UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

Elzie Ball, Nathaniel Code, and James Magee, **Plaintiffs,** **vs.** **James M. LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections, Burl Cain, Warden of the Louisiana State Penitentiary, Angela Norwood, Warden of Death Row, and the Louisiana Department of Public Safety and Corrections,** **Defendants.**	**Civil Action No. 13-368-BAJ-SCR** **STATEMENT OF INTEREST OF THE UNITED STATES**

STATEMENT OF INTEREST OF THE UNITED STATES

This litigation presents two questions of vital public importance: (1) Whether Louisiana prison officials are exposing prisoners to extreme heat conditions that constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution or Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12133, and, if so, (2) What remedies are needed to ensure that Louisiana prison officials comply with federal constitutional and statutory civil rights laws. The United States takes no position on the fact-dependent first question.[1] Rather, the United States files this statement of interest to assist the

[1] The United States is aware, however, that the Court granted Plaintiffs' motion for preliminary injunction on July 1, 2013, and in doing so, found that "Plaintiffs have presented an overwhelming amount of evidence indicating that the conditions inside Death Row at Louisiana State Penitentiary are in clear violation of the Eighth Amendment's ban on cruel and unusual punishment." [ECF No. 21 at 2].

Court in determining what remedies would be necessary should the Court find that the Louisiana Department of Corrections violated the federal civil rights of prisoners in its custody. It is the United States' position that if the Court so finds, it should permit Plaintiffs' counsel and representatives to access the Louisiana State Penitentiary at Angola ("Angola") or, in the alternative, appoint an independent monitor to ensure that the injunctive relief Plaintiffs seek is properly implemented.

Interest of the United States

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in federal court.[2] The United States, acting through the Civil Rights Division of the U.S. Department of Justice, has an interest in this matter because the alleged unconstitutional correctional practices at Angola fall within the Civil Rights Division's enforcement authority. Specifically, the Civil Rights Division enforces the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997 *et seq*., which allows it to investigate and remedy unconstitutional conditions of confinement imposed by state and local governments pursuant to a pattern or practice of civil rights violations. *See, e.g. United States v. Miami-Dade County*, No. 13-cv-21570 (S.D. Fla. filed May 1, 2013); *United States v. Cook County, Ill.* No. 10-cv-2946 (N.D. Ill. filed May 13, 2010); *United States v. Erie County, N.Y.*, No. 09-cv-849 (W.D.N.Y. filed Sept. 30, 2009); *United States v. Dallas County, Tex.*, No. 07-cv-1559 (N.D.

[2] The full text of 28 U.S.C. § 517 is as follows: "The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

Tex. filed Sept. 12, 2007); *Jones v. Gusman*, No. 06cv5275 (E.D. La. filed Aug. 31, 2006); *United States v. Terrell County*, Ga.*,* No. 04cv76 (M.D. Ga. filed June 7, 2004).[3]

Background

On June 10, 2013, Plaintiffs Elzie Ball, Nathaniel Code, and James Magee, death row inmates at Angola, filed suit against the Louisiana State Department of Public Safety and Corrections and prison officials seeking declaratory and injunctive relief for extreme heat conditions. Compl. [ECF No. 1]. On June 18, 2013, Plaintiffs moved for a preliminary injunction. Pls.' Mot. for Prelim. Inj. ("Pls.' Mot.") [ECF No. 12]. Defendants responded on June 28, 2013. Defs.' Mem. in Opp. to Pls.' Mot. for Prelim. Inj. ("Defs.' Mem.") [ECF No. 15].

After considering Plaintiffs' "overwhelming amount of evidence," the court granted their Preliminary Injunction Motion on July 1, 2013. Order [ECF No. 21 at 3–4] . The Court found that by Defendants' own reporting, the heat index on death row often exceeds 150 degrees and "put Plaintiffs in substantial risk of death, paralysis and other extreme health problems." Order [ECF No. 21 at 1–2]. In response to Defendants' contention that reducing the heat index would be cost-prohibitive, the Court found "any harm that Defendants might face is financial in nature and therefore plainly outweighed by the threat of substantial injury or death to Plaintiffs." *Id.* at 3–4.

Plaintiffs now seek several forms of injunctive relief, as set forth in their Complaint and Motion for Preliminary Injunction. The requested relief includes ordering Angola to maintain the death row heat index at 88 degrees and requiring Defendants to work with Plaintiffs' experts to implement the heat reduction. Compl. at 11; Pls. Mot. at 26.

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[3] For a more comprehensive list of cases concerning the constitutionality of conditions in correctional facilities, please visit the Civil Rights Division Special Litigation Section's website at http://www.justice.gov/crt/about/spl/findsettle.php.

Discussion

I. If the Court Finds that Unconstitutional Conditions Exist in Angola, the Court Has Broad Authority to Enter Injunctive Relief.

If Plaintiffs prevail on the merits of their claims, this Court has broad authority to order injunctive relief to remedy constitutional violations at Angola. In order to secure final injunctive relief, Plaintiffs must not only prevail on the merits of their claims, they also must demonstrate: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange LLC*, 547 U.S. 388, 391 (2006). Given that the question of whether Plaintiffs have satisfied this standard is intertwined with the fact-dependent question of whether Plaintiffs should prevail on the merits, the United States does not opine on whether Plaintiffs have satisfied this four-prong test.

However, if the Plaintiffs have met their burden, it is well established that "the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies." *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *see also Valley v. Rapides Parish Sch. Bd.*, 702 F.2d 1221, 1225 (5th Cir. 1983); *Gates v. Collier*, 501 F.2d 1291, 1320 (5th Cir. 1974) ("Having found these numerous constitutional violations . . . the court had the duty and obligation to fashion effective relief."). While broad, a court's equitable discretion is not without limits, and a court must tailor injunctive relief to the specific constitutional violations that the relief is meant to correct. *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1041 (5th Cir. 1982). Nonetheless, district courts have wide latitude to fashion comprehensive relief that addresses "each element contributing to the violation" at issue. *Hutto*

v. Finney, 437 U.S. 678, 687 & n.9 (1978); *see also Milliken v. Bradley*, 433 U.S. 267, 282 (1977) ("[W]here . . . a constitutional violation has been found, the remedy does not 'exceed' the violation if the remedy is tailored to cure the 'condition that offends the Constitution.'").

II. Monitoring Mechanisms Are Essential to Ensuring Compliance with the Court's Order.

The effectiveness of injunctive relief is often contingent on some level of compliance monitoring over a court's order to restore constitutional conditions in a correctional facility. If a monitoring system is not in place, reliance on "self-certification" can further endanger the constitutional rights of all inmates who are affected by the defendants' behavior. *Benjamin v. Schriro*, 370 Fed. App'x 168, 171 (2d Cir. 2010); *see also Gary W. v. State of Louisiana*, No. 74-cv-2412, 1987 WL 12120, at *1 (E.D. La. June 9, 1987) (court-ordered independent monitoring "needed to provide an objective assessment to the Court."). The importance of a monitoring mechanism is particularly important when an unconstitutional practice is entrenched. Plaintiffs allege that Defendants' failure to remedy the extreme heat conditions has existed since at least 1991. Pls.' Mot. at 2–3. If the Court finds that this practice is unconstitutional, it will show an entrenchment of Eighth Amendment violations requiring close observation to ensure compliance.

In exercising its enforcement authority under CRIPA, the United States commonly employs two monitoring mechanisms: (1) access to the correctional facility by counsel and representatives (in the form of a team of experts), and (2) court-appointed independent monitors. These monitoring mechanisms are particularly effective and are commonly used by the United States in its corrections practice. Both mechanisms have been approved by the Fifth Circuit.

A. If the Court Finds Liability, Facility Access to Plaintiffs' Counsel and Representatives Is an Appropriate Form of Relief.

Plaintiffs' counsel and representatives' access to Angola is vital to ensuring that Defendants comply with Court-ordered injunctive relief, if granted. Many court orders and settlement agreements in correctional conditions of confinement cases between the Department of Justice and states or local governments contain "full and complete" provisions granting the United States and its agents "unrestricted" access to the facilities in question. Settlement Agreement, *Shreve, et al. v. Franklin County, Oh., et al.*, No. 2:10-cv-644 (S.D. Ohio, filed July 16, 2010) [ECF 94-1 at 11]; Consent Agreement, *Miami-Dade County* [ECF No. 1-5 at 31]; Agreed Order, *Cook County* [ECF No. 3-1 at 53]; Stipulated Order of Dismissal, *Erie County* [ECF No. 225-1 at 32] (providing for "reasonable access . . . once each six (6) month reporting period"); Agreed Order, *United States v. Dallas County, Tex.* [ECF No. 8 at 18]; Order, *Terrell County, Ga.* [ECF No. 82-1 at 28-29] ("DOJ representatives, with their experts, may conduct periodic, unannounced, on-site compliance monitoring tours."); Consent Judgment, *Jones v. Gusman* [ECF No. 466 at 40]. Facility access allows the United States to keep abreast of defendants' implementation of both the ordered relief and the independent monitor's recommendations for achieving that relief. If defendants fail to reach compliance or take any steps toward compliance, on-site observations give the United States the opportunity to advise the court and potentially take further enforcement action.

The same is true in cases involving private plaintiffs. Several courts have ordered that plaintiffs' counsel have access rights to monitor progress with court orders for constitutional prison conditions. *See, e.g., Ruiz v. Johnson*, 164 154 F. Supp. 2d 975, 996 (S.D. Tex. 2001) ("Section XVI of the Final Judgment identifies . . . provisions for prison access and inmate meetings by plaintiffs' counsel for purposes of monitoring defendant's compliance. . . .");

Inmates of D.C. Jail v. Jackson, 158 F.3d 1357, 1359 (D.C. Cir. 1998) (discussing plaintiffs' counsel monitoring prison conditions); *Adams v. Mathis*, 752 F.2d 553, 554 (11th Cir. 1985) (discussing fees of court-ordered compliance monitoring by plaintiff's counsel).

Most pertinently, in *Advocacy Center v. Cain*, No. 3:12-cv-508 (M.D. La. filed Aug. 17, 2012), the Louisiana Protection and Advocacy Agency (P&A) brought an access suit against Angola's prison officials after they denied the P&A access to investigate extreme heat conditions. The parties resolved this litigation through a settlement agreement that provides the P&A's agents, experts Dr. Susi Vassallo and Mr. James Balsamo (the same experts for the plaintiffs in this matter), with access to Angola. Pursuant to the access provisions, Dr. Vassallo and Mr. Balsamo were able to expeditiously investigate the heat conditions on death row without any known disruption to facility operations or prison security. Granting Plaintiffs and their experts access in this case will allow them to function in the same way as in the *Advocacy Center* agreement, but with the ultimate goal of enforcing any relief ordered by the Court.

B. If the Court Finds Liability, It May Appoint an Independent Monitor.

If the Court finds unconstitutional conditions from the excessive heat on death row at Angola, it may also choose to appoint an independent monitor. The authority of the Court to appoint a monitor is well established. *See Ex Parte Peterson,* 253 U.S. 300, 312–13 (1920) (acknowledging inherent power of courts to "appoint persons unconnected with the court to aid judges in the performance of specific judicial duties," and noting that courts have long exercised this power "when sitting in equity by appointing, either with or without the consent of the parties, special masters, auditors, examiners, and commissioners."); *Gates v. Collier*, 501 F.2d 1291, 1321–22 (5th Cir. 1974).

The United States often uses monitors to ensure compliance with settlement agreements or court orders involving correctional facilities. *See, e.g.* Consent Agreement, *Miami-Dade County* [ECF No. 1-5 at 31-33]; Agreed Order, *Cook County, Ill.* [ECF No. 3-1 at 50–52]; Stipulated Order of Dismissal, *Erie County, N.Y.* [ECF No. 225-1 at 33–35] (monitor called a "technical compliance consultant"); Agreed Order, *Dallas County, Tex.* [ECF No. 8 at 19]; Consent Judgment, *Jones* [ECF No. 466 at 40–42]. In addition, the Fifth Circuit has upheld several appointments of outside monitors in the prison condition context. *Sockwell v. Phelps*, 20 F.3d 187, 189 n.2 (5th Cir. 1994); *Miller v. Carson*, 683 563 F.2d 741, 752–53 (5th Cir. 1977). In fulfilling their duties under these agreements, independent monitors are ensured access to the facilities to observe conditions, review records, and speak with both prisoners and prison officials to ensure defendant's compliance with the injunctive relief.[4] An independent monitor can guide implementation of injunctive relief, reduce unnecessary delays, and provide an unbiased tracking record of defendants' compliance with court-ordered relief. An independent monitor operating in this function also can provide substantial assistance to the Court and the parties, which reduces potential future litigation over compliance disputes.

Conclusion

Should the Court find that Louisiana prison officials are exposing prisoners at Angola to extreme heat conditions that constitute cruel and unusual punishment in violation of the Eighth Amendment or Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12133, it has broad powers to order injunctive relief to remedy those conditions. It is the position of the United States, grounded in decades of experience in investigating and litigating

[4] For example, in the Orleans Parish Prison consent decree, the language concerning monitor access to the facility was as follows: "The Monitor shall have full and complete access to the Facility, all Facility records, prisoners' medical and mental health records, staff, and prisoners. OPSO shall direct all employees to cooperate fully with the Monitor. All information obtained by the Monitor shall be maintained in a confidential manner." Consent Judgment *Jones* [ECF No. 466 at 41].

conditions of confinement in prisons such as Angola, that the Court should grant Plaintiffs' counsel and representatives ongoing access to Angola or, in the alternative, appoint an independent monitor to ensure that the injunctive relief Plaintiffs seek is properly implemented. These aspects of final remedy are within the Court's equitable authority and are minimally necessary considering the persistent nature of Plaintiffs' allegations. Federal courts in Louisiana, the Fifth Circuit, and around the country have included plaintiffs' right of access or the appointment of an independent monitor in final injunctive relief, and the Court should do so here in shaping any relief in this case.

Respectfully submitted,

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DATED: August 2, 2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Statement of Interest was filed electronically on this 2nd day of August 2013, with the Clerk of Court for the Middle District of Louisiana using the CM/ECF System, which will send a notice of such filing to all registered parties.

s/Catherine M. Maraist
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