IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, et al.	**PLAINTIFFS**
VS.	**CIVIL ACTION NO. 4:20-CV-07-DMB-JMV**
PELICIA E. HALL, et al.	**DEFENDANTS**

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Tommy Taylor, in his official capacity as Interim Commissioner of the Mississippi Department of Corrections, and Marshall Turner, in his official capacity as Superintendent of the Mississippi State Penitentiary, file this Response in Opposition to Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction [Doc. 13 and 14].[1] In support, Defendants rely on the arguments and authorities set forth in their accompanying Memorandum of Law and on the declarations of Jeworski Mallett, John Sprayberry, and Sean Smith, collectively attached hereto as Exhibit A. For the reasons discussed in their Memorandum of Law, Defendants respectfully request that the Court deny Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction. Defendants request such other and further relief as the Court deems just and appropriate under the circumstances.

Date: January 27, 2020.

[1] Plaintiffs named Pelicia Hall as a Defendant in this case, but she is no longer with MDOC.

Respectfully submitted,

TOMMY TAYLOR, in his official capacity as the Interim Commissioner of the Mississippi Department of Corrections, and MARSHAL TURNER, in his official capacity as the Superintendent of the Mississippi State Penitentiary

By: *_/s/ Trey Jones_*
William Trey Jones, III
One of Their Attorneys

OF COUNSEL:
R. David Kaufman (MSB #3526)
dkaufman@brunini.com
William Trey Jones, III (MSB #99185)
tjones@brunini.com
Karen E. Howell (MSB #102243)
khowell@brunini.com
Cody C. Bailey (MSB #103718)
cbailey@brunini.com
Jacob A. Bradley (MSB #105541)
jbradley@brunini.com
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street (39201)
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: (601) 948-3101
Facsimile: (601) 960-6902

CERTIFICATE OF SERVICE

I, Trey Jones, hereby certify that on January 27, 2020, I caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and registered participants.

*_/s/ Trey Jones_*
William Trey Jones, III
One of the Attorneys for the Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, et al. **PLAINTIFFS**

VS. **CIVIL ACTION NO. 4:20-CV-07-DMB-JMV**

PELICIA E. HALL, et al. **DEFENDANTS**

DECLARATION OF JEWORSKI MALLETT

Pursuant to 28 U.S.C. § 1746, I, Jeworski Mallett, declare under penalty of perjury that the following statements, based on my personal knowledge, are true:

1. I am an adult resident citizen of Ridgeland, Mississippi. I am competent to testify to the matters contained in this Declaration, and I give this Declaration voluntarily.

2. I am currently serving as the Acting Deputy Commissioner of Institutions for the Mississippi Department of Corrections ("MDOC"). I began serving in that position on January 15, 2020, and I have been employed by MDOC since September 2001.

3. In my position as the Acting Deputy Commissioner of Institutions at MDOC, the responsibilities of my office include evaluating the effectiveness of security procedures and support services in the correctional system.

4. I have direct personal knowledge of the present conditions and operations of the Mississippi State Penitentiary at Parchman ("Parchman"). I have personally observed the present conditions, and I am aware of the efforts undertaken by the MDOC after January 15, 2020. Since my appointment as Acting Deputy Commissioner of Institutions, I have visited Parchman almost daily.

EXHIBIT
A

5. Pursuant to my job duties, I have developed personal knowledge regarding the destruction of facilities at Parchman. It is my observation that the destruction of Parchman's facilities is caused primarily by inmates.

6. I have reviewed the Plaintiffs' Memorandum of Law in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

7. Based on my personal knowledge, many of the allegations in Plaintiffs' Memorandum are inaccurate or state an incomplete version of the facts. The following are my observations related to the allegations in Plaintiffs' submissions:

- Showers – As of January 21, 2020, all inmates have been restored to normal shower privileges. MDOC's aim is to provide inmates the opportunity to shower three times per week. Some shower privileges were suspended prior to that date due to the lockdown status at Parchman. Lockdown status is a safety measure that results in little or no movement of the prison population. Lockdowns are necessary to ensure safety of the inmates and to facilitate investigations of inmate violence. Some units are no longer on lockdown. Unit 29 remains on lockdown, but inmates have been offered showers. Some inmates refuse showers.

- Medical Care – As of the date of my appointment, I am not aware of weeks passing without inmates receiving medical care or medicine. Lockdown status results in temporary cessation of all activities, but the inmates receiving medical care is a priority. Since my appointment, I am aware of substantial efforts being undertaken to ensure inmates have proper medical care and medication. I am not aware of any inmate's not receiving medical care or medication since my appointment.

- Correctional Officers – Since my appointment on January 15, 2020, I have become aware that officers and agents from around the state are present at Parchman to supplement the number of Parchman correctional officers. However, as is true in any correctional facility, even more officers would be desirable. Measures are underway to recruit, hire, and utilize additional support officers until conditions improve.

- No Meals – Inmates have been provided multiple meals a day on a daily basis. Lockdown status initially may have resulted in some interruption of food service. On lockdown, the food is delivered to the inmates' cells. This process is an administrative burden and safety issue, so meals are delivered on different schedules than those to which inmates are accustomed.

- Food – To my knowledge, inmates are not served rotten food containing any rocks, insects, bird droppings, and rat feces. The slower food service on lockdown may have resulted in food not being as warm as normal.

- Officers Entering Units – If an officer is alone, he or she should not, and likely will not enter the cell to stop inmate violence until other officers arrive. It would be extremely unsafe and reckless to enter a cell alone. Officers are to call immediately for backup. Entering alone has caused officers to be assaulted. One officer recently nearly lost her life as a result of such an inmate assault.

- Fires – Inmates destroy property, including by setting fires. I have not personally observed or seen reports from credible sources regarding an inmate setting a fire as a life-saving measure. MDOC officers have undertaken extraordinary efforts to ensure inmates receive medical care.

- Access to Attorneys – As of January 15, 2020, inmates have continued to have access to their attorneys. Temporary denial of access may have been necessary due to on-going inmate violence, but attorneys have been provided access as soon as safety permitted.

- Commissary – Where safety permits and for all units that are not on lockdown, inmates are receiving privileges based on their inmate classification, including commissary privileges.

- Heat/Blankets – I am aware that the heat in Unit 29 and other units is currently operating. I am aware that replacement blankets as well as additional blankets were provided to inmates.

8. As a function of my job duties with MDOC, the following measures have been taken to restore conditions and promote inmate safety at Parchman:

- Lockdown status has continued in some units at Parchman as a means to protect inmates from other inmates and ensure a safe environment for officers and work crews. Lockdown status is also necessary to conduct investigations regarding inmate violence. Some units at Parchman are no longer on lockdown.

- MDOC has spent and is spending a substantial amount over its annual budget to combat the violence and destruction at Parchman.

- Officers and agents from across the State have been present at Parchman to facilitate inmate safety.

- Wardens and deputy wardens have been and are working 12-hour shifts to ensure supervisory personnel are on site at all times.

- Cleaning and re-cleaning units and other facilities is underway.

- MDOC has issued purchase requisitions to obtain in-cell recreational activities for those inmates that remain on lockdown.

- Televisions damaged by inmates are being repaired.

- Corrections officers are being screened for gang affiliation.
- Inmates have been moved both within Parchman and to alternative locations.
- Inmates are being screened for gang affiliation prior to being transported whether inside Parchman or to alternative locations.

9. In my experience at MDOC, I have made several observations regarding the movement of inmate. Moving inmates from unit to unit is a very difficult undertaking. It takes substantial financial, administrative, and human resources to achieve safe transfers of inmates. It is even more difficult to move inmates to other institutions. It is essential that the plans to move inmate remain confidential for security reasons.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted,

____

Jeworski Mallett

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, et al.	**PLAINTIFFS**
VS.	**CIVIL ACTION NO. 4:20-CV-07-DMB-JMV**
PELICIA E. HALL, et al.	**DEFENDANTS**

DECLARATION OF JOHN G. SPRAYBERRY

Pursuant to 28 U.S.C. § 1746, I, John G. Sprayberry, declare under penalty of perjury that the following statements, based on my personal knowledge, are true.

1. I am an adult resident citizen of Carthage, Mississippi. I am competent to testify to the matters contained in the declaration, and I give this declaration voluntarily.

2. I am currently serving as the Deputy Administrator, Facility Planning, Construction & Maintenance, for the Mississippi Department of Corrections ("MDOC"). I began serving in that position in December 2017. Prior to that, I was employed by a private company providing maintenance services to the MDOC.

3. In my position as the Deputy Administrator at the MDOC, the responsibilities of my office include, among other things, overseeing the planning, construction, repairs, and maintenance of buildings and facilities at all MDOC facilities, including Parchman.

4. Pursuant to these job duties, I have direct personal knowledge of the present conditions and operations of the Mississippi State Penitentiary at Parchman ("Parchman"). I have personally observed the present conditions, and I am aware of the efforts undertaken by the MDOC before and after December 29, 2019.

5. I have reviewed the Plaintiffs' Memorandum of Law in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction, Doc. 14.

6. Based on my personal knowledge, many of the allegations in Plaintiffs' Memorandum are inaccurate or state an incomplete version of the facts. The following are my observations related to the allegations in Plaintiffs' submissions:

- Pests – I am not aware of rats and cockroaches attacking inmates' food or crawling over inmates while they sleep. Parchman has a full-time pest control specialist. His duty is to ensure pests are eliminated.

- Plumbing – Flooding and plumbing issues are caused by destruction and damage by inmates. Inmates have flushed sheets, pillows, cell phones, and other belongings down the toilets, causing flooding. Substantial efforts by MDOC crews and outside contractors are underway to remedy the plumbing issues. Plumbing has been restored to the units. This issue is still ongoing however because inmates damage facilities that have already been repaired. Work crews are engaged in a constant effort to repair and re-repair facilities. MDOC has spent substantial financial resources in these repairs and will continue to do so.

- Water – I am not personally aware and have not observed the existence of water contaminated with human waste or that is brown in color. The water supply was interrupted as a result of a weather event. Water has been restored by MDOC crews and outside contractors. Bottled water was available to inmates in the interim. Parchman's water supply is routinely tested and has been and currently is in compliance with applicable regulations.

- Roof – To my knowledge, none of the Plaintiffs have requested that MDOC conduct testing to determine the presence of black mold in their cells. I am also not aware of any report, study, or investigation that has revealed the presence of black mold anywhere at Parchman. Efforts were ongoing before December 29th to repair the roof for Unit 29, which was damaged partially due to inmate tampering. Inmates remove the exhaust fan and pin, causing leaking. Leaks in Unit 29 remain despite efforts of MDOC crews.

- Lights – Inmates have repeatedly destroyed Parchman's light fixtures. Work crews replace broken light fixtures as soon as possible and when their safety permits. These efforts are made more difficult by the threat of violence from inmates. It is often unsafe for work crews. When work crews replaced light fixtures, inmates have frequently destroyed them soon thereafter. As a solution, MDOC is installing portable lighting outside inmate cells so that the inmates do not have access to and cannot destroy the light fixtures.

- Heat/Blankets – The heating in Unit 29 and other areas of Parchman is currently functioning. Unit 29's heating system was inoperable for a 12-hour period as a result of a

significant weather event, but work crews were successful in restoring heating to the units.

7. In being present at MDOC, I have personally observed that the root cause of the inmates' living conditions often is inmates' intentional destruction of their own property, others' property, and inmate cells. It requires an extraordinary effort to maintain a prison in any case. The task of maintaining Parchman is made even more difficult by the inmates' destruction of property immediately or shortly after it is repaired.

8. Since December 29, 2019, the following measures have been taken to restore conditions and promote inmate safety at Parchman:

- MDOC is devoting substantial financial, administrative, and human resources to ensure the facilities at Parchman are safe and habitable.
- Outside contractors were utilized to make immediate and emergency repairs of Parchman in the aftermath of the violence and destruction that followed December 29th.
- MDOC crews from across the State have been and are being utilized to repair and re-repair vandalized Parchman facilities, including lighting, plumbing, water supply, and heating.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Respectfully submitted,

John Sprayberry

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

MICHAEL AMOS, et al.	**PLAINTIFFS**
VS.	**CIVIL ACTION NO. 4:20-CV-07-DMB-JMV**
PELICIA E. HALL, et al.	**DEFENDANTS**

DECLARATION OF SEAN SMITH

Pursuant to 28 U.S.C. § 1746, I, Sean Smith, declare under penalty of perjury that the following statements, based on my personal knowledge, are true:

1. I am an adult resident citizen of Lena, Rankin County, Mississippi. I am competent to testify to the matters contained in the declaration, and I give this declaration voluntarily.

2. I am currently serving as the Director, Corrections Investigations Division, for the Mississippi Department of Corrections ("MDOC"). I began serving in that position in August 2012, and I have been employed in corrections since 1996.

3. In my position as a Director at MDOC, the responsibilities of my office include overseeing investigations regarding all administrative and criminal infractions that are committed within or have a nexus with MDOC facilities. I investigate criminal infractions by staff, inmates, and the general public.

4. Pursuant to these job duties, I have direct personal knowledge of the present conditions and operations of the Mississippi State Penitentiary at Parchman ("Parchman"). I have personally observed the present conditions, and I am aware of the efforts undertaken by MDOC before and after December 29, 2019.

5. Pursuant to my job duties, I have access to inmate records on file at MDOC. Attached as an Exhibit 1 to this declaration is a true and correct copy of MDOC records which show the crimes committed by Plaintiffs, including a certification of those official records. As shown by the certificate attached with Exhibit 1, these records are public records of MDOC, they were prepared by MDOC personnel in the ordinary course of MDOC business.

6. Pursuant to my job duties, it is my responsibility to oversee investigations of inmate fatalities at Parchman. Although I cannot comment on on-going investigations, I have personally observed deaths at Parchman that were caused by inmates intentionally killing other inmates. I have personally observed the presence of gangs at Parchman and other Mississippi institutions. It is my observation that many deaths at Parchman are the result of gang activity.

7. Pursuant to my duties, I observed that an inmate-on-inmate fatality occurred on December 29, 2019, at the South Mississippi Correctional Facility. Although I cannot comment on on-going investigations, media reports that this was a result of gang violence are accurate. It is my observation that the December 29 incident led to additional inmate violence and inmate destruction at Parchman.

8. Pursuant to my job duties, I have developed personal knowledge regarding the destruction of the facilities at Parchman. It is my observation that the destruction of Parchman's facilities is caused primarily by inmates.

9. I have reviewed the Plaintiffs' Memorandum of Law in Support of Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction.

10. As a function of my job duties with MDOC, the following measures have been taken to restore conditions and promote inmate safety at Parchman:

- MDOC and other State agencies are undertaking substantial measures to investigate the recent inmate-on-inmate violence and destruction at Parchman.

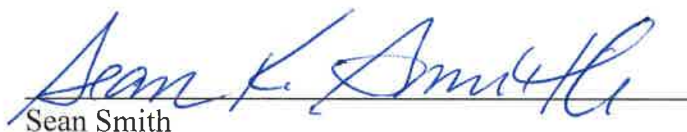
- Mississippi Bureau of Investigations ("MBI") arrived at Parchman on January 3, 2020, and to the best of my knowledge has continued to conduct investigations at Parchman.

- Corrections officers, agents, and other law enforcement from across the state have arrived at Parchman since December 29, 2019 to assist in functions to facilitate inmate safety. These officers and agents serve under: the Department of Public Safety, Special Operations Groups; the Department of Wildlife and Fisheries; the Sunflower County Sherriff's Department; the Issaquena County Sherriff's Department; and Indianola Police Department. MDOC Probation and Parole Agents, and Community Corrections Special Response Teams have also arrived at Parchman to assist in the above functions.

- Correctional officers are being screened for gang affiliation.

- Officers and investigators are devoting substantial resources to finding and seizing cell phones, which are a contributing factor to inmate violence.

I declare under penalty of perjury that the following statements, based on my personal knowledge, are true:



Sean Smith

MISSISSIPPI DEPARTMENT OF CORRECTIONS

LIST OF ACTIVE INMATES SERVING TIME

REPORT DATE : January 27,2020

MDOC# 119350 **Gender: MALE** **Age: 39**

Name: ADRIAN,WILLIARD **Race: BLACK** **Total Term To Serve: LIFE**

OFFENSE	TERM TO SERVE	COUNTY CONV
CAPITAL MURDER	LIFE	HINDS
AGGRAVATED ASSAULT	20 YEARS	HINDS

MDOC# 106808 **Gender: MALE** **Age: 41**

Name: ANTONIO,DAVIS **Race: BLACK** **Total Term To Serve: 8 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
AGGRAVATED ASSAULT	6 YEARS	HOLMES
POSSESSION OF FIREARM BY CONVICTED FELON	8 YEARS	HOLMES

MDOC# 139614 **Gender: MALE** **Age: 34**

Name: BILLY,JAMES **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
MANSLAUGHTER	20 YEARS	CARROLL

MDOC# 153126 **Gender: MALE** **Age: 29**

Name: BRANDON,ROBERTSON **Race: BLACK** **Total Term To Serve: 11 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ROBBERY	6 YEARS	HARRISON
RECEIVE STOLEN PROPERTY	5 YEARS	HARRISON

MDOC# 158780 **Gender: MALE** **Age: 35**

Name: CARLOS,VARNADO **Race: BLACK** **Total Term To Serve: 40 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ARMED ROBBERY	20 YEARS	MARION
CONSPIRACY TO COMMIT A CRIME	5 YEARS	MARION

EXHIBIT 1

MISSISSIPPI DEPARTMENT OF CORRECTIONS

LIST OF ACTIVE INMATES SERVING TIME

REPORT DATE : January 27,2020

MDOC# L6223 **Gender: MALE** **Age: 35**

Name: CHALLIS,LEWIS **Race: BLACK** **Total Term To Serve: 41 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
SEXUAL BATTERY	33 YEARS	MADISON
BURGLARY-RESIDENTIAL	8 YEARS	MADISON
STATUTORY RAPE	33 YEARS	MADISON

MDOC# 211559 **Gender: MALE** **Age: 23**

Name: CHARLES,GAYLES **Race: BLACK** **Total Term To Serve: 26 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ARMED ROBBERY	26 YEARS	DESOTO
ARMED ROBBERY	26 YEARS	DESOTO

MDOC# 157731 **Gender: MALE** **Age: 27**

Name: CONTI,TILLIS **Race: BLACK** **Total Term To Serve: 10 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
POSSESSION OF CONTROLLED SUBSTANCE	3 YEARS	WARREN
POSSESSION OF FIREARM BY CONVICTED FELON	7 YEARS	WARREN

MDOC# 216587 **Gender: MALE** **Age: 21**

Name: CURTIS,WILSON **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
BURGLARY-RESIDENTIAL	10 YEARS	RANKIN
BURGLARY-VEHICLE	7 YEARS	RANKIN
BURGLARY-VEHICLE	3 YEARS	RANKIN
RECEIVE STOLEN PROPERTY	10 YEARS	RANKIN
BURGLARY-VEHICLE	YEARS	RANKIN

MISSISSIPPI DEPARTMENT OF CORRECTIONS

LIST OF ACTIVE INMATES SERVING TIME

REPORT DATE : January 27,2020

MDOC# 105808 **Gender: MALE** **Age: 38**

Name: DANIEL,GUTHRIE **Race: WHITE** **Total Term To Serve: 55 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
POSS OF CNTLD SUBST WITH INTENT	50 YEARS	MADISON
METHAMPHETAMINE - POSSESSION	5 YEARS	OKTIBBEHA

MDOC# 184836 **Gender: MALE** **Age: 29**

Name: DEANGELO,TAYLOR **Race: BLACK** **Total Term To Serve: 15 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ARMED ROBBERY	15 YEARS	ATTALA

MDOC# 131851 **Gender: MALE** **Age: 33**

Name: DEAUNTE,LEWIS **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
MANSLAUGHTER	20 YEARS	WARREN

MDOC# 184112 **Gender: MALE** **Age: 31**

Name: DEMARCUS,TIMMONS **Race: BLACK** **Total Term To Serve: 32 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
KIDNAP-	30 YEARS	MADISON
KIDNAP-	32 YEARS	MADISON
CONSPIRACY TO COMMIT A CRIME	5 YEARS	MADISON
ARMED ROBBERY	32 YEARS	MADISON

MDOC# 164936 **Gender: MALE** **Age: 28**

Name: DERRICK,PAM **Race: BLACK** **Total Term To Serve: 6 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
THEFT X TAKING MOTOR VEHICLE	4 YEARS	WASHINGTON
RECEIVE STOLEN PROPERTY	1 YEARS	WASHINGTON

CONSPIRACY	4 YEARS	WASHINGTON
GRAND LARCENY	4 YEARS	WASHINGTON
AGGRAVATED ASSAULT	5 YEARS	WASHINGTON

MDOC# 160736 **Gender: MALE** **Age: 28**

Name: DERRICK,ROGERS **Race: BLACK** **Total Term To Serve: 15 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
BURGLARY-RESIDENTIAL	15 YEARS	HINDS
POSSESS STOLEN PROP	5 YEARS	HINDS

MDOC# 145959 **Gender: MALE** **Age: 31**

Name: DESMOND,HARDY **Race: BLACK** **Total Term To Serve: 10 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ROBBERY	2 YEARS	WASHINGTON
CONSPIRACY	5 YEARS	WASHINGTON
ARMED ROBBERY	8 YEARS	WASHINGTON

MDOC# 117837 **Gender: MALE** **Age: 38**

Name: H.D.,SCOTT **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
MURDER 2ND DEGREE	20 YEARS	TALLAHATCHIE

MDOC# 106197 **Gender: MALE** **Age: 34**

Name: JONATHAN,HAM **Race: BLACK** **Total Term To Serve: 11 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
COCAINE-POSSESS	6 YEARS	RANKIN
COCAINE-SELL	5 YEARS	RANKIN

MISSISSIPPI DEPARTMENT OF CORRECTIONS

LIST OF ACTIVE INMATES SERVING TIME

REPORT DATE : January 27,2020

MDOC# 162538 **Gender: MALE** **Age: 32**

Name: JUSTIN,JAMES **Race: BLACK** **Total Term To Serve: 60 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
AGGRAVATED ASSAULT	20 YEARS	ATTALA
ARMED ROBBERY	20 YEARS	ATTALA
CONSPIRACY TO COMMIT A CRIME	5 YEARS	ATTALA
MANSLAUGHTER	20 YEARS	ATTALA

MDOC# 110851 **Gender: MALE** **Age: 42**

Name: KURIAKI,RILEY **Race: BLACK** **Total Term To Serve: LIFE**

OFFENSE	TERM TO SERVE	COUNTY CONV
SEXUAL BATTERY	30 YEARS	ATTALA
HOMICIDE/MURDER	LIFE	ATTALA

MDOC# 160323 **Gender: MALE** **Age: 26**

Name: LARRY,MAXWELL **Race: BLACK** **Total Term To Serve: 16 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
BURGLARY LARCENY-UNOCCUPIED DWELLING	10 YEARS	STONE
ROBBERY	6 YEARS	HARRISON

MDOC# 124724 **Gender: MALE** **Age: 31**

Name: LEMARTINE,TAYLOR **Race: BLACK** **Total Term To Serve: 30 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
AGGRAVATED ASSAULT	YEARS	RANKIN
BURGLARY LARCENY-UNOCCUPIED DWELLING	YEARS	RANKIN
ARMED ROBBERY	30 YEARS	RANKIN

MDOC# 217140 **Gender: MALE** **Age: 22**

Name: MICHAEL,AMOS **Race: BLACK** **Total Term To Serve: 7 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ESCAPE-JAIL	5 YEARS	HOLMES
BURGLARY-NONRESID	2 YEARS	HOLMES

MDOC# 157916 **Gender: MALE** **Age: 31**

Name: PHILLIP,WEBSTER **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
MANSLAUGHTER	20 YEARS	WASHINGTON

MDOC# 208459 **Gender: MALE** **Age: 25**

Name: PITRELL,BRISTER **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
ARMED ROBBERY	20 YEARS	HINDS
AGGRAVATED ASSAULT	20 YEARS	HINDS
ARMED ROBBERY	20 YEARS	HINDS

MDOC# 120671 **Gender: MALE** **Age: 31**

Name: QUENTEN,JOHNSON **Race: BLACK** **Total Term To Serve: 7 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
CHILD ABUSE	7 YEARS	HINDS

MDOC# 130596 **Gender: MALE** **Age: 38**

Name: TERRANCE,MCKINNEY **Race: BLACK** **Total Term To Serve: 10 YEARS**

OFFENSE	TERM TO SERVE	COUNTY CONV
POSSESSION OF CONTROLLED SUBSTANCE	10 YEARS	JACKSON
POSS OF CNTLD SUBST WITH INTENT	8 YEARS	HARRISON

MDOC# K9384 **Gender: MALE** **Age: 37**

Name: TYREE,ROSS **Race: BLACK** **Total Term To Serve: 10 YEARS**

MISSISSIPPI DEPARTMENT OF CORRECTIONS

LIST OF ACTIVE INMATES SERVING TIME

REPORT DATE : January 27,2020

OFFENSE	TERM_TO_SERVE	COUNTY_CONV
VEHICLE THEFT	10 YEARS	MARION
ROBBERY	10 YEARS	LAMAR

MDOC# K4717 **Gender: MALE** **Age: 37**

Name: WILLIE,FRIEND **Race: BLACK** **Total Term To Serve: 20 YEARS**

OFFENSE	TERM_TO_SERVE	COUNTY_CONV
AGGRAVATED ASSLT-DOMESTIC INVOLVEMENT	20 YEARS	LEE
BURGLARY LARCENY-RESIDENTIAL	YEARS	LEE

STATE OF __Mississippi______________)

COUNTY OF __Hinds_______________)

I, _Audrey McAfee__________________________, hereby certify that I am the _Deputy Administrator____________ of the Mississippi Department of Corrections______, a division of the State of Mississippi situated in the county and State aforesaid, that in my legal custody as such officer are the computerized files and records of persons heretofore committed to said penal institution; that all documents attached hereto are based on the original records of persons hereto committed to said penal institution who serve a term of imprisonment therein; the foregoing and attached reports are, a full, true and correct transcript and copy derived from its said original.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of January 2020.

Signature

_Deputy Administrator
Technology and Program Services
Official Title

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

MICHAEL AMOS, et al. **PLAINTIFFS**

VS. **CIVIL ACTION NO. 4:20-CV-07-DMB-JMV**

PELICIA E. HALL, et al. **DEFENDANTS**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Defendants, like the rest of Mississippi's elected leaders and the public, want to see positive changes at Parchman as soon as possible, but the preliminary injunctive relief requested by Plaintiffs is not the means to that end. Plaintiffs have asked the Court to immediately hold an evidentiary hearing at Parchman and to appoint a private, third-party to "step into the shoes of the warden" and "assume control of day-to-day operations" at Parchman. Plaintiffs provide no factual support that such a drastic measure would actually benefit or improve current conditions; instead, such an abrupt change could very well make matters worse. Plaintiffs do not identify the qualifications that the appointee would possess, how the appointee's operations would be funded, or the specific changes that the appointee would seek to implement. As the declarations attached to this response brief demonstrate, current Parchman officials are working diligently with the resources that they have to provide a reasonably safe environment for inmates.

The recent nationwide rise of violence, riots, and suicides in prisons is well documented and indisputable. The inmates housed in Parchman, and Unit 29 in particular, include violent and dangerous individuals. The rapid growth of gangs in prison and resulting gang-related violence is a significant challenge as well. Mississippi's corrections officers and elected leadership

recognize the tremendous challenges at Parchman, including the recent violence and tragic deaths, and they are currently working to address the issues.

Unfortunately, complaints about prison conditions are not new and they are not unique to Parchman or Mississippi. The Prison Litigation Reform Act ("PLRA") was enacted to limit court involvement in directing state prison operations. In this case, Plaintiffs are asking the Court for an order of so-called "relief" that is premature, unprecedented, inconsistent with both the PLRA and preliminary-injunction standards, and unsupported by any evidentiary basis. Indeed, Plaintiffs' emergency motion does not even seek an appropriate remedy that would directly address what they claim are unconstitutional conditions.

It must also be emphasized that Plaintiffs' Complaint and motion before this Court are not part of a class action on behalf of all inmates at Parchman. And of course, generalized grievances about prison conditions do not state injuries for purposes of presenting a justiciable case or controversy. Instead, the claims at issue are limited to those of 29 individual Plaintiffs.[1] Any claims held by other inmates who might have allegedly suffered injuries related to prison conditions are not before the Court. The focus in this case should be on whether these particular Plaintiffs have carried their "heavy burden" to demonstrate entitlement to the extraordinary remedy of granting preliminary injunctive relief. As shown below, they have not. The motion is deficient on a number of grounds and should be denied.

FACTS

While it is undisputed that the Mississippi State Penitentiary at Parchman, Mississippi ("MSP" or "Parchman") has experienced very serious issues in recent days and weeks as a result of inmate violence, the unsupported allegations in Plaintiffs' motion and related submissions are

---

[1] *See* Exhibit 1 to the Declaration of Sean Smith, which is attached to Defendants' response as part of Exhibit A and includes information related to Plaintiffs and their convictions.

very much disputed. *See* Declarations of Jeworski Mallett, John Sprayberry, and Sean Smith collectively attached to Defendants' response as Exhibit A.

On December 29, 2019, an inmate at the South Mississippi Correctional Facility was killed in a gang-related altercation. Although Parchman and other prisons around the State were immediately placed on lockdown, that incident set off a chain reaction, resulting in further gang-related inmate violence. The violence contributed, at least in part, to the tragic deaths of multiple Parchman inmates. *See* Doc. 14 at 3, n.1. As Mississippi's elected leaders have acknowledged, the violence and other inmate activity has also resulted in diminished living conditions for many inmates at Parchman.[2] Importantly, however, Plaintiffs' unsworn, redacted "affirmations" attached to their motion are inaccurate and misleading as to the existence, extent, and root cause of conditions at Parchman. Moreover, the State has undertaken extraordinary measures to combat inmate violence and remediate the living conditions at Parchman. *See* Ex. A.

As discussed below, Plaintiffs' so-called "affirmations," which are redacted and unsworn, are not evidence, and therefore, cannot serve as a basis for granting the preliminary relief Plaintiffs seek or any other relief. *See* Fed. R. Civ. P. 65(b); Doc. 13-1. Many of the central allegations in Plaintiffs' motion and "affirmations" are simply not true, are exaggerated, or are misleading because they are without context or because Plaintiffs conveniently omit the known cause of the condition. As shown in Exhibit A to Defendants' response, Mississippi corrections officials have submitted sworn declarations addressing Plaintiffs' allegations in turn:

- Showers – Prior to December 29, inmates were extended normal shower privileges. When lockdowns are instituted for inmates' and corrections officers' safety, it is

[2] *See, e.g.*, Sarah Warnock, *Gov. stations an agent at Parchman oversee, review MDOC employees and inmates*, CLARION LEDGER (Jan. 23, 2020), online at https://www.clarionledger.com/videos/news/2020/01/23/tate-reeves-stations-agent-parchman-prison/4558311002/.

necessary to temporarily suspend shower and other privileges. Shower privileges were restored as of January 21, 2020.[3]

- Medical Care – Lockdowns required temporary suspension of the ability to visit the medical unit. Since the lockdown was initiated, medical personnel have made rounds throughout Parchman to deliver medications and provide medical care. Inmates have been and continue to be provided their medical prescriptions.

- Corrections Officers – Since December 29, the Mississippi Department of Corrections ("MDOC") has commissioned supplemental correctional officers from various jails and state agencies to address the officer shortage.

- Pests – Parchman has a permanent, full-time pest-control specialist whose only duty is to eliminate pests, and that person is currently providing services to Parchman.

- Plumbing – Inmates cause flooding and other problems by flushing their pillows, sheets, cell phones, and other objects down the toilets. Since December 29, officials have spent thousands of dollars commissioning contractors to remedy the issues. These efforts are stalled by inmates' continued flushing of items and re-flooding their cells. Inmates constantly attack the infrastructure at Parchman. Extensive corrective efforts are ongoing.

- Water – Plaintiffs' allegations as to deprivation of water are simply untrue. The water supply was interrupted for a 12-hour period as a result of a significant weather event. The water supply has been restored by MDOC crews and outside contractors. Bottled water was made available to inmates in the interim. MDOC officials have not observed water that is allegedly contaminated with human waste or is brown in color. Inmates drink the same water as officers. Parchman has an officer whose duty is to ensure compliance with laws regarding the water supply, and Parchman is in compliance with such laws.

- Roof – Parchman officials have undertaken repair efforts to address leaks in Unit 29's roof. The leaks existed in part as a result of inmates' tampering. Corrections officers on site at Parchman are unaware of the presence of alleged black mold. Plaintiffs have not requested that officials investigate any of their cells to determine whether black mold exists, and Parchman officials are not aware of any tests, studies, or reports that indicate the presence of black mold.

- No Meals – Plaintiffs' allegations regarding meals are simply untrue. Multiple meals are provided to inmates on a daily basis. Safety measures taken in lockdown require officers to deliver meals to inmates' cells, which results in some inmates not receiving food according to their ordinary schedules, but the inmates are receiving meals.

---

[3] Parchman generally maintains logs to document extension of privileges or services to inmates. Due to the unusually short time frame Defendants had to respond to Plaintiffs' motion, Defendants have not been able to obtain any logs. *But see* Exhibit A to Defendants' response. Defendants reserve the right to supplement this response with additional evidence, including Parchman logs, to document the privileges and services that have been afforded to Parchman inmates, if necessary or requested by the Court.

- Food Quality – Defendants dispute these allegations. Inmates are not receiving rotten food containing rocks, insects, bird droppings, and/or rat feces.

- Entering Units – Corrections officers' safety is paramount. If alone, an officer will not intervene to attempt to stop violence between inmates until additional officers arrive on the scene. Additional officers are presently on site at Parchman.

- Fires – On December 29 and thereafter, many inmates destroyed their own, others', and Parchman's property. Inmates set fires to their cells and other areas of Parchman. Corrections officials are unaware of any specific incident where a fire was set by an inmate as a life-saving measure. Notwithstanding the lockdown, officers have undertaken measures to ensure that inmates receive medical care and prescriptions.

- Access to Attorneys – Inmates have had access to their attorneys.

- Lights – Corrections officers and contractors from around the State have undertaken efforts to repair lighting damaged by inmate destruction. When new lighting is installed, inmates often destroy it immediately. In response, Parchman is installing portable lighting outside the units which shines light into the units.

- Commissary – Where possible, officers extend commissary privileges to inmates.

- Heat/Blankets – The heat in some buildings was lost for 12 hours as a result of a storm event. The heat in all buildings was restored after that 12-hour period, and it is currently working properly. New and additional blankets have been provided to inmates since December 29. Inmates continue to destroy their own and others' blankets.

See Exhibit A to Defendants' response.

Plaintiffs assert the "'evidence' makes clear that inmates have alerted officers and other officials to their specific grievances many times, to no avail." Doc. 14 at 12. Not so. Plaintiffs submitted no such "evidence." Plaintiffs assert that "prisoners have worked in good faith . . . to submit grievances through the Administrative Remedy Program" ("ARP"), but again Plaintiffs submit no evidence of such grievances. *Id.* (emphasis added). And importantly, submissions by "prisoners" in general do not equate to submissions by these 29 Plaintiffs.

Plaintiffs submitted a "declaration" from Debra Graham to discuss health risks associated with sewage. Doc. 13-3. Due to the unusually short time restraints of responding to this motion, Defendants have been unable to obtain an expert to respond to Ms. Graham's assertions.

However, while exposure to sewage can result in health risks, Ms. Graham apparently has no personal knowledge of the existence of sewage at Parchman. She has not even visited Parchman. And the "affirmations" she relies on are not affidavits or declarations but are unsworn, self-serving, redacted notes. *Id.* at 2, ¶6. Defendants' investigations reveal that many photographs and videos that have surfaced in the media were staged by inmates. Ms. Graham presumably used the same photographs and videos as a basis for her opinion. *Id.* Ms. Graham does not identify what "other evidence" she purportedly reviewed for her statement. *Id.*

Plaintiffs also do not address the swift and extraordinary efforts of Defendants and other state officials to attempt to cure the conditions at Parchman. First, high-level corrections officers have been recently hired and strategically placed to correct the issues. Governor Reeves appointed an interim MDOC Commissioner, Tommy Taylor, to combat issues at Parchman and elsewhere.[4] The Governor also appointed a search committee for a permanent MDOC Commissioner. Further, MDOC and Defendants coordinated an emergency effort to move 375 inmates to private prisons near Parchman.[5]

Governor Reeves recently visited Parchman and other Mississippi facilities and has stated plans to initiate other correctional measures. Warnock, *Gov. stations an agent at Parchman*, CLARION LEDGER (JAN. 23, 2020). Among other things, the Governor has "deployed an agent to Parchman to conduct a wide-ranging criminal investigation." *Id.* He has stated that MDOC will "rebuild the integrity of the system." *Id.* The Governor and the State are "doing everything we can to minimize and mitigate any future events" at Parchman. *Id.*

---

[4] *Mississippi governor: Prison violence was a 'catastrophe'*, AP (Jan. 17, 2020), online at https://wreg.com/2020/01/17/mississippi-governor-prison-violence-was-a-catastrophe/. Commissioner Pelicia Hall, a named Defendant in this case, is no longer with MDOC. *Id.*

[5] As stated by Governor Reeves, efforts are underway to move inmates. Warnock, *Gov. stations an agent at Parchman*, CLARION LEDGER (Jan. 23, 2020). Not only is moving inmates an exceptionally difficult task, plans for moving prisoners are not shared with the general public for safety reasons.

Apart from the Governor, other MDOC officials are undertaking unprecedented measures to restore safety and conditions at Parchman following the inmate violence and destruction. The following are some, but not all, of those measures:

- MDOC has spent significant funds over and above its annual budget to combat the violence and destruction at Mississippi prisons, including Parchman;
- Corrections officers and agents from across the State and from other states spent nearly two weeks at Parchman assisting with inmate safety and other critical operations;
- Outside contractors from Mississippi and elsewhere have repaired and re-repaired vandalized facilities, including lighting, plumbing, water supply, and heating;[6]
- Cleaning and re-cleaning units is underway;
- Improvements to administrative functions have been and are being undertaken;
- Interim personnel are being appointed to fill vacant positions;
- Officers are being screened for gang affiliation;
- Substantial resources are being expended to reinstate inmate privileges;
- Officers and investigators are devoting substantial resources to finding and seizing cell phones, which are a contributing factor to inmate violence; and
- Lockdowns remain in place in some units to facilitate inmate safety and to ensure investigators can properly identify the inmates responsible for the recent violence.

See Exhibit A to Defendants' response.

The recent violence at Parchman is unfortunate, but the evidence shows that Defendants and the State are working arduously towards a resolution.

For the reasons discussed below, the Court should deny Plaintiffs' motion.

[6] Officials state, and work orders will show, that the MDOC has spent thousands of dollars on contractors and materials to repair vandalized facilities, but such efforts are thwarted by further inmate destruction as soon as the repairs are completed.

ARGUMENT

I. The PLRA restricts the authority of federal courts to issue orders for prospective relief.

Congress enacted the Prison Litigation Reform Act ("PLRA") in 1996 to bring prison condition litigation under control. *United States v. Territory of the Virgin Islands*, 884 F. Supp. 2d 399, 406 (D. V.I. 2012) (citing *Woodford v. Ngo*, 548 U.S. 81, 114 (2006) ("The PLRA contains a variety of provisions to bring this [prison condition] litigation under control."). The primary purpose of the PLRA was "to restrict the authority of federal courts to issue and enforce compliance with orders for prospective relief, and thus to curb the involvement of the federal judiciary in prison management." *Territory of the Virgin Islands*, 884 F. Supp. 2d at 408 (citing *Gilmore v. California*, 220 F.3d 987, 991 (9th Cir. 2000) ("It is clear that Congress intended the PLRA to revive the hands-off doctrine," the former "rule of judicial quiescence" that the federal judiciary not be involved with the problems of state-run prisons.); *Inmates of Suffolk Cnty. Jail v. Rouse*, 129 F.3d 649, 655 (1st Cir. 1997) ("Congress passed the PLRA in an effort, in part, to oust the federal judiciary from day-to-day prison management.")).

Under the PLRA, "[n]o action shall be brought with respect to prison conditions under section 1983 . . . , or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). "The PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes." *Porter v. Nussle*, 534 U.S. 516, 532 (2002). Exhaustion is mandatory, even if the inmate seeks monetary relief. *Booth v. Churner*, 532 U.S. 731, 740-41 (2001). The purpose of the requirement "is to give an agency 'an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court' and to encourage the efficient resolution of claims." *Missouri v.*

Domino, 2018 WL 7051035, at *2 (S.D. Miss. Nov. 15, 2018) (quoting *Woodford* , 548 U.S. at 89); *see also Days v. Johnson*, 322 F.3d 863, 866 (5th Cir. 2003). Plaintiffs do not allege that they have exhausted their available administrative remedies.[7]

Moreover, the PLRA "greatly limits the ability of a court to fashion injunctive relief." *Dockery v. Hall*, No. 13-cv-326, Doc. 850 at 14 (S.D. Miss. Dec. 31, 2019). It provides that "prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs." 18 U.S.C. § 3626(a)(1)(A). Before preliminary injunctive relief can issue, a district court must find that such relief "is narrowly drawn, extend[s] no further than necessary to correct the harm the court finds requires preliminary relief, and [is] the least intrusive means necessary to correct that harm." *Id*. at § 3626(a)(2) (emphasis added). (Taken together, these requirements are commonly referred to as the "need-narrowness-intrusiveness" standard.) The Court must also "give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the relief." *Id.* As shown below, the so-called "relief" requested by Plaintiffs is not the "least intrusive means necessary" to correct the conditions at Parchman.

II. The "relief" requested by Plaintiffs is not appropriate under the PLRA.

The purpose of a temporary restraining order ("TRO") is "to preserve the status quo and prevent irreparable harm, but only until the court can hold an adversarial hearing for a preliminary injunction[,]" and the purpose of a preliminary injunction is typically to "preserve

[7] The Complaint is silent on the issue, and Plaintiffs' supporting memorandum simply states that "prisoners" have "worked in good faith … to submit grievances through the Administrative Remedy Program and thus alert the appropriate officials to the grave problems taking place. Yet the complete breakdown in the systems at Parchman has rendered the process completely unavailable and inaccessible." Doc.14 at 12 (citing Exhibit A, Doc. 13-1). Plaintiffs failed to demonstrate that each of the named Plaintiffs have individually exhausted their administrative remedies. Defendants have not had an opportunity to investigate this issue, and therefore, Defendants reserve all rights with respect to dismissal of some or all of the claims based on a failure to exhaust administrative remedies.

the *status quo* during the course of litigation until the court can hold a trial on the matter." *Walker v. Turner*, 2019 WL 615360, at *1 (N.D. Miss. Feb. 11, 2019) (citations omitted).[8]

The "relief" requested in Plaintiffs' motion and memorandum does not seek to prohibit Defendants from taking action nor does it seek to require Defendants to act. Instead, Plaintiffs ask the Court to "hold an evidentiary hearing on the record in Parchman itself so that the Court may speak with inmates in person and inspect the facilities," and that the Court appoint a receiver to "step into the shoes of the warden" and "assume control of day-to-day operations" at Parchman, or in the alternative, appoint an independent "special monitor" to provide oversight at Parchman. Doc. 14 at 15-20. This motion is not the proper medium for such extraordinary requests. Regardless, the "relief" is premature and inappropriate under the PLRA.

a. An "evidentiary hearing" at Parchman is not proper, and the eventual hearing in this case should be conducted only after the parties have had an opportunity to develop the factual record.

The problems with the "evidentiary hearing" request are many: (1) Plaintiffs cite no authority to support their "unusual" request for an immediate "evidentiary hearing" at the prison; (2) any eventual "evidentiary hearing" must be fair and therefore cannot be held at Parchman; and (3) the eventual evidentiary hearing should be held only after the parties have had a chance to develop the factual record and must include an opportunity for cross examination.

Plaintiffs conflate their request for an "evidentiary hearing" at Parchman with a correctional facility tour that was conducted by a judge in another state in an unrelated case. Plaintiffs assign importance to a New York criminal case where the judge toured the Metropolitan Detention Center ("MDC") "on the record . . . [and had] conversations with

[8] Plaintiffs moved "pursuant to Rule 65 of the Federal Rules of Civil Procedure" for a TRO and preliminary injunctive relief. *See* Doc. 13. Before a TRO can be issued, Plaintiffs must set forth "specific facts in an affidavit or a verified complaint" to "clearly show that immediate and irreparable injury, loss, or damage will result to the movant . . . ." Fed. R. Civ. P. 65(b). Plaintiffs failed to do so.

inmates at the MDC." Doc. 14 at 16. In other words, although Plaintiffs request "an evidentiary hearing on the record at Parchman," Plaintiffs cite no authority for such an "unusual" request. Doc. 14 at 15. Plaintiffs cite only to a case where a facility tour was conducted in connection with a criminal hearing that was actually held in a courtroom and not at the correctional facility.[9] The facility walk-through in the New York case was not an evidentiary hearing. Although it was conducted "on the record, the court did not allow for an orderly presentation of evidence" as is required in a fair evidentiary hearing, and the court did not permit cross examination of the inmates. *See, e.g.*, *United States v. Jimenez*, 464 F.3d 555, 559 (5th Cir. 2006) (quoting *Davis v. Alaska*, 415 U.S. 308, 317 (1974) ("[Cross-examination] is the principal means by which the believability of a witness and the truth of his testimony are tested.")).

Moreover, any evidentiary hearing in this case must be *meaningful* and *fair*, especially because of the "extraordinary remedy" of preliminary injunction sought by Plaintiffs. *Amando v. Whitfield*, 2017 WL 1102883, at *1 (N.D. Tex. Feb. 28, 2017) (quoting *United States v. Jefferson Cty.*, 720 F.2d 1511, 1519 (5th Cir. 1983)). Federal Rule of Civil Procedure 65(a) states that "a preliminary injunction [shall issue] only on notice to the adverse party." Fed. R. Civ. P. 65(a). The Fifth Circuit has stated this "notice requirement . . . mean[s] that 'where factual disputes are presented, the parties must be given a <u>fair</u> <u>opportunity</u> and a <u>meaningful</u> <u>hearing</u> to present their

[9] The New York case cited by the Plaintiffs is inapposite. Unlike here, the plaintiffs in that case did not request, and the Eastern District of New York did not order or participate in, the MDC walk-through. *See Fed. Defenders of N.Y., Inc. v. Fed. Bur. of Prisons*, 1:19-cv-660 (E.D.N.Y.). In that Sixth Amendment case, the Eastern District merely ordered that the MDC grant detainees access to their attorneys. Doc. 9 ("Indeed, the temporary restraining order sought by Plaintiff is limited to Plaintiff's request to permit attorney and social visits"). Instead, the February 5, 2019 evidentiary hearing was ordered by another Judge in another district court and in a criminal case. *United States v. Segura-Genao*, 18-CR-219, Dkt. 80 (S.D.N.Y.); *United States v. Perez*, 17-CR-513, Dkt. 60 (S.D.N.Y.). The MDC walk-throughs in those criminal cases occurred months after the criminal proceedings were initiated. Thus, the *Federal Defenders* case does not stand for the proposition that courts have or should order hearings at penal institutions immediately upon filing of a lawsuit or a motion for TRO. Neither does it stand for the proposition that courts have or should conduct hearings at detention facilities as a precursor to ordering those institutions to take corrective measures to cure unconstitutional conditions. The walk-through in the New York criminal case was not conducted for that purpose.

differing versions of those facts before a preliminary injunction may be granted.'" *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) (quoting *Commerce Park at DFW Freeport v. Mardian Const. Co.*, 729 F.2d 334, 342 (5th Cir. 1984)) (emphasis added). A "fair" hearing cannot be held at Parchman. Contrary to their bald statements, it is clearly Plaintiffs' goal to "sway the Court" with "emotional elements" that would prejudice any fact finder.[10]

Finally, it would be improper for the Court to award preliminary injunctive relief, much less the drastic relief sought by Plaintiffs, based on a hurried and undeveloped factual record and without permitting Defendants and elected leaders to address the concerns at Parchman. Defendants and MDOC are currently undertaking extraordinary efforts to stabilize Parchman, address the allegedly deteriorated conditions, and minimize further inmate violence. *See* Ex. A. To that point, an immediate hearing at the prison could destabilize the situation. *See Williams v. Krystopa*, 1998 WL 848069, at *1 (E.D. Pa. Dec. 8, 1998) (prison visits can be destabilizing, even under the best of conditions); *State v. O'Neal*, 718 S.W.2d 498, 502 (Mo. 1986) (same); *and Nimkoff v. Dollhausen*, 262 F.R.D. 191, 195–96 (E.D.N.Y. 2009) (same). Moreover, the logistical demands of a hearing at Parchman (such as moving court personnel, counsel for all parties, and devices necessary to present evidence) would be imprudent and disruptive. And although federal hearings are generally open to the public, a hearing at Parchman could not be open to the public for obvious safety reasons. *Smith v. Klecker*, 554 F.2d 848, 849 (8th Cir. 1977) (cancelled hearing at prison because it "would be subject to the . . . open meetings law and warned of problems with security and false testimony"). Also, the Court would likely not gain an

[10] In addition to not being proper or fair, Plaintiffs have pointed to no case where a court conducted an evidentiary hearing at a prison at the initial stages of litigation or in connection with a motion for preliminary injunctive relief. Research has not revealed any courts within the Fifth Circuit that have done so. Judges have of course toured prisons, but almost always as a part of a trial on the merits. Again, touring a facility is much different than what Plaintiffs are requesting.

accurate picture of the facts from an immediate hearing at Parchman. For the above reasons, an immediate evidentiary hearing at Parchman would be improper.

b. No "special master" or "independent monitor" should be appointed.

"The PLRA has substantially limited the capacity of federal courts to appoint special masters to oversee prison conditions, specifically in order to ensure compliance with the Eighth Amendment." *Webb v. Goord*, 340 F.3d 105, 111 (2d Cir. 2003).[11] *See Ctr. v. Lampert*, 726 F. App'x 672, 676 (10th Cir. 2018) (upholding denial of appointment of court advocate to oversee prison operations). The Act "provides that a federal court may not grant any prospective relief at all—let alone appoint a special master to administer a state prison system—unless the court finds that 'such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.'" *Webb*, 340 F.3d at 111 (citing 18 U.S.C. § 3626(a)(1)(A)) (emphasis added).

Plaintiffs' requests that the Court appoint what amounts to a receiver to "administer appropriate relief" or, in the alternative, an independent monitor to provide "neutral and close oversight of conditions" are premature, at best, given the fact the Court has not made any determinations as to "appropriate relief." Doc. 13 at 2; Doc. 14 at 20. The appointment of a special master is "a means of achieving previously ordered relief, rather than a form of relief itself." *Territory of the Virgin Islands*, 884 F.Supp.2d at 409 (citations omitted) (emphasis added). The request for appointment of a private, third-party receiver is not proper "relief."

Nonetheless, Plaintiffs seek the draconian appointment of what amounts to a receiver to assume control of the day-to-day operations at Parchman and step into the shoes of the warden. Doc. 14 at 17. Such an appointment must be accompanied by findings that the need-narrowness-

[11] As noted above, the purpose of the PLRA was "curb the involvement of the federal judiciary in prison management." *Territory of the Virgin Islands*, 884 F. Supp. 2d at 408.

intrusiveness standard is satisfied. *See Webb*, 340 F.3d at 111.[12] Yet, here, Plaintiffs do not offer a shred of evidence that such an appointment is necessary or will remedy any of their complaints. For example, Plaintiffs provide no evidence as to how the appointment would cure what Plaintiffs allege is a gross understaffing problem. And Plaintiffs have submitted no evidence that some other unspecified staffing plan, assuming the special master could implement one, would prevent further inmate-on-inmate violence. And Plaintiffs have not indicated what authority the special master would have to repair the alleged leaking roof or to undertake other construction or repair activities. Furthermore, Plaintiffs cannot demonstrate that the appointment of a special master is narrowly drawn or the least intrusive means necessary to correct the alleged violations when the Governor has announced a number of measures he is implementing to address some of the very issues Plaintiffs raise. Plaintiffs offer no evidence to contradict the possibility that the Governor's measures will remedy or minimize the alleged problems.

In an attempt to support their request, Plaintiffs rely on cases that are distinguishable and, in many instances, prove the point that now is not the time for the appointment of a special master or monitor. For example, Plaintiffs claim that courts faced with litigation over prison conditions have a long history of appointing special masters. Doc. 14 at 19. But not one of the cases Plaintiffs cited in support of that statement involved the appointment of a special master prior to a judicial determination that injunctive relief was appropriate.[13]

---

[12] To the extent Plaintiffs are seeking the appointment of a receiver instead of a special master, this is the minimum standard required. *Plata v. Schwarzenegger*, 603 F.3d 1088, 1095 (9th Cir. 2010) (quoting 18 U.S.C. § 3626(a)(1)(A)).

[13] *Ruiz v. Estelle*, 679 F.2d 1115, 1127-28 (5th Cir.), amended in part, vacated in part, 688 F.2d 266 (5th Cir. 1982) (special master and several monitors appointed under Rule 53 to monitor implementation of court-ordered relief following 159 days of trial, 349 witnesses, and 1,565 exhibits); *Union Cty. Jail Inmates v. Di Buono*, 713 F.2d 984, 988 (3d Cir. 1983) (district court approved consent agreement between parties in October 1981 and appointed a Rule 53 special master in 1982 to investigate conditions at jail and assess defendant's efforts under consent judgment); *Inmates of D.C. Jail v. Jackson*, 158 F.3d

Plaintiffs also claim the Supreme Court has confirmed that where courts are faced with unconstitutional prison conditions, appointment of special masters and receivers remain appropriate remedies, citing *Brown v. Plata*, 563 U.S. 493, 511 (2011). *See* Doc. 14 at 19. That case concerned two cases about prison conditions in California. The first to commence, *Coleman v. Brown*, was filed in 1990 and involved a class of seriously mentally ill persons in California prisons. *Brown*, 563 U.S. at 506. In 1995, after a 39-day trial, the *Coleman* district court found "overwhelming evidence of the systemic failure to deliver necessary care to mentally ill inmates" in California prisons. *Coleman v. Wilson*, 912 F.Supp. 1282, 1316 (E.D.Cal. 1995). The court then appointed a special master to oversee development and implementation of a remedial plan. *Brown*, 536 U.S. at 506. The second action, *Plata v. Brown*, was filed in 2001 and involved a class of state inmates with serious medical conditions. *Id*. at 507. After the action commenced, the state conceded that deficiencies in prison medical care violated inmates' Eighth Amendment rights and stipulated to an injunction. *Id.* However, in 2005, after the state failed to comply with that injunction, the court appointed a receiver to oversee remedial efforts. *Id.* The situation here does not fit either scenario, as there have been no decisions and there are no orders in place.

Plaintiffs cite *Ball v. Leblanc*, 2015 WL 4454779, at *2 (M.D. La. July 20, 2015), in support of their statement that the appointment of special masters in prison litigation continues to be familiar in this circuit post-PLRA. Doc. 14 at 19. Unsurprisingly, that case concerned the appointment of a special master at a later stage in the case. *Ball*, 2015 WL 4454779, at *1. Specifically, several months after an evidentiary hearing on the plaintiffs' motion for injunctive

---

1357, 1359 (D.C. Cir. 1998) (in 1975, years after case was filed, district court found constitutional violations and issued an injunction ordering defendant to improve conditions for inmates; district court later found pattern of continuing violations and repeatedly issued orders attempting to bring conditions into compliance; in 1995, court appointed a special master to coordinate with defendant and ordered that jail's medical and mental health services be placed in receivership); *Gary W. v. Louisiana*, 601 F.2d 240, 244-45 (5th Cir. 1979) (two years after entry of a 1976 court order, district court granted plaintiff's request for appointment of a special master under Rule 53).

relief and a trial on the merits, a special master was appointed to oversee the defendants' implementation of the court-ordered remedial plan and report on the defendants' progress. *See Ball v. Leblanc*, 3:13-cv-368, Doc. 87, at 98-99 (M.D. La. Dec. 19, 2013).

Plaintiffs concede they were unable to find a single appellate case in which the Fifth Circuit expressly blessed the use of a special master in post-PLRA prison litigation, but claim many of its sister circuits have. Doc. 14 at 19. Two of the cases they cite involved situations in which parties agreed to the appointment of a special master well into the litigation,[14] and the third simply acknowledged PLRA language stating that a special master may be appointed.[15]

Plaintiffs further contend that the Third Circuit "recently noted that prison oversight remains the quintessential role for a special master," citing *Prometheus Radio Project v. Fed. Commc'ns Comm'n*, 939 F.3d 567, 589 (3d Cir. 2019). That Federal Communications Commission case, which cited a 1982, pre-PLRA case (*Ruiz v. Estelle*), simply stated: "Courts will sometimes appoint a special master to oversee compliance with remedial decrees, but these cases typically involve institutions such as prisons where the Court could not otherwise easily ascertain whether the defendant is complying, <u>and the master's job is limited only to observing and reporting</u>." *Id.* (emphasis added). *Prometheus* is hardly an endorsement of the appointment of a special master to step in and run the day-to-day operations of the prison.

---

[14] *In re Bayside Prison Litig.*, 477 F. App'x 16, 17 (3d Cir. Apr. 17, 2012) (only reference to a special master is to state that cases triggered by homicide of a corrections officer in 1997, which involved numerous jury trials and numerous appeals, resulted in hundreds of claims being "referred to and heard (by consent) before a Special Master in streamlined proceedings"); *Montez v. Hickenlooper*, 640 F.3d 1126, 1129 (10th Cir. 2011) (in 2003, parties in a class action lawsuit filed in the early 1990s entered into a consent decree setting forth actions defendants would take to bring state prison system into compliance and establishing a procedure through which individual inmates could bring damage claims, with consent decree providing that damage claims of class members would be determined by special master, subject to abuse-of-discretion review by district court).

[15] *Armstrong v. Brown*, 768 F.3d 975, 988 (9th Cir. 2014) (did not concern the appointment of a special master, merely recited the language of the PLRA stating that they may be appointed).

Regarding their request for appointment of an independent special monitor, Plaintiffs state that, because of their more limited roles, monitors are not subject to the same restrictions imposed on the appointment of special masters by the PLRA, citing *Handberry v. Thompson*, 446 F.3d 335, 351-352 (2d Cir. 2006). The discussion in *Handberry* regarding restrictions concerned the defendants' responsibility to pay the court-appointed monitor, not whether the "need-narrowness-intrusiveness" standard applied. Regardless, as in the other cases cited by Plaintiffs, the monitor was appointed years after the case was filed and only after the court ruled in favor of the plaintiffs and adopted a remedial plan. *Id*. at 339-340. She was to monitor the defendants' efforts to implement the court-ordered plan and submit a report. *Id*. at 340. Here, there is no plan for a monitor to oversee, and the request therefore is at best premature.

All of these cases make clear that no special master or monitor should be appointed without a full evidentiary hearing where Defendants have adequate time to address Plaintiffs' constitutional allegations with fact and expert testimony and fair and meaningful cross examination. The Court should not do so via a truncated TRO or preliminary injunction proceeding lacking full development of the facts.

III. Plaintiffs have failed to satisfy their burden to show that the Court should grant the requested temporary and preliminary injunctive relief.

Even if Plaintiffs' requests complied with the PLRA, which they do not, Plaintiffs fail to satisfy their heavy burden under the test for allowing the extraordinary remedy of preliminary injunctive relief. In *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974), the Fifth Circuit established the four prerequisites for granting a preliminary injunction:

> (1) a substantial likelihood that plaintiff will prevail on the merits;
>
> (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;

> (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant; and
>
> (4) that granting the preliminary injunction will not disserve the public interest.

Id. "In considering these four prerequisites, the court must remember that a preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion." *Id.* at 573. To obtain temporary or preliminary injunctive relief, Plaintiffs "must carry 'a heavy burden of persuading the district court that all four elements are satisfied,' and failure to carry the burden on any one of the four elements will result in the denial of the preliminary injunction.'" *Leachman v. Harris Cty., Texas*, 779 F. App'x 234, 237 (5th Cir. 2019), as revised (Oct. 2, 2019) (quoting *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985)).

It is critical to bear in mind that Plaintiffs are not just asking the Court to maintain the *status quo*—they are asking the Court to (1) "hold an evidentiary hearing on the record at Parchman" and (2) appoint some unidentified private third party to "step into the shoes of the warden" and "assume control of day-to-day operations" at Parchman." Doc. 14 at 15, 17.[16] Plaintiffs' request for preliminary relief, which "goes beyond maintaining the *status quo*," is "particularly disfavored, and should not be issued unless the facts and the law clearly favor the moving party." *Martinez v. Matthews*, 544 F.2d 1233, 1243 (5th Cir. 1976).

As discussed below, Plaintiffs are not "substantially likely" to prevail on the merits of their claims, particularly given the "deliberate indifference" standard. And Plaintiffs offered no support whatsoever for their position that the Court's failure to grant this extraordinary and drastic request would prevent "irreparable injury." In other words, Plaintiffs have not shown that

---

[16] Courts are not permitted to "micromanage" state prisons. *Gates v. Cook*, 376 F.3d 323, 338 (5th Cir. 2004) (citing *Bell v. Wolfish*, 441 U.S. 520, 562 (1979)).

some unidentified, private third party would be immediately more successful in protecting inmates from harm and in providing sufficient environmental conditions than the current administration. Finally, Plaintiffs' requested relief, which amounts to a judicial takeover of state functions, is not in the public's best interest. Plaintiffs do not even suggest how the requested appointment of what amounts to a receiver would change conditions for the better, much less how such an appointment and accompanying protocols would be funded. Accordingly, Plaintiffs have failed to carry their burden on all four *Canal* prerequisites, and therefore, the Court should deny Plaintiffs' motion for temporary and preliminary injunctive relief.[17]

a. Plaintiffs are not substantially likely to succeed on the merits of their claims.

In determining whether prison officials have violated the Eighth Amendment, courts apply a two-pronged analysis.[18] First, there must be an objective showing that the alleged constitutional deprivation is of a "sufficiently serious" nature. *Wilson v. Seiter*, 501 U.S. 294, 298 (1991); *see also Dockery v. Hall*, 3:13-cv-326-WHB-JCG, Doc. 850 Opinion and Order at 13-14 (S.D. Miss. Dec. 31, 2019). To satisfy the "sufficiently serious" requirement, a prison official's act or omission must result in the "extreme deprivation" of the "minimal civilized measures of life's necessities," *Rhodes v. Chapman*, 452 U.S 337, 347 (1981), or result in an inmate's being "incarcerated under conditions posing a substantial risk of serious harm." *Helling v. McKinney*, 509 U.S. 25, 35 (1993); *see also Davis v. Scott*, 157 F.3d 1003, 1006 (5th Cir. 1998) (quoting *Wilson*, 501 U.S. at 304). Second, the official must have a "sufficiently culpable

[17] The grant or denial of a preliminary injunction is within the discretion of the trial court. *Apple Barrel Productions, Inc. v. Beard*, 730 F.2d 384, 386 (5th Cir. 1984).

[18] The "same subjective deliberate indifference standard has been applied to pre-trial detainees under the Fourteenth Amendment as well as convicted inmates under the Eighth Amendment." *Caston v. Harris*, 2013 WL 5724127, at *1 (N.D. Miss. Oct. 21, 2013) (citing *Hare v. City of Corinth*, 74 F.3d 633, 648 (5th Cir. 1996)). And as Plaintiffs note, the Eighth Amendment applies to the states via the Fourteenth Amendment. Doc. 14 (citing *State of Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463 (1947)).

state of mind." *Wilson*, 501 U.S. at 298. In prison-conditions cases, that means the official must have acted with "deliberate indifference" to a prisoner's health or safety. *Id.* at 302–303. To satisfy the "deliberate indifference" requirement, it must be shown that a prison official "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).

"A prison official acts with deliberate indifference 'only if he knows that inmates face a substantial risk of serious harm and <u>disregards that risk by failing to take reasonable measures to abate it.</u>'" *Jones v. Texas Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018) (quoting Farmer v, 511 U.S. at 847) (emphasis added); *see also Dockery*, 3:13-cv-326-WHB-JCG, Doc. 850 at 23, 36. Here, although Plaintiffs allege that the environmental and social conditions at Parchman are "severe" and pose a substantial risk of harm to inmates, Plaintiffs do not allege any facts to support a claim that the prison officials "disregarded that risk by failing to take reasonable measures to abate it." To the contrary, as shown by the declarations from MDOC personnel, the prison officials have continuously and dutifully taken the reasonable measures that they can afford in an effort address the environmental and safety risks at Parchman. *See* Ex. A. Unfortunately, such measures are almost always rendered futile by the violent, destructive acts of inmates. *Id.* Plaintiffs have presented no evidence to show otherwise, much less evidence that Parchman officials ignored the problems and failed to take reasonable abatement measures.[19]

[19] Plaintiffs' "redacted affirmations of Parchman inmates," Doc. 14-1, are insufficient. They are not affidavits made under oath or declarations under penalty of perjury. And they do not set forth any facts to show that the prison officials intentionally disregarded the alleged risks and failed to take measures to address the risks. Instead, declarations attached to Defendants' response as Exhibit A show that officials have taken many measures to address the risks, many of which are thwarted by actions of inmates. And while lack of adequate funding is alleged, Defendants of course have no role in appropriating funding.

Moreover, as noted above, Governor Reeves announced that he had appointed a special agent at Parchman to investigate conditions and make recommendations, which is part of what Plaintiffs are requesting.[20] Governor Reeves acknowledged "problems in the system" and stated: "We don't want to hide them, we want to fix them."[21] Governor Reeves announced that he and others are already working to implement "common sense" changes, including sending maintenance teams to improve conditions, studying a potential relocation of inmates to another facility, removing contraband, and working to remove corruption from the ranks of officers. The evaluation of conditions at a prison continues throughout the litigation and is not a snap shot in time. *See, e.g.*, *Dockery*, 3:13-cv-326-WHB-JCG, Doc. 850 at 53-55. It is clear that that the State is working to correct the noted problems at Parchman, and the Court should allow it the opportunity to do that before implementing any outside relief, as is required by Fifth Circuit law. *See, e.g.*, *Chisom*, 853 F.2d at 1187. For the above-stated reasons, Plaintiffs are not "substantially likely" to succeed on the merits of their claims.

b. Plaintiffs have not established a substantial threat that they will suffer irreparable harm unless an evidentiary hearing is held at Parchman and the Court appoints what amounts to a receiver to take over as warden.

"Perhaps the single most important prerequisite for the issuance of a preliminary injunction is a demonstration that if it is not granted the applicant is likely to suffer irreparable harm before a decision on the merits can be rendered." *Trinity USA Operating, LLC v. Barker*,

---

[20] Even if the Court were to find a substantial likelihood that Plaintiffs would prevail on their claims, the Court should not grant injunctive relief without first allowing the State to correct the alleged deficiencies. *See Chisom v. Roemer*, 853 F.2d 1186, 1187 (5th Cir. 1988) ("It is now established beyond challenge that upon finding a particular standard, practice, or procedure to be contrary to either a federal constitutional or statutory requirement, the federal court must grant the appropriate state or local authorities an opportunity to correct the deficiencies . . . before the court attempts to draft a remedial plan.").

[21] *See, e.g.*, Sarah Warnock, *Gov. stations an agent at Parchman oversee, review MDOC employees and inmates*, CLARION LEDGER (Jan. 23, 2020), online at https://www.clarionledger.com/videos/news/2020/01/23/tate-reeves-stations-agent-parchman-prison/4558311002/.

844 F. Supp. 2d 781, 786 (S.D. Miss. 2011). Plaintiffs essentially ignore this element of the test, which is detrimental to their motion for preliminary injunctive relief. In fact, the *only* reference that Plaintiffs make to the "irreparable harm" element is to state: "For the purposes of this Motion, it is plain that the totality of the circumstances and conditions at Parchman are causing, and will cause, Plaintiffs to suffer irreparable harm absent immediate relief." Doc 14 at 13. That is not the test. The test is whether there is a substantial threat that Plaintiffs will suffer irreparable harm unless the Court grants the requested relief. Plaintiffs have made no showing that holding an evidentiary hearing at Parchman and appointing a private third party to take over control of the prison would act to prevent any threat of harm. Their conclusory allegation is wholly insufficient to meet the "heavy burden" under this element of the test.

"Without question, the irreparable harm element must be satisfied by independent proof, or no injunction may issue." *White v. Carlucci*, 862 F.2d 1209, 1211 (5th Cir. 1989) (emphasis added, citation omitted). Plaintiffs set forth no such "independent proof" of irreparable harm. "Indeed, where no irreparable injury is alleged and proved, denial of a preliminary injunction is appropriate." *Canal Auth.*, 489 F.2d at 574. Plaintiffs have not shown how the so-called "relief" that they are requesting addresses the problems at hand. Plaintiffs offer no facts to show how such an appointment would better the prison environment or protect inmates. Accordingly, Plaintiffs have failed to show a substantial threat of irreparable harm absent the requested "relief," and therefore, the Court should not issue a preliminary injunction.

c. Plaintiffs are not entitled to a preliminary injunction because they ignore the public's significant interests.

Because Mississippi's interest is indistinguishable from the "public's interest," the final two prerequisites of the *Canal Authority* test are considered together. Plaintiffs must make a "clear showing" "that the threatened injury to plaintiff outweighs the threatened harm the

injunction may do to defendant; and . . . that granting the preliminary injunction will not disserve the public interest." *White*, 862 F.2d at 1211. Plaintiffs have failed to make such a "clear showing." *Id.* Defendants of course do not dispute that Plaintiffs are entitled to constitutional protections or that they would be prejudiced by a denial of constitutional rights. But the public's interests in keeping Mississippi citizens safe, reducing recidivism and violence, allocating an appropriate level of tax-payer funding for prisons through elected representatives, and maintaining autonomy and control over the State's penitentiary, as opposed to having the judicial system run the prison, far outweigh Defendants' requests for an evidentiary hearing and the appointment of a third-party receiver to assume the role of warden.

Mississippi taxpayers finance the operation of public prisons, including Parchman. Plaintiffs have set forth no facts to show how they propose to fund control by the third-party receiver, how much that would cost, the impact such would have on public safety, or how the requested relief would solve the alleged problems. Notwithstanding, they would like for the Court to place into the hands of someone who is "unaffiliated with the state government or prison administration" full control over the prison, presumably including its funding, staffing, security, and all other operations. Plaintiffs merely state conclusively that "it is readily apparent that the relief Plaintiffs seek will promote the public interest." Doc. 14 at 14. But Plaintiffs fail to explain how or why that is the case, and offer nothing to support their position. Accordingly, the Court should deny Plaintiffs' motion for preliminary injunction.

CONCLUSION

For the reasons discussed above, Defendants respectfully request that the Court deny Plaintiffs' Emergency Motion for Temporary Restraining Order and Preliminary Injunction and request such other and further relief as the Court deems appropriate under the circumstances.

Date: January 27, 2020.

Respectfully submitted,

TOMMY TAYLOR, in his official capacity as the Interim Commissioner of the Mississippi Department of Corrections, and MARSHAL TURNER, in his official capacity as the Superintendent of the Mississippi State Penitentiary

By: */s/ Trey Jones*
William Trey Jones, III
One of Their Attorneys

OF COUNSEL:

R. David Kaufman (MSB #3526)
dkaufman@brunini.com
William Trey Jones, III (MSB #99185)
tjones@brunini.com
Karen E. Howell (MSB #102243)
khowell@brunini.com
Cody C. Bailey (MSB #103718)
cbailey@brunini.com
Jacob A. Bradley (MSB #105541)
jbradley@brunini.com
BRUNINI, GRANTHAM, GROWER & HEWES, PLLC
The Pinnacle Building, Suite 100
190 East Capitol Street (39201)
Post Office Drawer 119
Jackson, Mississippi 39205
Telephone: (601) 948-3101
Facsimile: (601) 960-6902

CERTIFICATE OF SERVICE

I, Trey Jones, hereby certify that on January 27, 2020, I caused the foregoing pleading to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record and registered participants.

/s/ Trey Jones
William Trey Jones, III
One of the Attorneys for the Defendants