UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, *ET AL*. **PLAINTIFFS**

V. **CASE NO. 4:20-CV-007-DMB-JMV**

TOMMY TAYLOR, *ET AL*. **DEFENDANTS**

PLAINTIFFS' SUPPLEMENTAL EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

COMES NOW Michael Amos, Pitrell Brister, Antonio Davis, Willie Friend, Charles Gayles, Daniel Guthrie, Jonathan J. Ham, Desmond Hardy, Billy James, Jr., Justin James, Quenten Johnson, Deaunte Lewis, Larry Maxwell, Terrance McKinney, Derrick Pam, Brandon Robertson, Kuriaki Riley, Derrick Rogers, Tyree Ross, H.D. Alexander Scott, Deangelo Taylor, Lemartine Taylor, Conti Tillis, Demarcus Timmons, Carlos Varnado, Phillip DeCarlos Webster, Adrian Willard, and Curtis Wilson, Caleb Buckner, William Green, Aric Johnson, Ivery Moore, and Kevin Thomas, plaintiffs herein, by and through undersigned counsel, and pursuant to Rule 65 of the Federal Rules of Civil Procedure, respectfully request that this Court grant their Motion for Temporary and Preliminary Injunction and the specific relief described below:

Regarding **Aric Johnson in Unit 29, Building F, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, Johnson must see a medical doctor to assess his high blood pressure;
2. Within twenty-four hours, refill Johnson's high blood pressure medication;
3. Within five (5) days, repair the roof and other avenues of water intrusion in Johnson's immediate living area;

4. Within five (5) days, repair the exposed electrical wires in Johnson's shower;

5. Within five (5) days, repair the toilets and urinals in Johnson's zone;

6. Within five (5) days, repair the air conditioning in Johnson's zone.

Regarding **Phillip Webster in Unit 29, Building F, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, treat effectively the infestation of rats and cockroaches in Webster's immediate living area;

2. Within five (5) days, repair the roof and other avenues of water intrusion in Webster's immediate living area;

3. Within five (5) days, repair the air conditioning in Webster's zone;

4. Within five (5) days, Webster must see an ophthalmologist to treat his burning eyes.

Regarding **Kuriaki Riley in Unit 30, Building B, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, Riley should see a psychiatrist to assess his mental health and develop a long-term mental health plan including periodic follow up visits, as medically indicated;

2. Within five (5) days, Riley should see a medical doctor to assess his high blood pressure;

3. Within twenty-four hours, refill Riley's high blood pressure medication;

4. Within five (5) days, restore the drinking water in Riley's zone to acceptable standards.

Regarding **Justin James in Unit 30, Building A, Zone B**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, treat effectively the infestation of rats and cockroaches in James' immediate living area;
2. Within five (5) days, repair the roof and other avenues of water intrusion in James' immediate living area;
3. Within five (5) days, remediate the mold in the shower in James' zone;
4. Within five (5) days, repair the air conditioning in James' zone;
5. Within five (5) days, repair the air conditioning in James' zone;
6. Within five (5) days, arrange for James to have the required one hour of recreation daily.

In support of its motion, Plaintiffs respectfully submit their accompanying Supplemental Memorandum Brief and the following exhibits:

EXHIBIT A: Eldon Vail Expert Report and Addendum
EXHIBIT B: Dr. Marc Stern Expert Report and Addendum
EXHIBIT C: Craig Haney, Ph.D., J.D. Expert Report
EXHIBIT D: Debra Graham Expert Report and Addendum
EXHIBIT E: Madeleine LaMarre Expert Report
EXHIBIT F: Frank Edwards Expert Report
EXHIBIT G: Plaintiffs' Affirmation Compilation
EXHIBIT H: Plaintiffs' Photograph Submission
EXHIBIT I: Supplemental Declaration of Phillip Webster (June 5, 2020)
EXHIBIT J: Supplemental Declaration of Aric Johnson (June 5, 2020)
EXHIBIT K: Supplemental Declaration of Justin James (June 5, 2020)
EXHIBIT L: Supplemental Declaration of Kuriaki Riley (June 5, 2020)
EXHIBIT M: Sworn COVID Questionnaire Compilation
EXHIBIT N: Vail's Additional Expert Source Material
EXHIBIT O: Stern's Additional Expert Source Material
EXHIBIT P: Haney's Additional Expert Source Material
EXHIBIT Q: Graham's Additional Expert Source Material
EXHIBIT R: LaMarre's Additional Expert Source Material
EXHIBIT S: Edwards' Additional Expert Source Material

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court grant their Emergency Motion for Temporary Restraining Order and Preliminary Injunction and for any other relief the Court deems appropriate.

This the 8th day of June, 2020.

Respectfully submitted,

/s/ Marcy B. Croft
Marcy B. Croft (MS Bar #10864)
Jessica L. Rice (MS Bar #105722)
Ericson Enger (MS Bar #105808)
MARON MARVEL BRADLEY ANDERSON & TARDY LLC
200 South Lamar Street
Jackson, MS 39201
Telephone: (601) 960-8630
Telefax: (601) 206-0119
ATTORNEY FOR PLAINTIFF

Thomas G. Bufkin (MS Bar #10810)
Carson H. Thurman (MS Bar #104871)
CARROLL BUFKIN PLLC
1076 Highland Colony Pkwy.
600 Concourse, Suite 125
Ridgeland, MS 39157
Telephone: (601) 982-5011
Telefax: (601) 853-9450
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the Court's electronic filing system.

/s/ Marcy B. Croft
Marcy B. Croft (MS Bar #10864)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, *ET AL*. **PLAINTIFFS**

V. **CASE NO. 4:20-CV-007-DMB-JMV**

TOMMY TAYLOR, *ET AL*. **DEFENDANTS**

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs respectfully submit this Supplemental Memorandum in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction ("Supplemental Memorandum").[1]

PRELIMINARY STATEMENT

Plaintiffs are 33 inmates[2] at the Mississippi State Penitentiary in Parchman, Mississippi ("Parchman"), who have brought this class action to remedy unconstitutional and life-threatening conditions at the prison. Parchman is in the midst of a humanitarian crisis that has claimed 23 lives[3] to date in 2020 and that leaves Plaintiffs daily at risk of violence, injury, disease, and death, not to mention torturous conditions of confinement. While abhorrent, Parchman's condition is no secret to Defendants. Governor Tate Reeves, the chief law enforcement officer in

[1] This Supplemental Memorandum is provided pursuant to this Court's order [Doc. 55] in support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") [Doc. 13], and Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion ("Original Memorandum"). [Doc. 14]. Per the Court, this Supplemental Memorandum supersedes and replaces the Original Memorandum. *Id.*

[2] Based on information and belief, since the filing of this action, Defendants have transferred 24 of the Named Plaintiffs from Parchman to other MDOC facilities and released 2 Named Plaintiffs May 3 and May 26, 2020, respectively. Pursuant to the last hearing of the parties, Plaintiffs have not yet filed their second amended complaint in this action, but will be prepared to do same when permitted and when appropriate. Said amendment will necessarily include substitution of certain named defendants (to reflect new individuals serving in the official roles) and substitution of certain named plaintiffs to serve as class and/or sub-class representatives.

[3] *See* Docs. #56, #97 and additional press releases contained in the News and Announcements section of the official website for the Mississippi Department of Corrections, accessible at https://www.mdoc.ms.gov/Pages/default.aspx (last visited June 8, 2020).

the State of Mississippi, visited Parchman on January 23, 2020 and declared the situation "infuriating."[4] He blamed Parchman's condition on a "leadership crisis" within the Mississippi Department of Corrections ("MDOC") and admitted, "[t]here is no excuse."[5] Yet, despite the Governor's admonition, Defendants seem unwilling and incapable of bringing Parchman up to constitutional standards. In fact, Defendants, in this very proceeding, have grown indignant in defense of mismanagement at Parchman. Their indignation, however, is grossly misplaced. Consider the conclusions of nationally renowned experts in the field of prison administration, healthcare, and hygiene, each of whom has inspected Parchman in the context of this litigation:

Eldon Vail, a former prison warden and administrator with 35 years experience, including 11 years in the top two positions in the Washington State Department of Corrections, states in his report that, "[i]t is not hyperbole to say the conditions at Parchman fall far below anything I have ever seen in any other jurisdiction in this country." Ex. A, Eldon Vail Expert Report and Addendum, p.36 ("Vail").

Marc Stern, MD, MPH, who specializes in correctional health care, and who has evaluated approximately 100 jails, prisons, and immigration detention facilities in the United States, writes that, "[t]he health-related conditions I observed at Parchman are the worst conditions I have observed in any U.S. jail, prison, or immigration detention facility in my 20 years working in this field. To say that the Mississippi Department of Corrections warehouses human beings at Parchman would be insulting to proper warehouses. The conditions under which residents exist at Parchman are sub-human and deplorable in a civilized society." Ex. B, Dr. Marc Stern Expert Report and Addendum, p. 3 ("Stern").

[4] *See* Website of the Office of the Governor of the State of Mississippi, https://governorreeves.ms.gov/ (linking to https://www.facebook.com/197649153585886/videos/224534535221371/) (last visited June 8, 2020).
[5] *Id.*

Craig Haney, Ph.D., J.D., Distinguished Profession of Psychology at the University of California, Santa Cruz, was a principal researcher in the "Stanford Prison Experiment," and has published extensively on the psychological effects of confinement on prisoners. Haney states that those in charge of Parchman exhibit "a profound level of neglect and disregard for the prisoners themselves, including gross underfunding of the prison, unprecedented levels of understaffing, an abject failure to maintain a livable physical environment for prisoners, and a systemic disregard for the prisoners' medical and mental health needs." Ex. C, Craig Haney, Ph.D., J.D. Expert Report, p. 7 ("Haney").

Debra Graham, an environmental health specialist and registered dietician, who for 28 years served in the Miami-Dade Corrections and Rehabilitation Department, including two and one-half years as its director of departmental compliance, states that, "[t]he deplorable and inhumane environmental conditions at MSP are putting offenders, staff and visitors at serious risk of harm." Ex. D, Debra Graham Expert Report and Addendum, p. 23 ("Graham").

Madeleine LaMarre, a nurse practitioner with nearly 40 years experience in correctional health care and administration, states that "[t]he totality of the conditions in Units 29 and 30 at MSP are so horrific that all inmates should be transferred from these Units within 60 days, and these Units should be permanently closed." Ex. E, Madeline LaMarre Expert Report, p. 26 ("LaMarre").

Given the foregoing, it is quite unreasonable – indeed, beyond the pale – to believe that Parchman's deplorable, unconstitutional conditions, which are so obvious to even occasional observers like Governor Tate Reeves, Eldon Vail, Marc Stern, Craig Haney, Debra Graham, and Madeleine LaMarre, are anything but well-known, open, and obvious to Defendants. Yet, Defendants have turned a blind eye and a callous heart toward the unconstitutional and

dangerous conditions, and human suffering, at Parchman. Accordingly, Plaintiffs are entitled to emergency injunctive relief.

PROCEDURAL HISTORY

Plaintiffs filed a First Amended Class-Action Complaint in this action on January 28, 2020.[6] Shortly thereafter, in response to deadly and dangerous conditions at Parchman, Plaintiffs sought emergency injunctive relief. [Doc. #13]. The Court directed the parties to engage in limited discovery and supplement the record with evidence relating to the conditions at Parchman. [Doc. ## 31, 48, 55]. This Memorandum is the product of that limited discovery effort and contains, as evidentiary support, six expert reports, sworn inmate declarations, numerous photographs of conditions inside Parchman, MDOC's own documents, and medical records of Plaintiffs.

Importantly, during the evidentiary period granted by the Court, Defendants have transferred (likely temporarily) from Parchman some 24 of the 33 named Plaintiffs. Of course, this necessarily narrows the scope of this motion, which, under applicable standards, is designed to prevent Named Plaintiffs from suffering immediate, irreparable harm.[7] Accordingly, Plaintiffs have included as exhibits to the Motion, and have cited in this Memorandum, a second, more recent declaration from each of the following named Plaintiffs who remain housed in Parchman: Aric Johnson, Phillip Webster, Kuriaki Riley, and Justin James. Each of these four named Plaintiffs currently suffers from emergent, unconstitutional conditions at Parchman. Defendants are, and have been, aware of these deficiencies for some time, yet have failed to act. Therefore, these Plaintiffs are entitled to immediate injunctive relief.

[6] *See* Doc. #22 (seeking injunctive relief, costs/expenses). Demand for a jury trial was withdrawn. Doc. #51.

[7] Defendants have previously noted that, as is typical in cases of this nature, the putative class has not yet been certified. *See e.g.* Doc. #93 at 2. Plaintiffs have been following the guidelines set forth at the last in-person hearing in this matter, but are ready to move forward with pre-class certification discovery pursuant to FRCP 26.

LEGAL STANDARD

A. TRO/Preliminary Injunction

Plaintiffs are entitled to a temporary restraining order or preliminary injunction upon the following showing:

> (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is denied; (3) that the threatened injury outweighs any damage that the injunction might cause the defendant; and (4) that the injunction will not disserve the public interest.

Jackson Women's Health Org. v. Currier, 760 F.3d 448, 452 (quoting *Hoover v. Morales*, 164 F.3d 221, 224 (5th Cir. 1998)). *Clark v. Pritchard*, 812 F.2d 991, 993 (5th Cir. 1987). As the merits of this case will be decided under the Eighth Amendment to the United States Constitution, an analysis of its requirements are appropriate, as well.

B. Eighth Amendment

The Eighth Amendment bans cruel and unusual punishment. This prohibition includes "inherently barbaric punishments under all circumstances." *Graham v. Florida*, 560 U.S. 48, 58 (2010) (citing *Hope v. Pelzer*, 536 U.S. 730 (2002)). The conditions of confinement in prisons are subject to this prohibition. Thus, prison officials are constitutionally mandated to ensure that conditions of confinement meet inmates' basic needs and rights. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). "A prison that deprives prisoners of basic sustenance, including adequate medical care, … is incompatible with the concept of human dignity and has no place in civilized society." *Brown v. Plata*, 563 U.S. 493, 511 (2011). The Eighth Amendment, at an absolute minimum, requires "humane conditions of confinement," including "adequate food, clothing,

shelter, and medical care . . . [as well as] 'reasonable measures to guarantee the safety of the inmates.'" *Id.* (quoting *Hudson v. Palmer*, 468 U.S. 517, 526-27 (1984)).[8]

The Eighth Amendment standard carries two requirements:[9] First, the deprivation complained of must be "sufficiently serious" that it denies inmates "the minimal civilized measure of life's necessities." *Palmer v. Johnson*, 193 F.3d 346, 352 (5th Cir. 1999) (quoting *Farmer*, 511 U.S. at 834). In order to satisfy this prong, Plaintiffs may rely on the collective conditions of confinement in order to provide the Court will full context. *See, e.g., Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (noting that conditions with a "mutually enforcing effect" may establish an Eight Amendment violation in combination.) (citing *Wilson v. Seiter*, 501 U.S. 294, 304 (1991); *Hutto v. Finney*, 437 U.S. 678, 686-87 (1978)). Moreover, any substantial risk of harm is sufficient regardless of whether it is actually occurring. *See, e.g., Watkins v. Monroe*, No. 6:18-CV-347, 2019 WL 2246850, at *7 (E.D. Tex. Apr. 12, 2019) (quoting *Estelle v. Gamble*, 429 U.S. 97, 103-06 (1976)). As the Supreme Court has noted, "[i]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them." *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

Second, prison officials must be shown to have acted with "deliberate indifference to inmate health or safety." *Id.* In order to prove "deliberate indifference," the evidence must show that the prison officials "(1) were aware of facts from which an inference of an excessive risk to

[8] The Eighth Amendment's ban on cruel and unusual punishment applies to the states *via* the Fourteenth Amendment. *State of Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947).

[9] Named Plaintiffs have attempted to submit grievances pursuant to Parchman's Administrative Relief Program ("ARP"), but to no avail. Ex. G. This is because the ARP at Parchman mirrors much of the rest of the prison; it is non-functioning. This lack of any meaningful administrative relief option for named Plaintiffs is noted both by Eldon Vail and Madeleine LaMarre. "The Administrative Relief Program at MSP is broken. LaMarre Report, Ex. E at 26. "[F]or all intents and purposes, Plaintiffs have no available avenue to grieve health concerns and the conditions of confinement." *Id.* "This system is a dead end providing these plaintiffs with no possibility of relief." *Id.* "Grievance forms are often not available and complaints that do get filed rarely receive a response." Vail Report, Para. 124.

the prisoner's health or safety could be drawn and (2) that they actually drew an inference that such potential for harm existed." *Id.* (quoting *Bradley v. Puckett*, 157 F.3d 1022, 1025 (5th Cir. 1998)). Subjective knowledge can be proven by inference from circumstantial evidence; in other words, subjective knowledge is proven if the facts show that the risk of harm was obvious. *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43) (holding that violations that are "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past," are sufficient to show that a prison official "must have known about" the deficient condition). Moreover, demonstrating that Defendants have known about the substantial risk of harm, but have not changed their practices, is a clear manner in which their deliberate indifference can be proven. *See* Doc. #79 at 21 (citing *Hernandez v. County of Monterey*, 110 F. Supp. 3d 929, 943 (N.D. Cal. 2015). When Defendants "continue[] to turn a blind eye to severe violations of inmates' constitutional rights – despite having received notice of such violations – a rational fact finder may properly infer the existence of a previous policy or custom of deliberate indifference." *Henry v. County of Shasta*, 137 F. 3d 1372, 1372 (9th Cir. 1998) (amending prior opinion at 132 F.3d 512, 519 (9th Cir. 1997)); *see also Hernandez*, 110 F. Supp. 3d at 943.

ARGUMENT

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

1. Lack of Basic Safety and Protection from Violence/Lack of Security

The conditions of confinement at Parchman fail to provide Plaintiffs basic security and protection from violence. No statistic bears out this allegation more clearly than the 2020 death

rate at Parchman. At least 23 people incarcerated at Parchman have died this year.[10] According to Eldon Vail, "[t]his is an extraordinary rate of death in such a short amount of time . . . far beyond anything I have seen or experienced in my forty-plus years of working in corrections." Vail Report, ¶ 14. But sadly, violence is a part of everyday life at Parchman. Plaintiffs testify by sworn declarations that guards ignore inmate violence, at best, and often encourage or actively participate in the violence.

For example, Plaintiff Willie Friend testifies that in late December 2019, a guard allowed an inmate affiliated with a gang to open the cell of another inmate, Walter Gates, and stab him. Ex. G, Friend Dec., ¶ 5-6, P000044. Plaintiff William Green has personally witnessed murders at Parchman, and he testifies that when inmates fight, guards intentionally delay their response. Ex. G, Green Dec., ¶ 8-9, P000059. "Many Prisoners reported seeing staff actively involved in mistreating and abusing Prisoners." Haney, ¶ 25. Plaintiff Deaunte Lewis testifies that he was stabbed approximately 10 times by other inmates, but guards did nothing to stop the assault and he received no medical care for four hours. Ex. G, Lewis Dec., ¶ 8, P000148. Lewis' friend was murdered in the same incident. *Id*. Plaintiff Daniel Guthrie was stabbed in 2017 and promptly was returned to his cell by guards and locked inside with the same inmate who stabbed him. Ex. G, Guthrie Dec., ¶ 6, P000080. Plaintiff Adrian Willard likewise testifies that guards have helped inmates access other inmates' cells, and when he has needed help from prison staff, he has gone unassisted. Ex. G, Willard Dec., ¶ 5, P000302. Willard once witnessed another inmate being stabbed at least a dozen times; the inmate who was stabbed was assisted by other prisoners rather than prison staff. *Id.*

Parchman's endemic violence results, or at least is furthered by, critical understaffing in the housing units where Plaintiffs live. Staffing levels at Parchman range on the high side from

[10] *See supra* fn. 3.

three or four guards per 150 inmates in Units 29-I (Ex. G, Buckner Dec., ¶ 6, P000026), to as few as one guard per 140 or 160 inmates in Units 29-K and 29-G respectively (Ex. G, Moore Dec., ¶ 6, P000187; Ex. G, Pam Dec., ¶ 6, P000196; Ex. G, D. Taylor Dec., ¶ 6, P000245), and two guards for some 240 inmates in Unit 26 (Ex. G, Thomas Dec., ¶ 6, P000262).

Plaintiff Derrick Pam testifies in his sworn declaration that guards were completely absent from his living area for a day and a half in December 2019, and (apparently are absent regularly) during holidays. Ex. G, Pam Dec., ¶ 8, P000196. "The lack of even remotely adequate staffing has led to unbelievably lax security practices." Haney, ¶ 28. The result is that "corrections staff and prisoners alike are afraid, prisoners are not properly supervised, and the facility has devolved to ceding the authority of correctional officers to some prisoners who are often powerful gang leaders." Vail, ¶ 16. As Vail noted,

> "Twenty-eight of the [33] plaintiffs were asked about how the zones that they lived in were supervised, how many officers were assigned, where the officers were stationed and how often they actually came into the zones in Unit 29. Their responses were remarkably consistent with very few deviations. Twenty-six of them reported that there was one officer assigned and that they spent their time in the hallway adjacent to the unit and that they were never in the tower. Two of the named plaintiffs said there were two officers assigned but they were never in the tower either. When asked about how often officers actually came into the zone, the overwhelming report was only for counts and to escort the nurse for pill call."

Vail, ¶ 62. Craig Haney's interviews with Plaintiffs produced similar results. "Prisoners reported that there are very few correctional officers working in the housing units. As a result, they [the prisoners] are left to fend for themselves at multiple levels in multiple ways, including washing their own clothes in the sinks of their cells and cutting each other's hair with the razors and combs they are allowed to have. Even more importantly, significant understaffing means that the officers rarely check directly on the Prisoners. In fact, there are so few correctional officers that they cannot respond to emergencies in a timely manner." Haney, ¶ 26.

Plaintiff Pam describes instances when guards refused to take action to prevent inmate on inmate violence even when they were warned that violence was about to occur. Ex. G, Pam Dec. ¶ 8, P000196. Most troubling in Pam's account is the implication that guards are affiliated with gangs, an allegation that is corroborated by Friend's testimony that guards have let gang members into the locked cells of rival gang members in order to perpetrate violence.[11] "Many Prisoners reported seeing staff actively involved in mistreating and abusing Prisoners." Haney, ¶ 25. "Plaintiffs report that some correctional officers are sexually involved and/or aligned with gang-affiliated inmates and provide weapons and special access to these inmates to allow them to harm other, rival gang-affiliated inmates." LaMarre, p. 6. Prison officials often house prisoners with different gang affiliations in the same area, which is an invitation to violence. D. Taylor Dec., ¶ 9, P000246.

On some occasions, guards have been absent from entire buildings altogether. *See* Ex. G, Thomas Dec., ¶ 6, P000262 (stating that he did not see a single guard in Unit 26 between December 22nd – 27th). Cameras are not always functional, making it even more unlikely that officials can respond to inmate violence in a timely or effective manner. *Id.*, ¶ 9, P000263; Ex. G, Ham Dec., ¶ 1, P000086. Vail states that "[n]ot regularly entering the zones in Parchman to do security checks (which are different than counts) in Unit 29 is a significant problem. Vail, ¶ 86. "Prisoners in Unit 29 are classified as high security prisoners. You cannot adequately supervise such prisoners from the hallway. It is bizarre and unexplained why the towers in these units are not staffed." Vail, ¶ 63.

The grossly understaffed and inadequate security at Parchman is, by any measure, sufficiently serious to establish the first element of an Eighth Amendment violation: Plaintiffs

[11] *Id.* ¶ 27, P000200; *see also* Website of the Office of the Governor of the State of Mississippi, https://governorreeves.ms.gov/ (linking to https://www.facebook.com/197649153585886/videos/2610318775913021/) (last visited June 8, 2020).

are certainly "incarcerated under conditions posing a substantial risk of serious harm." *Farmer*, 511 at 834. Indeed, Vail states that security at Parchman "has deteriorated to the point where a shotgun is taken to the units [by prison officials entering the units], teeth are getting knocked out, dogs are being used and floorwalkers [certain inmates with authority] are using force with the approval of correctional officers. This is far beyond what I have seen in other prisons in my role as a correctional consultant and expert and I have inspected many troubled prisons." Vail, ¶ 105.

The conditions at Parchman satisfy the "deliberate indifference" requirement of the Eighth Amendment, as well. As noted *supra*, Plaintiffs can make the necessary showing of Defendants' subjective state of mind through objective facts – such as violations that are "longstanding, pervasive, well-documented" – which show that Defendants must have known of the problem. *See, e.g.*, *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43). It is no defense to a "failure-to-protect" claim that Defendants did not know that the *specific* complainant was in danger from a *specific* other inmate. *Edmond v. Eaves*, 70 F. App'x 159, 160 (5th Cir. July 3, 2003) (per curiam) (quoting *Farmer*, 511 U.S. at 843). "[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of attack for reasons personal to him or because all prisoners in his situation face such a risk." *Farmer*, 511 U.S. at 843. In instances where officials are aware of a persistent, serious threat to inmate security, "it would obviously be irrelevant to liability that the officials could not guess beforehand precisely who would attack whom." *Id.* Defendants' indifference to the climate of violence at Parchman is sufficient. Indeed, where Plaintiffs are held in an environment "where terror reigns," *i.e.* where guards are virtually absent much of the time and violent inmates prey on others with impunity, such incarceration is itself cruel and unusual, and Defendants' knowledge of that state of affairs alone

will satisfy the subjective prong. *See Jones v. Diamond*, 636 F.2d 1364, 1373 (5th Cir. 1981), *overruled on other grounds by Int'l Woodworkers of Am., AFL-CIO and its Local No. 5-376 v. Champion Int'l Corp.*, 790 F.2d 1174 (5th Cir. 1986). Given that violent inmates have access to cell keys as a result of gross understaffing, and guards have been unable to stop an unusual series of murders and other acts of violence since the New Year, Parchman deservingly qualifies as a facility "where terror reigns." *Id.* Moreover, it is not plausible that Defendants have failed to notice the many deaths and attacks happening on their watch. Defendants undeniably are well aware of the problem, yet have failed, and continue to fail, to take the necessary remedial action; this establishes their deliberate indifference. *See, e.g.*, *Wilkins v. Henry*, No. 4:17-CV-137-DAS, 2018 WL 3945617 (N.D. Miss. Aug. 16, 2018) (allowing failure-to-protect claim to proceed against Warden Morris, who had known for two to three months that inmates in a zone of Parchman's Unit 29 had tampered with cell locks so that they did not lock properly, but took no action).

In sum, Plaintiffs live under the constant threat of brutal violence. The risk is not hypothetical. The victimization of Plaintiffs, the deaths they have witnessed assaults they have endured, and the undisputed outbreaks of violence in Unit 29 and elsewhere, show the immediacy and severity of the threat to Plaintiffs at Parchman. In full knowledge of the risk, Defendants have not held guards accountable for neglecting inmate violence, nor have they meaningfully increased staffing, or even taken basic steps to prevent further violence such as fixing broken cameras or ensuring guards stay at their posts. A clearer example of deliberate indifference is difficult to imagine.

2. Plaintiffs Have Been Deprived Adequate Medical Care

A prison official violates the Eighth Amendment's "deliberate indifference" standard when he or she "knows of and disregards an excessive risk to inmate health or safety . . . ."

Easter v. Powell, 467 F.3d 459, 463 (5th Cir. 2006) (quoting *Farmer*, 511 U.S. at 832). The Supreme Court in *Brown v. Plata* declared, "[j]ust as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." 563 U.S. at 510-11; *see also Farmer*, 511 U.S. at 832 (the Eighth Amendment requires prison officials to "ensure that inmates receive adequate food, clothing, shelter, and medical care . . . ."). As the Fifth Circuit has noted, this deprivation can take many forms: an inmate has a valid Eighth Amendment claim for inadequate medical treatment if he can show that a defendant official "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Easter*, 467 F.3d. at 464 (quoting *Domino v. Tex. Dep't of Criminal Justice*, 239 F.3d 752, 756 (5th Cir. 2001). The Fifth Circuit has further recognized that an inmate suffering while medical care is withheld qualifies as substantial harm establishing a constitutional violation. *See Coleman v. Sweetin*, 745 F.3d 756, 765-66 (5th Cir. 2014) (inmate suffered substantial harm due to experiencing severe pain while officials ignored his requests for medical assistance); *Easter*, 467 F.3d at 465 (inmate with history of cardiac problems suffered substantial harm due to the severe chest pains he suffered during the period of time defendant failed to treat him).

Defendants have denied Plaintiffs urgently needed medical treatment. For instance, Friend, Pam, Ross, and Willard all have sought medical attention and medication that has been denied. Ex. G, Friend Dec., ¶ 24, P000048 (no response in the past month to medical request for broken finger); Ex. G, Pam Dec., ¶ 23-24, P000199 (no nurse in the unit for ten days at time of statement; inmates had to start a fire to get attention after diabetic was denied insulin for three

days; medical help took 24 hours to arrive after guards used rubber bullets on inmates); Ex. G, Ross Dec., ¶ 24, P000233 (denied medication for blood pressure condition during lockdown; denied medication despite filing sick call requests; when stabbed in the head in 2018, was not seen for 45 minutes and waited 90 further minutes for an ambulance); Ex. G, Willard Dec., ¶ 24, P000306 (received delayed attention for major dental issue despite filing sick call requests; personally witnessed inmates suffering a seizure and multiple stabbings without prison staff intervening).

Lewis, after being stabbed repeatedly, did not receive medical care for four hours and his friend died in the same attack. Ex. G, Lewis Dec., ¶ 8, P000147. Other Plaintiffs have testified that nurses deny having any sick call request slips, preventing inmates from formally requesting medical assistance at all. *See* Ex. G, McKinney Dec., ¶ 24, P000175.

Billy James concisely summarized the problem. When asked, "[h]ow does sick call work?" he answered, "It doesn't." Ex. G, B. James Dec., ¶ 45, P000113. "Lack of access to health care is systemic at MSP. Correctional officers repeatedly fail to transport Plaintiffs to health care appointments.

Correctional officer understaffing is one, but not the only, factor in lack of health care access." LaMarre, p. 6. For emergencies, the already bleak situation is worse. "Plaintiffs reported that COs are rarely, if ever, present in the living unit…. Once the CO is aware that there is a medical emergency in the living unit, they do not always enter the living unit immediately to assess the situation – even though all residents are securely sequestered in their cells – instead waiting, according to two Plaintiffs, 30 to 40 minutes for a supervisor to arrive. Further, once on scene of a medical emergency COs do not automatically notify a health care professional." Stern, pp. 4-5. "Inmates experiencing acute and life-threatening emergencies are not provided timely

and appropriate emergency care. In some cases, staff did not provide emergency care at all, resulting in inmate deaths." LaMarre, p. 15.

"Plaintiffs report that when they need urgent medical attention, they are often unable to notify correctional officers due to no officers being stationed within the housing units. Plaintiffs resort to escalating measures including yelling, banging on cell doors, and lighting fires. As just one example, multiple Plaintiffs reported of a diabetic inmate who was not provided insulin for 3 days and inmates set fires in the housing units to summon help. LaMarre, p. 22. Plaintiffs also report setting fires when the water was turned off for 3 days. Plaintiffs sometimes resort to feigning suicide to access care when they feel threatened or lack food." LaMarre, p. 6. If an inmate is fortunate enough to be transported to the medical unit, the ambulance service is abysmal. "The medical staff utilize three ambulances to transport patients. [Stern] inspected all three ambulances and found them in conditions comparable to decommissioned ambulances … in junk yards ready to be stripped for parts, and definitely not in a state ready to transport sick patients." Stern, pp. 14. Moreover, the hospital unit itself has, *inter alia*, poor sanitation, missing medical equipment, and torn examination tables. LaMarre, p. 22. And once an emergency subsides, follow-up care is virtually non-existent. "Medical providers do not provide Plaintiffs timely and appropriate follow-up following urgent events or specialty services." LaMarre, p. 15.

3. Plaintiffs are Denied Adequate Mental Health Care

Meaningful mental health care at Parchman is nonexistent, and its absence is a denial of an Eighth Amendment right. Friend testifies that officials are aware that certain inmates need help, but mental health aid is refused; as a result, his own cellmate hung himself. Ex. G, Friend Dec., ¶ 25, P000048. Timmons testifies that he tied a rope around his neck and told a passing guard that he would jump and hang himself; the guard told him not to, walked away, and never

came back. Ex. G, Timmons Dec., ¶ 25, P000282. Similarly, guards have responded to inmates who express suicidal thoughts with taunts such as "make the rope strong enough." Ex. G, Pam Dec., ¶ 25, P000200. Johnson testifies that he has "never seen anyone offering those services"—*i.e.* no mental health services whatsoever. Ex. G, Johnson Dec., ¶ 7, P000137. Riley testifies that, although he was able to see a psychiatric specialist after a two-week wait, he was denied his request for medication that would help him sleep, and six months after his request, no one has bothered to check on him. Ex. G, Riley Dec., ¶ 6, P000207. Finally, as with homicides at Parchman, the sheer number of suicides at Parchman is undeniable evidence that inmates who require mental health care are unable to obtain it. Plaintiffs, through the foregoing testimony, have established the "serious harm" requirement of the first prong of an Eighth Amendment claim for failure to provide medical care.

The second prong, deliberate indifference, is again established by the longstanding, pervasive, and obvious nature of the problem. Under the circumstances, Defendants cannot disclaim knowledge of comprehensive flaws in the medical systems at Parchman. *See Gates v. Cook*, 376 F.3d 323, 342-43 (5th Cir. 2004) (affirming injunction to alleviate inadequate mental health care at Parchman, noting deficiencies including "that prisoners seldom see medical staff and that monitoring of medication was sporadic," and holding that "the obvious and pervasive nature of these conditions supports [the district court's finding of] deliberate indifference"). Despite knowing of the serious hazards that lack of medical attention poses to inmates with medical conditions — ranging from those with chronic conditions requiring consistent treatment (*see, e.g.*, Ex. G, Riley Dec., ¶ 6, P000207) to those who receive untimely or no care for life-threatening wounds (*see, e.g.*, Ex. G, Lewis Dec., ¶ 8, P000147) — Defendants have not acted to remedy the glaring deficiencies in Parchman's medical capabilities.

Accordingly, Plaintiffs have demonstrated that Defendants are deliberately indifferent to the serious risks that inadequate medical care poses to Plaintiffs. Thus, Plaintiffs are likely to prevail on the merits of their constitutional claim for inadequate medical care.

4. Defendants Fail to Provide Adequate Food and Water

The Eighth Amendment requires prison officials to furnish adequate food to sustain prisoners' health. *Farmer*, 511 U.S. at 832 ("prison officials must ensure that inmates receive adequate food . . . ."). Indeed, deprivation of adequate food has long been recognized as a form of corporal punishment. *See Gates v. Collier*, 501 F.2d 1291, 1306 (5th Cir. 1974) (holding that "[u]nquestionably, the district court correctly enjoined" numerous corporal punishment practices used by Parchman officials, including "depriving inmates of . . . adequate food . . . ."). The Eighth Amendment sets standards for not only the quantity, but the substance of food: at a minimum, inmates are entitled to "well-balanced meal[s], containing sufficient nutritional value to preserve health . . . ." *Smith v. Sullivan*, 553 F.2d 373, 379-80 (5th Cir. 1977). Defendants have violated this constitutional requirement in several ways.

First, Plaintiffs testify repeatedly that they often are denied meals. Rogers testifies that he is aware of "many occasions" when food was not given to the prisoners at all, and this testimony is echoed by other Plaintiffs. *See, e.g.*, Ex. G, Rogers Dec., ¶ 11, P000222; Ross Dec., ¶ 11, P000231; D. Taylor Dec., ¶ 11, P000247; Thomas Dec., ¶ 11, P000264 (specifying 17 occasions); Varnado Dec., ¶ 2, P000286. Gayles testifies that meals were missed between January 14 and January 18, 2020. Ex. G, Gayles Dec., ¶ 13, P000053. Friend cites "numerous" occasions when meals have been missed since January 1, 2020. Ex. G, Friend Dec., ¶ 11, P000046. Plaintiffs recognize that an occasional missed meal does not rise to the level of a constitutional deprivation. However, when Plaintiffs testify that they are denied food entirely on

"many" occasions over a matter of months, the deprivation becomes *systematic*, not sporadic. The Eighth Amendment does not permit such systematic failure.

Second, Plaintiffs testify consistently that the food at Parchman is often inedible. This does not mean the food is merely unpalatable, but rather it is contaminated with animal or insect feces or it is raw and therefore unsafe to eat. *See*, *e.g.*, Ex. G, Amos Dec., ¶ 12, P000004 (food left exposed to rats); Brister Dec., ¶ 11, P000019 (food served uncooked or not defrosted); Green Dec., ¶ 12, P000060 (rat droppings on food tray, cockroaches crawling on food); Green Dec., ¶ 10-11, P000067 (rocks and bird feces in food); Guthrie Dec., ¶ 2-4, P000078-80 (rocks, grasshopper parts, animal excrement in food; "I wouldn't feed it to a dog"); Ham Dec., ¶ 2, P000087 (rocks and insects in food, which is "consistently cold and spoiled"); Hardy Dec., ¶ 9, P000094 (bird droppings in food); J. James Dec., ¶ 2, P000117 (food "always comes cold," rat and bird feces found in food); Q. Johnson Dec., ¶ 2, P000134 (rat and bird feces in food, as well as rocks). It is no exaggeration to say that the food at Parchman, as described by Plaintiffs, is unfit for human consumption.

Third, the food system at Parchman fails its basic purpose of keeping inmates healthy. The Constitution entitles inmates not merely sustenance, but food of sufficient quantity and quality to preserve reasonable health. The food Plaintiffs are given—tainted by animal feces, spoiled, and raw—is unhealthy by definition. As a result of eating contaminated food, Plaintiffs have suffered adverse effects on their health. Taylor testified that he vomited for days from apparent food poisoning. Ex. G, D. Taylor Dec., ¶ 10-12, P000246-47. Many of the Plaintiffs have lost significant amounts of weight, a clear testament to the inadequacy of their diet. *See*, *e.g.*, Ex. G, Wilson Dec., ¶ 24, P000322 (lost sixty pounds since September 2019); Scott Dec., ¶ 9, P000238 (lost forty pounds since August 2019); Friend Dec., ¶ 24, P000048 (lost thirty

pounds since incarceration in 2018); Gayles Dec., ¶ 14, P000053 (lost twenty-three pounds since incarceration in 2019).

The deficiencies originate in the kitchens at Parchman, which "lack adherence to standard food safety practices, because of missing floor tiles, lack of chemical control, bathrooms that are not stocked properly for appropriate and adequate hand hygiene, missing ceiling tiles and ceilings in disrepair, standing water on the floors, and improper hot holding temperatures of food items on the steamtable. All of these issues are security and/or food safety and Food Code violations." Graham, p. 24. In short, Defendants are failing to provide inmates with safe, edible food with sufficient nutrition to keep them reasonably healthy, as the Constitution requires.

Water, likewise, is a basic need of human life, and failing to provide adequate water to inmates is thus a denial of the "minimal civilized measure of life's necessities," violating the Eighth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)). The Constitution requires that inmates have access to clean water that is not toxic. *Cole v. Livingston*, No. 4:14-CV-1698, 2016 WL 3406439, at *7-8 (S.D. Tex. June 21, 2016) (granting preliminary injunction requiring prison officials to provide inmates water consistent with EPA standards), *appeal vacated as moot due to automatic expiration of preliminary injunction, sub nom. Yates v. Collier*, 677 F. App'x 915 (5th Cir. Jan. 30, 2017); *see also Roberts v. Williams*, 456 F.2d 819, 827 (5th Cir. 1971) (stating that if prison administrators allowed drinking water to become contaminated with typhoid bacteria over time, it could be cruel and unusual).

At Parchman, Defendants have failed to make safe, drinkable water available to Plaintiffs in violation of the Eighth Amendment. First, often there is no running water at all. Green testified that as of January 23, 2020, he already had endured *ten* days since the New Year in

which there was no running water in his cell. Ex. G, Green Dec., ¶ 13, P000060. Hardy experienced seven consecutive days without running water. Ex. G, Hardy Dec., ¶ 12, P000095. Friend stated that in the two and a half weeks before he gave his declaration, running water was shut off for all, or nearly all, of that period. Ex. G, Friend Dec., ¶ 13, P000046. Moreover, when water is available, it appears to be contaminated. Plaintiffs repeatedly testify that the water is brown in color and has an unpleasant aroma and taste. Plaintiffs believe the water at Parchman is tainted with sewage, based on the color and odor, as well as the fact that Parchman's sewage system is in a severe state of disrepair. *See, e.g.*, Ex. G, Scott Dec., ¶ 11, P000239; Riley Dec., ¶ 3, P000205; Pam Dec., ¶ 3, P000197.

A guard told Plaintiff Ham not to drink the water, saying it was contaminated with lead. Ex. G, Ham Dec., ¶ 3, P000085. Edwards in his report confirms the guard's warning to Ham, stating there is "evidence the drinking water quality at the prison has been compromised in the past two years with contaminants, such as lead and bacteria, both of which are regulated by the MSDH as harmful to human health in drinking water." Edwards, p. 16. Showing their knowledge of this ongoing contamination, MDOC received an email on December 22, 2017, from MSDH stating "that lead was detected above the action level in ten samples for the 2015 to 2017 three year monitoring period." Edwards, p. 4. Edwards agrees there is a "historical pattern of non-compliance [with] MSDH regulations regarding providing the prison with safe drinking water and safe management of raw, sanitary sewage. The evidence indicates complacency/neglect/non-commitment to address these issues in a timely manner to protect human health." Edwards, p. 16. Tests at Parchman by Frank Edwards also reveal "[t]otal Coliform detected in drinking water samples above the Safe Drinking Water Act's acceptable level for human consumption on multiple occasions." Edwards, p. 4.

The Eighth Amendment does not allow Defendants to cut off the water supply to Plaintiffs, or to permit the drinking water to be contaminated with sewage and toxins. Stated simply, the Eighth Amendment entitles Plaintiffs to water that will not make them sick. Poisonous substances in the drinking water that repeatedly fail State-required testing compels the conclusion that Defendants are, and have been, fully aware of this problem. Yet, they have done nothing. This denial over time of safe food and water constitutes deliberate indifference to Plaintiffs' rights and subjects them to an unreasonable risk of serious harm. Consequently, Plaintiffs have established a substantial likelihood of success on the merits of their Eighth Amendment claim for denial of adequate, safe food and water.

5. Defendants Fail to Provide Adequate Sanitation and Hygiene

As the Fifth Circuit and other courts have long recognized, failure to provide inmates with adequate sanitation and hygiene constitutes an Eighth Amendment violation. *See, e.g.*, *Gates v. Cook*, 376 F.3d 323, 341 (5th Cir. 2004) (affirming district court's injunction requiring Parchman officials to repair toilets that consistently overflowed, spilling raw waste into cells); *Palmer v. Johnson*, 193 F.3d 346, 352 (5th Cir. 1999) (noting that the Fifth Circuit has previously determined that "the deprivation of basic elements of hygiene" is sufficiently "base, inhumane, and barbaric" that it violates the Eighth Amendment) (quoting *Novak v. Beto*, 453 F.2d 661, 665 (5th Cir. 1971)); *see also Bradley v. Puckett*, 157 F.3d 1022 (5th Cir. 1998) (finding that allegations that a disabled inmate had to bathe using toilet water because he was denied a shower chair were sufficient to state a claim for an Eighth Amendment violation).

Not surprisingly, exposure to sewage and waste not only violates the Eighth Amendment's ban on cruel and unusual physical conditions, but also offends the Eighth Amendment's protection of human dignity. *See Despain v. Uphoff*, 264 F.3d 965, 974 (10th Cir. 2001) (finding that exposure to human waste "evokes both the health concerns emphasized in

Farmer and the more general standards of dignity embodied in the Eighth Amendment."); *see also Plata*, 563 at 510 ("Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment."). The Fifth Circuit has repeatedly held that cells that are continually filthy, including due to human waste, are unconstitutional. *See Gates*, 376 F.3d at 338; *Harper v. Showers*, 174 F.3d 716, 716 (5th Cir. 1999).

Defendants have utterly failed to maintain Parchman's plumbing and sewage systems, and as a result, Plaintiffs are routinely exposed to raw sewage, sometimes for weeks at a time. Ex. G, Ross Dec., ¶ 14, P000231 (sewage on the floor on "many" occasions since 2018); Friend Dec., ¶ 14, P000046 (sewage on the floor every day for a month); Amos Dec., ¶ 14, P000004 (sewage on the floor "nearly every day for the past six weeks"); Ham Dec., ¶, 3, P000088 (toilets in Unit 29-C "were constantly overflowing," spilling raw sewage). The exposure to sewage can occur because of overflow in cell toilets, or because toilets will not flush. *See* Ex. G, Q. Johnson Dec., ¶ 19, P000142 (stating that the toilets in Unit 29 do not work); Willard Dec., ¶ 19, P000312 (toilets back up when water is shut off); Scott Dec., ¶ 5, P000213 (Plaintiff's toilet backs up whenever the toilet in a neighboring cell is flushed). Indeed, some Plaintiffs testify that sewage in their cells has been a daily reality as long as they can remember. *See, e.g.*, Ex. G, Pam Dec., ¶ 14, P000197 (Plaintiff observed sewage on the floor every day for eight months); B. James Dec., ¶ 14, P000103 (sewage exposure "always," since "forever"); Thomas Dec., ¶ 14, P000264 (sewage on the floor on "countless" occasions since incarceration in January 2018).

Upon inspection, Eldon Vail "found even worse conditions in Unit 32 than … in 29H, B-zone. In Unit 32 there was clearly visible mold, cell windows that could not be controlled and were either stuck open or shut, as well as severe problems with toilets and sinks. In the three

zones I inspected, which had sixteen cells in each, the most striking and disgusting evidence were how many toilets remained full of feces or toilets that were sealed so they could not be used. The smell of feces in the unit was overwhelming. In one of the zones fourteen of the toilets were in such shape." Vail, ¶ 30. "Plumbing issues are so pervasive that there is a serious risk to health of offenders and staff." Graham, p. 18.

Notwithstanding foul conditions, inmates are frequently denied cleaning supplies that might allow them to disinfect their cells and alleviate some of the health risks associated with exposure to raw sewage. *See*, *e.g.*, Ex. G, Riley Dec., ¶ 3, P000205 (inmates have to clean themselves, but are not given cleaning supplies); Q. Johnson Dec., ¶ 26, P000143 (cleaning supplies never provided in the two years of Plaintiff's experience); McKinney Dec., ¶ 20, P000182 (if toilets overflow, inmates clean it themselves, but "w/no chemicals"). Kevin Thomas testified that inmates had gone weeks without even being given toilet paper. Ex. G, Thomas Dec., ¶ 14, P000264.

In a similar vein, Parchman's laundry service is deficient, at best, and most often nonfunctional, which forces inmates to wash their clothes in the sink, when it is working, and in the toilet, when it is not. Ex. G, Scott Dec., ¶ 13, P000239 (Plaintiff has never been permitted to launder his clothes other than in his cell); Hardy Dec., ¶ 13, P000093 (same) *see also* Maxwell Dec., ¶ 18, P000165 (stating that Plaintiff must wash clothes in toilet); McKinney Dec., ¶ 18, P000181 (same).

According to Vail, it is "a common complaint in the interviews and affirmations of the named plaintiffs … that cleaning supplies, including sufficient supplies of cleaning chemicals and cleaning equipment are not made available for the prisoner population in order for them to maintain an adequate level of cleanliness in their individual cells. It is reported in those same

documents that the floors outside of the cells of the unit are sometimes swept but rarely, if ever, mopped. The result is the accumulated filth that I witnessed in my inspection of this zone. It is generally unhealthy for the prisoners confined in such an environment and sends a powerful message to the prisoners about the prison administrations concern for their health and welfare." Vail, ¶ 26.

Numerous Plaintiffs also have been denied showers for long periods of time, despite the highly unsanitary conditions in their cells. *See, e.g.*, Ex. G, Ham Dec., ¶ 3, P000088 (Plaintiff was not allowed to shower between December 27 and January 20); Hardy Dec., ¶ 12, P000095 (Plaintiff was denied a shower between Thanksgiving and January 27); B. James Dec., ¶ 15, P000103 (Plaintiff had last been allowed to shower on December 25). This deprivation is pernicious in several respects: it worsens the health risks caused by exposure to sewage; it forces inmates to use toilet water for bathing if their sink is not working, risking further exposure to waste; it can aggravate or cause medical conditions in itself, such as skin disorders or infections; and it dehumanizes and humiliates inmates in violation of the Eighth Amendment's protection of human dignity.

Based on the foregoing, Plaintiffs' Eighth Amendment claim based on inadequate sanitation and hygiene is highly likely to succeed on the merits. What Plaintiffs experience is far beyond mere discomfort or unsightliness, and courts have routinely held that persistent denial of hygiene is by no means a minor inconvenience. For instance, the Third Circuit has stated that "it would be an abomination of the Constitution" to force a prisoner to live surrounded by his waste for even four days. *Young v. Quinlan*, 960 F.2d 351, 365 (3d Cir. 1992). Indeed, this Court, in declining to find an Eighth Amendment violation based on filthy conditions over a period of a few days, has cautioned that holding inmates in such conditions for "weeks or months"—as

Plaintiffs have endured—would violate the Constitution. *Anderson v. Morris*, No. 4:16-CV-101-DMB-JMV, 2017 WL 9565839, at *11 (N.D. Miss. July 18, 2017).

Defendants know full well the abysmal condition of sanitation at Parchman. In fact, Defendants have been ordered to fix these very same problems in the past. In particular, *Gates v. Cook* dealt extensively with sewage exposure, and the Fifth Circuit not only upheld the district court's injunction requiring MDOC to repair the "ping-pong toilets" in Parchman's Unit 32-C — toilets that overflow whenever a neighboring toilet is flushed — but also noted the health risks of exposure to human waste. 376 F.3d at 341 (5th Cir. 2004). Further, despite MDOC's argument that it was working on the problem and therefore not deliberately indifferent, the Court noted that the broken plumbing persisted for more than a decade despite repeated warnings from health officials, and that courts have repeatedly cautioned that exposure to human waste poses serious constitutional problems. *Id.* Plaintiffs in their testimony are clear that these problems are not new or isolated: they are longstanding realities of life at Parchman. Under the circumstances, Defendants cannot effectively deny knowledge of the lack of hygiene suffered by Plaintiffs.

In sum, Plaintiffs' testimony shows that inadequate hygiene – including not only exposure to raw sewage, but also denial of cleaning supplies, showers, and clean laundry – are longstanding and pervasive problems that Defendants most certainly are aware of; indeed, MDOC has been on actual notice for years of these problems and the attendant health risks. Accordingly, Plaintiffs have shown both deliberate indifference to the inadequate hygiene conditions at Parchman, and a substantial likelihood of success on the merits of this Eighth Amendment claim.

6. Defendants Have Pervasive Structural Deficiencies in the Facilities

As noted *supra*, Defendants bear a general obligation to ensure inmates' safety. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (quoting *Youngberg v. Romeo*, 457 U.S. 307, 315-16

(1982)). When the spaces in which inmates are held move beyond uncomfortable into dangerous and harmful, the Eighth Amendment requires action. *See, e.g.*, *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (stating that "[e]xtreme cell temperatures . . . can violate the Eighth Amendment" and finding Eighth Amendment violation based on excessively hot temperatures in cells); *Beck v. Lynaugh*, 842 F.2d 759, 761 (5th Cir. 1988) (finding that prisoners stated valid Eighth Amendment claim for detention over the winter in cells missing window panes, without blankets or coats); *Gates v. Collier*, 501 F.2d 1291, 1299-1303 (5th Cir. 1974) (finding that plaintiffs prevailed on Eighth Amendment claim of unsafe prison conditions at Parchman, including frayed and exposed electric wiring, inadequate firefighting capabilities, inadequate support systems such as kitchens and bathrooms, and general disrepair of facilities).

Plaintiffs almost uniformly testify that mold exists in their living spaces, including in showers and the walls of the building. *See, e.g.*, Ex. G, Amos Dec., ¶ 20, P000005; Ham Dec., ¶ 5, P000089; Thomas Dec., ¶ 20, P000265; Timmons Dec., ¶ 18, P000280; Varnado Dec., ¶ 5, P000288; Webster Dec., ¶ 20, P000296; Willard Dec., ¶ 20, P000305. According to Dr. Stern, "[m]old is ubiquitous in the living areas of Parchman residents. I observed it on the ceilings over their heads and on the walls next to where they sleep." Stern, p. 15. Frank Edwards confirms this in his report stating, "[t]he FLIR imagery was captured in Unit 29 (buildings B, C, D, E, F, G, H, I, K, L), Unit 30 (buildings A, B, C, D), and Unit 32, and depicts numerous locations within each building indicative of moisture accumulation causing mold growth. The FLIR imagery is documented in the photographic log included as Appendix D. The FLIR thermal imagery results were further validated by first hand observations of water leaks within the buildings and structure staining indicative of mold, as discussed below." Edwards, p. 15.

The mold in the cells at Parchman is most likely a direct consequence of the many leaks: numerous Plaintiffs testify that water leaks into their cells when it rains. *See* Ex. G, Friend Dec., ¶ 18, P000047; L. Taylor Dec., ¶ 5, P000257; Webster Dec., ¶ 18, P000296. According to Stern's inspection, "[t]he buildings at Parchman are best described as sieves. Pools of standing water were on the floors of hallways and many cells. As I toured the facility, water dripped on my head. Water soaked through to my socks. Residents pointed out where rainwater was dripping on their beds. Apart from the stress this causes and the risk to health of not being dry when one has an infectious illness, the standing water poses a risk of slips and falls as well as a risk of electricity-induced injury." Stern, p. 16. "Multiple areas were found with active leaking from the roof, walls, pipe chases (water closets), and excessive amounts of standing water were observed on the floors and wet towels about the areas. All of these instances promote the growth of bacteria and mold, both of which are capable of causing adverse health issues. Mold growths were observed in numerous areas within buildings and housing areas." Graham, p. 16. "Water is permitted to stand on floors in cells and dayrooms for extended periods of time. Leaks are remedied by stuffing a towel under doors, along walls, in drain holes of pipe chases (water closets), and spread on floors to absorb water, all very unsanitary practices." Graham, p. 18. The effects on Plaintiffs of leaks and water intrusion into the cells are worsened by the absence of heat. *See* Ex. G, Willard Dec., ¶ 18, P000305; Amos Dec., ¶ 18, P000005; Timmons Dec., ¶ 23, P000281.

Particularly disconcerting amidst all the leaks and flooding is the web of exposed electrical wires that crisscross the floors of most housing units: standing water and exposed wires in the same area are an open and obvious electrocution hazard. At least one Plaintiff has actually been shocked by the wires. *See* Ex. G, Amos Dec., ¶ 18, P000005; Willard Dec., ¶ 18, P000305

(shocked by wires). Stern's personal observation confirms Plaintiffs' account: "The number of exposed electrical wires in the living units at Parchman is unimaginable. Bare wires stick out of metal electrical boxes everywhere, including in cells. Extension cords are strung from the center tower on the first floor to the second floor where in two units, they are secured by wrapping around a railing bannister, then lose their outer protective sheathes, and run, unprotected, across the hallway floor, into a resident's cell. The risk of a serious electricity-induced injury (burn or death) is a constant risk." Stern, p. 16.

As if the physical deficiencies were not enough, Parchman also is infested with vermin, primarily rats and cockroaches, to the point that they are an inescapable presence. *See*, *e.g.*, Ex. G, Timmons Dec., ¶ 17, P000280 ("I see rats all day long. . . they created a nest in the corner of my [sleeping] mat"); Webster Dec., ¶ 19, P000296 (infestations particularly bad in kitchen areas); Green Dec., ¶ 12, P000060 (cockroaches in food); Willard Dec., ¶ 19, P000305 (rats in cells eat inmates' food). Willie Friend even testifies to snakes entering living spaces through holes in the walls. Ex. G, Friend Dec., ¶ 19, P000047. Plaintiffs testify that guards have done nothing about the vermin infestations. *See* Ex. G, Wilson Dec., ¶ 19, P000321.

The above conditions documented are sufficiently severe raise an Eighth Amendment violation, particularly when their cumulative effect is taken into account such as the combination of multiple leaks, or exposure to the elements and inadequate heat, or the combination of exposed wires and standing water. Courts in this circuit have found accordingly. *See*, *e.g.*, *Gates v. Collier*, 501 F.2d at 1299-1303; *Huff v. Pundt*, No. 2:11-CV-148, 2012 WL 2994839, at *8 (S.D. Tex. June 29, 2012) (finding prisoner's Eighth Amendment claim based on unsafe, broken set of showers, which featured exposed wires, exposed light fixtures, and black mold, survived summary judgment). Moreover, Defendants' failure to remedy these deficiencies must

be viewed as deliberate indifference to the conditions, not ignorance or mere negligence. The multitude of leaks and the absence of heat in cells, mold in living spaces, exposed electrical wires, and ubiquitous rat and cockroach infestations are obvious conditions of which Defendants could not conceivably be unaware. As such, both prongs of an Eighth Amendment claim for unconstitutional living conditions exist, and Plaintiffs have demonstrated a substantial likelihood of success on the merits of this claim.

B. PLAINTIFFS WILL BE IRREPARABLY HARMED IF THE MOTION IS DENIED.

The foregoing mountain of evidence demonstrates the longstanding, pervasive and continuous deficiencies that exist at Parchman. While Defendants have temporarily moved some 26 named Plaintiffs from Parchman in an attempt to alleviate the risk of immediate irreparable injury to which they have been subjected, and thwart the purposes of this Motion, certain named Plaintiffs remain in unconstitutional conditions and will suffer immediate, irreparable harm if the Court does not grant relief.

The classic definition of "irreparable harm" for purposes of a preliminary injunction is a harm that cannot be adequately remedied at law, such as by monetary damages. *Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011). However, "the mere fact that economic damages may be available does not always mean that a remedy at law is 'adequate.'" *Id.* The central question is whether there exists an adequate remedy at law for the injury alleged. *See, e.g.*, *Davis v. McCain*, No. 1:16-CV-01534, 2018 WL 4936566, at *5-6 (W.D. La. Sept. 19, 2018) (granting preliminary injunction mandating that prison officials enforce Louisiana's ban on tobacco use in the prison).

The hazards and injuries that named Plaintiffs and their experts describe from first-hand observation, cannot be remedied with an award of damages. First and foremost, Defendants'

inability to provide adequate security for inmates at Parchman creates a very real threat to Plaintiffs' lives; the tragic deaths of 22 inmates this year alone are undeniable evidence. Plaintiffs' risk of death, if conditions at Parchman are not improved, is far from speculative or theoretical. Because death is plainly an irreparable injury, Plaintiffs' detailed allegations of the risk to their lives posed by uncontrolled inmate violence satisfies the irreparable harm requirement.

Furthermore, courts in this Circuit—including this Court—have recognized that substantial injuries and risks to inmate health qualify as irreparable harm in the context of a preliminary injunction. *See Gates v. Fordice*, No. CIV.A. 4:71CV6–JAD, 1999 WL 33537206, at *4 (N.D. Miss. July 19, 1999) (holding that "'the risk of diminished treatment options' for HIV-positive inmates at Parchman 'is clearly irreparable harm'"); *see also Cole v. Collier*, 4:14-CV-1698, 2017 WL 3049540, at *43 (S.D. Tex. July 19, 2017) (holding that inmates established irreparable injury by heatstroke, where twenty-three inmates had died of heat-related causes at Texas prisons; plaintiffs suffered symptoms of heat illness; and heatstroke posed severe health risks); *Davis v. McCain*, No. 1:16-CV-01534, 2018 WL 4936566, at *5-6 (W.D. La. Sept. 19, 2018) (holding that the health risks of inmate's exposure to secondhand tobacco smoke constituted irreparable harm). Cases such as these establish beyond doubt that Plaintiffs' harm, as described in the evidence presented herein, is irreparable for purposes of injunctive relief.

Plaintiffs consistently have testified that they routinely endure serious health risks. Plaintiffs have been left without medical treatment; are forced to eat spoiled or inedible food; and are exposed to contaminated water and raw sewage, to name a few. These conditions pose clear health risks. Moreover, Plaintiffs have produced expert testimony that help to fill in the details, by connecting the specific conditions Plaintiffs allege to specific health risks. In short,

the record before the Court speaks clearly that the conditions Plaintiffs seek to remedy through this Motion inflict irreparable harm on Plaintiffs, and will continue to do so if the Motion is denied. Therefore, this element of the test for injunctive relief is met.

C. Plaintiffs Will Be Far More Prejudiced If The Court Denies Relief Than Defendants Will Be If Relief Is Granted

Plaintiffs, as described herein, stand to be irreparably harmed if the relief sought in this Motion is not granted. For Plaintiffs, their physical safety, medical care, sustenance, hygiene, and living conditions are basic needs of human life, for which they depend entirely on Defendants to provide. Plaintiffs currently are living without these basic needs of human life, and will continue to do so, in conditions that are cruel and unusual in violation of the Eighth Amendment, unless relief is granted. In the interest of brevity, Plaintiffs refer the Court to the sworn declarations of Plaintiffs, and the expert reports, all of which are submitted herewith, and which detail the crippling burdens that Plaintiffs and their fellow inmates endure daily at Parchman. It follows that, for the reasons set forth above, Plaintiffs will suffer extreme prejudice if this Motion is denied.

No countervailing prejudice to Defendants as a result of granting the requested relief exists, and accordingly, injunctive relief in Plaintiffs' favor is warranted. Indeed, this Motion has been reduced, as a result of transfers, to only four named Plaintiffs complaining of unconstitutional conditions. The burden to Defendants associated with the relief required to satisfy the constitutional minimums as to these four inmates is negligible. Certainly, this "burden" does not constitute 'prejudice' that could outweigh Plaintiffs' interests and justify denying relief. Indeed, it is well-established that lack of resources is not a valid basis for leaving constitutional violations in place. *See Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 396 (1992) ("the lack of resources can never excuse a failure to obey constitutional requirements");

Smith v. Sullivan, 553 F.2d 373, 378 (5th Cir. 1977) ("inadequate resources can never be an adequate justification for depriving any person of his constitutional rights.") (quoting *Hamilton v. Love*, 328 F.Supp. 1182, 1194 (E.D. Ark. 1971)); *Cole v. Collier*, No. 4:14-CV-1698, 2017 WL 3049540, at *43 (S.D. Tex. July 19, 2017) (granting preliminary injunction despite prison officials' protests that implementing the relief sought would be "fiscally catastrophic" for the state department of corrections); *Advocacy Center for Elderly & Disabled v. La. Dep't of Health & Hosp.*, 731 F.Supp.2d 603, 626 (E.D. La. 2010) (finding plaintiff inmates met this prong of the standard for preliminary injunction, notwithstanding defendants' assertion that complying with such an injunction would require budget cuts elsewhere).

The argument of an administrative burden on Defendants is no more persuasive. Courts have ordered emergency relief when necessary to remedy threats to inmates' basic rights and needs, irrespective of the fact that it may require Defendants to put forth further efforts. *See, e.g.*, *Cole v. Livingston*, No. 4:14-CV-1698, 2016 WL 3406439, at *7 (S.D. Tex. June 21, 2016) (holding, in weighing the parties' respective burdens, that inmates' prejudice from having to drink water that failed EPA standards, even though the additional risk of cancer was "minute," was "significantly more troublesome" than Defendants' burden in taking steps to provide clean water), *appeal vacated as moot due to automatic expiration of preliminary injunction, sub nom. Yates v. Collier*, 677 F. App'x 915 (5th Cir. Jan. 30, 2017); *Gates v. Fordice*, No. CIV.A. 4:71CV6–JAD, 1999 WL 33537206, at *4 (N.D. Miss. July 19, 1999) (holding that "the risk of medical injury to the plaintiffs outweighs the harm, if any, to the defendants. The HIV positive inmates are entitled to a degree of care that will not hasten their death and the defendants are obligated to provide it."). Constitutional requirements must take priority over the moderate and reasonable administrative burdens necessary to guarantee them.

In short, the bare fact that only four Plaintiffs now seek relief that would impose new "burdens" on Defendants is no barrier to relief. First, any injunctive relief that raises Plaintiffs' circumstances to constitutionally permissible standards will require Defendants to *do more*. Second, the inquiry is not whether Defendants will be inconvenienced at all, but whether they will be prejudiced to an extent that outweighs the prejudice Plaintiffs will suffer without relief. Defendants cannot make such a showing, because the "prejudice" from adopting tailored relief mandated by the Eighth Amendment cannot remotely compare to the prejudice Plaintiffs are suffering, and continue to suffer daily, as a direct result of the conditions Defendants have created and knowingly allow to persist at Parchman. Consequently, this requirement of the preliminary injunction standard is plainly satisfied.

D. The Public Interest is Served by Plaintiffs' Requested Relief

Finally, far from disserving the public interest, the relief Plaintiffs seek will promote critical public goals. As a general rule, the Fifth Circuit has stated that "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (upholding injunction) (citing *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012); *see also O'Donnell v. Harris Cty., Tex.*, 251 F.Supp.3d 1052, 1159 (S.D. Tex. 2017) (stating the same principle that "[i]t is always in the public interest to prevent the violation of a party's constitutional rights") (quoting *Simms v. D.C.*, 872 F.Supp.2d 90, 105 (D.D.C. 2012)). It is similarly well established that an injunction that bars unconstitutional state action serves the public interest, and meets this prong of the standard for preliminary injunctive relief. *See Ingebretsen ex rel. Ingebretsen v. Jackson Pub. Sch. Dist.*, 88 F.3d 274, 280 (5th Cir. 1996) ("The School Prayer Statute is unconstitutional, so the public interest was not disserved by an injunction preventing its implementation."). Accordingly, an

injunction from this Court to remedy Plaintiffs' unconstitutional conditions of confinement at Parchman is perfectly consistent with the public good.

Moreover, courts have previously found this element to be satisfied as to relief highly similar to that sought by this Motion. *See, e.g.*, *Gates v. Fordice*, No. CIV.A. 4:71CV6–JAD, 1999 WL 33537206, at *4 (N.D. Miss. July 19, 1999) (holding, regarding Parchman inmates' request for injunctive relief, that "the public interest is served by assuring that adequate medical care is provided to all citizens, especially those who are incarcerated and have no means for providing for themselves."); *see also Cole v. Collier*, No. 4:14-CV-1698, 2017 WL 3049540, at *46 (S.D. Tex. July 19, 2017) (granting plaintiffs preliminary injunction mandating relief for environmental conditions that posed a risk to prisoners' health and safety); *Johnson v. Wetzel*, 209 F.Supp.3d 766, 781 (M.D. Pa. 2016) (holding, where inmate challenged the conditions of his detention as cruel and unusual, "[i]ssuance of a preliminary injunction will serve the public's interest in defending the integrity of a constitutional right."). By the same token, Plaintiffs' request for relief meets the required standard.

III. This Court Should Waive the Requirement to Post Security

Rule 65(c) ordinarily requires movants seeking preliminary injunctive relief to post security "in an amount that the court considers proper" before an injunction may be issued. As this language suggests, the Court has substantial discretion over the amount of such security, and it is fully within the Court's power to waive the requirement entirely, where appropriate. *See, e.g.*, *Corrigan Dispatch Co. v. Casa Guzman, S.A.*, 569 F.2d 300, 302-03 (5th Cir. 1978). In this case, Plaintiffs are indigent prisoners who do not have the resources to post the ordinary security. Further, Plaintiffs' claims further the public interest by vindicating constitutional rights, "an area in which the courts have recognized an exception to the Rule 65 security requirement." *City of Atlanta v. Metropolitan Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. Unit B 1981).

Accordingly, Plaintiffs respectfully request that the Court exercise its discretion to dispense with such security in connection with this Motion, or in the alternative, require Plaintiffs to post security in a nominal amount.

IV. Relief

Based on the foregoing evidence, Plaintiffs respectfully request relief to remedy unconstitutional conditions at Parchman that are posing an immediate risk of substantial harm to the following named Plaintiffs.

A. Plaintiff Aric Johnson

Aric Johnson currently is housed in Unit 29, Building F, Zone A. Johnson's constitutional rights currently are being violated, as he is being deprived of constitutionally-adequate medical care and his conditions of confinement fall below constitutional standards, both of which subject him to an immediate risk of irreparable harm. Defendants are aware of, but have not addressed, the constitutional violations addressed herein, and therefore Johnson is entitled to relief.

Medical Care

Johnson has been diagnosed with high blood pressure and hypertension. Ex. J, Johnson Decl. ¶ 2, p.1. He is supposed to have his blood pressure checked regularly by the Parchman medical staff, but no one has checked his blood pressure in the past two months. *Id*. Johnson frequently goes without his blood pressure medication because the medical staff will not provide refills in a timely manner. *Id*. Johnson has attempted to request medical attention, but he has not been provided "sick call" forms and, when he attempted to make the request by writing on a blank piece of paper, he was cursed and rebuffed by a guard. *Id*. Madeleine LaMarre, who examined Johnson's medical records, confirms that Johnson "has not received timely and appropriate follow-up for his hypertension…." LaMarre, Appendix B-17.

Defendants know of Johnson's medical condition, and his need for medication, yet they have ignored his treatment.

The Supreme Court has held that, "[j]ust as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society." *Plata*, 563 U.S. at 510-11; *see also Farmer*, 511 U.S. at 832.

Plaintiff Aric Johnson suffers immediate risk of irreparable harm as a result of denial of adequate medical care for his high blood pressure and hypertension. Defendants are aware of Johnson's conditions, yet have failed, and continue to fail, to provide him adequate medical care. Accordingly, the Court should enter its order requiring Defendants to check Johnson's blood pressure, update and fill his medications immediately.

Conditions of Confinement

The roof in Aric Johnson's cell leaks when it rains. Ex. J, Johnson Decl. ¶ 6, p.2. In the shower in his zone, there are exposed wires hanging from the ceiling. *Id*. Johnson has been electrocuted several times while showering due to the exposed wiring. *Id*. Further, Johnson testified in his declaration that there is no air conditioning or heat in his zone. *Id*. Moreover, Johnson's zone, wherein the inmates are housed "barracks" style, has only one working toilet and one working urinal for all of the inmates to share. *Id*. He describes the environmental conditions in the building similar to being outside. *Id*. If it is freezing outside, it is freezing inside. If it is 100 degrees outside, it is at least 100 degrees inside. As summer approaches, with its sweltering temperatures, mosquitos also have begun to infest Johnson's zone. *Id*.

Dr. Marc Stern inspected Unit 29 including Aric Johnson's zone. Dr. Stern states, "[t]he buildings at Parchman are best described as sieves. Pools of standing water were on the floors of hallways and many cells. As I toured the facility, water dripped on my head. Water soaked through to my socks. Residents pointed out where rainwater was dripping on their beds. Apart from the stress this causes and the risk to health of not being dry when one has an infectious illness, the standing water poses a risk of slips and falls as well as a risk of electricity-induced injury." Stern, p. 16. Dr. Stern also agreed that "at times there is no heat when ambient temperature is low and at times there is insufficient cooling when the ambient temperature is high … both hypo- and hyperthermia are potentially fatal conditions." Stern, p. 16.

The Fifth Circuit has held that the general disrepair of facilities, such as leaking ceilings and walls, exposed wiring, and excessively hot or cold temperatures can violate a prisoner's Eighth Amendment rights. *Gates v. Collier*, 501 F.2d 1291, 1299-1303 (5th Cir. 1974) (finding Eighth Amendment violation at Parchman for *inter alia* the general disrepair of facilities); *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (finding Eighth Amendment violation for excessively hot temperatures in cells); *Beck v. Lynaugh*, 842 F.2d 759, 761 (5th Cir. 1988) (finding Eighth Amendment violation for excessively cold temperatures in cells as a result of missing window panes); *Gates v. Collier*, 501 F.2d 1291, 1299-1303 (5th Cir. 1974) (finding Eighth Amendment violation at Parchman for frayed and exposed electric wiring).

Defendants are aware, and have been for years, of the dilapidated condition of Unit 29, including Johnson's zone. Indeed, guards and other MDOC personnel occupy Unit 29 daily. More recently, the Governor of the State of Mississippi and the press have borne witness to its abhorrent conditions. Subjective knowledge of a constitutional violation can be proven by inference from circumstantial evidence; in other words, subjective knowledge is proven if the

facts show that the risk of harm was obvious such that prison officials "must have known" about the deficient conditions. *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43).

Plaintiff Aric Johnson suffers immediate risk of irreparable harm as a result of his conditions of confinement including water intrusion into his living area, the risk of electrocution from exposed electrical wiring in the shower, and excessively high or low temperatures due to inadequate cooling and heating. Defendants are aware of Johnson's conditions of confinement, yet have failed, and continue to fail, to provide him constitutionally-adequate living conditions. Accordingly, the Court should enter its order requiring Defendants immediately to repair the walls in Johnson's living area to stop the flow of water, repair the exposed electrical wiring in the showers, repair all the toilets and urinals in Johnson's zone, and provide adequate cooling.

B. Plaintiff Phillip Webster

Phillip Webster currently is housed in Unit 29, Building F, Zone A. Webster's constitutional rights currently are being violated, as he is being deprived of constitutionally-adequate medical care and his conditions of confinement fall below constitutional standards, both of which subject him to an immediate risk of irreparable harm. Defendants are aware of, but have not addressed, the constitutional violations addressed herein, and therefore Johnson is entitled to relief.

Conditions of Confinement

Webster testifies in his declaration that his living area is inundated with rats and cockroaches. Ex. I, Webster Decl. ¶ 2, p.1. He has resorted to trapping the rats that get close to his bunk in an effort to keep them from crawling on him at night. *Id*. Like Johnson, who also lives in 29/F/A, Webster's roof leaks every time it rains, which forces Webster to clean

throughout the night in an effort to stem the flow of water. *Id*. Webster also testifies that there is no air conditioning in his zone, which presents a particular hazard as the stifling temperatures of the Mississippi summer fast approach. *Id*.

Dr. Stern, who inspected Unit 29, states that, "the association between rats and human disease is well-enough accepted science to conclude that the rat infestation at Parchman places its residents at significant risk of serious harm." Stern, p. 15. Indeed, in *Bienvenu v. Beauregard Parish Police Jury*, the Fifth Circuit held that allegations of a cold, rainy, roach-infested cell supported finding an Eighth Amendment violation. 705 F.2d 1457 (5th Cir. 1983). Similarly, allegations of rats crawling on prisoners stated a cause of action for a constitutional violation in *Foulds v. Corley*. 833 F.2d 52 (5th Cir. 1987). The Fifth Circuit also has held that the general disrepair of facilities, such as leaking ceilings and walls, and excessively hot or cold temperatures can violate a prisoner's Eighth Amendment rights. *Gates v. Collier*, 501 F.2d 1291, 1299-1303 (5th Cir. 1974) (finding Eighth Amendment violation at Parchman for *inter alia* the general disrepair of facilities); *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (finding Eighth Amendment violation for excessively hot temperatures in cells); *Beck v. Lynaugh*, 842 F.2d 759, 761 (5th Cir. 1988) (finding Eighth Amendment violation for excessively cold temperatures in cells as a result of missing window panes).

Defendants are aware, and have been for years, of the dilapidated condition of Unit 29, including Webster's zone. Indeed, guards and other MDOC personnel occupy Unit 29 daily. More recently, the Governor of the State of Mississippi and the press have borne witness to its abhorrent conditions. Subjective knowledge of a constitutional violation can be proven by inference from circumstantial evidence; in other words, subjective knowledge is proven if the facts show that the risk of harm was obvious such that prison officials "must have known" about

the deficient conditions. *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43).

Plaintiff Phillip Webster suffers immediate risk of irreparable harm as a result of his conditions of confinement including infestation of rats and cockroaches, rainwater intrusion in his living area, and inadequate air conditioning. Defendants are aware of Webster's conditions of confinement, yet have failed, and continue to fail, to provide him constitutionally-adequate living conditions. Accordingly, the Court should enter its order requiring Defendants immediately to repair the ceiling and walls in Webster's living area to stop the flow of water, treat successfully the infestation of rats and cockroaches, and provide adequate cooling.

Medical Care

Phillip Webster suffers from burning in his eyes, which he attributes to the contaminated water in his zone. An eye examination was scheduled for Webster in 2019, but he was never taken for the appointment. Ex. I, Webster Decl. ¶ 5, p.1. Madeleine LaMarre, who inspected Parchman and reviewed Webster's medical records, concluded that the medical providers at Parchman "do not provide Plaintiffs timely and appropriate follow-up following urgent events or specialty services." LaMarre, p. 13. LaMarre found that Webster's medical records reveal that Defendants knew of Webster's condition, yet failed to provide him adequate follow-up treatment. Specifically, on March 30, 2019, Webster was seen by a nurse for his burning eyes. LaMarre, Appendix B-46. The nurse flushed his eyes with a solution, but the burning returned. On June 25, 2019, Webster was seen again by a nurse for his burning eyes, and again the nurse flushed his eyes. LaMarre, Appendix B-47. On August 29, 2019, Webster was seen by an "optometrist" who prescribed Webster an ophthalmic solution, and who scheduled Webster for a return visit one month later to check on his condition. LaMarre, Appendix B-47. Unfortunately,

Webster was never taken for his return appointment, and the burning in his eyes persists. Ex. I, Webster Decl. ¶ 5, p.1.

Plaintiff Phillip Webster suffers immediate risk of irreparable harm as a result of denial of adequate medical care. Obviously, any condition of the eyes, which inherently may affect eyesight, carries with it the risk of irreparable harm. Defendants are aware of Webster's eye condition, since they have seen him but failed to adequately treat, or even follow up, on his treatment. All the while, Webster's painful eye condition persists. Accordingly, the Court should enter its order requiring Defendants immediately to arrange and facilitate an appointment with an ophthalmologist.

C. Plaintiff Kuriaki Riley

Kuriaki Riley currently is housed in Unit 30, Building B, Zone A. Ex. L, Riley Decl. ¶ 1, p.1. Riley's constitutional rights currently are being violated, as he is being deprived of constitutionally-adequate medical care and his conditions of confinement fall below constitutional standards, both of which subject him to an immediate risk of irreparable harm. Defendants are aware of, but have not addressed, the constitutional violations addressed herein, and therefore Riley is entitled to immediate relief.

Medical Care

Riley testifies in his declaration that there is rampant gang violence in his zone, and that guards do not attempt to intervene. *Id*. at ¶ 2, p.1. Accordingly, Riley states that he fears for his life. *Id*. So fearful and hopeless has Riley become that he attempted suicide in February 2020. LaMarre, Appendix B-10. According to Dr. Stern, this type of stress constitutes a serious risk of irreparable harm. "The sum total of stress for those subjected to multiple stressors is unimaginable. From a medical standpoint, chronic stress can impact the heart, digestive system,

sleep, and blood pressure, among other systems. Therefore, the traumatization caused by current conditions at Parchman significantly increases the risk of serious medical harm." Stern, p. 15.

Despite a suicide attempt, Riley has never been seen by a mental health professional at Parchman. Ex. L, Riley Decl. ¶ 3, p.1. With no mental health treatment, Riley remains at serious risk of imminent harm. Neither his environmental conditions, nor his mental health condition, has changed, and thus he remains at risk. *Id.*; *Conn v. City of Reno*, 572 F.3d 1047, 1055 (9th Cir. 2009) ("Though complaints of depression are not necessarily serious, acute or serious depression may constitute a serious medical need, and threats or risk of suicide certainly are.").

Additionally, Riley has been diagnosed with high blood pressure. Stern, p. 10. Riley routinely goes without his blood pressure medication because nurses are late refilling his medications. Ex. L, Riley Decl. ¶ 7, p.1. Delays in receiving his medication cause his symptoms to return, symptoms which can be fatal, which clearly places Riley at immediate risk of irreparable harm. *Id*. As of the date of Riley's Declaration attached hereto, Riley has been without his blood pressure medication for two weeks. *Id*.

An inmate has a valid Eighth Amendment claim for inadequate medical treatment if he can show that a defendant official "refused to treat him, ignored his complaints, intentionally treated him incorrectly, or engaged in any similar conduct that would clearly evince a wanton disregard for any serious medical needs." *Easter*, 467 F.3d. at 464 (5th Cir. 2006). As the Supreme Court held in *Plata*, "a prison that deprives prisoners of basic sustenance, *including adequate medical care*, is incompatible with the concept of human dignity and has no place in civilized society." *Plata*, 563 U.S. at 510-11 (emphasis added); *see also Farmer*, 511 U.S. at 832.

Plaintiff Kuriaki Riley suffers immediate risk of irreparable harm as a result of denial of adequate medical care for his high blood pressure and treatment for his mental health condition. Defendants are aware of Riley's high blood pressure and suicide attempt, yet have failed, and continue to fail, to provide him adequate medical and mental health care. Accordingly, the Court should enter its order requiring Defendants to check Riley's blood pressure immediately, update and fill his prescription for his blood pressure medicine, and ensure that he is seen immediately by a mental health professional.

Conditions of Confinement

Kuriaki Riley testifies that the drinking water available to him is brown and so contaminated that he becomes ill from drinking it. Ex. L, Riley Decl. ¶ 4, p.1. Of course, water is a basic need of human life, and the courts have held that failing to provide adequate water to inmates is a denial of the "minimal civilized measure of life's necessities," violating the Eighth Amendment. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991) (quoting *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981)); *Cole v. Livingston*, No. 4:14-CV-1698, 2016 WL 3406439, at *7-8 (S.D. Tex. June 21, 2016) (granting preliminary injunction requiring prison officials to provide inmates water consistent with EPA standards), *appeal vacated as moot due to automatic expiration of preliminary injunction, sub nom*. *Yates v. Collier*, 677 F. App'x 915 (5th Cir. Jan. 30, 2017); *see also Roberts v. Williams*, 456 F.2d 819, 827 (5th Cir. 1971). Defendants know of unconstitutional unclean water conditions in Riley's zone, some of which were detailed in a January 2020 Building Inspection Report. Graham, p. 12. The Report notes that the pipes in the shower are broken, the water fountain is inoperable, the showers are inoperable, rusty and leak, and there is no hot water. *Id.* Frank Edwards inspected Parchman, and reviewed Mississippi Department of Health ("MDOH") records related to its water supply. Parchman's entire water

supply has been abysmally deficient for years. Edwards, p. 16. By no later than 2017, Defendants were aware of lead in Parchman's drinking water. *Id*. In 2018, the MDOH again placed Defendants on notice that Parchman was in violation of the Safe Drinking Water Act, and directed Parchman to notify its inmates of unsafe water. *Id*. at 5. So persistently deficient is Parchman's water supply that it has been directed by the MDOH to maintain a log of all activities related to the operation and maintenance of the water system. *Id*. at 97. With all of these deficiencies related to the water at Parchman, it is not surprising that Riley's water is brown and makes him ill when he drinks. Ex. L, Riley Decl. ¶ 4, p.1.

Plaintiff Kuriaki Riley suffers immediate risk of irreparable harm as a result of his conditions of confinement including contaminated drinking water that is consistently making him ill. Defendants are aware of Riley's conditions of confinement, yet have failed, and continue to fail, to provide him clean water. Accordingly, the Court should enter its order requiring Defendants immediately to bring Riley's drinking water up to minimum standards.

D. Plaintiff Justin James

Justin James currently is housed in Unit 30, Building A, Zone B. Ex. K, James Decl. ¶ 1, p.1. James' constitutional rights currently are being violated, as his conditions of confinement fall below constitutional standards, which subjects him to an immediate risk of irreparable harm. Defendants are aware of, but have not addressed, the constitutional violations addressed herein, and therefore James is entitled to immediate relief.

James testifies in his declaration that every night rats and roaches crawl on him in his bunk. *Id*. at ¶ 2, p.1. James states that his drinking water is brown and smells like sewage. *Id*. at ¶ 3, p.1. While he is afraid to drink it, he has no choice. *Id*. When it rains, water leaks through the ceiling and into James' bunk and onto the floor. *Id*. at ¶ 6, p.1. When the rain is heavy, it also

leaks and seeps through the walls. *Id.* And after a heavy rain, there are puddles of standing water throughout the zone. *Id.* Likely due to the leaky roof and walls, mold grows in the shower in James' zone. *Id*. There is also no air conditioning or heat. James testifies that when it gets hot outside, it is "like an oven in the zone, even with fans." *Id*. at ¶ 5, p.1.

Defendants have known of the litany of unconstitutional conditions in Unit 30, Building A, Zone B, where James is housed, for some time. In January 2020, a Building Inspection Report produced by MDOC states that sinks are inoperable, the water fountain is inoperable, pipes are broken in shower, toilets and urinals are missing, the hot water is inoperable, the wall telephone is broken, floor tiles are missing throughout the zone, drains are clogged, the zone's lights are inoperable, the exhaust fan is inoperable, the shower panel needs replacing, the light fixture covering is missing, there are exposed wires, there is no heat, and the inmates are breathing smoke from previous fire. Graham, p. 12 (citing MDOC-Amos 7353-7354).

Moreover, Frank Edwards inspected Unit 30, and reviewed Mississippi Department of Health ("MDOH") records related to its water supply. Edwards found that Defendants have known that Parchman's water supply has been abysmally deficient for years. Edwards, p.16. By no later than 2017, Defendants were aware of lead in Parchman's drinking water. *Id*. In 2018, the MDOH again placed Defendants on notice that Parchman was in violation of the Safe Drinking Water Act, and directed Parchman to notify its inmates of unsafe water. *Id*. at 5. So persistently deficient is Parchman's water supply that it has been directed by the MDOH to maintain a log of all activities related to the operation and maintenance of the water system. *Id*. (E0021-48). With all of these deficiencies related to the water at Parchman, it is not surprising that James' water is brown and he is afraid to drink it. Ex. K, James Decl. ¶ 3, p.1.

Parchman also has known about is ubiquitous mold problem for years. First, mold growth is open and obvious. Subjective knowledge can be proven by inference from circumstantial evidence; in other words, subjective knowledge is proven if the facts show that the risk of harm was obvious. *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43) (holding that violations that are "longstanding, pervasive, well-documented, or expressly noted by prison officials in the past," are sufficient to show that a prison official "must have known about" the deficient condition). Second, Frank Edwards inspected Unit 30 A for mold using FLIR imagery, and identified numerous areas within the building indicative of moisture accumulation causing mold growth. Edwards, p. 15 (Appendix D, E0150-154; E0190-191).

Dr. Stern, who also inspected Parchman, warned against the dangerous of inoperative air and heating systems in the prison environment. Stern states that "both hypo- and hyperthermia are potentially fatal conditions" and are more likely to occur when buildings lack basic necessities of contemporary society. Stern p. 16. Not surprisingly, the Fifth Circuit has held that excessively hot or cold temperatures violate an inmates constitutional right against cruel and unusual punishment. *Ball v. LeBlanc*, 792 F.3d 584, 592 (5th Cir. 2015) (finding Eighth Amendment violation for excessively hot temperatures in cells); *Beck v. Lynaugh*, 842 F.2d 759, 761 (5th Cir. 1988) (finding Eighth Amendment violation for excessively cold temperatures in cells as a result of missing window panes).

As for infestations, the Fifth Circuit has held rat or roach infestations are evidence of a constitutional violation. *Foulds v. Corley*, 833 F.2d 52 (5th Cir. 1987); *Bienvenu v. Beauregard Parish Police Jury*, 705 F.2d 1457 (5th Cir. 1983).

Finally, James has not been offered recreation in three weeks. *Id.* The American

Corrections Association ("ACA") states that at a minimum outdoor areas must be provided for general population inmates to exercise at least one hour daily. Vail, p. 28 (citing ACA Standard 5-ACI-2E-01). Despite its constitutional implications, Vail notes that "exercise for prisoners" is one of the ACA standards that has "gone away at Parchman." *Id.* Moreover, crowding and lack of correctional staff do not provide penological justification for lack of exercise. *Gilland v. Owens*, 718 F. Supp. 665, 685 (W.D. Tenn. 1989).

As with Unit 29, subjective knowledge of a constitutional violation in Unit 30 can be proven by inference from circumstantial evidence; in other words, subjective knowledge is proven if the facts show that the risk of harm was obvious such that prison officials "must have known" about the deficient conditions. *Hinojosa v. Livingston*, 807 F.3d 657, 665 (5th Cir. 2015) (citing *Farmer*, 511 U.S. at 842-43).

Plaintiff Justin James suffers immediate risk of irreparable harm as a result of his conditions of confinement including exposure to rats and roaches, unclean drinking water, excessive heat, and lack of exercise. Defendants are aware of James' conditions of confinement, yet have failed, and continue to fail, to provide him constitutionally acceptable conditions. Accordingly, the Court should enter its order requiring Defendants immediately to provide James with housing that is free from rats and roaches, clean drinking water, housing that maintains a reasonable temperature, and daily exercise.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court grant their Motion for Temporary and Preliminary Injunction and the specific relief described below:

A. With regard to **Aric Johnson in Unit 29, Building F, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, Johnson must see a medical doctor to assess his high blood pressure;

2. Within twenty-four hours, refill Johnson's high blood pressure medication;

3. Within five (5) days, repair the roof and other avenues of water intrusion in Johnson's immediate living area;

4. Within twenty-four hours, repair the exposed electrical wires in Johnson's shower;

5. Within five (5) days, repair the toilets and urinals in Johnson's zone;

6. Within five (5) days, repair the air conditioning in Johnson's zone.

B. With regard to **Phillip Webster in Unit 29, Building F, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, treat effectively the infestation of rats and cockroaches in Webster's immediate living area;

2. Within five (5) days, repair the roof and other avenues of water intrusion in Webster's immediate living area;

3. Within five (5) days, repair the air conditioning in Webster's zone;

4. Within five (5) days, Webster must see an ophthalmologist to treat his burning eyes.

C. With regard to **Kuriaki Riley in Unit 30, Building B, Zone A**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, Riley should see a psychiatrist to assess his mental health and develop a long term mental health plan including periodic follow up visits, as medically indicated;

2. Within five (5) days, Riley should see a medical doctor to assess his high blood pressure;

3. Within twenty-four hours, refill Riley's high blood pressure medication;

4. Within five (5) days, restore the drinking water in Riley's zone to acceptable standards.

D. With regard to **Justin James in Unit 30, Building A, Zone B**, Defendants should be ordered to remedy the following unconstitutional conditions:

1. Within five (5) days, treat effectively the infestation of rats and cockroaches in James' immediate living area;

2. Within five (5) days, repair the roof and other avenues of water intrusion in James' immediate living area;

3. Within five (5) days, remediate the mold in the shower in James' zone;

4. Within five (5) days, repair the air conditioning in James' zone;

5. Within five (5) days, repair the air conditioning in James' zone;

6. Within five (5) days, arrange for James to have the required one hour of recreation daily.

E. Plaintiffs further request all other relief the Court may deem appropriate.

Date: June 8, 2020

Respectfully submitted,

/s/ Marcy B. Croft

Marcy B. Croft (MS Bar #10864)
Jessica Rice (MS Bar #105722)
Ericson Enger (MS Bar #105808)
MARON MARVEL BRADLEY ANDERSON &

TARDY LLC
200 South Lamar Street
Jackson, MS 39201
Telephone: (601) 960-8630
Telefax: (601) 206-0119

Thomas G. Bufkin (MS Bar #10810)
Carson H. Thurman (MS Bar #104871)
CARROLL BUFKIN PLLC
1076 Highland Colony Pkwy.
600 Concourse, Suite 125
Ridgeland, MS 39157
Telephone: (601) 982-5011
Telefax: (601) 853-9450

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 8, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record registered to receive electronic service by operation of the Court's electronic filing system.

/s/ Marcy B. Croft
Marcy B. Croft (MS Bar #10864)