity set out in paragraph (1)(B) in tailoring any preliminary relief. Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.

STATEMENT OF THE CASE

A. Legal Background

1. The “judicial Power of the United States” extends only to certain “Cases” and “Controversies.” U.S. Const. art. III, §§ 1–2. That jurisdictional limit means that “to invoke the jurisdiction of a federal court, a litigant must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citation modified). And under Article III, “the [courts] may only adjudicate actual, ongoing controversies.” *Honig v. Doe*, 484 U.S. 305, 317 (1988); *see also Moore v. Harper*, 600 U.S. 1, 14 (2023) (The live-controversy requirement applies “at all stages of review, not merely at the time the complaint is filed.”).

“Mootness doctrine addresses whether an intervening circumstance has deprived the plaintiff of a personal stake in the outcome of the lawsuit.” *Moore*, 600 U.S. at 14 (quotation and citation omitted). A case “becomes moot ... when the issues presented are no

longer live or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation modified).

This Court “has recognized a handful of exceptions to mootness that apply in ‘exceptional situations.’” *Shemwell v. City of McKinney*, 63 F.4th 480, 484 (5th Cir. 2023) (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998)). Relevant here, an otherwise-moot dispute is “not moot [if] it falls within a special category of disputes that are ‘capable of repetition’ while ‘evading review.’” *Turner*, 564 U.S. at 439. A dispute evades review if it “is ‘in its duration too short to be fully litigated’ through the [lower] courts (and arrive here) prior to its ‘expiration.’” *Id.* at 440.

Two aspects of that mootness exception are relevant here. *First*, as this Court has held, periods of one year, one-and-a-half years, and even two years are “too short” for a dispute to be fully litigated. *Id.* *Second*, for a dispute to be fully litigated, “plenary review *by this Court*”—not just a court of appeals—must be possible. *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 774 (1978) (emphasis added); see *In re Flint Water Cases*, 53 F.4th 176, 189 (6th Cir. 2022) (en banc) (“An action is too short if it is impossible ‘to obtain complete judicial review,’ including ‘plenary review’ by the Supreme Court.” (citation omitted)); *United Bhd. of Carpenters & Joiners of AM., AFL-CIO v. Plasterers’ & Cement Masons’ Int’l Ass’n of U.S. & Canada, AFL-CIO*, 721 F.3d 678, 688 (D.C. Cir. 2013) (“To evade review, the challenged action must be incapable of surviving long enough to undergo Supreme Court review.”); *Associated Energy Grp., LLC v. United States*, 131 F.4th 1312, 1318 (Fed. Cir. 2025) (“Evading review means

that the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration.” (quoting *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 787 (9th Cir. 2012) (citation modified)).

2. The mootness issue—and the applicability of the capable-of-repetition-yet-evading-review exception—arises in this case against the backdrop of the PLRA, 18 U.S.C. § 3626. The PLRA “establishes standards for the entry and termination of prospective relief in civil actions challenging prison conditions.” *Miller v. French*, 530 U.S. 327, 331 (2000). These standards “curb[]”—and were “principal[ly]” intended to “curb[]”—“the equitable discretion of district courts.” *Id.* at 339; see *Preiser v. Rodriguez*, 411 U.S. 475, 491–92 (1973) (“It is difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.”).

Most prominently, the PLRA prohibits the entry of prospective relief “unless” the district court makes three specific findings under subsection (a)(1) of the statute: “that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” § 3626(a)(1). Those findings commonly are known as “need-narrowness-intrusiveness findings.”

In the narrow circumstance where prospective relief is warranted, the PLRA imposes a 90-day default

limit on any preliminary injunction: “Preliminary injunctive relief shall automatically expire on the date that is 90 days after its entry, unless the court makes the findings required under subsection (a)(1) for the entry of prospective relief and makes the order final before the expiration of the 90-day period.” § 3626(a)(2). Put otherwise, any preliminary relief automatically expires by operation of law 90 days after its issuance—unless the district court both (1) “makes the findings required under subsection (a)(1) for the entry of prospective relief” (*i.e.*, the need-narrowness-intrusiveness findings); and (2) “makes the order final before the expiration of the 90-day period.” *See id.*; *see also Voice of the Experienced v. Westcott (VOTE I)*, No. 24-30420, 2025 WL 2222990, at *2 (5th Cir. Aug. 5, 2025) (“The parties agree that the district court did not make the requisite findings to ‘make[] the order final before the expiration of the 90-day period.’”).³

³ Although not directly at issue here, the Fifth Circuit understands the “finality” requirement in § 3626(a)(2) to mean the entry of a permanent injunction before the expiration of the 90-day period. *See VOTE I*, 2025 WL 2222990, at *3 (“the plaintiff prisoners [] allowed the July 2 preliminary injunction to expire and did not seek to make it permanent under 18 U.S.C. § 3626(a)(2)”; *see also Banks v. Booth*, 3 F.4th 445, 448 (D.C. Cir. 2021) (“[I]f a judge enters a preliminary injunction in a suit covered by this section, that injunction will terminate on its 90th day unless the court has rendered it permanent”); *Ga. Advocacy Office v. Jackson*, 4 F.4th 1200, 1211 (11th Cir. 2021), *vacated on settlement grounds*, 33 F.4th 1325 (11th Cir. 2022) (“[T]he entry of a permanent injunction is necessary to prevent a preliminary injunction from expiring by operation of law after 90 days under the PLRA’s ‘unless’ clause.”).

3. A mootness problem inevitably arises any time a district court enters a preliminary injunction in a PLRA case, the defendants appeal that injunction, and the district court meanwhile refuses to take the two steps necessary to prevent the automatic expiration of the injunction after 90 days. At that point, the injunction has expired, and the pending appeal is moot.

The Fifth Circuit has controlling precedent on this precise question—*Smith*, 88 F.4th 1119. In *Smith*, the district court entered an injunction. *Id.* at 1123. The defendants immediately appealed, but—after the district court took no action to prevent the automatic expiration of the injunction—the injunction automatically expired one week before the Fifth Circuit issued its opinion. *Id.* at 1124. *Smith* held that the appeal was moot and declined to apply the exception for issues capable of repetition yet evading review.

“Generally,” the court reasoned, “when an injunction ‘expires by its own terms,’ it is moot and ‘there is nothing to review.’” *Id.* (quoting *Yates v. Collier*, 677 F. App’x 915, 917 (5th Cir. 2017), in turn quoting *Briggs & Stratton Corp. v. Local 232, Int’l Union, Allied Indus. Workers of Am. (AFL-CIO)*, 36 F.3d 712, 713 (7th Cir. 1994)). Applying this general rule, the *Smith* court dismissed each of the defendants’ arguments that the appeal was not moot. *Id.* at 1125–26. Relevant here, the defendants argued that “the appeal is not moot because”—given the 90-day default limit under the PLRA—“the issue is capable of repetition but will evade review.” *Id.* at 1125. As the Fifth Circuit acknowledged, “[t]hat exception applies when (1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration’ and (2) there

is a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* (citation modified).

But the Fifth Circuit found that “ninety days is not in itself necessarily too short a time fully to litigate a challenge to a PLRA injunction.” *Id.* at 1125–26. The *Smith* court suggested that the defendants could have “raised the PLRA mootness issue” when they “filed their notice of appeal—or at least some time before [p]laintiffs first raised it in their [] brief.” *Id.* at 1126. This would have allowed the Fifth Circuit, it said, to “set a more expedited briefing schedule and perhaps adjudicated the appeal before the preliminary injunction expired.” *Id.* “Regardless,” the court said, defendants “fail[ed] to show that any new injunction entered by the district court would evade review.” *Id.* Thus, the court dismissed the appeal as moot and vacated the underlying preliminary injunction. *See id.* at 1127.

B. Procedural Background

This case is *Smith*—three times over. On three separate occasions, the district court entered preliminary injunctions that automatically expired while Louisiana’s appeals were pending. Each time, the Fifth Circuit dismissed Louisiana’s appeals as moot, simply applying *Smith*.

1. Plaintiffs in this lawsuit are Louisiana State Penitentiary (LSP) prisoners who claim that conditions at LSP—specifically heat conditions on the Farm Line—violate the Eighth Amendment. App.34a. The Farm Line comprises certain prison crews who perform work at LSP. *See id.*; App.53a. That work involves tasks such as grass-cutting, the planting and

harvesting of thousands of fruits and vegetables that feed LSP prisoners, and other forms of labor. *See* App.53a. According to Plaintiffs, performing such work subjects them to an intolerable risk of harm. *See id.* The district court recently rejected this challenge across the board after a multi-day trial and entered judgment in Louisiana’s favor. But, over the course of the two years that this lawsuit was pending, the district court entered three preliminary injunctions, known respectively as *VOTE I*, *VOTE II*, and *VOTE III*.

VOTE I. The district court first entered a preliminary injunction in July 2024 (modified by a subsequent order in August 2024) requiring LSP to undertake various measures to protect prisoners on the Farm Line from heat risks. *See Voice of the Experienced v. LeBlanc*, No. 23-cv-1304-BAJ-EWD, 2024 WL 3279899 (M.D. La. July 2, 2024), *vacated sub nom. Voice of the Experienced v. Westcott (VOTE I)*, No. 24-30420, 2025 WL 2222990 (5th Cir. Aug. 5, 2025). Louisiana immediately appealed the injunction order, which the Fifth Circuit partially stayed. Order, *VOTE I*, No. 24-30420, ECF 41-1. The injunction then expired by operation of law 90 days after its issuance under § 3626(a)(2), and a Fifth Circuit panel, after finding the then-pending appeal moot, vacated the injunction order. *VOTE I*, 2025 WL 2222990, at *2–4.

In determining that the appeal was moot, the *VOTE I* panel specifically relied on *Smith*. *Id.* at *2. Louisiana acknowledged that *Smith* compelled the panel to dismiss the appeal as moot—and the panel agreed, concluding that the “appeal is moot because

the preliminary injunction expired automatically under the PRLA.” *Id.* at *3. Because there was no sign at that time that Louisiana would be subject to sequential injunctions, Louisiana acquiesced in *Smith* during the *VOTE I* proceedings.

VOTE II. It turned out that the *VOTE I* mootness problem was only the beginning. On the Plaintiffs’ motion, the district court entered a second preliminary injunction (the *VOTE II* injunction) on May 23, 2025. App.52a–93a. The *VOTE II* injunction mandated two things: (1) Louisiana must “monitor the heat index every 30 minutes on the Farm Line at LSP,” App.52a, and (2) Louisiana must “issue a ‘Heat Alert’ on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit,” *id.* It is undisputed that, before entering the *VOTE II* injunction, the district court did not make the need-narrowness-intrusiveness findings required by § 3626(a)(1).

The State immediately appealed the *VOTE II* injunction. Moreover, in compliance with the *Smith* court’s suggestion that an expedited timeline could avoid any mootness problems, *see* 88 F.4th at 1126, the State sought expedited review, which was granted. *See VOTE II*, No. 25-30322 (5th Cir.), ECF 8 (Mot.); ECF 49 (Order). A panel of the Fifth Circuit heard oral argument on August 4, 2025—weeks before the PLRA’s 90-day clock would expire on August 21—but the court did not issue its opinion until August 28. App.32a–41a.

Like the *VOTE I* panel, the *VOTE II* panel held that “under the plain language of the PLRA,” “the order [] ceased to have any legal effect” 90 days after its

issuance. App.38a. Thus, pursuant to *Smith*, “[b]ecause the preliminary injunction has expired, there is no remedy [the court] can provide [Appellants] at this point.” *Id.* (quoting *Smith*, 88 F.4th at 1126). “Consequentially, the parties have no continued, legally cognizable interest in the appeal of the now-expired order,” so the court held “that this appeal is moot.” *Id.*

Because it quickly became clear that *Smith* was wrongly decided—and that the capable-of-repetition-yet-evading-review mootness exception should apply—Louisiana sought en banc review of the *VOTE II* decision on September 11, 2025, and asked the Fifth Circuit to overrule *Smith*. *VOTE II*, No. 25-30322, ECF 99. In particular, Louisiana explained that, although the *Smith* court relied on the possibility of appellate review *by the Fifth Circuit* within 90 days, this Court’s precedents (and precedents from sister circuits) require plenary merits review *by this Court*—and there is no question that such review would be virtually impossible within 90 days. *Id.* at 8–11. Further, Louisiana explained that merits review was extraordinarily important because the district court had failed to make the need-narrowness-intrusiveness findings required by § 3626(a)(1) before the entry of prospective relief. *Id.* at 5–6, 11–12.

VOTE III. In the meantime, the district court was ramping up its third preliminary injunction. On August 22, 2025—one day after the *VOTE II* injunction expired on August 21—the district court entered, at Plaintiffs’ request, “a successive preliminary injunction” requiring the issuance of a “‘Heat Alert’ on the Farm Line at LSP whenever the heat index meets or

exceeds 88 degrees Fahrenheit.” App.42a–43a. If that directive sounds familiar, that is because it is identical to one of the directives in the *VOTE II* injunction. Louisiana protested that the district court had effectively converted that directive into a 180-day preliminary injunction without complying with the PLRA’s prerequisite for avoiding expiration after 90 days. *See* § 3626(a)(2). To no avail: The district court’s view was that, having allowed the *VOTE II* injunction to expire for one day, its new *VOTE III* injunction was, well, a new injunction subject to a new 90-day deadline—no need to comply with § 3626(a)(2). On top of that, it is undisputed that, as with the *VOTE II* injunction, the district court refused to make the need-narrowness-intrusiveness findings required by § 3626(a)(1) before entering the *VOTE III* injunction.

The State immediately appealed the *VOTE III* injunction order and again sought expedited review, which the Fifth Circuit granted. *VOTE III*, No. 25-30478 (5th Cir.), ECF 41 (Mot.); ECF 59 (Order). The Fifth Circuit stayed the *VOTE III* injunction pending appeal. ECF 59. Consistent with its then-pending en banc petition in *VOTE II*, moreover, Louisiana’s *VOTE III* panel-stage briefing expressly “preserve[d] for en banc review the issue raised in its pending *VOTE II* en banc petition: whether the capable-of-repetition-yet-evading-review exception applies in PLRA cases such as this where the 90-day deadline routinely defeats effective appellate review absent application of a mootness exception.” ECF 75-1 at 5–6.

A merits panel of the Fifth Circuit heard oral argument on November 5, 2025. The *VOTE III* injunction, however, automatically expired on November 20.

App.20a. And the panel issued a decision on November 21, holding “like [the *VOTE I* and *VOTE II*] panels”—under *Smith*—that “this appeal is moot.” App.28a. The State sought en banc review of the *VOTE III* panel’s decision, again (a) urging the Fifth Circuit to overrule *Smith* and apply the exception for issues capable of repetition yet evading review and (b) highlighting the district court’s egregious end-run around the PLRA’s limits on prospective relief. *VOTE III*, No. 25-30478, ECF 99.

2. The Fifth Circuit denied rehearing en banc in both *VOTE II* and *VOTE III*. The court issued its principal order in the *VOTE III* docket on February 27, 2026, App.3a–17a, where the court’s en banc poll resulted in an 11-6 vote against rehearing. App.4a.

Judge Jones, joined by Judges Smith, Ho, Duncan, and Oldham, dissented from the denial of rehearing en banc. App.5a. “For two years,” Judge Jones explained, “the state of Louisiana has been held hostage to serial interim-but-expiring injunctive decrees, but it has been unable to obtain appellate review.” App.7a. This is a textbook case, she said, for “appellate review under the mootness exception for issues capable of repetition yet evading review.” App.8a. “The exception requires that ‘(1) the challenged action [must be] in its duration too short to be fully litigated prior to cessation or expiration’ and (2) there [must be] a reasonable expectation that the same complaining party will be subject to the same action again.” *Id.* (quoting *Shemwell v. City of McKinney*, 63 F.4th 480, 484 (5th Cir. 2023) (in turn quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170 (2016))). “The fact that three appeals have been dismissed as moot proves

the first factor, and the fact that an identical injunction is at issue in at least two appeals proves the second factor.” *Id.*

Recognizing that the Fifth Circuit’s *Smith* decision barred review, Judge Jones stressed that the “instant proceedings refute [*Smith*’s] holding.” *Id.* Looking to other circuits’ determinations of “how much judicial review is needed,” virtually all “hold that sufficient judicial review means parties must have time to seek ‘plenary review by the Supreme Court.’” *See* App.8a–9a (collecting cases). More, “[t]he Supreme Court itself ‘has held that periods of twelve months, eighteen months, and even two years are too short to obtain complete review.’” App.10a (citations omitted). Thus, “[n]inety days is not enough time for a PLRA case to be fully resolved on appeal.” *Id.*

Judge Wilson—the author of *Smith* and a panel member in *VOTE II*—offered a statement respecting the denial of rehearing en banc. He described the district court’s conduct in this case as “concerning,” and, “[l]ike Judge Jones and my other dissenting colleagues,” he was “deeply skeptical” that a district court “can functionally evade the PLRA’s express curbs on its injunctive power, seemingly insulated from appellate review.” App.15a. Nonetheless, Judge Wilson voted to deny rehearing en banc. He noted that the State did not expressly ask the panel to overrule *Smith* in *VOTE II*. App.16a. (Doing so would have been futile because *Smith* was binding on the *VOTE II* panel, but in all events, Judge Wilson did not dispute that the State expressly preserved its *Smith* challenge before the *VOTE III* panel, *see supra* p. 15.) He also reaffirmed his commitment to *Smith*’s reasoning.

See App.16a (“Nor am I convinced that *Smith* was incorrect in its analysis of the capable-of-repetition-yet-evading-review exception to mootness.”). In particular, he stated that he is “not ready to jettison the notion that meaningful review of a district court’s preliminary injunction is feasible within the PLRA’s express framework—even if it would, by definition, need to be expedited.” *Id.*

3. On May 26, 2026, following a bench trial in early February—and after two years of litigation—the district court entered judgment for Defendants and dismissed Plaintiffs’ claims with prejudice. *Voice of the Experienced v. LeBlanc*, No. 23-cv-1304-BAJ-EWD, 2026 WL 1472248 (M.D. La. May 26, 2026).

REASONS FOR GRANTING THE PETITION

This Court’s review and reversal are warranted because the Fifth Circuit’s *Smith* decision as implemented below is contrary to this Court’s precedents and the precedents of virtually every court of appeals. Indeed, the error is so clear that summary treatment would be proper. And course correction in this case is especially warranted to preserve the PLRA and to ensure that district courts faithfully comply with it.

I. SUMMARY REVERSAL IS WARRANTED.

The Fifth Circuit’s application of its *Smith* decision below squarely conflicts with this Court’s precedents and precedents from virtually every court of appeals in two respects: (A) contrary to *Smith*, those precedents hold that 90 days is too short to fully litigate a dispute; and (B) contrary to *Smith*, those precedents hold that the unavailability of plenary merits review

by *this Court* is what triggers the mootness exception for issues capable of repetition yet evading review. The Court should summarily reverse on either or both grounds—or, at the least, it should grant plenary review on both grounds.

A. This Court and Others Squarely Reject the Fifth Circuit’s View that 90 Days Is Sufficient to Fully Litigate a Dispute.

1. This Court’s precedents could not be clearer on the question whether a dispute “is ‘in its duration too short to be fully litigated.’” *Turner*, 564 U.S. at 440. Those precedents, the Court has emphasized, hold that periods of one year, one-and-a-half years, and even two years are “too short” for a dispute to be fully litigated. *Id.* Further, the Court held just last year that a period of “three months” is “too short to complete judicial review[.]” *Consumers’ Rsch.*, 606 U.S. at 671 n.1 (citation omitted). Virtually every court of appeals is in line with these precedents.

The vast majority of the courts of appeals, for example, holds that periods from approximately six months to two years are too short to fully litigate a dispute. *See, e.g., Where Do We Go Berkeley v. Cal. Dep’t of Transp.*, 32 F.4th 852, 858 (9th Cir. 2022) (A “six-month preliminary injunction is too brief for an appeal to be fully litigated.”); *Libertarian Party of Mich. v. Johnson*, 714 F.3d 929, 932 (6th Cir. 2013) (six months); *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1018 (9th Cir. 2012) (“We have repeatedly held that similar actions lasting only one or two years evade review.”); *Bourgeois v. Peters*, 387 F.3d 1303, 1309 (11th Cir. 2004) (“[W]e conclude that one

year is an insufficient amount of time for a district court, circuit court of appeals, and Supreme Court to adjudicate the typical case.”); *Burlington N. R.R. Co. v. Surface Transp. Bd.*, 75 F.3d 685, 690 (D.C. Cir. 1996) (“[B]oth Supreme Court and circuit precedent hold that orders of less than two years’ duration ordinarily evade review.”); *United Steel Paper & Forestry Rubber Mfg. Allied Indus. & Serv. Workers Int’l Union AFL-CIO-CLC v. Gov’t of Virgin Islands*, 842 F.3d 201, 208 (3d Cir. 2016) (“two years” was “too short” for claim “to be fully litigated prior to its expiration”).

Unsurprisingly, moreover, the vast majority of the courts of appeals also holds that periods of 90 days specifically (and similar periods) are too short to fully litigate a dispute. *See, e.g., Arcia v. Fla. Sec’y of State*, 772 F.3d 1335, 1343 (11th Cir. 2024) (a “90-day window” is “too short” to permit issues to be “fully litigated prior to their cessation or expiration”); *Praxis Props., Inc. v. Colonial Savings Bank, S.L.A.*, 947 F.2d 49, 62 (3d Cir. 1991) (90-day period is “sufficiently brief to satisfy the ‘evading review’ requirement”); *In re Grand Jury Proceedings*, 814 F.2d 61, 68 (1st Cir. 1987) (“The ninety-day nondisclosure provision in the letter makes it quite unlikely that appellate review could take place within that period.”); *Dohner v. Depweg*, 178 F. App’x 656, 658 (9th Cir. 2006) (applying exception to preliminary injunction that likely expired on the PLRA’s 90-day provision); *see also J.T. v. Dist. of Columbia*, 983 F.3d 516, 524 (D.C. Cir. 2020) (“[A] maximum shelf-life of fewer than four months” “meets the ‘evading review’ prong.”); *United States v. Seminole Nation of Okla.*, 321 F.3d 939, 943 (10th Cir. 2002) (60- to 90-

day limit on duration of temporary orders was “a sufficiently limited duration to ordinarily escape appellate review”); *Lighthouse Fellowship Church v. Northam*, 20 F.4th 157, 165 (4th Cir. 2021) (executive orders with “lifespans” of “about 30 days” meet the exception because “those executive orders were inherently limited in duration”).

2. Against that backdrop, the Fifth Circuit’s *Smith* decision—implemented in the decisions below—stands virtually alone. *Smith* holds that “ninety days is not in itself necessarily too short a time fully to litigate a challenge to a PLRA injunction.” 88 F.4th at 1125–26. *Smith*’s author, moreover, reaffirmed below his view that a 90-day period is sufficient to ensure “meaningful review.” App.16a (Wilson, J.).

With the deepest respect for Louisiana’s home circuit, this is wrong. If as this Court has held (see *Turner*)—and if as numerous courts of appeals have held (see those listed above)—periods of up to two years are insufficient to ensure meaningful appellate review, then so is 90 days. This Court in *Consumers’ Research* said exactly that: A period of “three months” is “too short to complete judicial review[.]” See 606 U.S. at 671 n.1 (citation omitted); accord App.10a (Jones, J.) (“Ninety days is not enough time for a PLRA case to be fully resolved on appeal.”). The Court need say no more to summarily reverse the decisions below.

B. This Court and Others Squarely Reject the Fifth Circuit’s View that Review by a Court of Appeals Is Sufficient.

1. This Court’s precedents likewise could not be more clear on the question whether plenary review by this Court (rather than a court of appeals) is the focus of the mootness exception for issues capable of repetition yet evading review. The question, this Court has said, is whether “plenary review *by this Court*” is possible. 435 U.S. at 774 (emphasis added); *accord Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 547 (1976) (“[I]f we decline to address the issues in this case on grounds of mootness, the dispute will evade review, or at least considered plenary review in this Court, since these orders are by nature short-lived.”). Or, as the Court put it more recently, a dispute evades review if it expires before it “arrive[s] here.” *Turner*, 564 U.S. at 440 (citation omitted).

Here, too, the vast majority of the federal courts of appeals echoes the Court’s focus on whether a dispute will likely expire before plenary merits review by this Court. *See, e.g., Lowe v. Gagné-Holmes*, 126 F.4th 747, 760 (1st Cir. 2025) (the question is whether a dispute may be fully litigated “at the Supreme Court” prior to its expiration); *Alcoa, Inc.*, 698 F.3d at 787 (“[W]e have recognized that ‘evading review’ means that the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration.” (citation omitted)); *United Bhd. of Carpenters & Joiners of Am.*, 721 F.3d at 688 (“To evade review, the challenged action must be incapable of surviving long enough to undergo Supreme Court review.”); *In re Flint Water Cases*, 53 F.4th at

189 (“An action is too short if it is impossible ‘to obtain complete judicial review,’ including ‘plenary review’ by the Supreme Court.” (citation omitted)); *Associated Energy Grp.*, 131 F.4th at 1318 (“Evading review means that the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration.” (citation omitted)); *Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of City of Watervliet*, 260 F.3d 114, 119 (2d Cir. 2001) (“A recurrent dispute will ‘evade review’ if it could not be entirely litigated before again becoming moot, including prosecution of appeals as far as the Supreme Court.”); *Cnty. of Butler v. Governor of Pa.*, 8 F.4th 226, 231 n.3 (3d Cir. 2021) (citing *Brach v. Newsom*, 6 F.4th 204, 921 (9th Cir. 2021), favorably for the proposition that “complete judicial review ... includes Supreme Court review”); *Bourgeois*, 387 F.3d at 1309 (“[W]e conclude that one year is an insufficient amount of time for a district court, circuit court of appeals, and Supreme Court to adjudicate the typical case.”).

2. Likewise on this issue, the Fifth Circuit’s *Smith* decision stands virtually alone. Neither *Smith* itself nor Judge Wilson’s statement below disputes that plenary merits review by this Court within 90 days is nigh impossible. Unfortunately, neither writing even addresses the fact that this Court’s *Bellotti*, *Nebraska Press Association*, and *Turner* decisions (to say nothing of the sister circuits’ decisions) require the possibility of this Court’s plenary review to avoid the mootness exception for issues capable of repetition yet evading review.

Instead, *Smith* rests on the hypothetical that (a) *the Fifth Circuit* can expedite proceedings quickly enough so that (b) *the Fifth Circuit* can issue a merits decision within 90 days of the injunction’s issuance. *See* 88 F.4th at 1126 (reasoning that, if the appellant immediately identifies the impending mootness issue, the Fifth Circuit could “set a more expedited briefing schedule and perhaps adjudicate[] the appeal before the preliminary injunction expire[s]”); *accord* App.16a (Wilson, J.) (an “expedited” Fifth Circuit appeal could permit “meaningful review”). As Louisiana’s experience illustrates, the hypothetical is unrealistic on its own terms given that both *VOTE II* and *VOTE III* were expedited in the Fifth Circuit—and still that court’s decisions came too late. *See* App.8a (Jones, J.) (“The instant proceedings refute that holding.”). But more fundamentally, the Fifth Circuit’s focus on whether *the Fifth Circuit* can meaningfully review an injunction within 90 days directly conflicts with this Court’s precedents and the others highlighted above: The proper question is whether *this Court* can conduct plenary merits review of an injunction within 90 days—and of course, no one disputes that the answer to that question generally is no. *See* App.8a–9a (Jones, J.) (“[O]ther circuits hold that sufficient judicial review means parties must have time to seek ‘plenary review’ by the Supreme Court.” (quotation marks omitted)).

Here, too, this Court need say no more to summarily reverse.

II. THE COURT’S INTERVENTION IN THIS CASE IS IMPORTANT.

It is important for the Court to intervene now not only to correct the Fifth Circuit’s clear error, but also to stave off serious negative consequences both for the PLRA and for the states within the Fifth Circuit. And given Louisiana’s remarkable story in this case, this is an ideal vehicle to correct course.

A. Start with the PLRA, which was designed to “curb[] the equitable discretion of district courts.” *Miller*, 530 U.S. at 339. Relevant here, the PLRA does so by requiring district courts to make need-narrowness-intrusiveness findings before entering prospective relief (§ 3626(a)(1)) and by forcing the automatic expiration of preliminary injunctions after 90 days unless the district court takes certain affirmative steps to avoid such expiration (§ 3626(a)(2)).

Those PLRA limits are gutted in the Fifth Circuit under the regime established by *Smith*. That is because *Smith* reduces the PLRA to an honor system: District courts can comply with the PLRA if they wish when they enter preliminary injunctions, but if they opt not to comply, their refusal to comply is effectively unreviewable by the Fifth Circuit or this Court—because the PLRA’s 90-day deadline will always be available to immunize the injunction order from appellate scrutiny.

Regrettably, that is the story that played out below. In both *VOTE II* and *VOTE III*, Louisiana protested that the district court unlawfully entered prospective relief without making the need-narrowness-intrusiveness findings. *Cf.* § 3626(a)(1) (“The court

shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.”). The district court, however, allowed both injunctions to expire—and the consequence of *Smith* is that those PLRA violations are now unreviewable.

The story is even worse as to *VOTE III* where it was clear to everyone involved that the district court was unable to take the steps necessary to extend the *VOTE II* injunction past the 90-day deadline—it could not “make[] the findings required under subsection (a)(1) for the entry of prospective relief [or] make[] the order final before the expiration of the 90-day period.” § 3626(a)(2). So the district court found a workaround: It allowed the *VOTE II* injunction to expire for one day and then entered an identical injunction (the *VOTE III* injunction), without pretending to satisfy the PLRA’s default bar on preliminary injunctive relief extending past “the date that is 90 days after its entry.” § 3626(a)(2). With due respect, this is lawless. It does irreparable harm to the integrity of the judiciary and the PLRA itself—and both Judge Jones and Judge Wilson rightly identified the problem. *See* App.10a (Jones, J.) (“This court should have taken a stand against judicial failure to abide by the law.”); App.15a (Wilson, J.) (“Like Judge Jones and my other dissenting colleagues, I am deeply skeptical that this pattern complies with the PLRA’s statutory parameters.”).

Yet *Smith* renders unreviewable this direct violation of the PLRA. *See* App.15a (Wilson, J.) (“[O]ur court faces a concerning conundrum: If a district court

may simply enter a ‘new’ preliminary injunction under the PLRA on day 91, after a prior one expires, that court can functionally evade the PLRA’s express curbs on its injunctive power, seemingly insulated from appellate review.”); App.7a (Jones, J.) (“[M]ootness effectively prevents appellate consideration of the propriety of any PLRA-governed preliminary injunction. Even worse from a legal standpoint, the threat that a district court could commit serial violations of the PLRA with 90-day ‘preliminary’ relief orders that escape appellate review is intolerable.”).

This is not, and cannot be, the law. As Judge Jones explained, “Congress enacted the PLRA precisely to curb excessive and imprudent judicial management of state and local prison facilities.” App.7a. The *Smith* decision, however, permits district courts to return to the halcyon pre-PLRA days if they wish—for any violations of the PLRA are effectively insulated from appellate review in the preliminary-relief context. *Smith* must be overturned to restore the PLRA to its rightful place and our appellate bench to its proper role.

B. *Smith* also poses a recurring danger to Louisiana and its sister states within the Fifth Circuit. *Smith* itself was a Louisiana case—and it followed a predecessor, *Yates*, which was a Texas case. As the existence of both cases suggests, this mootness problem naturally and frequently arises within states that endure extensive prison litigation. That Louisiana subsequently faced the same mootness problem three different times in this case alone underscores the point. And that problem is costly: For Louisiana in this case, those costs include litigating three full appeals, with

nothing to show for them as of yet—all the while remaining subject to the district court’s appetite for serial injunctions. Only overruling *Smith* can turn the tide for the Fifth Circuit states.

The problem for Louisiana—and the need for merits review of the above PLRA issues—is even more acute. That is because this lawsuit arises from the Middle District of Louisiana, in which Louisiana’s largest prison, LSP, is located. Louisiana thus has a profound interest in both (a) Middle District precedent that complies with the PLRA and (b) the Fifth Circuit’s ability to review on the merits any failures to comply with the PLRA.

C. This vehicle, moreover, is an ideal vehicle to jettison *Smith*. Rarely can an appellant claim that it has faced the same mootness problem three different times in the same case; Louisiana can. And the PLRA problems crying out for merits review confirm that this is the right case to address *Smith*.

In his statement below, Judge Wilson suggested (App.16a–17a) that the then-impending trial on the merits would independently moot this case. In the weeks since he made that suggestion, Louisiana prevailed at that trial, and the district court entered judgment in Louisiana’s favor. But that development poses no vehicle issue. That is because no one disputes that the *VOTE II* and *VOTE III* appeals are moot—the underlying injunctions have expired. The only question is whether the mootness exception for issues capable of repetition yet evading review applies to the disputes that would have been litigated in those appeals:

whether the district court violated the PLRA. The answer is yes. That a trial on the merits has come and gone has nothing to do or say about the PLRA preliminary-relief issues Louisiana seeks to litigate in the Fifth Circuit. If anything, that Louisiana endured serial unlawful injunctions *and then won at trial* underscores the need to ensure effective appellate review of those injunctions, so that further repeated PLRA violations cannot occur.

CONCLUSION

The Court should grant the petition and summarily reverse or, alternatively, grant plenary review.

Respectfully submitted,

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APPENDIX

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**APPENDIX A — DENIAL OF REHEARING
EN BANC OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT,
FILED MARCH 5, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30322

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION *ON BEHALF OF ITSELF AND
ITS MEMBERS*; MYRON SMITH, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DAMARIS JACKSON, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; NATE WALKER, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DARRIUS WILLIAMS, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; KEVIAS HICKS; JOSEPH GUILLORY;
ALVIN WILLIAMS,

Plaintiffs-Appellees,

versus

JAMES M. LEBLANC, *SECRETARY,
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS*; TIM HOOPER, *WARDEN,
LOUISIANA STATE PENITENTIARY*; LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS,

Defendants-Appellants.

Appendix A

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

ON PETITION FOR REHEARING EN BANC

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P.40 and 5TH CIR. R.40), the petition for rehearing en banc is DENIED.

**APPENDIX B — DENIAL OF REHEARING
EN BANC OF THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT,
FILED FEBRUARY 27, 2026**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30478

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION *ON BEHALF OF ITSELF AND
ITS MEMBERS*; MYRON SMITH, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DAMARIS JACKSON, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; NATE WALKER, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DARRIUS WILLIAMS, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; KEVIAS HICKS; JOSEPH GUILLORY;
ALVIN WILLIAMS,

Plaintiffs-Appellees,

versus

JAMES M. LEBLANC, *SECRETARY,
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS*; TIM HOOPER, *WARDEN,
LOUISIANA STATE PENITENTIARY*; LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS,

Defendants-Appellants.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

ON PETITION FOR REHEARING EN BANC

Before DAVIS, STEWART, and RAMIREZ, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R.40 I.O.P.), the petition for panel rehearing is DENIED. The petition for rehearing en banc is DENIED because, at the request of one of its members, the court was polled, and a majority did not vote in favor of rehearing (FED. R. APP. P.40 and 5TH CIR. R.40).

In the en banc poll, six judges voted in favor of rehearing, JUDGES JONES, SMITH, HO, DUNCAN, ENGELHARDT, and OLDHAM, and eleven judges voted against rehearing, CHIEF JUDGE ELROD, and JUDGES STEWART, RICHMAN, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, WILLETT, WILSON, DOUGLAS, and RAMIREZ.

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EDITH H. JONES, *Circuit Judge*, joined by SMITH, HO, DUNCAN, and OLDHAM, *Circuit Judges*, dissenting from denial of rehearing en banc:

I respectfully dissent from this court's failure to rehear this appeal en banc and forcefully rebuke the district court's gamesmanship that avoided the requirements of federal law. The authority of federal courts springs from our adherence to governing law, which derives from statutes enacted by Congress, Supreme Court rulings, and for Fifth Circuit district courts, rulings of this court. As Hamilton put it, Article III federal courts have "neither Force nor Will, but merely judgment." *The Federalist* No. 78 (Alexander Hamilton). Judgment must be based soundly and impartially on the law. That governing law is inconvenient or personally unpalatable affords no basis for refusing to abide by it. It is up to the Article III courts to police judicial refusals to follow the law. This case, though by far not the only example of recent judicial disobedience, is emblematic.

Twice, the district court here disobeyed the Prison Litigation Reform Act, which mandates that all preliminary injunctions in institutional prison reform cases expire after 90 days if they are not made permanent. 18 U.S.C. § 3626(a)(2). *See Miller v. French*, 530 U.S. 327, 339, 120 S. Ct. 2246, 2254, 147 L. Ed. 2d 326 (2000) (the purpose of the PLRA was to "curb[] the equitable discretion of district courts."). To avoid automatic expiration, the court must "make[] the findings required under subsection (a)(1) for the entry of prospective relief and make[] the order final *before* the expiration of the 90-day period." 18 U.S.C.

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§ 3626(a)(2) (emphasis added). And the court must find that “such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.” *Id.* § 3626(a)(1)(A).

When the court’s two violations of the PLRA occurred, litigation in this case about prisoners’ farming during the summer had already been pending a year, and the district court’s initial interim relief had been stayed in part by this court.¹ This court subsequently held the appeal moot because the preliminary injunction’s 90-day term had expired under the PLRA.²

When the next farming season rolled around, a new motion was filed for injunctive relief. The district court issued a new preliminary order, and it was immediately appealed. *Voice of the Experienced v. LeBlanc (II)*, No. 25-30322. Apparently seeking to avoid the PLRA’s stringent substantive requirements, the district court let its preliminary injunction expire. This court declared the case moot and did not rule on the merits. The state sought rehearing en banc.

But *one day after* the 90-day deadline, the district court reimposed an identical injunction, also without

1. *Voice of the Experienced v. LeBlanc (I)*, No. 24-30420. The district court’s temporary restraining order was treated by this court functionally as a reviewable preliminary injunction.

2. Given the vicissitudes of litigation, *perhaps* the court’s failure to follow the PLRA in this initial skirmish was anomalous.

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the factfindings required by § 3626 (a)(1)(A). *Voice of the Experienced v. LeBlanc (III)*, No. 25-30478. The state again (unsuccessfully) sought rehearing en banc. Yet again, this court has declared the case moot after the PLRA's 90-day deadline expired.³ And this court has refused to entertain a petition for rehearing en banc. I respectfully dissent.

For two years, the state of Louisiana has been held hostage to serial interim-but-expiring injunctive decrees, but it has been unable to obtain appellate review. Even with expedited appellate schedules in this court, the preliminary injunctions expired, and the appeals were held moot. Obviously, mootness effectively prevents appellate consideration of the propriety of any PLRA-governed preliminary injunction. Even worse from a legal standpoint, the threat that a district court could commit serial violations of the PLRA with 90-day “preliminary” relief orders that escape appellate review is intolerable. Congress enacted the PLRA precisely to curb excessive and imprudent judicial management of state and local prison facilities. The Supreme Court has admonished that prison administration is among the most difficult but important tasks of government officials. *Turner v. Safley*, 482 U.S. 78, 84-85, 107 S. Ct. 2254, 2259, 96 L. Ed. 2d 64 (1987). Federal courts’ inappropriate interference with prison management undermines basic principles of Federalism. Congress very deliberately limited the grounds by which federal judges may impose liability and

3. Since the farming season closed in the fall, the district court finally commenced a full injunction hearing on the claimed violation of prisoners’ rights during this winter.

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remedial measures on prison administrators. *Miller*, 530 U.S. at 339-340, 120 S. Ct. at 2254.

In this case, where the specter of serial preliminary injunctive orders by a noncompliant judge has become real, this court should have granted appellate review under the mootness exception for issues capable of repetition yet evading review. The exception requires that “(1) ‘the challenged action [must be] in its duration too short to be fully litigated prior to cessation or expiration’ and (2) ‘there [must be] a reasonable expectation that the same complaining party will be subject to the same action again.’” *Shemwell v. City of McKinney*, 63 F.4th 480, 484 (5th Cir. 2023) (quoting *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170, 136 S. Ct. 1969, 1976, 195 L. Ed. 2d 334 (2016)). The fact that three appeals have been dismissed as moot proves the first factor, and the fact that an identical injunction is at issue in at least two appeals proves the second factor.

The panels here were bound by our decision in *Smith v. Edwards*, which held that a preliminary injunction under the PLRA does not meet the capable of repetition exception to mootness. *Smith v. Edwards*, 88 F.4th 1119, 1125-26 (5th Cir. 2023). *Smith* held that the 90-day deadline in the PLRA is not “necessarily too short a time fully to litigate a challenge to a PLRA injunction.” *Id.* at 1126. The instant proceedings refute that holding. Although this court has not decided “how much judicial review is needed” before a matter has evaded review, *Empower Texans, Inc. v. Geren*, 977 F.3d 367, 370 (5th Cir. 2020), other circuits hold that sufficient judicial review

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means parties must have time to seek “‘plenary review’ by the Supreme Court,” *In re Flint Water Cases*, 53 F.4th 176, 189 (6th Cir. 2022) (quoting *First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765, 774, 98 S. Ct. 1407, 1414, 55 L. Ed. 2d 707 (1978)).⁴ Two circuits’ decisions that involved appeals under the PLRA ruled primarily on the second test for the mootness exception: each confronted only a single injunction that had expired within 90 days, but the courts found that the likelihood of district court evasion was remote. See *United States v. Sec’y, Fla. Dep’t of Corr.*, 778 F.3d 1223, 1229 (11th Cir. 2015) (“no basis . . . to predict that [the plaintiff will seek] a new preliminary injunction,” nor that “the district court . . . will refrain from finalizing its order.”); *Ahlman v. Barnes*, 20 F.4th 489, 491 (9th Cir. 2021) (because the COVID epidemic had subsided, “the chance that Plaintiffs successfully acquire another preliminary injunction . . . is remote.”). *Ahlman* also held, however, that in many PLRA appeals, the preliminary injunction “will not be fully litigated

4. See also *United Bhd. of Carpenters & Joiners of Am., AFL-CIO v. Operative Plasterers’ & Cement Masons’ Int’l Ass’n of U.S. & Canada, AFL-CIO*, 721 F.3d 678, 688, 406 U.S. App. D.C. 46 (D.C. Cir. 2013) (“To evade review, the challenged action must be incapable of surviving long enough to undergo Supreme Court review.”); *Associated Energy Grp., LLC v. United States*, 131 F.4th 1312, 1318 (Fed. Cir. 2025) (“[E]vading review’ means that the underlying action is almost certain to run its course before either this court or the Supreme Court can give the case full consideration.” (quoting *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774, 787 (9th Cir. 2012)); *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1287 (9th Cir. 2013) (holding that a case is only fully litigated if it has opportunity to be “reviewed by [a circuit court] and the Supreme Court.”).

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before the injunction expires.” *Ahlman*, 20 F.4th at 494. Therefore, the first criterion for the mootness exception was fulfilled. *Id.*

The Supreme Court itself “has held that periods of twelve months, *Turner v. Rogers*, 564 U.S. 431, 440, 131 S. Ct. 2507, 180 L. Ed. 2d 452 (2011), eighteen months, *First Nat’l Bank*, 435 U.S. at 774, and even two years, *Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 170, 136 S. Ct. 1969, 195 L. Ed. 2d 334 (2016), are too short to obtain complete review.” *In re Flint Water Cases*, 53 F.4th at 189.

Ninety days is not enough time for a PLRA case to be fully resolved on appeal. This court should have found by at least the second injunctive order in question that the district court’s noncompliance with the PLRA raised issues capable of repetition yet evading review. This court should have taken a stand against judicial failure to abide by the law. I dissent.

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STEPHEN A. HIGGINSON, *Circuit Judge*, joined by STEWART, GRAVES, and DOUGLAS, *Circuit Judges*, concurring in denial of rehearing en banc:

It is a disservice to our branch for any inferior officer to speak of “rebuk[ing]” or “policing” another. In that spirit, we would all do well to remember our late colleague Judge Reavley’s kind and gentle reminder that “[t]he trial judge is the key to the administration of justice. . . . [I]t is a function of the circuit judge to be an enabler of the trial judge, because the trial court is the point of delivery of justice.” Thomas M. Reavley, *TMR’s Judicial Philosophy*, in REAVLEY ON LAW, JUDGING, AND THE GOOD LIFE 7, 7, 9 (Bryan A. Garner ed., 2022); *see also* Alvin B. Rubin, *Views from the Lower Court*, 23 UCLA L. REV. 448, 452 (1976) (“In these endeavors, hyperbole and metaphor are more frequently a hindrance than a help.”).

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JAMES C. HO, *Circuit Judge*, dissenting from the denial of rehearing en banc:

I regret that we’re not taking this case en banc. I get that this appeal may become moot—the district court may soon enter final judgment, and thus supplant the preliminary injunction. *See Koppula v. Jaddou*, 72 F.4th 83 (5th Cir. 2023). But even if so, this denial order serves two useful functions.

First, Judge Jones’s important dissent details the troubling series of actions by the district court. I join her call to arms on the need for appellate courts to police insubordination in the district courts. *See also In re Westcott*, 135 F.4th 243, 250 & n.1, 251 (5th Cir. 2025) (Ho, J., concurring). One hopes that district courts in our circuit will heed her message.¹

Second, the support for rehearing en banc today restores and reaffirms the proper standards that do (and do not) govern rehearing en banc.

1. Our colleagues contend that it’s wrong to comment on insubordination by federal judges. *See ante*, at 8 (Higginson, J., concurring in the denial of rehearing en banc).

But they did just that—indeed, just last week—in *Roake v. Brumley*, 154 F.4th 329 (5th Cir. 2026) (Dennis, J., dissenting) (accusing federal judges of “evad[ing]” precedent in a “calculated” “maneuver” to violate the “vertical fidelity that defines the role of an inferior court”). Their dissent in *Roake* demonstrates that they see nothing wrong with judges judging the work of other judges. Nor do I. Indeed, that’s our job. The only question is whether a particular allegation of insubordination is true or false.

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In *United States v. Bell*, 130 F.4th 1053 (5th Cir. 2025), the support for en banc review reaffirmed that the lack of an en banc petition is *not* a good reason to deny en banc—a point that warranted clarification after *Neese v. Becerra*, 127 F.4th 601 (5th Cir. 2025).

Today’s order likewise restores an en banc principle put into question in *Neese*. We reaffirm today that a suggestion of mootness (like the absence of an en banc petition) is *not* a good reason to deny rehearing en banc.

To begin with, a suggestion of mootness is just that—a suggestion. It may well be proven false.²

And even if the suggestion of mootness comes true, it’s still worth granting en banc review, just to vacate the

2. See *Neese*, 127 F.4th at 603 n.1 (Ho, J., dissenting from the denial of rehearing en banc) (opposing misuse of “procedural stratagems to avoid judicial review,” such as a suggestion of mootness because the government purports to have abandoned its views) (citing cases); see also *Tenn. v. Kennedy*, 2025 U.S. Dist. LEXIS 207870, 2025 WL 2982069, *4 (S.D. Miss. 2025) (later ordering same relief that the district court granted in *Neese*, because “Defendants have not delineated any efforts they have made to comply with the President’s directives”).

Judge Jones believes the suggestion of mootness will prove false here, too. Taking this case en banc would have allowed us to explore her theory further. See, e.g., *Independence Party of Richmond Cnty. v. Graham*, 413 F.3d 252, 256 (2nd Cir. 2005) (“To apply the ‘capable of repetition yet evading review’ exception to otherwise moot appeals of preliminary injunctions would, moreover, impermissibly evade the ordinary rule, pursuant to 28 U.S.C. § 1291, that appellate courts review only ‘final decisions’ of a lower court.”).

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errant panel precedent. *See Neese*, 127 F.4th at 603 n.1 (Ho, J., dissenting from the denial of rehearing en banc).

Take *Spectrum WT v. Wendler*, 157 F.4th 673 (5th Cir. 2025). That appeal featured both elements from *Neese*—namely, (1) no en banc petition, and (2) a suggestion of mootness. In fact, it presented a much higher risk of mootness than *Neese* (*ante*, at n.1). Pending proceedings in the *Spectrum WT* district court, like here, strongly indicated that final judgment would soon supplant the preliminary injunction. We granted en banc review anyway—thus vacating errant panel precedent. And then we dismissed the appeal as moot. *See* Order, No. 23-10994, 2026 U.S. App. LEXIS 1375 (5th Cir. Jan. 20, 2026).

The panel decision here was unpublished and thus non-precedential. So if rehearing en banc is warranted even here—and I agree that it is—then it was *a fortiori* warranted in both *Spectrum WT* and *Neese*.

* * *

I’m grateful to Judge Jones for emphasizing the importance of policing district courts—and for reaffirming that a suggestion of mootness, like the absence of an en banc petition, is not a good reason to deny en banc review.

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CORY T. WILSON, *Circuit Judge*, respecting the denial of rehearing en banc:

Under the Prison Litigation Reform Act (PLRA), preliminary injunctions automatically expire after 90 days unless the district court makes specific factual findings to support extending the injunction. *See* 18 U.S.C. § 3626 (a)(2). Generally, once a preliminary injunction expires, it is moot and therefore unreviewable by our court. *Smith v. Edwards*, 88 F.4th 1119, 1124 (5th Cir. 2023). Yet in this appeal, our court faces a concerning conundrum: If a district court may simply enter a “new” preliminary injunction under the PLRA on day 91, after a prior one expires, that court can functionally evade the PLRA’s express curbs on its injunctive power, seemingly insulated from appellate review.

This litigation, involving Louisiana prisoners’ exposure to summer heat while working the penitentiary’s farm line, starkly illustrates the problem. The injunctive relief fashioned by the district court was needed only in the summer growing season, *i.e.*, for about 90 days, give or take. So for two years now, as green shoots emerged in the spring, so did plaintiffs’ requests for preliminary injunctive relief, after lying fallow during the cooler months. And as spring turned to summer, the district court entered “preliminary” relief, which lapsed per the PLRA’s timeframe before our court could review the injunctions on substance. Like Judge Jones and my other dissenting colleagues, I am deeply skeptical that this pattern complies with the PLRA’s statutory parameters.

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But I voted against hearing this case en banc because it presents a poor vehicle to address the problems with the district court's approach. First, the mootness-exception issue—the concern driving Judge Jones's dissent—was not squarely put before our *VOTE* panel. As a result, in dismissing the second of these serial appeals, we did not have occasion to consider the issue in any depth. *See Voice of the Experienced v. LeBlanc*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382 (5th Cir. Aug. 28, 2025) (*VOTE II*); *see also Voice of the Experienced v. Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990 (5th Cir. Aug. 5, 2025) (*VOTE I*); *Voice of the Experienced v. LeBlanc*, 2025 U.S. App. LEXIS 30664, 2025 WL 3252638 (5th Cir. Nov. 21, 2025) (*VOTE III*). And even assuming the issue was properly raised by the State, I am not convinced that *Smith v. Edwards* is irreconcilable with the *VOTE* panels' holdings. Nor am I convinced that *Smith* was incorrect in its analysis of the capable-of-repetition-yet-evading-review exception to mootness. In other words, I am not ready to jettison the notion that meaningful review of a district court's preliminary injunction is feasible within the PLRA's express framework—even if it would, by definition, need to be expedited.

Regardless, these cases will also shortly be moot for another reason: Earlier this month, the district court conducted a five-day bench trial on the prisoners' claims for declaratory and permanent injunctive relief. Whichever way the district court's ruling goes, the perennial crop of preliminary injunctions will not be sown again during this year's growing season. Therefore, while I share many of the concerns sketched by Judge Jones

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about the “evergreen” preliminary relief at issue, the more judicious course is a patient one. At bottom, I “do not believe our en banc resources are warranted to review the mootness question” in the case at hand. *Sacramento Homeless Union v. City of Sacramento*, 115 F.4th 1149, 1154 (9th Cir. 2024) (Nelson, J., respecting the denial of rehearing en banc).

**APPENDIX C — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED NOVEMBER 21, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30478

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION *ON BEHALF OF ITSELF AND
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Defendants-Appellants.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

Before DAVIS, STEWART, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

This case involves the third issuance of preliminary relief requested by Voice of the Experienced and several Angola inmates (collectively, “VOTE”) and granted by the district court in this matter, enjoining the Louisiana State Penitentiary (hereinafter “Angola”) from certain practices on its Farm Line. Each of the first two temporary restraining orders (“TROs”) were appealed by Louisiana’s Department of Safety and Corrections (“DPSC”), the Secretary of DPSC, and the Warden of Angola (collectively, “Louisiana”). The first two TROs expired 90 days after entry under the Prison Reform Litigation Act (“PLRA”) before the panels had an opportunity to rule on the merits. Accordingly, the first two panels dismissed their respective appeals as moot and vacated the underlying TROs under the *Munsingwear* doctrine.¹ See *Voice of the Experienced v. Westcott* (“VOTE I”), No. 24-30420, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *1 (5th Cir. Aug. 5, 2025) (per curiam); *Voice of the Experienced v. LeBlanc* (“VOTE II”), No. 25-30322,

* This opinion is not designated for publication. See 5th Cir. R. 47.5.

1. See *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S. Ct. 104, 95 L. Ed. 36 (1950).

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2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *1-2 (5th Cir. Aug. 28, 2025) (per curiam).

Both parties agree that pursuant to the terms of the PLRA, the preliminary injunction underlying the instant appeal expired on November 20, 2025. Because November 20 has come and gone, the parties no longer have a legally cognizable interest in the instant appeal and there is no meaningful relief that this panel could order. Accordingly, we DISMISS the appeal as moot and VACATE the district court's August 2025 Order of preliminary relief.

I²**A**

The Farm Line is a practice through which Angola compels inmates incarcerated at its facility to perform hard labor. Incarcerated men assigned to the Farm Line pick vegetables by hand for hours under hot, strenuous conditions. In the high heat of the Louisiana summer, conditions on the Farm Line can become life threatening. So long as they do not have a medical exemption, any of the approximately 4,000 men incarcerated at Angola can potentially be assigned to the Farm Line for disciplinary reasons. In September 2023, VOTE filed a class action lawsuit challenging Angola's operation of the Farm Line as violating the Eighth Amendment's prohibition on cruel

2. Portions of the facts and procedural history contained in subsections I.A and I.C are replicated from our previous opinion in *Voice of the Experienced v. LeBlanc*, No. 25-30322, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382 (5th Cir. Aug. 28, 2025).

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and unusual punishment. A five-day bench trial on the merits is scheduled to begin on February 3, 2026.

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At the time VOTE's suit was filed, the procedure for heat alerts for work on the Farm Line was governed by a 2018 Policy promulgated by DPSC. The policy aimed to "establish provisions for the reduction of heat pathology and to reduce the exposure to inmates identified as more vulnerable to heat (the "2018 Policy"). The 2018 Policy directed DPSC to monitor the temperature every two hours and call "Heat Alerts" when "the apparent temperature (heat index) outdoors . . . exceeded 88 degrees Fahrenheit."³ When a Heat Alert was announced at the 88-degree threshold, DPSC was required to provide the following measures to inmates working outdoors: (1) water and ice at least every thirty minutes; and (2) a rest break of at least five minutes every thirty minutes. Additionally, when Heat Alerts were called, work hours could be adjusted to accommodate extreme temperatures. In 2019, Angola adopted Directive 13.067 (the "2019 Directive"), which was specific to Angola but required the same protections for Farm Line workers when the apparent temperature, measured every two hours, reached 88 degrees.

3. "The heat index, also known as the apparent temperature, is what the temperature feels like to the human body when relative humidity is combined with the air temperature." *What Is the Heat Index?*, Nat'l Weather Serv., <https://www.weather.gov/ama/heatindex>. The terms "heat index" and "apparent temperature" are used interchangeably herein.

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In May 2024, VOTE moved for a preliminary injunction and temporary restraining order. Attempting to get ahead of the ensuing summer months, VOTE requested that the district court immediately enjoin all agricultural labor performed by incarcerated persons on the Farm Line when the apparent temperature exceeded 88 degrees Fahrenheit. In July 2024, the district court granted VOTE's motion in part (the "2024 Order"). It declined to enjoin labor on the Farm Line altogether in 88-plus degree weather but entered a TRO requiring that Angola undertake the following measures to ensure prisoner safety:

1. Correct the deficiencies of [the 2019 Directive described in the court's order], including the lack of shade and adequate rest provided to incarcerated persons laboring on the Farm Line;
2. Correct the problems with [Angola's] equipment policies . . . , including the failure to provide sunscreen and other necessary protective clothing and equipment to those laboring on the Farm Line;
3. Submit a revised and expanded [] list [of medications exempting individuals from labor on the Farm Line];
4. Create a procedure to ensure that all incarcerated persons suffering from health conditions that significantly inhibit

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thermoregulation are assessed by medical personnel and are granted heat precaution duty status; and

5. Develop an additional heat-related policy to protect those laboring outdoors when heat index values reach or exceed 113 degrees Fahrenheit, the temperature at which the National Weather Service issues excessive heat warnings.

Louisiana petitioned the Fifth Circuit for a stay of the 2024 Order pending appeal. Hearing that petition, another panel of this court denied the stay of the 2024 Order's first two provisions, but granted a stay for the last three provisions. It reasoned that the last three provisions were overbroad because they appeared to reach beyond Angola to cover the entire Louisiana DPSC, rather than just inmates working on Angola's Farm Line. However, VOTE's proposed class consists only of Angola inmates who could be forced to perform agricultural labor, not all Louisiana inmates. By contrast, the motions panel noted that the first two provisions of the 2024 Order were targeted specifically at Angola's Farm Line, and thus held that those two provisions were not overbroad.

Both parties agreed that the district court's 2024 Order expired under the PLRA on September 30, 2024. *See* 18 U.S.C. § 3626(a)(2). Nevertheless, another panel of this court heard oral argument on the 2024 Order's propriety on April 30, 2025. On August 5, 2025, that panel issued a per curiam opinion finding the appeal moot and

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vacating the 2024 Order. *VOTE I*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *1.

C

Meanwhile, in the wake of the 2024 Order, DPSC revised its heat policies in October of 2024 (the “2024 Policy”). Notably, it *raised* the threshold for issuance of a Heat Alert from 88 to 91 degrees Fahrenheit. However, the 2024 Policy also provided for some of the mitigation measures contemplated by the 2024 Order. Specifically, it stated that “water and ice,” “shaded areas for breaks” and “sunscreen” would be available to outdoor laborers at all times, regardless of the issuance of a Heat Alert. Although the 2024 Policy provided for monitoring of the temperature every two hours, a later Angola-specific Directive (the “2025 Directive”) required hourly monitoring.⁴

In March 2025, VOTE moved for a TRO to require Angola to (1) issue a Heat Alert on the Farm Line whenever the heat index meets or exceeds 88 degrees and (2) monitor the heat index every 30 minutes. VOTE argued that it was likely to succeed on the merits of its Eighth Amendment claim regarding the Farm Line practices, and Appellants were deliberately indifferent to the alleged Eighth Amendment violations. VOTE argued that preliminary injunctive relief was necessary to “protect [inmates] on the Farm Line from heat-related injury.”

4. The 2025 Directive also added a requirement for field staff to document any Heat Alert on the daily line count sheets and ensure that all rest breaks are clearly documented on the daily line count sheet.

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Among the evidence Appellees introduced in support of their motion were declarations from their own expert, Dr. Susi Vassallo (“Dr. Vassallo”) and deposition testimony from DPSC’s Chief Medical Officer, Dr. Randy Lavespere (“Dr. Lavespere”).

Appellants opposed the motion, arguing that any preliminary injunction would be improper under the PLRA. Appellants also argued that even if an injunction would be proper under the PLRA, VOTE could not show a likelihood of success on the merits or that Appellants’ actions rose to the level of deliberate indifference.

The district court held a hearing on VOTE’s motion for a TRO, which it granted in full on May 23, 2025 (the “May 2025 Order”).⁵ The May 2025 Order determined that it was substantially likely that Angola’s current Heat Alert and heat-index monitoring practices posed a substantial risk of serious harm to inmates on the Farm Line. The court also determined Appellants were likely deliberately indifferent based on their decision to *raise* the Heat Alert threshold from 88 to 91 degrees Fahrenheit despite having been ordered by the court to improve heat policies. It stated that Appellants “simply ignored” the “compelling medical findings” set forth in the findings of previous court orders, which credited Dr. Vassallo’s opinion that the risks of heat-related injury and death increase sharply at 88 degrees. Regarding the dangers of

5. The district court clarified in a later order that it had granted the TRO under its authority pursuant to the PLRA and that it would expire on August 21, 2025—90 days after its entry—unless extended or converted to permanent relief before then.

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the Angola’s heat monitoring practices, the district court cited Dr. Lavespere’s deposition testimony, concluding that it showed that Appellants were “well aware of the significant temperature swings that may occur.”

Appellants timely appealed the May 2025 Order. They also moved to expedite the appeal, which a separate motions panel of this court granted. At oral argument, both parties acknowledged that under the PLRA’s 90-day limit for preliminary injunctive relief, the May 2025 Order would automatically expire on August 21, 2025—90 days after its entry. *See* 18 U.S.C. § 3626(a)(2). On August 28, 2025, the *VOTE II* panel deemed the appeal moot and vacated the May 2025 Order under the *Munsingwear* doctrine. *VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *4.⁶

D

Meanwhile, on July 28, 2025, VOTE moved for a “renewed, successive preliminary injunction granting the same relief” issued in the May 2025 Order. On August 22, 2025, the district court granted that motion in part (the “August 2025 Order”), explaining:

The [c]ourt [previously] issued a lengthy [r]uling describing the factual and legal bases as to why the issuance of an Order requiring Defendants to maintain a Heat Alert threshold of 88 degrees Fahrenheit was necessary to preserve human

6. A petition for rehearing en banc remains pending in *VOTE II*.

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health and safety. . . . Because there have been no intervening changes in fact or law, the [c]ourt finds that a successive preliminary injunction is warranted to once again preserve human health and safety. . . . Defendants' arguments opposing the issuance of this successive preliminary injunction do not persuade otherwise.

The district court determined that successive injunctions are not barred by the PLRA nor by any order of this court. It then recounted the extensive evidence it considered in issuing the May 2025 Order, described *supra*. The court credited Dr. Vassallo's testimony regarding the risk of harm, which was supported by data from the Occupational Health and Safety Administration, the National Weather Service, and scientific literature. Therefore, the court enjoined the use of the 91 degrees Fahrenheit threshold for Heat Alerts, and imposed an 88 degrees Fahrenheit threshold "[f]or the same compelling reasons described" in the May 2025 Order.

However, the court declined to re-issue relief regarding the frequency of heat index monitoring. The court observed that pursuant to the 2025 Directive, Louisiana was monitoring the heat index at one-hour intervals. VOTE requested monitoring at half-hour intervals. Because the difference between these frequencies was minimal, relief on that issue was not warranted.

Louisiana immediately appealed the August 2025 Injunction and sought to consolidate that appeal with its appeal of the May 2025 Injunction. However, because the

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VOTE II panel determined that the May 2025 Injunction was moot, that panel denied the motion to consolidate and denied the motion to stay without prejudice to refiling. *VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *4. Louisiana refiled its motion for a stay pending appeal, which was granted by a separate motions panel of this court. Louisiana also filed an unopposed motion to expedite this appeal, which was granted. Oral argument was heard by the panel on November 5, 2025, just fifteen days before the preliminary injunction was set to expire.

II

The August 2025 Order “had the ‘practical effect’ of a preliminary injunction.” *VOTE I*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *2; *see also VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *2. Therefore, regardless of the label given to the order by the district court, we have jurisdiction over this appeal under 28 U.S.C. § 1292(a)(1).

III

The circumstances presented to this panel are strikingly similar to those presented to the *VOTE I* and *VOTE II* panels. Accordingly, like those panels, we hold that this appeal is moot and that the August 2025 Order must be vacated.

A

It is well established that for this court to retain Article III judicial authority over a case, the case must

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remain a case or controversy “through ‘all stages of the litigation,’” including on appeal. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87, 92, 130 S. Ct. 576, 175 L. Ed. 2d 447 (2009)). Therefore, “[i]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed.” *VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *2 (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992)).

Here, an event has occurred that has made it impossible for this panel to grant effectual relief to the parties. On November 20, 2025, the August 2025 Order expired by matter of law under the PLRA, 90 days after its entry. When the injunction expired, it ceased to have any legal effect on the parties and the parties ceased to have any legally cognizable interest in the review of that injunction. *See VOTE I*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *2 (“Generally, when an injunction expires by its own terms, it is moot and there is nothing to review.” (quoting *Yates v. Collier*, 677 F. App’x 915, 917 (5th Cir. 2017) (per curiam))). In short, “[b]ecause the preliminary injunction has expired, there is no remedy we can provide [Appellants] at this point.” *See Smith v. Edwards*, 88 F.4th 1119, 1126 (5th Cir. 2023).

We recognize that this is the third time these parties have appeared before our court on appeal of preliminary relief in the same underlying dispute. This case was set for expedited appeal on an expedited, contemporaneous briefing schedule, with argument heard as soon as

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practicable—which was still just fifteen days before the injunction was set to expire as a matter of law. But the PLRA’s 90-day limit does not provide for any exceptions. We note that at oral argument, VOTE averred that it does not intend to seek additional preliminary relief during the winter months where temperatures are not reasonably expected to exceed 88 degrees. The panel fully anticipates that this case will be tried on the merits as scheduled in February 2026, before temperatures increase again in the spring.

B

Finally, for the same reasons articulated by the first two *VOTE* panels, we hold that vacatur of the August 2025 Order is appropriate under the *Munsingwear* doctrine.

The *Munsingwear* doctrine dictates that vacatur of an underlying order is appropriate where review of the order was “prevented through happenstance,” that is, where mootness was “due to circumstances unattributable to any of the parties.” *U.S. Bancorp Mortg. Co. v. Bonner Mall P’ship*, 513 U.S. 18, 22-23, 115 S. Ct. 386, 130 L. Ed. 2d 233 (1994) (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 40, 71 S. Ct. 104, 95 L. Ed. 36 (1950), and *Karcher v. May*, 484 U.S. 72, 82-83, 108 S. Ct. 388, 98 L. Ed. 2d 327 (1987)). The purpose of this doctrine “is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a ‘preliminary’ adjudication.” *VOTE I*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *3 (internal quotation marks omitted) (quoting *Camreta*

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v. Greene, 563 U.S. 692, 713, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011)). Our court has previously vacated PLRA preliminary injunctions that expired under the statute’s 90-day limit. *See VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *4; *VOTE I*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *4; *Yates*, 677 F. App’x at 918; *Smith*, 88 F.4th at 1127.

The August 2025 Order expired on November 20, 2025, by operation of law—not by circumstances attributable to the parties. When this appeal became moot, Louisiana was “actively pursuing [its] right to appeal.” *VOTE II*, 2025 U.S. App. LEXIS 22204, 2025 WL 2481382, at *3. Therefore, vacatur of the August 2025 Order is appropriate.

IV

For the foregoing reasons, Louisiana’s appeal is DISMISSED as moot and the August 2025 Order is VACATED.⁷

7. Because the August 2025 Order is vacated, the motion panel’s stay of that order is without substantive effect and is thus LIFTED.

**APPENDIX D — OPINION OF THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT,
FILED AUGUST 28, 2025**

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 25-30322

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION ON BEHALF OF ITSELF AND
ITS MEMBERS; MYRON SMITH, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DAMARIS JACKSON, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; NATE WALKER, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; DARRIUS WILLIAMS, *INDIVIDUALLY
AND ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED*; KEVIAS HICKS; JOSEPH
GUILLORY; ALVIN WILLIAMS,

Plaintiffs-Appellees,

versus

JAMES M. LEBLANC, *SECRETARY,
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS*; TIM HOOPER, *WARDEN,
LOUISIANA STATE PENITENTIARY*; LOUISIANA
DEPARTMENT OF PUBLIC SAFETY AND
CORRECTIONS,

Defendants-Appellants.

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Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:23-CV-1304

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

PER CURIAM:*

This case involves a temporary restraining order (“TRO”) issued by the district court on May 23, 2025, enjoining the Louisiana State Penitentiary (hereinafter “Angola”) from certain practices on its “Farm Line.” This is the second TRO requested by Appellees, Voice of the Experienced (“VOTE”)¹ and several Angola inmates. It is also the second TRO appealed to this court by Appellants, the Secretary of the Louisiana Department of Public Safety and Corrections, the Warden of Angola, Prison Enterprises, Inc. and its Director, and Louisiana’s Department of Safety and Corrections (“DPSC”). Recently, another panel of this court held that the appeal of the first TRO was moot and vacated the underlying order under the *Munsingwear* doctrine.² See *Voice of the Experienced v. Westcott*, No. 24-30420, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990 (5th Cir. Aug. 5, 2025) (per curiam). Because the TRO that is the subject of this appeal has now expired as well, we do the same.

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

1. VOTE is a nonprofit organization that “advocate[s] for the civil, constitutional and human rights” of Louisiana inmates.

2. See *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S. Ct. 104, 95 L. Ed. 36 (1950).

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The Farm Line is a practice through which Angola compels inmates incarcerated at its facility to hard labor. Incarcerated men assigned to the Farm Line pick vegetables by hand for hours under hot, strenuous conditions. In the high heat of the Louisiana summer, conditions on the Farm Line can become life threatening. So long as they do not have a medical exemption, any of the approximately 4,000 men incarcerated at Angola can potentially be assigned to the Farm Line for disciplinary reasons. In September 2023, VOTE filed a class action lawsuit challenging Angola's operation of the Farm Line as violating the Eighth Amendment's prohibition on cruel and unusual punishment.

In March 2025, VOTE moved for a TRO to require Angola to (1) issue a Heat Alert on the Farm Line whenever the heat index meets or exceeds 88 degrees and (2) monitor the heat index every 30 minutes. VOTE argued that it was likely to succeed on the merits of its Eighth Amendment claim regarding the Farm Line practices, and Appellants were deliberately indifferent to the alleged Eighth Amendment violations. VOTE argued that preliminary injunctive relief was necessary to "protect [inmates] on the Farm Line from heat-related injury." Among the evidence Appellees introduced in support of their motion were declarations from their own expert, Dr. Susi Vassallo ("Vassallo") and deposition testimony from DPSC's Chief Medical Officer, Dr. Randy Lavespere ("Dr. Lavespere").

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Appellants opposed the motion, arguing that any preliminary injunction would be improper under the Prison Litigation Reform Act (“PLRA”). Appellants also argued that even if an injunction would be proper under the PLRA, VOTE could not show a likelihood of success on the merits or that Appellants’ actions rose to the level of deliberate indifference.

In April 2025, six months after discovery closed, Angola adopted a new policy (the “2025 Directive”), which required temperature checks every hour—more frequent than the 2024 Policy’s two-hour window but less frequent than VOTE’s requested 30-minute window.³

The district court held a hearing on VOTE’s motion for a TRO, which it granted in full on May 23, 2025 (the “May 2025 Order”).⁴ The May 2025 Order determined that it was substantially likely that Angola’s current Heat Alert and heat-index monitoring practices pose a substantial risk of serious harm to inmates on the Farm Line. The court also determined that Appellees’ argument that Appellants were deliberately indifferent had merit. It stated that Appellants “simply ignored” the

3. The 2025 Directive also added a requirement for field staff to document any Heat Alert on the daily line count sheets and ensure that all rest breaks are clearly documented on the daily line count sheet.

4. The district court clarified in a later order that it had granted the TRO under its authority pursuant to the PLRA and that it would expire on August 21, 2025-90 days after its entry—unless extended or converted to permanent relief before then.

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“compelling medical findings” set forth in the findings of previous court orders, which credited Dr. Vassallo’s opinion that the risks of heat-related injury and death increase sharply at 88 degrees. Regarding the dangers of the Angola’s heat monitoring practices, the district court cited Dr. Lavespere’s deposition testimony, concluding that it showed that Appellants were “well aware of the significant temperature swings that may occur.”

Appellants timely appealed the May 2025 Order. They also moved to expedite the appeal, which a separate motions panel of this court granted. At oral argument, both parties acknowledged that under the PLRA’s ninety-day limit for preliminary injunctive relief, the May 2025 Order would automatically expire on August 21, 2025—ninety days after its entry. *See* 18 U.S.C. § 3626(a)(2).

II

Like the previous panel to consider the first TRO issued in this matter, “we conclude that the district court’s order had the ‘practical effect’ of a preliminary injunction and is therefore reviewable under 28 U.S.C. § 1292(a)(1).” *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *2. However, because the May 2025 Order has now expired, there is no live controversy before us and we lack subject matter over this appeal. Accordingly, we dismiss this appeal as moot and vacate the district court’s May 2025 Order.

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Article III limits this court’s judicial authority to “Cases” and “Controversies.” U.S. CONST. art. III, §§ 1-2. Actual controversy must exist “through ‘all stages of the litigation,’” including on appeal. *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 92, 133 S. Ct. 721, 184 L. Ed. 2d 553 (2013) (quoting *Alvarez v. Smith*, 558 U.S. 87, 92, 130 S. Ct. 576, 175 L. Ed. 2d 447 (2009)). “A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—‘when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’” *Id.* (quoting *Murphy v. Hunt*, 455 U.S. 478, 481, 102 S. Ct. 1181, 71 L. Ed. 2d 353 (1982)). Thus, a change of circumstances that eliminates the controversy moots the case. *Students for Fair Admissions, Inc. v. Univ. of Tex. at Austin*, 142 F.4th 819, 824 (5th Cir. 2025). “[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party, the appeal must be dismissed.” *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12, 113 S. Ct. 447, 121 L. Ed. 2d 313 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653, 16 S. Ct. 132, 40 L. Ed. 293 (1895)).

“Generally, when an injunction expires by its own terms, it is moot and there is nothing to review.” *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *2 (quoting *Yates v. Collier*, 677 F. App’x 915, 917 (5th Cir. 2017) (per curiam)); see also *Wickes Corp. v. Indus. Fin. Corp.*, 493 F.2d 1173, 1176 (5th Cir. 1974) (“[B]y its own

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terms, the preliminary injunction is dissolved, and the appeal of this order is now moot.”).

The parties agree that the August 2025 Order expired by its own terms on August 21, 2025. That date has come and passed. Thus, under the plain language of the PLRA, the order has ceased to have any legal effect; Appellants are no longer enjoined by its terms. “Because the preliminary injunction has expired, there is no remedy we can provide [Appellants] at this point.” *See Smith v. Edwards*, 88 F.4th 1119, 1126 (5th Cir. 2023). Consequentially, the parties have no continued, legally cognizable interest in the appeal of the now-expired order. Accordingly, we hold that this appeal is moot and we lack subject matter jurisdiction over it.

B

Like the panel that considered the first TRO in this matter, we next consider whether vacatur of the district court’s May 23, 2025 Order is appropriate under the *Munsingwear* doctrine. *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *2 (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 71 S. Ct. 104, 95 L. Ed. 36 (1950)). We hold that it is.

“*Munsingwear* practice is well settled.” *Id.* (quoting *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5, 144 S. Ct. 18, 217 L. Ed. 2d 155 (2023)). *Munsingwear* vacatur “clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance.” *U.S. Bancorp Mortg.*

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Co. v. Bonner Mall P'ship, 513 U.S. 18, 22-23, 115 S. Ct. 386, 130 L. Ed. 2d 233 (1994) (“*Bancorp*”) (quoting *Munsingwear*, 340 U.S. at 40). “The point of vacatur is to prevent an unreviewable decision from spawning any legal consequences, so that no party is harmed by what we have called a ‘preliminary’ injunction.” *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *3 (internal quotation marks omitted) (quoting *Camreta v. Greene*, 563 U.S. 692, 713, 131 S. Ct. 2020, 179 L. Ed. 2d 1118 (2011)).

On at least three other occasions, panels of this court have vacated a preliminary injunction where it automatically expired under the PLRA. In *Westcott*—the appeal of the earlier TRO issued in this case—the panel determined that vacatur was appropriate on similar grounds discussed herein. 2025 U.S. App. LEXIS 19701, 2025 WL 2222990. In *Yates*, another panel reasoned that because the prisoner plaintiffs “allowed” their preliminary injunction to expire, vacatur of that injunction was warranted. 677 F. App’x at 918. Finally, in *Smith*, the panel held that because the preliminary injunction was mooted by automatic expiration under the PLRA rather than by defendant’s conduct, defendant was “frustrated by the vagaries of circumstance, . . . [and] ought not in fairness be forced to acquiesce in the judgment.” 88 F.4th at 1127 (quoting *Staley v. Harris Cnty.*, 485 F.3d 305, 310 (5th Cir. 2007)).

As explained *supra*, this appeal became moot when the May 2025 Order automatically expired under the PLRA’s clear ninety-day limit. Regardless of whether the appeal expired because of the parties’ actions, or

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by “happenstance,” vacatur is warranted here because “[v]acatur must be granted where an appeal has ‘become moot due to circumstances unattributable to any of the parties.’” *See Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *3-4 (quoting *Bancorp.* 513 U.S. at 23). The ninety-day “expiration clock” for preliminary injunctions under the PLRA is one of those circumstances. 2025 U.S. App. LEXIS 19701, [WL] at *4.

Vacatur here does not violate the principles set forth in *Bancorp.* 513 U.S. 18. In *Bancorp.*, “[t]he Court concluded that the logic of *Munsingwear* did not extend to mootness by settlement because, in that situation, the party who lost below ‘has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari.’” *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *4 (quoting *Bancorp.*, 513 U.S. at 25). In such a situation, the district court’s “judgment is not unreviewable, but simply unreviewed by [that party’s] own choice.” *Id.* (alteration in original) (quoting *Bancorp.*, 513 U.S. at 25). When this appeal was mooted, Appellants were actively pursuing their right to appeal. In light of its mootness, *Munsingwear* vacatur of the district court’s May 2025 Order is appropriate.

Like the previous panel to address these issues, we find that vacatur is particularly appropriate given the procedural posture of this case. *Westcott*, 2025 U.S. App. LEXIS 19701, 2025 WL 2222990, at *4. “By vacating the preliminary injunction, we ‘clear[] the path for future relitigation’ . . . between the parties on issues such as class certification, other preliminary relief, and ultimately

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a full bench trial on the merits and permanent relief.” *Id.* (alteration in original) (citation omitted) (quoting *Munsingwear*, 340 U.S. at 40).

III

On August 22, 2025, the district court entered a new preliminary injunction under the PLRA. Appellants immediately filed a separate notice of appeal of that preliminary injunction. *See* No. 25-30478, *Voice of the Experienced, et al. v. LeBlanc, et al.* Appellants have also filed motions to consolidate that appeal with this one and to stay the district court’s new injunction pending appeal.

IV

For the foregoing reasons, this appeal is DISMISSED as moot and the district court’s May 23, 2025 order is VACATED. Because this appeal is moot, Appellants’ motion to consolidate this appeal with Case No. 25-30478 is DENIED and their motion for a stay pending appeal is DENIED without prejudice to Appellants’ refiling another motion for a stay in Case No. 25-30478.

**APPENDIX E — RULING AND ORDER OF
THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF LOUISIANA,
FILED AUGUST 22, 2025**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 23-01304-BAJ-EVVD

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION ON BEHALF OF ITSELF AND
ITS MEMBERS, *et al.*,

VERSUS

JAMES LEBLANC, *et al.*

RULING AND ORDER

Before the Court is Plaintiffs' **Motion For Renewed Injunctive Relief (Doc. 280)** and **Motion for Expedited Consideration** of same (Doc. 281). Plaintiffs ask the Court to issue a successive preliminary injunction granting the same relief encompassed in the Court's May 23, 2025 Temporary Restraining Order (Doc. 253). (Doc. 280 at 1). Defendants oppose the Motion. (Doc. 286). Plaintiffs filed a Reply Brief. (Doc. 291).

For the following reasons, Plaintiffs' Motion for Renewed Injunctive Relief (Doc. 280) is **GRANTED IN PART** and **DENIED IN PART** and Plaintiffs' Motion for Expedited Consideration (Doc. 281) is **GRANTED**.

*Appendix E***I. BACKGROUND**

On May 23, 2025, the Court issued a Temporary Restraining Order, ordering the following relief: (1) Defendants shall issue a “Heat Alert” on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit; and (2) Defendants shall monitor the heat index on the Farm Line at LSP every 30 minutes. (Doc. 253, the “Court’s May 23 Ruling”). The factual background and procedural history of this case is detailed, at length, in the Court’s May 23 Ruling. (Doc. 253 at 1-8). The Court will not repeat the background of the case here, but will supplement to include the developments that have occurred in the intervening 90 days.

On August 5, 2025, the United States Court of Appeals for the Fifth Circuit issued an Unpublished Opinion and Judgment, vacating the Court’s July 2, 2024 Order (“July 2 Order”), and remanding the matter to this Court for further proceedings in accordance with its Mandate and Judgment (“August 5 Mandate and Judgment,” Fifth Circuit Docket No. 24-30420, Doc. 123; Doc. 124).

Following the August 5 Mandate and Judgment, the Court ordered that the parties brief the effect of the August 5 Mandate and Judgment on the current procedural posture of this case. (Doc. 294). The deadline for this briefing has not yet passed. Under the Prison Litigation Reform Act (“PLRA”), however, “[p]reliminary injunctive relief shall automatically expire on the date that is 90 days after its entry[.]” 18 U.S.C.A. § 3626(a)(2). The

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ninetieth day after the Court issued its May 23 Ruling passed yesterday, and thus, the Court must address Plaintiffs' requested relief without the benefit of the parties' full briefing on the matter.

Nevertheless, for the reasons described below, the Court finds that there has been no change in fact or law warranting a departure from the Heat Alert threshold of 88 degrees Fahrenheit. For the same compelling reasons described in the Court's May 23 Ruling, the Court finds that a successive preliminary injunction requiring the issuance of a "Heat Alert" on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit is warranted. Such relief will be in place for an additional 90 days, at which point, if necessary, the parties may re-urge the issue.

II. DISCUSSION

In its May 23 Ruling, the Court emphasized, after hearing extensive testimony during an evidentiary hearing, as follows:

Plaintiffs have shown that incarcerated persons working on the Farm Line at LSP are at substantial risk of suffering serious harm under Defendants' current heat index monitoring and Heat Alert practices. The Heat Alert threshold is medically significant because many protections—including bringing heat sensitive persons indoors, providing water and ice, and giving work breaks at specified intervals—are

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mandatory only once a heat alert is called. (Doc. 201-3 at ¶ 9). And for a Heat Alert to be accurately called, more contemporaneous data collected in more frequent intervals is necessary.

As it stands, incarcerated persons working on the Farm Line at LSP will not receive medically significant protections until a Heat Alert is called at a heat index of 91 degrees Fahrenheit, sometime within a 2-hour window of when the heat index actually reached 91 degrees Fahrenheit. Defendants' current policies and practices place incarcerated persons at LSP at substantial risk of suffering serious harm.

Plaintiffs have also shown that Defendants have likely been deliberately indifferent to such risks, increasing the Heat Alert threshold from 88 to 91 degrees Fahrenheit after the Court placed Defendants on notice that they must improve conditions on the Farm Line at LSP to preserve human health and safety, and failing to modify their policies despite their full knowledge that the temperature in Louisiana can sharply increase in a two-hour period. (*See* Doc. 70).

Plaintiffs rightly argue that although the May 23 Ruling is set to expire by operation of law under the PLRA, none of the material facts underlying the May 23 Ruling have changed, nor has the necessity of the relief

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the Court ordered. (*See* Doc. 280-1 at 5). Should the injunctive relief ordered in the Court's May 23 Ruling lapse, Plaintiffs argue that Defendants will revert to policies that are likely unconstitutional and that place incarcerated persons on the Farm Line at grave risk. (*Id.* at 6). To prevent that from happening, Plaintiffs urge the Court to enter an identical successive preliminary injunction, renewing the protections the Court ordered in its May 23 Ruling, for another 90 days. (*Id.*).

The Court issued a lengthy Ruling describing the factual and legal bases as to why the issuance of an Order requiring Defendants to maintain a Heat Alert threshold of 88 degrees Fahrenheit was necessary to preserve human health and safety. (Doc. 253). Because there have been no intervening changes in fact or law, the Court finds that a successive preliminary injunction is warranted to once again preserve human health and safety. For the reasons described below, Defendants' arguments opposing the issuance of this successive preliminary injunction do not persuade otherwise.

A. Successive Injunctions Generally.

First, Defendants argue that a successive preliminary injunction is procedurally inappropriate because the PLRA bars the issuance of identical and successive preliminary injunctions. (Doc. 286 at 1). The Court has already addressed the appropriateness of successive preliminary injunctions generally and will not do so again here. (Doc. 253 at 17-18).

*Appendix E***B. Successive Injunctions in Light of the Circuit's August 5 Mandate and Judgment.**

Second, Defendants urge the Court to find that the Circuit's August 5 Mandate and Judgment forecloses the relief Plaintiffs seek—a successive preliminary injunction. (Doc. 285 at 1-5). Plaintiffs disagree, contending that nothing in the Circuit's August 5 Mandate and Judgment forecloses this new, successive injunction. (Doc. 291 at 10).

The Court has studied the Circuit's August 5 Mandate and Judgment. Based on the Court's review, it appears that the Circuit did not address whether successive, identical preliminary injunctions are appropriate. Instead, the Circuit emphasized the procedure to make a preliminary injunction permanent under the PLRA:

This appeal is moot because the preliminary injunction expired automatically under the PLRA. The mootness has resulted from the unilateral actions of the party who prevailed below—namely, the plaintiff prisoners who allowed the July 2 preliminary injunction to expire and did not seek to make it permanent under 18 U.S.C. § 3626(a)(2). And defendants' appeal has been frustrated by operation of the PLRA, not their own actions. So vacatur is warranted here. *See Yates*, 677 F. App'x at 918; *Smith*, 88 F.4th at 1127.

(Fifth Circuit Docket No. 24-30420, Doc. 123-1 at 7-8). Here, Plaintiffs explicitly state that they are not seeking to make the Court's May 23 Ruling permanent. (Doc. 291

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at 10-11). The Circuit's August 5 Mandate and Judgment does not appear to foreclose the relief issued here but rather addresses a different procedural path.

C. Whether Pending Appeal Bars Successive Injunctive Relief.

Third, Defendants argue that their pending appeal of the Court's May 23 Ruling requires the Court to deny Plaintiffs' Motion. (Doc. 286 at 6). Although Defendants acknowledge that the Fifth Circuit permits district courts to take actions to maintain the status quo during the pendency of an appeal, Defendants argue that Plaintiffs cannot invoke that "status quo" for two reasons. (*Id.* (citing *Sierra Club, Lone Star Chapter v. Cedar Point Oil Co.*, 73 F.3d 546, 578 (5th Cir. 1996); see *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 190 n.2 (5th Cir. 2008) ("While the validity of an injunction is on appeal, the district court's power is limited to 'maintaining the status quo' pursuant to Rule 62(c) of the Federal Rules of Civil Procedure.")). Applying circular reasoning, Defendants argue that somehow the PLRA's purported bar on successive, identical injunctive relief prevents the Court from maintaining the status quo here. The Court has already addressed this argument and will not do so again.

Defendants next argue that if the Fifth Circuit reverses this Court's May 23 Ruling, then a second Order mandating the same relief would be improper. (Doc. 286 at 7). Because the Circuit has not made such a finding, this argument has no bearing on the current state of the case.

*Appendix E***D. Relief Warranted.**

Finally, Defendants challenge the substance of the Court's May 23 Ruling. Turning first to the Heat Alert threshold, the Court finds that no facts or law have changed in the intervening 90 days to change the necessity of the 88 degree Fahrenheit Heat Alert threshold. Before issuing the May 23 Ruling, the Court held a three-day evidentiary hearing and heard testimony from several witnesses, including Dr. Susi Vassallo.¹ (Doc. 233-235).

As the Court emphasized in its May 23 Ruling, Dr. Vassallo, a licensed physician and expert in thermoregulation, credibly testified that incarcerated persons working on the Farm Line at LSP are at substantial risk of serious harm due to their prolonged exposure to heat indices above 88 degrees Fahrenheit. (Doc. 253 at 21). Dr. Vassallo relied on data from the Occupational Health and Safety Administration, National Weather Service, and scientific literature, described extensively in the Court's May 23 Ruling. (*Id.* at 21-31). The Court's May 23 Ruling was also informed by the fact that the Fifth Circuit and other district courts within the Fifth Circuit have repeatedly relied on Dr. Vassallo's expertise to make similar findings. (Doc. 253 at 24-25).

A Heat Alert threshold of 88 degrees Fahrenheit is also well-supported in the law—numerous courts have

1. The Court is not relying on its July 2, 2024 Order to make this finding—instead, the Court is relying on new evidence presented to the Court for the purpose of the May 23, 2025 Ruling.

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found that a heat index of 88 degrees Fahrenheit or higher poses a substantial risk of adverse health outcomes. (Doc. 253 at 31-32). To protect human health and safety, the Court finds that successive injunctive relief is warranted regarding the Heat Alert threshold.

Turning finally to the frequency of heat index monitoring, Defendants contend that they monitor the heat index on the Farm Line at LSP every hour, not every two hours. (Doc. 286 at 8). Accordingly, the difference at issue is one of thirty minutes. The Court will not re-issue this relief at this time.

III. CONCLUSION

Accordingly,

IT IS ORDERED that Plaintiffs' Motion For Renewed Injunctive Relief (Doc. 280) is **GRANTED IN PART** and **DENIED IN PART**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Expedited Consideration of Motion For Renewed Injunctive Relief (Doc. 281) is **GRANTED**. The Court has considered Plaintiffs' Motion expeditiously.

IT IS FURTHER ORDERED that Defendants shall issue a "Heat Alert" on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit.

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Baton Rouge, Louisiana, this 22nd day of August, 2025

/s/ Brian A. Jackson

JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

**APPENDIX F — RULING AND ORDER OF
THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF LOUISIANA,
FILED MAY 23, 2025**

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

CIVIL ACTION
NO. 23-01304-BAJ-EWD

VOICE OF THE EXPERIENCED, A MEMBERSHIP
ORGANIZATION ON BEHALF OF ITSELF AND
ITS MEMBERS, *et al.*

VERSUS

JAMES LEBLANC, *et al.*

RULING AND ORDER

Before the Court is Plaintiffs’ **Application For A Second Temporary Restraining Order (“TRO”)** (Doc. 201), which requests that the Court issue a TRO immediately requiring Defendants to issue a “Heat Alert” whenever the heat index meets or exceeds 88 degrees Fahrenheit and to monitor the heat index every 30 minutes. (Doc. 201-1 at 7). Defendants oppose the Motion. (Doc. 223). Plaintiffs filed a Reply Brief. (Doc. 224). The matter came before the Court for a hearing. (Doc. 233).

For the reasons below, Plaintiffs’ Application for a Second TRO will be **GRANTED**. (Doc. 201). Plaintiffs’ Motion for a Preliminary Injunction will be addressed separately.

*Appendix F***I. FACTUAL BACKGROUND**

In this case, Plaintiffs challenge the Farm Line at Louisiana State Penitentiary in Tunica, Louisiana, otherwise known as “Angola” or “LSP,” as unconstitutional.¹ At LSP, incarcerated persons are sometimes required to perform agricultural labor for a variety of prison programs.

The usefulness and sophistication of the labor involved in the various programs allegedly differs substantially, with some programs resembling modern-day farming operations and others, such as the Farm Line, serving an almost purely penological function. At this time, Plaintiffs have described the Farm Line as those compulsory, punitive agricultural or farming labor programs operated at Angola, including but not limited to Lines 15a, 15b, 24, and 25. (Doc. 37-1 at p. 8 n. 2; Doc. 223 at 6).

Plaintiffs, incarcerated persons at LSP² and the Voice of the Experienced, a non-profit organization dedicated to “restoring [] human and civil rights” in the criminal justice system,³ contend that incarcerated persons forced to work on the Farm Line are subject to an increased risk of physical and psychological harm due to their work on the Farm Line. Plaintiffs allege that incarcerated

1. Additional facts have been detailed at length in the Court’s prior Rulings. (*See, e.g.*, Doc. 70).

2. The Court describes the named Plaintiffs at length in Doc. 70, Section II.

3. *See Voice of the Experienced*, <https://www.voiceoftheexperienced.org/> (last visited May 16, 2025).

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persons working on the Farm Line are subject to a risk of increased physical harm due to their extensive and continued exposure to high temperatures and heat indexes on the Farm Line. (Doc. 21 at ¶ 61). Plaintiffs also allege that incarcerated persons working on the Farm Line are subject to increased psychological harm due to the Farm Line's similarity to chattel slavery and the manner in which Defendants manage the Farm Line. (*Id.* at p. 1; ¶¶ 51-58).

Named Defendants in this lawsuit are James Leblanc,⁴ in his official capacity as Secretary of the Louisiana Department of Public Safety & Corrections; Timothy Hooper, in his official capacity as Warden of Louisiana State Penitentiary; Misty Stagg, in her official capacity as Director of Prison Enterprises, Inc.; the Louisiana Department Of Public Safety & Corrections ("DOC"); and Prison Enterprises, Inc. (Doc. 21). Relevant to the instant request, Defendants recently revised the following policies.

A. HCP8, Dated October 18, 2024.

On October 18, 2024, Defendants revised Health Care Policy No. HCP8 (the "2024 HCP8"). (Doc. 201-10). The 2024 HCP8 applies to all of DOC. (*Id.* at p. 1). The stated purpose of the 2024 HCP8 is to "establish provisions for the reduction of heat pathology and to reduce the exposure to inmates identified as more vulnerable to heat." (*Id.* at ¶ 3).

4. Since the initiation of this case, Leblanc has resigned as Secretary of DOC.

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Relevant here, the 2024 HCP8 defines “Heat Alert” as a “designation when the apparent temperature (heat index) outdoors has exceeded **91 degrees** Fahrenheit, requiring special provisions.” (*Id.* at ¶ 6(D) (emphasis added)). When the “apparent temperature (heat index) outdoors has exceeded 91 degrees Fahrenheit,” DOC “shall announce” a Heat Alert. (*Id.* at ¶ 3(a)(iii)).

The previous version of HCP8 in the record, dated August 21, 2018 (the “2018 HCP8”), defined “Heat Alert” as a “designation when the apparent temperature (heat index) outdoors has exceeded **88 degrees** Fahrenheit, requiring special provisions. (Doc. 37-39 at ¶ 6(D) (emphasis added)). Thus, on October 18, 2024, Defendants increased the threshold for the issuance of a Heat Alert from 88 to 91 degrees Fahrenheit. (*Compare* Doc. 37-39 *with* Doc. 201-10).

The 2024 HCP8 dictates that when a Heat Alert is announced, DOC shall provide the following measures to those working outdoors: (1) water and ice at least every 30 minutes; (2) a rest break of at least 15 minutes every 45 minutes; and (3) work hours may be adjusted to accommodate extreme temperatures. (Doc. 201-10 at ¶ 3(a)(iv)). The 2024 HCP8 also directs DOC to monitor the outside temperature every two hours. (*Id.* at ¶ 3(a)(ii)).

B. Directive No. 13.067, Dated April 8, 2025.

On April 8, 2025, LSP issued a revised Directive No. 13.067 (the “2025 Directive No. 13.067”). (Doc. 223-2). The 2025 Directive No. 13.067 is a policy specific to LSP. (*Id.* at

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1). Like the 2024 HCP8, the purpose of the 2025 Directive No. 13.067 is to “establish provisions for the reduction of heat pathology and to reduce the exposure to inmates identified as more vulnerable to heat.” (*Id.*).

The 2025 Directive No. 13.067 defines “Heat Alert” as a “designation when the apparent temperature (heat index) outdoors has exceeded **91 degrees** Fahrenheit, requiring special provisions.” (*Id.* (emphasis added)). Similar to HCP8, the previous version of Directive No. 13.067, effective March 21, 2019 (the “2019 Directive No. 13.067”), defined a “Heat Alert” as a “designation when the apparent temperature (heat index) outdoors has exceeded **88 degrees** Fahrenheit, requiring special provisions.” (Doc. 201-11 at 2 (emphasis added)). Thus, Defendants increased the threshold for the issuance of a Heat Alert from 88 to 91 degrees Fahrenheit in the 2025 Directive No. 13.067.

The 2025 Directive No. 13.067 dictates that when a Heat Alert is announced, the following measures will be provided to incarcerated persons working outdoors: (1) water and ice at least every 30 minutes; (2) a rest break of at least 15 minutes every 45 minutes; and (3) work hours may be adjusted to accommodate extreme temperatures. (Doc. 223-2 at ¶ 3(C)(4)). The 2025 Directive No. 13.067 also requires Field staff to document the Heat Alert on the daily line count sheets and ensure that all rest breaks are clearly documented on the daily line count sheet. (*Id.* at ¶ 3(C)(3)). The 2025 Directive No. 13.067 further directs LSP to monitor and record outside temperatures every hour. (*Id.* at ¶ 3(C)(2)).

*Appendix F***II. PROCEDURAL HISTORY**

On September 16, 2023, Plaintiffs filed this lawsuit. (Doc. 1). On December 15, 2023, Plaintiffs filed an Amended Complaint, which serves as the operative Complaint in this matter. (Doc. 21).

Defendants then moved to dismiss Plaintiffs' Thirteenth Amendment claims. (Doc. 22). The Court granted Defendants' Motion for Partial Dismissal and dismissed those claims. (Doc. 56). Plaintiffs' other claims remain.

On May 13, 2024, Plaintiffs moved for a preliminary injunction and temporary restraining order, requesting that the Court immediately enjoin all agricultural labor performed by incarcerated persons on the Farm Line at LSP when heat index values exceeded 88 degrees Fahrenheit. (Doc. 37). The matter came before the Court for a hearing. (Doc. 62).

On July 2, 2024, the Court entered an Order granting Plaintiffs' Motion for a Preliminary Injunction and Temporary Restraining Order in part and denying it in part. (Doc. 70, the "July 2 Order"). The Court did not enjoin labor on the Farm Line at that time but ordered Defendants to alter Farm Line working conditions to protect human health and safety. (*Id.*). Specifically, the Court ordered Defendants to immediately:

1. Correct the deficiencies of Directive No. 13.067 described in the Court's Order,

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including the lack of shade and adequate rest provided to incarcerated persons laboring on the Farm Line (“Part (1)” of the Court’s July 2 Order);

2. Correct the problems with Defendants’ equipment policies, including the failure to provide sunscreen and other necessary protective clothing and equipment to those laboring on the Farm Line (“Part (2)” of the Court’s July 2 Order);
3. Submit a revised and expanded Heat Pathology Medications list (“Part (3)” of the Court’s July 2 Order);
4. Create a procedure to ensure that all incarcerated persons suffering from health conditions that significantly inhibit thermoregulation are assessed by medical personnel and are granted heat precaution duty status (“Part (4)” of the Court’s July 2 Order); and
5. Develop an additional heat-related policy to protect those laboring outdoors when heat index values reach or exceed 113 degrees Fahrenheit, the temperature at which the National Weather Service issues excessive heat warnings (“Part (5)” of the Court’s July 2 Order).

(Id.).

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That same day, Defendants appealed the Court's July 2 Order to the U.S. Court of Appeals for the Fifth Circuit. (Doc. 71). Defendants moved the Circuit to stay the Court's July 2 Order pending the outcome of the appeal. (Fifth Circuit Case No. 24-30420, Doc. 12). On July 5, 2024, the Circuit entered a temporary administrative stay until July 19, 2024. (Fifth Circuit Case No. 24-30420, Doc. 26).

After additional briefing, the Circuit considered Defendants' motion for stay pending appeal. (Fifth Circuit Case No. 24-30420, Doc. 41). The Circuit vacated the administrative stay and granted in part and denied in part Defendants' motion for stay pending appeal. (*Id.*). Specifically, the Circuit granted a stay pending appeal with respect to parts (3), (4), and (5) of the Court's July 2 Order. (*Id.* at 10). The Circuit denied a stay pending appeal with respect to parts (1) and (2) of the Court's July 2 Order. (*Id.*).

The Circuit reasoned that three portions of the Court's July 2 Order—Parts (3), (4), and (5)—were overbroad because they appeared to reach beyond LSP to cover the entire DOC, rather than inmates working on LSP's Farm Line. (*Id.* at 5). Plaintiffs' proposed classes consist of LSP inmates who could be forced to perform agricultural labor, rather than all Louisiana inmates. (*Id.*). The Circuit found that parts (1) and (2) of the Court's July 2 Order, however, were targeted specifically at the Farm Line, and thus were not overbroad. (*Id.*). Accordingly, the Circuit did not stay parts (1) and (2) of the Court's July 2 Order pending appeal.⁵ (*Id.* at 10).

5. Defendants also argued in their briefing before the Circuit that the Court's July 2 Order erred because the Court cannot issue

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Both parties agree that the Court’s July 2 Order has expired under the PLRA. (Doc. 201-1 at 9; Doc. 223 at 5). Nevertheless, the Fifth Circuit heard oral argument in this matter on April 30, 2025. A decision has not yet been issued.

III. LEGAL STANDARD

A. Temporary Restraining Order

Federal Rule of Civil Procedure (“Rule”) 65(b) sets forth the requirements that must be met before the Court may issue a TRO. It provides:

(1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

classwide relief before certifying the class. (Fifth Circuit Case No. 24-30420, Doc. 41-1 at 6). Recognizing that “[c]lass-wide relief may be appropriate in an individual action if such is necessary to give the prevailing party the relief to which he or she is entitled[.]” the Circuit found that Defendants had not shown a likelihood of success on this issue. (*Id.* (citing *Hernandez v. Reno*, 91 F.3d 776, 781 (5th Cir. 1996)). Thus, the Circuit found that the Court did not err in granting classwide relief on a preliminary basis for parts (1) and (2) of its July 2 Order. (*Id.*).

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(B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk’s office and entered in the record.

Fed. R. Civ. P. 65(b)(1)-(2). Additionally, the party requesting the TRO must provide “security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c).

A TRO is simply a highly accelerated and temporary form of preliminary injunctive relief, requiring that the movant establish the same four elements for obtaining a preliminary injunction: (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest. *See Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). In applying the four-factor analysis, a court must consider the factors on a “sliding scale”—a greater threat of irreparable injury may justify issuance of preliminary relief in a situation with a less certain likelihood of success, and vice versa. *Planned Parenthood*

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Gulf Coast, Inc. v. Kliebert, 141 F. Supp. 3d 604, 635 (M.D. La. 2015).

To establish a likelihood of success on the merits, a plaintiff “need not show that success is an absolute certainty. He need only make a showing that the probability of his prevailing is better than fifty percent.” *Eng v. Smith*, 849 F.2d 80, 82 (2d Cir. 1988). Irreparable injury is harm that “cannot be undone through monetary damages”—that is, harm for which money damages are inadequate or for which money damages are “especially difficult” to compute. *Deerfield Med. Ctr. v. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981); *Allied Marketing Grp., Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 810 n.1 (5th Cir. 1989).

B. Eighth Amendment

The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. CONST. AMEND. VIII. To establish an Eighth Amendment violation for conditions of confinement, “an inmate must show that the alleged violation was sufficiently serious, i.e., that it deprived him of the most minimal level of life’s necessities, and that prison officials acted with deliberate indifference to his health or safety.” *Hewitt v. Henderson*, 271 F. App’x 426, 428 (5th Cir. 2008) (citing *Farmer v. Brennan*, 511 U.S. 825, 834, 847, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994); *Wilson v. Seiter*, 501 U.S. 294, 303, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991)). In other words:

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A prison official has violated the Eighth Amendment when he 1) shows a subjective deliberate indifference to 2) conditions posing a substantial risk of serious harm to the inmate. *Farmer*, 511 U.S. at 833-34. Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious. *Id.* at 842.

Gates v. Cook, 376 F.3d 323, 333 (5th Cir. 2004). Further, “[c]onditions of confinement may establish an Eighth Amendment violation ‘in combination’ when each would not do so alone, but only when they have a mutually enforcing effect that produces the deprivation of a single, identifiable human need.” *Id.* (citing *Wilson*, 501 U.S. at 304). “The standard against which a court measures prison conditions are ‘the evolving standards of decency that mark the progress of a maturing society’ and not the standards in effect during the time of the drafting of the Eighth Amendment.” *Gates*, 376 F.3d at 333 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)).

“[T]he unnecessary and wanton infliction of pain . . . constitutes cruel and unusual punishment forbidden by the Eighth Amendment.” *Whitley v. Albers*, 475 U.S. 312, 319, 106 S. Ct. 1078, 89 L. Ed. 2d 251 (1986) (some internal

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quotation marks omitted). The U.S. Supreme Court has held that “[a]mong ‘unnecessary and wanton’ inflictions of pain are those that are ‘totally without penological justification.’” *Rhodes v. Chapman*, 452 U.S. 337, 346, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981). “In making this determination in the context of prison conditions, [the Court] must ascertain whether the officials involved acted with “deliberate indifference” to the inmates’ health or safety.” *Hope v. Pelzer*, 536 U.S. 730, 737, 122 S. Ct. 2508, 153 L. Ed. 2d 666 (2002) (quoting *Hudson v. McMillian*, 503 U.S. 1, 8, 112 S. Ct. 995, 117 L. Ed. 2d 156 (1992)). Courts “may infer the existence of this subjective state of mind from the fact that the risk of harm is obvious.” *Id.* (citing *Farmer*, 511 U.S. at 842).

Subjecting incarcerated persons to high heat conditions for sustained periods of time, with inadequate procedures to mitigate the risks inherent in such high heat, is a violation of the Eighth Amendment when prison officials are “deliberately indifferent” to such risks. *See, e.g., Hinojosa v. Livingston*, 807 F.3d 657, 670 (5th Cir. 2015) (“[I]nmates have a right, under the Eighth Amendment, not to be subjected to extreme temperatures without adequate remedial measures”); *Ball*, 792 F.3d at 596 (“[W]e affirm the district court’s conclusion that housing these prisoners in very hot cells without sufficient access to heat-relief measures, while knowing that each suffers from conditions that render him extremely vulnerable to serious heat-related injury, violates the Eighth Amendment”); *Cole v. Collier*, No. 4:14-CV-1698, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *39 (S.D. Tex. July 19, 2017) (finding that, due to continued

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occurrence of high heat and the inadequacy of efforts to mitigate such heat, “[t]he conditions of confinement at the Pack Unit,” a prison operated by the Texas Department of Criminal Justice, “violate the Eighth Amendment”).⁶

Further, “prison work requirements which compel inmates to perform physical labor, which is beyond their strength, endangers their lives, or causes undue pain constitutes cruel and unusual punishment.” *Howard v. King*, 707 F.2d 215, 219 (5th Cir. 1983); *see also Mendoza v. Lynaugh*, 989 F.2d 191, 194 (5th Cir. 1993) (“To be sure, if prison officials assign an inmate to a work detail and they know that such an assignment could exacerbate a serious physical ailment, then such a decision could constitute deliberate indifference.”); *Calhoun v. Hargrove*, 312 F.3d 730, 734-35 (5th Cir. 2002) (finding claim sufficient to survive a motion to dismiss where prison official purportedly knew about a four-hour medical work

6. *See also Hope*, 536 U.S. at 738 (Eighth Amendment violation was “obvious” in part because plaintiff was subjected to “unnecessary exposure to the heat of the sun”); *Gates*, 376 F.3d at 340 (holding that the probability of heat-related illness based on the conditions of confinement in a certain cellblock and the open and obvious nature of the risk thereof amounted to an Eighth Amendment violation); *Valigura v. Mendoza*, 265 F. App’x 232, 235 (5th Cir. 2008) (“We have held that temperatures [within confinement] consistently in the nineties without remedial measures, such as fans, ice water, and showers, sufficiently increase the probability of death and serious illness so as to violate the Eighth Amendment”); *McCollum v. Livingston*, No. 4:14-CV-3253, 2017 U.S. Dist. LEXIS 19602, 2017 WL 608665, at *18 (S.D. Tex. Feb. 3, 2017) (noting that Fifth Circuit precedent provides “that, in the face of extreme heat, prison officials must fashion adequate mitigating measures”).

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restriction but forced inmate to work long hours, which raised blood pressure to dangerously high levels).

The adequacy of procedures is a fact-specific question that courts have routinely turned to experts for help answering. *See, e.g., Gates*, 376 F.3d at 339 (upholding the issuance of injunctive relief that relied on Dr. Vassallo’s testimony that the conditions of confinement were such that it was “very likely” that incarcerated persons in the relevant facility would die from heat stroke or some other heat-related condition); *Ball*, 792 F.3d at 593 (affirming the district court finding that, based mainly on Dr. Vassallo’s testimony, the heat conditions and procedures in place within the relevant prison put incarcerated persons at substantial risk of serious harm); *Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *30 (relying on Dr. Vassallo’s testimony to find that a particular heat-related prison policy was ineffective).

Courts will issue preliminary or emergency injunctive relief to command that prisons modify their conditions of confinement so as to preserve human life. *See, e.g., Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *46; *Tiede v. Collier*, No. 1:23-CV-1004-RP, 2023 U.S. Dist. LEXIS 173756, 2023 WL 6345966, at *1 (W.D. Tex. Sept. 28, 2023). That being said, in doing so courts remain “barred from enjoining the state to follow its own laws and procedures.” *Valentine v. Collier*, 956 F.3d 797, 802 (5th Cir. 2020).

*Appendix F***IV. DISCUSSION**

Plaintiffs ask the Court to enter a TRO immediately requiring Defendants to issue a “Heat Alert” whenever the heat index meets or exceeds 88 degrees Fahrenheit and to monitor the heat index every 30 minutes. (Doc. 201-1 at 7). Defendants respond that the issuance of a TRO is procedurally improper, and if not, Plaintiffs cannot show deliberate indifference with respect to the current Heat Alert threshold of 91 degrees Fahrenheit. (Doc. 223 at 2).

For the reasons below, the Court will **GRANT** Plaintiffs’ Motion for a TRO and require Defendants to issue a Heat Alert on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit. The Court will further require Defendants to monitor the heat index every 30 minutes on the Farm Line at LSP. For the avoidance of doubt, this relief applies only to the Farm Line at LSP.

A. The Court Has Jurisdiction to Address Plaintiffs’ Request for a Temporary Restraining Order.

Because the Court’s July 2 Order is currently on appeal before the Fifth Circuit, the Court must at the outset determine whether it has jurisdiction to grant Plaintiffs’ request for a TRO. (*See* Doc. 70; Doc. 71). Both parties agree that the Court’s July 2 Order expired by operation of law during the pendency of the appeal. (Doc. 201-1 at 9; Doc. 223 at 5). Nevertheless, the Circuit heard

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oral argument on the matter and the Circuit has not yet issued a Ruling.

Defendants contend that because the injunction Plaintiffs now seek “nearly mirrors” the injunction on appeal before the Circuit, the Circuit’s forthcoming decision may address the merits of the Court’s July 2 Order and affect Plaintiffs’ current request for a TRO. (Doc. 223 at 5). Plaintiffs disagree, arguing that their application for a TRO seeks entirely new relief. (Doc. 231 at 8). The Court agrees with Plaintiffs.

“A notice of appeal from an interlocutory order does not produce a complete divestiture of the district court’s jurisdiction over the case; rather, it only divests the district court of jurisdiction over those aspects of the case on appeal.” *Alice L. v. Dusek*, 492 F.3d 563, 564 (5th Cir. 2007). Fifth Circuit caselaw makes this point clear: “It is the general rule that a district court is divested of jurisdiction upon the filing of the notice of appeal with respect to any matters involved in the appeal. However, where an appeal is allowed from an interlocutory order, the district court may still proceed with matters not involved in the appeal.” *Id.* at 564-65 (citing *Taylor v. Sterrett*, 640 F.2d 663, 667-68 (5th Cir. 1981); *see also Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58, 103 S. Ct. 400, 74 L. Ed. 2d 225 (1982) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control *over those aspects of the case involved in the appeal.*”) (emphasis added)); *see also See Satanic Temple, Inc. v. Tex. Health & Hum. Serv.*

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Comm’n, 79 F.4th 512, 514 (5th Cir. 2023) (determining that “[a]n appeal from a grant or denial of a preliminary injunction does not inherently divest the district court of jurisdiction or otherwise restrain it from taking other steps in the litigation.”).

The Court issued a TRO in this case on July 2, 2024, ordering Defendants to alter Farm Line working conditions to preserve human health and safety. (Doc. 70). The Court’s July 2 Order addressed shade, rest breaks, equipment, sunscreen, protective clothing, the Heat Pathology Medications List, and heat precaution duty status. (*Id.*). The Court’s July 2 Order did not address the issues present here: frequency of heat index monitoring and the 91-degree Fahrenheit Heat Alert threshold. (*Id.*). Indeed, because Defendants revised their policies to *raise* the Heat Alert threshold *after* the issuance of the Court’s July 2 Order, the 91 degree Fahrenheit Heat Alert policy threshold cannot plausibly be considered to be currently before the Circuit for review. (*Id.*).

Incredibly, although the Court found that Defendants’ proposed remedies to address the threat to human health and safety on the Farm Line “border[ed] on bad faith,” Defendants nonetheless chose to *raise* the Heat Alert threshold in effect as of the Court’s July 2 Order. (*See* Doc. 109 at 2). Approximately three months after the issuance of the Court’s July 2 Order, Defendants revised HCP8 to raise the Heat Alert threshold from 88 to 91 degrees Fahrenheit. (Doc. 201-10). Approximately nine months after the Court’s July 2 Order, Defendants revised Directive No. 13.067 similarly raising the Heat

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Alert threshold from 88 to 91 degrees Fahrenheit. (Doc. 223-2 at 1).

Because the issue currently before this Court addresses the *current* Heat Alert threshold, which Defendants implemented after the July 2 Order, and the frequency of heat index monitoring (neither of which were considered in the July 2 Order), the Court cannot conclude that the relief sought here is identical to the relief Plaintiffs previously sought. For the same reasons, the requested relief *sub judice* cannot be considered an “extension” of the Court’s July 2 Order. Because an appeal only divests the Court of jurisdiction over those aspects of the case on appeal, and because the aspects of the case currently at issue are *not* on appeal, the Court has jurisdiction to grant Plaintiffs’ request for a TRO.

B. The PLRA Does Not Preclude the Court from Granting Plaintiffs’ Request for a Temporary Restraining Order.

Next, citing no jurisprudential support, Defendants contend that the PLRA does not permit multiple injunctions in the same litigation. (Doc. 223 at 13). Plaintiffs respond that Defendants’ argument flies in the face of established precedent, as federal courts nationwide have issued successive orders for either preliminary or permanent injunctive relief in similar cases. (Doc. 231 at 7-8 (citing *See, e.g., Monroe v. Bowman*, 122 F.4th 688, 697 (7th Cir. 2024) (holding that, under the PLRA, plaintiffs “may ask the district court for a new injunction, preliminary or permanent”); *Melendez v. Sec’y, Fla. Dep’t of Corr.*, 2022 U.S. App. LEXIS 10263, 2022 WL 1124753,

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at *20-21 (11th Cir. Apr. 15, 2022) (affirming a second preliminary injunction after the first expired by operation of the PLRA); *Mayweathers v. Newland*, 258 F.3d 930, 936 (9th Cir. 2001) (“Nothing in the [PLRA] limits the number of times a court may enter preliminary relief.”)).

In *Gates v. Cook*, 376 F.3d 323, 344 (5th Cir. 2004), a case governed by the PLRA, the Fifth Circuit affirmed the district court’s issuance of three injunctions. *See Gates*, 376 F.3d at 344 (affirming three injunctions; vacating seven injunctions on the merits). The U.S. Court of Appeals for the Ninth Circuit Court has held that the PLRA does not bar successive preliminary injunctions:

Nothing in the [PLRA] limits the number of times a court may enter preliminary relief. If anything, the provision simply imposes a burden on plaintiffs to continue to prove that preliminary relief is warranted.

Mayweathers v. Newland, 258 F.3d 930, 936 (9th Cir. 2001). Defendants’ twisted reasoning that the words “a” and “an” in the statute prevent the Court from issuing a second order granting preliminary relief does not persuade otherwise. (Doc. 223 at 13 (citing 18 U.S.C. § 3626(a)(2) (“The PLRA expressly permits a court, ‘[i]n any civil action with respect to prison conditions,’ to ‘enter a temporary restraining order or an order for preliminary injunctive relief.’”)) (emphasis added)).

Finally, Defendants contend that Plaintiffs seek agency-wide policy changes in contradiction to the PLRA. (Doc. 223 at 2). However, as the Court has made clear, the

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relief granted in this Ruling and Order applies *only* to the Farm Line at LSP.

The Court will proceed to the merits.

C. The Court will Grant Plaintiffs' Request for Temporary Restraining Order and Require Defendants to Issue a Heat Alert When the Heat Index Meets or Exceeds 88 Degrees Fahrenheit and Monitor the Heat Index Every 30 Minutes on the Farm Line at LSP.

For the reasons below, the Court finds that Plaintiffs have shown a substantial likelihood of success on the merits of their Eighth Amendment claims regarding the Heat Alert threshold and heat index monitoring. Dr. Vassallo credibly testified that incarcerated persons working on the Farm Line at LSP are at substantial risk of serious harm due to their prolonged exposure to heat indices above 88 degrees Fahrenheit, but under Defendants' new policies, Defendants do not currently issue a Heat Alert until the heat index meets or surpasses 91 degrees Fahrenheit. (Doc. 201-3 at ¶ 4). Dr. Vassallo also credibly testified that monitoring the heat index only every two hours may not adequately protect the health of all workers on the Farm Line, particularly those who are heat sensitive. (*Id.* at ¶ 8).

The Court finds that Defendants have likely been deliberately indifferent to those risks by *raising* the Heat Alert threshold without sufficient thermoregulatory basis *after* the Court ordered Defendants to make changes on the Farm Line to protect human health and safety.

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Defendants' sole expert witness at the hearing admitted that no court has ever qualified him as an expert in thermoregulation, and this Court did not qualify him as an expert in thermoregulation, either. (Doc. 239 at 53:19-22; 62:24-63:1). Similarly, Defendants are aware that "significant" increases in heat index (up to 14 degrees Fahrenheit) can and do occur within a two-hour period near the Farm Line at LSP, yet have refused to revise their policies or practices to acknowledge this reality. (Doc. 201-6 at 150:7-12; Doc. 201-9).

The Court also finds that Plaintiffs have shown an immediate risk of irreparable injury because the current conditions on the Farm Line at LSP "create a substantial risk of injury or death." Finally, the Court finds that the balance of interests favors the issuance of a TRO.

Accordingly, the Court will grant Plaintiffs' request for a TRO and require Defendants to issue a Heat Alert on the Farm Line at LSP when the heat index meets or exceeds 88 degrees Fahrenheit. The Court will further require Defendants to monitor the heat index every 30 minutes on the Farm Line at LSP.

i. Plaintiffs Have Shown a Substantial Likelihood of Success on the Merits.

To show a substantial likelihood of prevailing on the merits of their Eighth Amendment claims, Plaintiffs must first show that conditions on the Farm Line render incarcerated persons at substantial risk of suffering serious harm. Plaintiffs must then show that Defendants have likely been deliberately indifferent to such risks. For

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the following reasons, the Court finds that both elements have been satisfied, and that Plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of their claims.

A substantial risk of harm may be found when prison conditions are such that they deprive an inmate of “the minimal civilized measure of life’s necessities.” *Wilson v. Seiter*, 501 U.S. 294, 298, 111 S. Ct. 2321, 115 L. Ed. 2d 271 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347, 101 S. Ct. 2392, 69 L. Ed. 2d 59 (1981)). Subjecting incarcerated persons to high heat conditions without adequate mitigatory procedures satisfies the substantial risk of serious injury or death element of an Eighth Amendment claim. *Hinojosa v. Livingston*, 807 F.3d 657, 670 (5th Cir. 2015) (“[I]nmates have a right, under the Eighth Amendment, not to be subjected to extreme temperatures without adequate remedial measures”).

Addressing the danger of excessive heat in prisons, the U.S. District Court for the Western District of Texas recently emphasized:

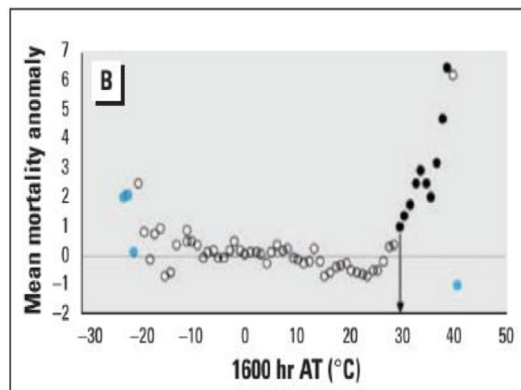
This case concerns the plainly unconstitutional treatment of some of the most vulnerable, marginalized members of our society. The Court finds that Plaintiffs have met their burden of establishing a likelihood of success on the merits that [defendant] Collier is violating the Eighth Amendment’s prohibition against cruel and unusual punishment. ***The Court is of the view that excessive heat is likely serving as a form of unconstitutional punishment.***

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Bernhardt Tiede, II v. Collier, No. 1:23-CV-01004-RP, Doc. 202, p. 90 (W.D. Tex. Mar. 29, 2025) (emphasis added). This may be the case here.

a. The Experts.

Here, Plaintiffs' expert Dr. Susi Vassallo, a licensed physician and expert in thermoregulation, credibly testified that incarcerated persons working on the Farm Line at LSP are at substantial risk of serious harm due to their prolonged exposure to heat indices above 88 degrees Fahrenheit.⁷ (Doc. 201-3 at ¶ 4). Dr. Vassallo further opined that all people, including young people and those with no known medical problems, are at risk for heat-related disorders during persistent exposure to a heat index above 88 degrees Fahrenheit. (*Id.* at ¶ 14). Dr. Vassallo pointed to the following graph to demonstrate the sharp increase in mortality when the apparent temperature (also known as the heat index) reaches 86 degrees Fahrenheit:



7. Thermoregulation refers to the “process by which the human body maintains its temperature within a safe physiological range.” (Doc. 37-3 at p. 7).

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(*Id.* at ¶ 15). According to Dr. Vassallo, outdoor workers have died of heat stroke when the day’s maximum heat index was only 86 degrees Fahrenheit, and the Occupational Safety and Health Administration (“OSHA”) has found that less severe heat-related illnesses can happen at even lower heat index values. (*Id.* at ¶ 16).

When asked which populations were at risk of dehydration if the temperature exceeds 88 degrees Fahrenheit, Dr. Vassallo testified that the literature indicates that “anybody who is in that temperature” can become dehydrated. (Doc. 245 at 113:14-19). Dr. Vassallo testified regarding the following table, which shows that heat-related emergency room visits, hospitalizations, and deaths often occur at the 88 degree Fahrenheit heat index threshold:

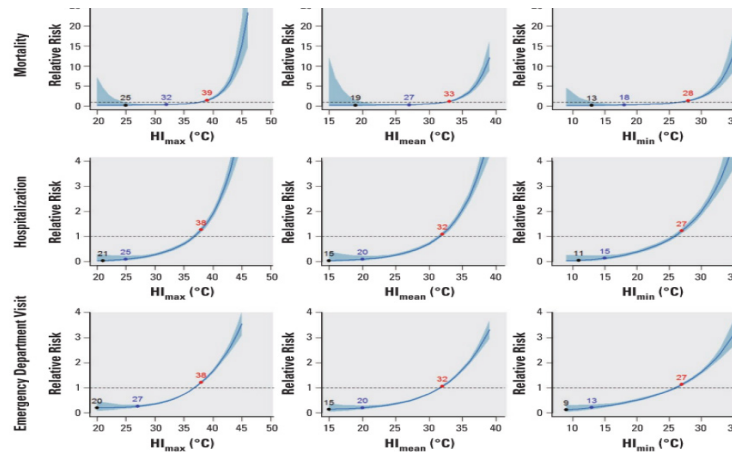


Figure 5. The modeled relationship between the relative risk of heat-related mortality (top panels), heat-related hospitalization (middle panels), and heat-related emergency department visits (lower panels), and three same-day heat index metrics (HI_{max} , HI_{mean} , HI_{min}), as in Figure 1. MRT is the temperature at which the fewest events were observed. Note that the vertical axis scale varies between panels.

(Doc. 245 at 60:20-61:14; Pl. Ex. 41 at 5).

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Dr. Vassallo also opined that monitoring the heat index only every two hours may not adequately protect the health of all workers on the Farm Line, particularly those who are heat sensitive. (Doc. 201-3 at ¶ 8). The National Weather Service (“NWS”) data excerpts in the record show sharp increases in heat index readings over a 2-hour period. (Doc. 201-9). For example, on August 6, 2024, the heat index at the New Roads False River Regional Airport (where the parties currently monitor the heat index) increased from 88 to 102 degrees Fahrenheit between 7:55 A.M. and 9:55 A.M. (*Id.* at 2; 11-12). The uncontroverted evidence shows that Defendants are aware of the significant increases in heat indices over two hours near the Farm Line at LSP. Dr. Randy Lavespere, DOC’s Chief Medical Officer who testified on behalf of DOC as its Federal Rule of Civil Procedure 30(b)(6) witness, stated that he agreed that the August 6, 2024 heat index increase was a “significant swing.” (Doc. 201-6 at 150:7-12).

Further bolstering the Court’s finding that Dr. Vassallo is a credible expert in the field of thermoregulation, the Fifth Circuit and other district courts, including this Court, have repeatedly found Dr. Vassallo credible. In *Yates v. Collier*, 868 F.3d 354, 363-64 (5th Cir. 2017), the Fifth Circuit emphasized:

Dr. Vassallo is a licensed physician and a recognized expert in the field of thermoregulation and hyperthermia, with over twenty-five years treating heat stroke and heat-related disorders. Dr. Vassallo has previously served as an expert witness in lawsuits challenging prison

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conditions, and ***this court has (at least) twice upheld district court findings that relied heavily on Dr. Vassallo’s testimony.*** See *Ball*, 792 F.3d at 593-94; *Gates*, 376 F.3d at 339-40.

Yates, 868 F.3d at 363-64 (emphasis added).

In *Lewis v. Cain*, this Court emphasized: “First, this Court has already found Dr. Vassallo’s opinion ***highly credible*** in the liability portion of this case. Second, the Fifth Circuit and a number of courts within the Fifth Circuit have accepted Dr. Vassallo’s expertise in medical care in prison systems.” *Lewis v. Cain*, 701 F. Supp. 3d 361, 402 (M.D. La. 2023), *appeal dismissed sub nom. Parker v. Hooper*, 128 F.4th 691 (5th Cir. 2025) (emphasis added) (citing *Yates v. Collier*, 868 F.3d 354, 363-64 (5th Cir. 2017); *Ball v. LeBlanc*, 792 F.3d 584, 593-94 (5th Cir. 2015); *Gates v. Cook*, 376 F.3d 323, 339-40 (5th Cir. 2004); *Cole v. Collier*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, *9 (S.D. Tex. 2017); *Cole v. Livingston*, 2016 U.S. Dist. LEXIS 77435, 2016 WL 3258345, *3 (S.D. Tex. 2016); *McCollum v. Livingston*, 2017 U.S. Dist. LEXIS 19602, 2017 WL 608665, *22 (S.D. Tex. 2017)).

In *Bernhardt Tiede, II v. Collier*, the U.S. District Court for the Western District of Texas relied on Dr. Vassallo’s testimony when evaluating vulnerability to heat, finding Dr. Vassallo’s testimony to be based on “credible, published medical studies.” *Bernhardt Tiede, II v. Collier*, No. 1:23-CV-01004-RP, Doc. 202, p. 11 (W.D. Tex. Mar. 29, 2025)

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In *Cole v. Collier*, the U.S. District Court for the Southern District of Texas found Dr. Vassallo's testimony credible, emphasizing that "Dr. Vassallo's expert report and testimony regarding the effects of heat on the human body were extremely thorough, and that she has extensive knowledge on this subject." *Cole v. Collier*, No. 4:14-CV-1698, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *14 n. 16 (S.D. Tex. July 19, 2017). This Court agrees and finds Dr. Vassallo's testimony credible, thorough, and supported by scientific literature.

Contrarily, Defense expert Dr. Carl Keldie was wholly uncredible. No court has ever qualified Dr. Keldie as an expert on the topics of heat-related medical care and disorders or thermoregulation. (Doc. 239 at 49:15-18). Dr. Keldie has no current Board certifications. (*Id.* at 50:8-11). Dr. Keldie has not published any articles, books, chapters, or scientific studies on any topic. (*Id.* at 50:12-14). Dr. Keldie has not participated in peer review of any scientific articles, nor does he know what a peer reviewed file is. (*Id.* at 50:15-17; 80:23-81:9). The last time Dr. Keldie treated patients in an emergency room setting was 25 years ago. (*Id.* at 50:18-20).

Dr. Keldie believes that LSP "is more like a community than a prison." (*Id.* at 96:22-24). Dr. Keldie formed his opinion that there have been no heat-related deaths on the Farm Line at LSP on the sole basis that someone at LSP told him so. (*Id.* at 119:4-9). Dr. Keldie does not know whether there have been any heat injuries among incarcerated people at LSP over the last decade. (*Id.* at

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83:10-16). Dr. Keldie opined that classic or non-exertional heatstroke affects people who cannot remove themselves from a hot environment or who have limited access to hydration or cooling modalities, but in his opinion, those conditions are not experienced at LSP. (*Id.* at 80:12-19).

Dr. Keldie recommended that DOC raise the Heat Alert threshold from a heat index of 88 to 95 degrees Fahrenheit. (*Id.* at 76:24-77:3). After additional discussions, Defendants raised the Heat Alert threshold three degrees instead of seven—from 88 to 91 degrees Fahrenheit. (*Id.* at 76:24-77:3). In Dr. Keldie’s opinion, it would be “very reasonable and extremely safe” to set a heat alert threshold to a heat index of 95 degrees Fahrenheit. (*Id.* at 91:1-4). Dr. Keldie believes that a heat index of 103 degrees Fahrenheit is a “moderate level” of heat. (*Id.* at 91:5-7).

Dr. Vassallo emphasized that DOC’s decision to raise the Heat Alert threshold to a heat index of 91 degrees Fahrenheit is unsupported by the scientific literature. (Doc. 201-3 at ¶ 14; Doc. 245 at 59:6-19). She opined that the sources cited by the DOC in HCP8 either do not support Dr. Keldie’s conclusions or outright contradict them. (Doc. 201-3 at ¶ 13). This was borne out on cross-examination.

Although Defendants argued that Dr. Keldie’s opinion was supported by OSHA, his opinion was belied by an OSHA article cited *in his own report*. The OSHA guidance indicated: “Physical labor increases the heat experienced by workers. Sports physiologists recognize that heat-related illness may occur, surprisingly, at low to moderate

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temperatures, including below 65° Fahrenheit when workload is very heavy[.]” (Pl. Ex. 5 at 3). OSHA warns that “[o]utdoor workers have died of heat stroke when the day’s maximum Heat Index was only 86° Fahrenheit.” (*Id.* at 6). Additionally, “less severe heat-related illnesses can happen at even lower Heat Index values.” (*Id.* at 6).

OSHA guidance further emphasizes:

Most heat-related illnesses affect workers who do strenuous physical activity. When workers engage in intense work, their bodies create heat. This “metabolic” heat combines with environmental heat (from temperature, sunlight, humidity, etc.) so workers’ core temperature can rise to dangerous levels.

To prevent a hazardous combination of environmental and metabolic heat, **employers should be aware of workers’ activity level.** Workload can be classified as light, moderate, heavy, or very heavy.

(*Id.* at 6). OSHA lists “[p]icking fruits or vegetables,” “[r]aking,” “[u]sing hand tools,” and “[c]ontinuous normal walking” as examples of moderate workload activities that could trigger heat-related illnesses. (*Id.* at 8).

Although Dr. Keldie testified that he relied on a U.S. Army chart when recommending a threshold for heat precautions, a review of that chart shows that a wet globe temperature of 90 degrees Fahrenheit or greater is

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categorized as the highest heat category—level 5, a black category. (Doc. 239 at 94:23-95:2). Dr. Keldie admitted that the U.S. Army chart does not refer to “heat index” at all, and that the chart does not consider environmental conditions or the weather in its definition of “easy work.” (Doc. 239 at 94:3-20; 95:16-19).

Most Current Update April 12, 2022

Heat Category	WBGT Index (°F)	Easy Work (250 W)		Moderate Work (425 W)		Heavy Work (600 W)		Very Heavy Work (800 W)	
		Work-Rest	Water Intake (qt/hr)	Work-Rest	Water Intake (qt/hr)	Work-Rest	Water Intake (qt/hr)	Work-Rest	Water Intake (qt/hr)
1 (white)	78-81.9	NL	½	NL	¾	40/20	¾	20/40	1
2 (green)	82-84.9	NL	½	NL	¾	30/30	1	15/45	1
3 (yellow)	85-87.9	NL	¾	NL	¾	30/30	1	10/50	1
4 (red)	88-89.9	NL	¾	50/10	¾	20/40	1	10/50	1
5 (black)	> 90	NL	1	20/40	1	15/45	1	10/50	1
Easy Work		Moderate Work		Heavy Work		Very Heavy Work			
• Weapon maintenance • Marksmanship training • Drill and ceremony		• Patrolling with 30-pound load • Low and high crawl • Dig defensive position		• Patrolling with 45-pound load • Four-person litter carry (180 pounds) • Jogging 4 mph		• Two-person litter carry (150 pounds) • Move under direct fire • Obstacle course			

(Pl. Ex. 51).

DOC’s Chief Medical Officer Dr. Lavespere testified on DOC’s behalf regarding the guidance DOC relied on when increasing the Heat Alert threshold from 88 to 91 degrees Fahrenheit. (Doc. 245 at 209:3-7). The only guidance Dr. Lavespere could point to that DOC relied on when increasing the Heat Alert threshold was a single chart from the NWS:

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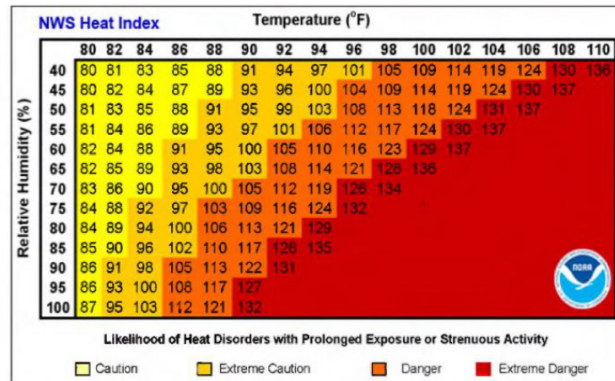


Figure 1. Heat index chart.

In order to determine the heat index using the chart above, you need to know the air temperature and the relative humidity. For example, if the air temperature is 100°F and the relative humidity is 55%, the heat index will be 124°F. When the relative humidity is low, the apparent temperature can actually be lower than the air temperature. For example, if the air temperature is 100°F and the relative humidity is 15%, the heat index is 96°F ([use this calculator](#)). In the Panhandles, we commonly see hot temperatures during the summer, but the low relative humidity values make it somewhat unusual to see dangerous heat index values (i.e. 103°F or greater). A full heat index chart for a larger range of temperatures and relative humidity values can be found [at this link](#).

It surprises many people to learn that the heat index values in the chart above are for shady locations. If you are exposed to direct sunlight, the heat index value can be increased by up to 15°F. As shown in the table below, heat indices meeting or exceeding 103°F can lead to dangerous heat disorders with prolonged exposure and/or physical activity in the heat.

(Pl. Ex. 6; Doc. 245 at 209:3-7). But Dr. Lavespere agreed that this chart is for “shady locations” only. (Doc. 245 at 203:14-25). According to the NWS, if a person is exposed to direct sunlight, the heat index can be increased by up to 15 degrees Fahrenheit. (*Id.*; Pl. Ex. 6).

Dr. Lavespere agreed that the NWS chart indicates that “extreme caution” should be undertaken at 90 degrees Fahrenheit *in the shade*. (Doc. 204:24-205:4). And although Dr. Lavespere testified that incarcerated persons are working under direct sunlight on the Farm Line at LSP “at times,” he explained that the only instance in which incarcerated persons working on the Farm Line would *not* be working in direct sunlight is when there are

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clouds in the sky. (Doc. 245 at 205:5-17 (The Court: “At what times would a field of vegetables not to be exposed to [. . .] direct sunlight?” Dr. Lavespere: “There are often clouds at Angola all the time.”). Photographs of the Farm Line confirm that incarcerated persons working on the Farm Line are working in an open field:



(Pl. Ex. 35).

The Court credits Dr. Vassallo’s opinion and discredits Dr. Keldie’s opinion.

b. Other Courts Have Also Accepted a Heat Index of 88 Degrees.

In finding that Dr. Vassallo has credibly testified that all incarcerated persons working on the Farm Line are at an increased risk of physical harm at a heat index of 88 degrees Fahrenheit such that a Heat Alert should be issued at that temperature, the Court emphasizes that at least two other courts within the Fifth Circuit have reached the same conclusion.

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In *Cole v. Collier*, the Southern District of Texas emphasized: “**Dr. Vassallo credibly testified that**, based on her several decades of clinical experience and a thorough review of the existing literature, **temperatures above a heat index of 88 degrees significantly increase the risk of heat-related illness.**” *Cole v. Collier*, No. 4:14-CV-1698, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *18 (S.D. Tex. July 19, 2017) (emphasis added). The court further emphasized that it had “no basis upon which to question Dr. Vassallo’s choice of 88 degrees as a threshold above which the risk of heat-related illness increases,” and found that “this choice is sound.” *Id.*

In *Bernhardt Tiede, II v. Collier*, the Western District of Texas similarly emphasized: “**Dr. Vassallo credibly testified that a heat index of 88° or higher poses a substantial risk of adverse health outcomes in all inmates**—even those who are young and healthy.”⁸ *Bernhardt Tiede, II v. Collier*, No. 1:23-CV-01004-RP, Doc. 202, p. 13 (W.D. Tex. Mar. 29, 2025) (emphasis added).

Plaintiffs have shown that conditions on the Farm Line at LSP render incarcerated persons at substantial risk of suffering serious harm.

8. The Court recognizes that *Cole* and *Bernhardt Tiede* involved heat indoors, while the Farm Line at LSP is outdoors. According to Dr. Vassallo, however, outdoor workers have died of heat stroke when the day’s maximum heat index was only 86 degrees Fahrenheit, and OSHA has found that less severe heat-related illnesses can happen at even lower heat index values. (Doc. 201-3 at ¶ 16). Dr. Vassallo also opined that the potentially deadly health consequences of DOC’s decision to raise the heat alert threshold are compounded by other limitations of DOC’s heat related policies and practices. (*Id.* at ¶ 17).

*Appendix F***c. Deliberate Indifference.**

Plaintiffs must additionally show that Defendants acted with deliberate indifference to the substantial risk of serious harm addressed above. “Deliberate indifference is defined as a failure to act where prison officials have knowledge of a substantial risk of serious harm to inmate health or safety.” *Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *40 (citing *Farmer v. Brennan*, 511 U.S. 825, 837, 114 S. Ct. 1970, 128 L. Ed. 2d 811 (1994)). It is an “extremely high” standard to meet. *Domino v. Tex. Dep’t of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). “Whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence.” *Ball*, 792 F.3d at 594. On this point, “a prison official’s knowledge of a substantial risk of harm may be inferred if the risk was obvious.” *Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *40 (citing *Farmer*, 511 U.S. at 829). Despite this high standard, Plaintiffs have provided sufficient evidence for the Court to determine that they are likewise substantially likely to prevail on this element of their Eighth Amendment claims.

Courts have found that “deliberate indifference may [] be ‘demonstrated straightforwardly, through direct evidence that an administrator was aware of serious systemic deficiencies and failed to correct them.’” *Cain*, 701 F. Supp. 3d 361, 2023 WL 7299130, at *48 (quoting *Dunn v. Dunn*, 219 F. Supp. 3d 1100, 1129 (M.D. Ala. 2016)); *see also Cole*, 2017 U.S. Dist. LEXIS 112095, 2017

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WL 3049540, at *40 (finding that defendants knew that a risk of serious harm existed after nearly two dozen men died of heat-related illnesses, and when inmates and correctional officers regularly experienced heat-related illnesses). Here, Defendants chose to increase the Heat Alert threshold from 88 to 91 degrees Fahrenheit *after* the Court ordered Defendants to improve conditions on the Farm Line to preserve human health and safety. (*See* Doc. 70). Indeed, the Court's July 2 Order made clear the risks present when the heat index exceeds 88 degrees Fahrenheit:

Dr. Vassallo reports that “[h]eat-related disorders occur when the body’s temperature control system is overloaded, and the body is unable to adequately dissipate heat.” ([Doc. 37-3] at p. 10). Further, the “**risk for heat stroke and heat-related disorders increases sharply when the heat index exceeds 88 degrees Fahrenheit.**” (*Id.*). Some heat-related disorders include “heat syncope (fainting), heat cramps, heat exhaustion, and heat stroke.” (*Id.*). Heat exhaustion and heat stroke can manifest in similar ways, including through light-headedness, thirst, nausea, weakness, fainting, irregular heartbeat, and abdominal cramps, because heat exhaustion can precede heat stroke. (*Id.* at p. 11). Heat strokes can occur rapidly and without warning. (*Id.* at p. 12). In fact, two-thirds of victims “experience symptoms for less than one day before being hospitalized or being found dead.” (*Id.*). Victims

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may also be physically or mentally incapable of calling for help, as heat stroke can lead to feelings of confusion and alter the afflicted's mental status. (*Id.*). Heat stroke "carries a significant risk of death and permanent disability." (*Id.* at p. 13). Dr. Vassallo points out that "[s]tudies have shown heat stroke mortality rates ranging from 30-80%. Survivors of heat stroke may have significant heat-related morbidity, such as permanent inability to walk and talk." (*Id.*). Further, "[p]ermanent neurological damage occurs in up to 17% of survivors." (*Id.*).

Dr. Vassallo opines that "***[a]ll people, including healthy people with no known medical problems, are at risk for heat related disorders during persistent exposure to a heat index above 88 degrees Fahrenheit.***" (*Id.* at pp. 19-20). "In addition to causing dehydration and heat stroke, extreme heat can 'affect otherwise healthy people's kidneys, liver, heart, brain, and lungs, which may cause renal failure, heat attack, and stroke.'" (*Id.* at p. 21 []). Further, "deaths due to heat alone, due to cardiovascular disease alone, and due to heat and cardiovascular disease combined, increase with the number of cumulative days of heat exposure." (*Id.* at p. 27). In other words, the risk of death from both heat-related diseases and facially unrelated diseases increases with the temperature.

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(Doc. 70 at 40-42 (emphasis added)). Defendants simply ignored these compelling medical findings. Moreover, the fact is that DOC is well aware of the significant temperature swings that may occur within a two-hour period near LSP. (Doc. 201-6 at 150:7-12). Thus, in this case, deliberate indifference is demonstrated straightforwardly.

d. Conclusion.

Plaintiffs have shown that incarcerated persons working on the Farm Line at LSP are at substantial risk of suffering serious harm under Defendants' current heat index monitoring and Heat Alert practices. The Heat Alert threshold is medically significant because many protections—including bringing heat sensitive persons indoors, providing water and ice, and giving work breaks at specified intervals—are mandatory only once a heat alert is called. (Doc. 201-3 at ¶ 9). And for a Heat Alert to be accurately called, more contemporaneous data collected in more frequent intervals is necessary.

As it stands, incarcerated persons working on the Farm Line at LSP will not receive medically significant protections until a Heat Alert is called at a heat index of 91 degrees Fahrenheit, sometime within a 2-hour window of when the heat index actually reached 91 degrees Fahrenheit. Defendants' current policies and practices place incarcerated persons at LSP at substantial risk of suffering serious harm.

Plaintiffs have also shown that Defendants have likely been deliberately indifferent to such risks, increasing the

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Heat Alert threshold from 88 to 91 degrees Fahrenheit after the Court placed Defendants on notice that they must improve conditions on the Farm Line at LSP to preserve human health and safety, and failing to modify their policies despite their full knowledge that the temperature in Louisiana can sharply increase in a two-hour period. (*See* Doc. 70).

ii. Plaintiffs Have Shown Immediate Risk of Irreparable Injury.

Based on the foregoing, the Court concludes that, at this stage, Plaintiffs have shown that conditions on the Farm Line “create a substantial risk of injury or death.” *Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *43. Irreparable harm is generally “one for which there is no adequate remedy at law.” *Book People, Inc. v. Wong*, 91 F.4th 318, 340 (5th Cir. 2024) (quoting *All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 251 (5th Cir. 2023) (internal quotations omitted)). There is no adequate remedy at law for non-economic injuries like death or serious physical injury, and so Plaintiffs have satisfied this element. *See, e.g., Vazquez Barrera v. Wolf*, 455 F. Supp. 3d 330, 340 (S.D. Tex. 2020) (finding that allegations that plaintiffs “face[d] a heightened risk of dying or suffering from serious illness” constituted “imminent and irreparable” harm); *East v. Blue Cross & Blue Shield of La.*, No. 3:14-CV-00115-BAJ, 2014 U.S. Dist. LEXIS 23916, 2014 WL 8332136, at *2 (M.D. La. Feb. 24, 2014).

Additionally, and alternatively, “[w]hen an alleged deprivation of a constitutional right is involved, most

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courts hold that no further showing of irreparable injury is necessary.” *Opulent Life Church v. City of Holly Springs, Miss.*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting 11A WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE, § 2948.1 (3d ed. 1998)). Plaintiffs have shown that they are likely being denied their Eighth Amendment rights. Accordingly, Plaintiffs have shown an immediate risk of irreparable injury.

iii. Balance of Interests.

In determining whether to grant injunctive relief, “a court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S. 531, 542, 107 S. Ct. 1396, 94 L. Ed. 2d 542 (1987). In other words, Plaintiffs must establish “that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted.” *See Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011). Plaintiffs must also establish “that the grant of an injunction will not disserve the public interest.” *Id.* However, “[t]hese factors merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435, 129 S. Ct. 1749, 173 L. Ed. 2d 550 (2009).

Plainly, “the public interest supports the protection of Eighth Amendment rights.” *Marlowe v. LeBlanc*, 2020 U.S. Dist. LEXIS 73504, 2020 WL 1983915, at *2 (M.D. La. Apr. 27, 2020); *see also Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 fn. 9 (5th Cir. 2014). As noted, it is likely that Plaintiffs will succeed on their Eighth Amendment claims, and so the public interest favors an injunction.

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The potential harms suffered by Plaintiffs far exceeds any harm suffered by Defendants by the issuance of injunctive relief, as the potential harms alleged by Plaintiffs are serious and potentially life-threatening. *See Collier*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *43 (“[I]f the Court were to fail to order remedies in this lawsuit, Plaintiffs’ safety would be severely undermined, leading to a substantial risk of irreparable injury”); *Harding v. Edwards*, 487 F. Supp. 3d 498, 527 (M.D. La. 2020) (Dick, C.J.) (“Even though Plaintiffs’ serious illness or death is not an *inevitable* result . . . the increased risk of such is still more detrimental than the abstract injury the state would suffer”). On the other hand, Defendants suggest that they will suffer harm because this TRO will prevent them from creating and enforcing their own policies. Human health and safety is the most imperative interest. Accordingly, the balance of interests favors the issuance of injunctive relief.

iv. Bond Requirements

Courts may waive the bond requirement provided in Federal Rule of Civil Procedure 65(c) when appropriate. *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981); *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 303 (5th Cir. 1978); *Cole*, 2017 U.S. Dist. LEXIS 112095, 2017 WL 3049540, at *44. The Court will do so here, and no bond shall be imposed. The majority of Plaintiffs are incarcerated persons with limited resources, and “[p]laintiffs have brought this suit to enforce constitutional rights,” a factor which weighs in favor of waiving the bond requirement. *See Cole*, 2017 U.S.

Appendix F

Dist. LEXIS 112095, 2017 WL 3049540, at *44 (citing *City of Atlanta*, 636 F.2d at 1094).

V. CONCLUSION

Accordingly,

IT IS ORDERED that Plaintiffs' **Application For A Second Temporary Restraining Order (Doc. 201)** is **GRANTED**. Plaintiffs' request for a preliminary injunction will be addressed separately.

IT IS FURTHER ORDERED that Defendants shall issue a "Heat Alert" on the Farm Line at LSP whenever the heat index meets or exceeds 88 degrees Fahrenheit.

IT IS FURTHER ORDERED that Defendants shall monitor the heat index on the Farm Line at LSP every 30 minutes.

Baton Rouge, Louisiana, this 23rd day of May, 2025

/s/ Brian A. Jackson

JUDGE BRIAN A. JACKSON
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA