

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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March 25, 2019

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

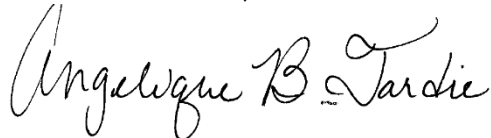
No. 18-20216 David Bailey, et al v. Bryan Collier, Exct
Dir TDCJ, et al USDC No. 4:14-CV-1698

Dear Mr. Bradley,

Enclosed is a copy of the judgment issued as the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Angelique B. Tardie, Deputy Clerk
504-310-7715

cc w/encl:

Mr. Jeff S. Edwards
Mr. David James
Mr. Darren Lee McCarty
Mr. Scott Charles Medlock
Mr. James Moore
Ms. Leah O'Leary
Mr. Michael C. Singley
Ms. Briana Marie Webb
Donald Adams, Ricky Adams, Anthony Aguilar, David
Aguilar, Frank Alvarado, Lakeith Amir-Sharif, Rodney R.
Anzaldua, Lawrence R. Avelar Jr., Derek M. Bailey,
Anthony Ray Banks, Usiaf Banna, Gary Barnett, Ronnald

L. Barrow, Howard Bass, Steven Bass, Ricky Wayne Beckett, Aaron Binion, Aaron Birchfield, Elvin A. Bonner, Jesse Boutte, Gary Bowen, Jessie Bramber, Craig A. Brown, Antwain Burks, Michael Burks Jr., Damacia Busby, Charles Carter, Gerald Childress, Leondrea Crawford, Andrew Joseph Cross, Eddie DeLeon, Terry D elord, Alberto Diaz, Bennie Dickson, Paul Dixon, James Dobbs, Shannon Donner, Emmanuel Doyle, Nakimo Drones, Steven Eads, Vermon Edwards, Marvin Elledge, Clifton Elliott, Kenneth Ellzey, Troy Escamilla, Anastacio S. Esparza, Alan J. Fanning, Edward Fansler, Joseph Farr, John A. Fisher, Monty David Fleming, Aronaldo Fogel, Patrick Ford, Rick E. Fras, Jimmy Freeman, Rudolfo Fuentes, John Paul Garcia, Johnny Garcia, Ray Garcia, Henry T. Garland, Wayne Garner, David Garrison, Terence Gayden, Gary Gee, Gerald Gibson, Jeremy Godinez, Arturo Gonzales, Leo Gonzales, Ruben Gonzales, Brandon Gordon, Norris Earl Goynes, Douglas Graf, Michael Graham, Tyrone Grant, Zachary Harvey, Kevin Hawkins, Steven Hayes, Samuel Henderson, Horacio Hernandez, Lupe R. Hernandez, Frederick Herrera, Lee Marcus Herrera, Chris Holland, David Holland, Clem Hollingsworth, Kenneth Holt, Justin L. Hudson, Richard Hyland, Travis James, Todd Janes, Damion G. Johnson, Darrell Johnson, Charles Jones, Jerry Jones, McCarty Jones, Willis Jones, Joshua Kearney, Grady Kennedy, Mark Kirby, Freeman Lamar, Charles Leck, Michael Lee, Arthur Lopez, Roderic Luster, Omar Mata, Haley Mayberry, Karey McFarland, Marty Layne McFee, Anthony McGuire, Nicholas McKnight, Jimmy McCillan, Jackie McQueen, James A. Meeks, Harvey Mellard, Vic Miller, James Monroe, Jaime Moreno, James Moore, Jose L. Munoz, Ceasar Navarro, Elwin D. Norris, Benajmin Onyeforo, Derek Orsborn, Robert Ortiz, Delton Oveal, William Alvin Owen, David S. Padilla, Eric Paredes, Donald A. Pearson, Alex Pena, Gregg Pendleton, Faustino Perez, Justin H. Petty, Robert Earl Pitts, Jr., Romont Robbins Sr., Carl Robinson, Jose Rodriguez, Tommie Rodriguez, Uriel Rodriguez, Craig Samples, Jesse Sanchez, III, Simon M. Sanchez, Dusty Seaton, Wisdom L. Simms, Jr., David Simon, Timothy Singleton, Jason P. Smith, Kevin Smith, Edward Smyth, Ronnie Spratt, Charles Stanley, Charlie Stanley, Jeffrey Steadman, Marshall W. Strifler, William Sullivan, Justin Summers, Palanco Tatman, Quintin Taylor, Kenneth Thomas, Larry Thomas, Jerry L. Thomas, Jonathan To, Carlos Wayne Toombs, Jose Torres, Jr., Joseph Torres, Raymond Torres, Mark Travis, Jesse Valenzuela, Jerry Vance, Richard Vetter, Jay Jay Vialobos, Ronald J. Walker, Steven Walker, Michael Walton, Ronald Warren, Jarmarcus White, Quavonn White, Frederick Whitley, Christopher Williams, Floyd Williams, Clayton Wilson, Joe Wolf, Blair Wright, Ricky Ybarra, Lester Yount, Francisco Zapata, James Zertuche

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-20216

BRYAN COLLIER, EXECUTIVE DIRECTOR, TEXAS DEPARTMENT OF
CRIMINAL JUSTICE; ROBERTO M. HERRERA; TEXAS DEPARTMENT
OF CRIMINAL JUSTICE,

Defendants - Appellees

v.

DUSTY SEATON; JAMES A. MEEKS,

Movants - Appellants



A True Copy
Certified order issued Mar 25, 2019

Lyfe W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

MICHAEL WALTON; ANTWAIN BURKS; JERRY L. THOMAS; ALAN J.
FANNING; SIMON M. SANCHEZ; STEVEN WALKER; EMMANUEL
DOYLE; ZACHARY HARVEY; NICHOLAS MCKNIGHT; SAMUEL
HENDERSON; QUAVONN WHITE; RICK EDMUND FRAS; ROBERT
EARL PITTS, JR.; ANTHONY AGUILAR; GARY BARNETT; EDWARD
FANSLER; WILLIAM SULLIVAN; CRAIG A. BROWN; JIMMY
FREEMAN; ARTURO GONZALES; JAMES MOORE; BLAIR WRIGHT,

Appellants

v.

MARVIN RAY YATES; JACKIE BRANNUM; RICHARD ELVIN KING;
FRED WALLACE; MICHAEL DENTON,

Plaintiffs - Appellees

Appeals from the United States District Court
for the Southern District of Texas

Before DENNIS, GRAVES, and COSTA, Circuit Judges.

PER CURIAM:

I. BACKGROUND & PROCEDURAL HISTORY

This appeal arises from a class action brought in 2014 by inmates in a particular unit of Texas’s state prisons—the “Pack Unit”—challenging the policies and practices of the Texas Department of Criminal Justice (TDCJ), which exposed them to extreme heat conditions in their housing areas. The district court originally certified a class consisting of “all inmates who currently are, or in the future will be, incarcerated at the Pack Unit, and who are subjected to TDCJ’s policy and practice of failing to regulate high indoor heat index temperatures in the housing areas.”

Relevant here, the district court issued a preliminary injunction that required TDCJ to transfer heat-sensitive residents—those with conditions that made them particularly sensitive to the dangers of extreme heat—out of the Pack Unit and into climate-controlled units. In late August 2017, some prisoners—including some heat-sensitive individuals—were transferred to the Pack Unit from the Stringfellow Unit as part of a Hurricane Harvey evacuation plan. TDCJ asked the district court to modify the injunction to remove the climate-control requirement for heat-sensitive inmates who had been transferred to the Pack Unit in the Hurricane Harvey evacuations. The district court denied the request, holding that the heat restriction for heat-sensitive residents of the Pack Unit continued to apply, regardless of the reason for the individuals’ residence at the Pack Unit. To comply with the preliminary injunction, then, TDCJ then moved the new heat-sensitive residents of the

Pack Unit to air-conditioned housing elsewhere in the system, including the Leblanc Unit.

On February 2, 2018, the parties informed the Court that they had reached a settlement in principle and filed a Motion for Approval of Class Action Settlement on March 6, 2018. As part of their Motion for Approval of Class Action Settlement, the plaintiffs sought amended certification of the class to include “all incarcerated people who are still in TDCJ custody who were assigned to live at the Pack Unit between July 19, 2017 and August 8, 2017, or are still living at the Pack Unit on March 6, 2018.”

This amended class definition excluded the inmates originally housed in the Stringfellow Unit who, in the wake of Hurricane Harvey, were transferred to the Pack Unit temporarily before being transferred again to a climate-controlled unit. In response to this exclusion, one of these individuals, prisoner Lakeith Amir-Sharif, on behalf of himself and several other inmates who were temporarily housed at the Pack Unit during Hurricane Harvey, filed an “Emergency Motion” in the district court challenging the settlement and arguing that Amir-Sharif and others who resided in the Pack Unit temporarily after Hurricane Harvey should be recognized as class members. The district court denied the emergency motion on March 27, 2018, explaining that the inmates were not class members and therefore could not challenge the class action settlement but were free to file separate lawsuits relating to conditions in the units where they were currently housed. The district court explained:

As a preliminary matter, the Court notes that Movants do not have standing to object to the settlement, since they are not members of the Settlement Class. In a separate order, the Court is preliminarily approving the settlement and amending the class definition to consist of people at Pack when the 2017 injunction went into effect and/or in March of 2018. Mr. Amir-Sharif and others transferred into Pack during TDCJ’s transfer program under the injunction were only part of the class on a temporary

basis. In light of the significant rights at issue in this case, and the fact that Mr. Amir-Sharif and other Leblanc residents were temporarily impacted by the case, the Court will nevertheless address Mr. Amir-Sharif's concerns and requests in writing.

The Court is acting within its authority in amending the class definition. The Court may amend the class definition during the course of the litigation. FED. R. CIV. P. 23(c)(1)(C) (“An order that grants or denies class certification may be altered or amended before final judgment.”); *Richardson v. Byrd*, 709 F.2d 1016, 1019 (5th Cir. 1983).

The modified class definition provides clarity and returns the class to its originally intended size and composition. The class as defined at certification was meant to include people living in the Pack Unit at present or in the future. The relief sought—safe temperatures for those at Pack—reflected this class definition. This case was brought to address conditions at Pack, by people incarcerated at Pack. The evidentiary and legal findings supporting class certification and the preliminary injunctions relate to Pack Unit conditions. However, the scope of the class fluctuated and expanded during the implementation of the 2017 injunction, as TDCJ transferred class members out of Pack and transferred new individuals into Pack. When the Court certified the class under the original definition, the Court did not anticipate that a transfer process would be put into place. The remedy that the parties have decided for settlement is air-conditioning the Pack Unit itself—the relief that Plaintiffs sought from the outset. It is reasonable and fair for the Settlement Class to consist of individuals at Pack prior to the injunction transfers and at the time of settlement.

The Court is sympathetic to the concerns of people incarcerated at the Leblanc Unit. The dangerous heat-related conditions that the Court identified in this case may exist at their unit or other units in the TDCJ system. Nothing in this settlement prevents people at Leblanc or other non-Pack units from undertaking efforts to vindicate their constitutional rights.

II. APPEAL AND MOTIONS

On April 5, 2018, 192 prisoners signed and filed a notice of appeal. Of the 192 signatories, 189 were not members of the settlement class (“the

Objectors”). The Objectors, including Amir-Sharif,¹ describe themselves as “former class and/or subclass members who were excluded from the class and settlement.”

Plaintiffs-Appellees—who are members of the settlement class—contend that the Objectors’ appeal should be dismissed for lack of jurisdiction. We agree. Generally, “only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment.” *Marino v. Ortiz*, 484 U.S. 301, 304 (1988). This court lacks jurisdiction to entertain objections to a settlement agreement brought by non-class members whose rights are unaffected by the agreement. *See United States v. Fletcher*, 805 F.3d 596, 602 (5th Cir. 2015) (describing the “central tenet of appellate jurisdiction” that this court lacks jurisdiction to entertain the appeal of “a party who is not aggrieved by a judgment of the district court”); *see also* 4 NEWBERG ON CLASS ACTIONS § 14:12 (5th ed.) (“[I]n general, nonclass members and nonsettling defendants will not have standing to appeal subsequent settlements. Nonsettling parties will have standing to appeal only insofar as the settlement purports to release their own legal claims or cause other plain legal prejudice.”). *Cf. Transamerican Ref. Corp. v. Dravo Corp.*, 952 F.2d 898, 900 (5th Cir. 1992) (“[N]on-settling defendants generally have no standing to complain about a settlement, since they are not members of the settling class.”).

As the district court noted here, “[n]othing in this settlement prevents people at Leblanc or other non-Pack units from undertaking efforts to vindicate their constitutional rights.” Because the Objectors are nonclass members who did not seek to intervene in the district court² and whose legal rights are

¹ The appeal was dismissed as to Amir-Sharif by an order of this court on September 10, 2018 for want of prosecution.

² One Objector, James A. Meeks, filed a motion to intervene, which the district court denied. The challenge to that denial was reviewed by a panel of this court in a companion appeal. *See Brannum v. Collier*, 745 F. App’x 544 (5th Cir. 2018).

completely unaltered by the settlement agreement, they are not aggrieved parties here and we therefore lack jurisdiction to review their appeal. *Marino*, 484 U.S. at 304. Of course, our lack of jurisdiction has no effect on the Objectors' ability to bring a separate legal challenge to TDCJ practices. We GRANT appellees' motion to dismiss the Objectors' appeals for want of jurisdiction and DENY the Objectors' currently pending motions as moot.

The two remaining appellants—Aaron Birchfield and Terry P. Delord—were members of the settlement class. On October 29, 2018, Birchfield and Delord were dismissed from the appeal for failure to file briefs. After consideration, appellants' motion for reconsideration of this dismissal is DENIED.

III. ORDER

IT IS ORDERED that the appeals of Donald Adams, Ricky Adams, Anthony Aguilar, David Aguilar, Frank Alvarado, Lakeith Amir-Sharif, Rodney R. Anzaldua, Lawrence R. Avelar Jr., Derek M. Bailey, Anthony Ray Banks, Usiaf Banna, Gary Barnett, Ronnald L. Barrow, Howard Bass, Steven Bass, Ricky Wayne Beckett, Aaron Binion, Elvin A. Bonner, Jesse Boutte, Gary Bowen, Jessie Bramber, Craig A. Brown, Antwain Burks, Michael Burks Jr., Damacia Busby, Charles Carter, Gerald Childress, Leondrea Crawford, Andrew Joseph Cross, Eddie DeLeon, Alberto Diaz, Bennie Dickson, Paul Dixon, James Dobbs, Shannon Donner, Emmanuel Doyle, Nakimo Drones, Steven Eads, Vernon Edwards, Marvin Elledge, Clifton Elliott, Kenneth Ellzey, Troy Escamilla, Anastacio S. Esparza, Alan J. Fanning, Edward Fansler, Joseph Farr, John A. Fisher, Monty David Fleming, Aronaldo Fogel, Patrick Ford, Rick E. Fras, Jimmy Freeman, Rudolfo Fuentes, John Paul Garcia, Johnny Garcia, Ray Garcia, Henry T. Garland, Wayne Garner, David Garrison, Terence Gayden, Gary Gee, Gerald Gibson, Jeremy Godinez, Arturo

Gonzales, Leo Gonzales, Ruben Gonzales, Brandon Gordon, Norris Earl Goynes, Douglas Graf, Michael Graham, Tyrone Grant, Zachary Harvey, Kevin Hawkins, Steven Hayes, Samuel Henderson, Horacio Hernandez, Lupe R. Hernandez, Frederick Herrera, Lee Marcus Herrera, Chris Holland, David Holland, Clem Hollingsworth, Kenneth Holt, Justin L. Hudson, Richard Hyland, Travis James, Todd Janes, Damion G. Johnson, Darrell Johnson, Charles Jones, Jerry Jones, McCarty Jones, Willis Jones, Joshua Kearney, Grady Kennedy, Mark Kirby, Freeman Lamar, Charles Leck, Michael Lee, Arthur Lopez, Roderic Luster, Omar Mata, Haley Mayberry, Karey McFarland, Marty Layne McFee, Anthony McGuire, Nicholas McKnight, Jimmy McMillan, Jackie McQueen, James A. Meeks,³ Harvey Mellard, Vic Miller, James Monroe, Jaime Moreno, James Moore, Jose L. Munoz, Ceasar Navarro, Elwin D. Norris, Benjamin Onyeforo, Derek Orsborn, Robert Ortiz, Delton Oveal, William Alvin Owen, David S. Padilla, Eric Paredes, Donald A. Pearson, Alex Pena, Gregg Pendleton, Faustino Perez, Justin H. Petty, Robert Earl Pitts Jr, Stephen Poole, Mickel Poyneer, Gil Ramirez, Jose M. Ramos, Leon Reed Jr., Romont Robbins Sr., Carl Robinson, Jose Rodriguez, Tommie Rodriguez, Uriel Rodriguez, Craig Samples, Jesse Sanchez III, Simon M. Sanchez, Dusty Seaton, Wisdom L. Simms Jr., David Simon, Timothy Singleton, Jason P. Smith, Kevin Smith, Edward Smyth, Ronnie Spratt, Charles Stanley, Charlie Stanley, Jeffrey Steadman, Marshall W. Strifler, William Sullivan, Justin Summers, Palanco Tatman, Quintin Taylor, Kenneth Thomas, Larry Thomas, Jerry L. Thomas, Jonathan To, Carlos Wayne Toombs, Jose Torres Jr., Joseph Torres, Raymond Torres, Mark Travis, Jesse

³ Meeks filed a companion appeal, No 18-20402, appealing the district court's denial of his motion to intervene and challenging the district court's approval of the class settlement agreement. A panel of this court affirmed the district court's denial of Meeks's motion to intervene and dismissed his challenge to the district court's approval of the class settlement for lack of jurisdiction. *Brannum v. Collier*, 745 F. App'x 544 (5th Cir. 2018).

Valenzuela, Jerry Vance, Richard Vetter, Jay Jay Vialobos, Ronald J. Walker, Steven Walker, Michael Walton, Ronald Warren, Jarmarcus White, Quavonn White, Frederick Whitley, Christopher Williams, Floyd Williams, Clayton Wilson, Joe Wolf, Blair Wright, Ricky Ybarra, Lester Yount, Francisco Zapata, and James Zertuche are DISMISSED for lack of jurisdiction and their pending motions are DENIED as moot.⁴ IT IS FURTHER ORDERED that the motion for reconsideration of the order dismissing the appeal as to appellants Aaron Birchfield and Terry P. Delord is DENIED.

⁴ We note that the majority of the Objectors have been previously dismissed for failure to timely file briefs. Their subsequent filings in this court, however, including motions for reconsideration of such dismissals and motions for appointment of counsel, along with appellees' motion to dismiss, cause us to separately examine our jurisdiction.