

ENTERED

March 23, 2018

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

KEITH COLE, et al.,

Plaintiffs,

v.

BRYAN COLLIER, et al.,

Defendants.

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CIVIL ACTION NO. 4:14-cv-1698

**MEMORANDUM AND ORDER SETTING OUT
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Before the Court is Plaintiffs’ unopposed motion to extend the preliminary injunction issued in this class action. The history and facts of this action are set out in greater detail in the Court’s prior orders entered July 19, 2017 and October 12, 2017. *See* Doc. Nos. 737, 854.

Defendants’ lack of opposition is conditioned on the parties’ agreement that neither party makes any concession regarding the merits and neither side shall be prejudiced by seeking or agreeing to any extension of the preliminary relief or any findings required to extend the preliminary relief.¹ Nevertheless, this Court must analyze the evidence presented to ensure that a continuing preliminary injunction remains necessary to correct an ongoing constitutional violation. *See* 16 U.S.C. § 3626(c)(1). After considering the evidence presented throughout this matter, the arguments of counsel, and all applicable law, the Court finds and concludes that Plaintiffs’ motion should be GRANTED. The Court finds and concludes as follows:

The Court finds that the evidence presented during the hearings in this matter will be equally applicable, in the absence of an order from this Court, during the summer of 2018. As to

¹ Defendants do not concede the merits of Plaintiffs’ claims or the Court’s preliminary injunction order. The Court finds that Defendants have not waived any argument or defense.

the facts, the evidence shows that, to the extent the weather patterns can be anticipated, the summer of 2018 will likely again be dangerously hot,² and that a Court order will be necessary to ensure that the same constitutional violations do not recur in 2018.³ Further, no intervening precedent changes the Court's legal analysis.

Accordingly, after considering all the evidence before the Court, the arguments of counsel, all applicable filings, and all applicable law, the Court incorporates the findings and conclusions contained in its July 19, 2017 and October 12, 2017 orders. Doc. Nos. 737, 854; *see* Fed. R. Civ. Proc. 65(a)(2). Based on these findings and conclusions, the Court ORDERS that the preliminary relief set forth in its July 19, 2017 order shall continue in effect.

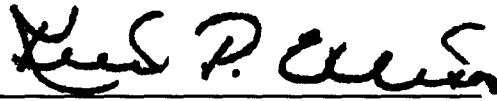
In light of TDCJ's lack of opposition to compliance with the preliminary injunction consistent with the relief described by the proposed settlement agreement pending before the Court, Docket Entries 989-4, pages 9 to 12, TDCJ is hereby ORDERED to do so on a temporary basis. In summary, TDCJ shall maintain the heat index at the Pack Unit housing areas at no greater than 88 degrees Fahrenheit from April 15, 2018 through October 15, 2018 and provide the same relief to the inmates enumerated in Docket Entry 989-5 for their current incarcerations, all subject to the provisions of the proposed settlement agreement. The Court defers any ruling on the approval of the settlement.

² *See, e.g.*, Plaintiffs' 2017 Hearing Exhibit 5; Doc. Nos. 693 & 693-1.

³ *See, e.g.*, Doc. No. 720-11 at 15, Deposition of C. Ginsel as TDCJ 30(b)(6) representative at 57:8-15; Doc. No. 720-13 at 10-12, Deposition of L. Linthicum at 206:21-208:10; Doc. No. 721.

IT IS SO ORDERED.

SIGNED at Houston, Texas, on this the 23rd day of March, 2018.

A handwritten signature in black ink, appearing to read "Keith P. Ellison". The signature is written in a cursive style with a horizontal line underneath it.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE