

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**TEXAS CITIZENS UNITED FOR
REHABILITATION OF ERRANTS;
TEXAS PRISONS COMMUNITY
ADVOCATES; JUSTICE IMPACTED
WOMEN'S ALLIANCE;**
Plaintiffs,

V.

**BOBBY LUMPKIN, in his official capacity
as Executive Director of the Texas
Department of Criminal Justice,
*Defendant.***

Civil Action No.: 1:23-CV-01004-RP

DEFENDANT’S OPPOSED MOTION TO STAY PENDING APPEAL

Defendant Bobby Lumpkin, Executive Director of the Texas Department of Criminal Justice (“TDCJ”), having been sued in his official capacity, hereby moves to stay the final judgment in this case pending resolution of his appeal to the United States Court of Appeals for the Fifth Circuit. In support thereof, Defendant respectfully submits the following.

I. INTRODUCTION

Texas' prison system is the largest in the country. TDCJ oversees an approximate population of 144,000 inmates, 74,000 on parole, and provides oversight to Texas counties overseeing 385,000 on probation. TDCJ is responsible for running day-to-day operations of 104 prison facilities, 67 parole offices, and providing administrative oversight of 120 probation offices spread across Texas.

As the voluminous evidence submitted in Defendant's case at trial demonstrates, a fully air-conditioned prison system is a top priority, and one being worked towards on an expedited basis. Plaintiffs' case at trial focused on criticizing TDCJ's progress through unrealistic proposals. At every turn, Plaintiffs' specious and conclusory trial evidence failed to engage with the reality that TDCJ cannot install air-conditioning as quickly as Plaintiffs would prefer.

Many of TDCJ's prison units were built from the late 1800's through the 1960's before air conditioning was available and were designed to ventilate air, making air-conditioning retrofits extremely complex and time-consuming. TDCJ is also near capacity and therefore does not have the luxury of vacating the inmate population during air conditioning retrofits. Despite these and other obstacles, in recent years, TDCJ's prison infrastructure has been upgraded and improved through the relentless installation of air conditioning in prisons where none previously existed.

Now, however, this Court has imposed judgment with an unachievable timeline—thirty-nine months—and a significant cost—estimated to exceed \$1.5 billion.¹ This grant of universal system-wide relief to every prisoner violates principles of standing and administrative exhaustion. Further, the Court's liability finding does not comport with settled deliberate indifference precedent, including the Fifth Circuit's recent decision in *Parker v. Hooper*, in which the rules of deliberate

¹ This Court's Findings cite to Defendant's witness, Dale Cox, as a purported basis for this timeline. But Mr. Cox clarified in his deposition that such a timeline was in a hypothetical "in a perfect world," which is not the world in which Defendant operates. See, Deposition of Dale Cox, Pg. 128:10. And, Plaintiffs' own expert, Mr. Craig Steigerwalt, admitted at trial that such a timeline was "in a perfect world." See, Trial Transcript, Day 3, Pgs. 80:12-81:9.

indifference in a penal setting were carefully enumerated.² There is no question that the Fifth Circuit’s guidance in *Parker* controls the legal questions this case’s trial was meant to solve.

The Court also declares that “financial considerations will not be considered a legitimate reason for failing to comply.” ECF 350, pg. 150. However, installing air conditioning in Texas prisons is expensive and funding for TDCJ’s operations is wholly dependent on biennial Legislative appropriations. TDCJ often experiences funding shortfalls that must be overcome. For instance, as reflected in the FY2028-29 Legislative Appropriations Request (LAR), consistent with the directions provided by the Governor, Lieutenant Governor and Speaker, the FY2028-29 TDCJ’s baseline request includes funding at 97%, resulting in a funding reduction totaling \$287.1 million from TDCJ’s baseline budget from the last Legislative cycle.³

TDCJ’s FY2028-29 LAR includes requests to fund exceptional items totaling \$2.2 billion above the baseline budget to address funding shortfalls for items affecting the life and safety of TDCJ’s staff and population. Specifically, TDCJ’s LAR includes the following:

- \$287.1 million to restore baseline after 3% reduction which is critical to TDCJ effectively meeting the mission of the agency to provide rehabilitation and public safety to fund correctional security operations, institutional goods and services, correctional managed health care, probation, parole supervision, correctional unit support, inmate services, contracted treatment, major repair and restoration, and administrative support operations;
- \$304.1 million to maintain existing operations to maintain existing operations and operate expansion dorms;
- \$55.7 million to integrate technology and contraband interdiction operations to combat illegal narcotics entering its facilities and prevent drug-related incidents, overdoses and homicides;
- \$400.9 million to maintain the agency’s major repair and restoration efforts, including roof repairs, security fencing and lighting, air conditioning, electrical renovations, water/wastewater systems, and major infrastructure repairs;

² *Parker v. Hooper*, 171 F.4th 736 (5th Cir. 2026) (en banc).

³ The Court took judicial notice of TDCJ’s FY2028-29 LAR in its Order. ECF 350, pg. 98. The Court should also take judicial notice of the public instruction of the Governor, Lt. Governor, and House Speaker issued to all state agencies to reduce their baseline funding requests by 3%.

<https://www.texastribune.org/2026/07/15/texas-state-agency-3-percent-budget-cuts-abbott-patrick-burrows-legislature/> (last accessed 10/08/2026).

- \$591.8 million to address projected capacity needs by constructing 17 dorms at 13 locations increasing capacity by approximately 5,600 air-conditioned beds;
- \$9.4 million to maintain and support technology initiatives throughout the state including radio refresh, telephone system maintenance, and equipment replacement for high-risk, pre-release inmates;
- \$491.2 to fund correctional managed healthcare to provide services such as unit primary care, specialty care, and outpatient and inpatient hospital care;
- \$10 million to replace aging and obsolete agriculture, laundry/food service, security and warehousing equipment;
- \$10.5 million to replace agency fleet vehicles that exceed double the replacement criteria and provide necessary additions to the fleet to address key needs within the agency;
- \$57.2 million for community supervision and correction departments; and
- \$44.7 million for information resources shared technology services to continue at projected levels of service.

The \$2.2 billion exceptional items in TDCJ's FY2028-29 LAR demonstrate how TDCJ must balance competing priorities when requesting funding from the Legislature to ensure that critical operations are funded.

Defendant now moves for a stay pending appeal. Defendant has consistently maintained that a fully air-conditioned prison system is TDCJ's goal. Throwing chaos and confusion into TDCJ's ongoing plans to install complete air-conditioning, before the Fifth Circuit has a chance to rule, needlessly wastes finite resources, and frustrates TDCJ's efforts to acquire funding to address operational and life safety measures to protect its population while moving as expediently to install air conditioning.

II. BACKGROUND

On September 22, 2026, this Court entered final judgment ("Judgment") in this matter. ECF No. 351. In its Findings of Fact and Conclusions of Law ("Findings"), the Court held, *inter alia*, that un-air-conditioned prison cells violate the Eighth Amendment, and that Defendant is deliberately indifferent to the needs of its prisoners. *See, generally*, ECF No. 350. Concurrently with this motion, Defendant timely filed the Notice of Appeal. ECF No. 360.

Because Defendant has raised substantial arguments on the merits of this Court's final

judgment, a stay of the imposed relief is warranted to allow the Fifth Circuit time to evaluate the merits of this Court's Judgment.

III. STANDARD

Prior to seeking relief directly from the Fifth Circuit, “[a] party must ordinarily move first in the district court” for “a stay of the judgment or order” pending appeal, including “an order ... granting an injunction while an appeal is pending.” Fed. R. App. P. 8(a)(1). The Supreme Court has detailed a four-factor test that “governs a court’s consideration of a motion for stay pending appeal: ‘(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.’” *United States v. Transocean Deepwater Drilling, Inc.*, 537 F.App’x 358, 360 (5th Cir. 2013) (per curiam) (quoting *Nken v. Holder*, 556 U.S. 418, 426 (2009)); accord *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 734 F.3d 406, 410 (5th Cir. 2013). In cases involving state actors as appellants, the second and fourth factors are combined, as harm to the state merges with harm to the public. *Veasey v. Abbott*, 870 F.3d 387, 391 (5th Cir. 2017) (per curiam). The first two factors are “the most critical.” *Nken*, 556 U.S. at 434.

Application of these factors is not rigid and mechanical; “the movant ‘need only present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay,’” as opposed to demonstrating a likelihood of success on the merits. *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983) (per curiam) (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. Unit A June 1981)).

Furthermore, the Fifth Circuit has historically recognized the need for a stay of far-reaching, systemically altering judgments, especially when the judgment’s non-recoverable compliance and implementation costs register in the billions. *Texas v. United States Env’t Prot. Agency*, 829 F.3d 405 (5th Cir. 2016); *Airlines for Am. v. Dep’t of Transportation*, 110 F.4th 672 (5th Cir. 2024); see also *Parker*, 171 F.4th at 742 (noting stay).

IV. ARGUMENT

A. Defendant presents a substantial case involving serious legal questions, satisfying the first factor in this analysis.

“[A] federal court, after initially finding liability, may not simply order remedial injunctive relief that supplants prison management with federal oversight ... [D]eliberate indifference “‘should be determined in light of the prison authorities’ current attitudes and conduct’: their attitudes and conduct at the time suit is brought and persisting thereafter.” *Parker v. Hooper*, 171 F.4th 736, 756 (5th Cir. 2026)(string cite omitted). “The Defendants’ remedial efforts may prove insufficient to cure all the identified institutional problems, but they indicate concern and sincerity on the part of prison officials that negate subjective indifference.” *Id.*, at 758.

With *Parker*’s standard in mind, Defendant raises substantial questions about the constitutional limits of the remedy this Court’s Judgment imposes, as well as Plaintiffs’ entitlement to such wide-reaching relief. Under *Ruiz* and *Baylor*, the robust showing of equities set out below amply satisfies the first factor in this motion’s request. *See Baylor*, 711 F.2d at 39.

1. Defendant is likely to succeed on appeal under the deliberate indifference standard applied in *Parker v. Hooper*.

“Deliberate indifference is an ‘extremely high’ standard to meet.” *Parker v. Hooper*, 171 F.4th 736, 758 (5th Cir. 2026)(string cite omitted). “Deliberate indifference encompasses only the unnecessary and wanton infliction of pain repugnant to the conscience of mankind.” *Stewart v. Murphy*, 174 F.3d 530, 534 (5th Cir. 1999) (internal quotation marks and citation omitted). A “reasonable response to inadequate prison conditions is indeed sufficient to prevent a deliberate indifference finding even if” the government agency’s attempts were unsuccessful, or if those attempts did not choose the optimal approach to the problem. *Parker, supra*, at 758, quoting *United States v. Hinds County*, 120 F.4th 1246, 1261 (5th Cir. 2024).⁴ Prison officials are not deliberately indifferent when they “respond[] reasonably to the risk, even if the harm ultimately was not averted.” *Farmer*, 511 U.S. at 844; *Gobert v. Caldwell*, 463 F.3d 339, 346 (5th Cir. 2006) (stating that “[a] prison official acts with deliberate indifference only if...he disregards that risk by failing

⁴ This specific cite to *Hinds* incurred negative treatment, but the ultimate decision in that matter stands for the same proposition. *United States v. Hinds Cnty. Bd. of Supervisors*, 128 F.4th 616, 630 (5th Cir. 2025).

to take reasonable measures to abate it.”).

An “imperfect” remedial response satisfies the Eighth Amendment. *Valentine*, 978 F.3d at 158, 162-65. Such is the heightened standard of a deliberate indifference finding. Thus, “a negligent or even a grossly negligent response to a substantial risk of serious harm” does not show deliberate indifference. *Dyer v. Houston*, 964 F.3d 374, 381 (5th Cir. 2020) (collecting cases).

Contrary to the Court’s Findings, Defendant’s response to the century-old prison infrastructure has been more than reasonable—it has been deliberate and comprehensive. The sheer scale of TDCJ’s heat mitigation efforts demonstrates that TDCJ is not indifferent. Witness after witness made clear that TDCJ is taking effective and significant actions to combat the heat, including implementation of AD 10.64, the heat strike team visits, and continued “cool bed” construction.

Air conditioning is still being installed on an expedited basis. Every TDCJ prison has air conditioning, but not every TDCJ prison is *fully* air conditioned, as reflected in the voluminous testimony concerning TDCJ’s respite areas with air conditioning in every single prison in Texas. Defendant does not dispute that many of TDCJ’s prison units are only partially air conditioned, but even if Defendant’s actions could be considered “imperfect” in light of the realities installing air conditioning requires, imperfection is not the measure of deliberate indifference. *Valentine*, *supra*, at 162-65.

Neither Plaintiffs, nor this Court, can claim that TDCJ is not working towards fully air conditioning its prisons—they simply take issue with the timeline, which is not the test for deliberate indifference. Doing nothing in the face of a clearly defined problem would be ample evidence of indifference, but TDCJ’s robust actions are a far cry from inaction.

2. There remains a substantial question concerning whether Plaintiffs have associational standing or have exhausted their administrative remedies.

From the beginning, Defendant has insisted that the Plaintiffs in this case lack standing to pursue these claims and that their members and constituents have not exhausted their administrative remedies as required by the PLRA. The Court has rejected those arguments.

Because standing is such an “indispensable part” to any party’s lawsuit, the Fifth Circuit should be given the opportunity to weigh in on these Plaintiffs’ ability to pursue this case before Defendant’s must commit \$1.5 billion to air conditioning all its prisons. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

These threshold issues have already been extensively briefed in previously filings, so Defendant will not reiterate the arguments previously put before the Court. *See, generally*, Defendant’s MSJ, ECF No. 250-1. Defendant will simply note, first, that allowing organizations to obtain universal relief merely by claiming all impacted individuals as “constituents” violates the limitations on judicial power articulated in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). And second, this Court’s decision conflicts with three circuits. *D.C. by Chaplick v. Fairfax Cnty. Sch. Bd.*, 171 F.4th 255, 266 (4th Cir. 2026) (no associational standing when exhaustion required); *Parent/Prof. Advoc. League v. City of Springfield*, 934 F.3d 13, 34 (1st Cir. 2019) (same); *Green Haven Prison Preparative Meeting of Religious Soc’y of Friends v. New York State Dep’t of Corr. & Cmty. Supervision*, 16 F.4th 67, 82 (2d Cir. 2021) (cannot avoid PLRA exhaustion by suing as an organization). A stay pending appeal is warranted given the likelihood the Fifth Circuit will not choose to exceed its authority under *Trump v. CASA* or split with its sister Circuits by finding standing and exhaustion here.

B. Absent a stay, Defendant will suffer irreparable injury because the Judgment compels Defendant to expend significant resources while his appeal is pending.

Despite the Findings’ claims that the Court’s Judgment is “less intrusive than alternative possible forms of relief,” the Court is still ordering TDCJ to undertake a project, the size of which has never been seen. ECF No. 350, pg. 148, ¶2. The Order mandates an end date for compliance, while failing to credit any of the improvements TDCJ has thus far made or the effectiveness of its ongoing heat mitigation efforts. Absent a stay, TDCJ is required to begin taking steps to comply with a likely unachievable deadline, resulting in TDCJ being forced to cut other critical operations and programs thereby exposing its staff and population to greater life safety risks, regardless of whether the Judgment is ultimately overturned on appeal. A stay of the Judgment during Defendant’s appeal would provide invaluable clarity to the long-term planning undertaken by

Defendant and avoid interruption of critical operations, programs, and infrastructure development.

1. **The time to comply with the Court's Judgment is already running, and this deadline forces TDCJ towards two divergent ends: adhering to a court-monitored remedy while pursuing its appeal.**

The evidence at trial overwhelmingly demonstrates that Defendant's efforts to install air conditioning are years in the making, require extensive planning and coordination between TDCJ staff, and are the result of difficult financial, engineering, construction, and resource allocation decisions. Based on this real-world experience, TDCJ is diligently working to install air conditioning on an expedited basis. Requiring TDCJ to upend that ongoing process during the pendency of its appeal could slow the pace at which new air conditioning is currently being installed. And the significant possibility that the Fifth Circuit will reverse all or a portion of the Court's judgment places an undue and unnecessary burden on Defendant, especially if Defendant is forced to plan for two different outcomes on appeal.

2. **To meet any compliance requirements, Defendant must dedicate significant resources and allocate finite funding which cannot be recovered if Defendant is successful on appeal.**

As this Court knows, TDCJ requests and receives money on a biannual basis. Indeed, the Court's Findings specifically mention the exact amount of money TDCJ has requested for air conditioning in the next biennium, which was more than twice what it requested in the prior biennium. *See*, ECF NO. 350, Findings, pg. 98. TDCJ has made its initial ask to the legislature, ahead of the 2028-29 legislative session, and in recognition of the statewide mandate for all State of Texas agencies to cut their budgets by three percent.

TDCJ's trial evidence consistently demonstrates that TDCJ only makes appropriation requests for funding that it reasonably believes it can obligate within the relevant budget cycle. None of Plaintiffs' witnesses ever offered competent or credible evidence that Defendant could request money above or beyond what it believes it can obligate, despite dubious claims to the

contrary from Plaintiffs’ witnesses regarding an “emergency” request fund.⁵ As such, TDCJ’s request must be informed and realistic.

TDCJ’s funding requests must also be measured to ensure that critical operations and programs are funded at appropriate levels to protect the life and safety of TDCJ’s staff and population while meeting the agency’s mission to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime. In evaluating the Court’s Order, there is real concern that being overly aggressive in requesting funding for one area—\$1.5 billion for air conditioning—could result in the elimination or reduction of funding for other key life and safety items (*i.e.*, health care services, contraband interdiction, treatment programs, and \$3 billion in deferred maintenance needed for critical infrastructure, such as water and wastewater treatment, locking systems, fire alarms, and maintenance of existing air conditioning systems), having immediate negative impacts to TDCJ’s staff and inmate population.

Additionally, it is difficult to contemplate TDCJ’s budgetary situation in the next year if the stay of judgment is not granted. Defendant would then be required to pursue *both* the system-wide overhaul this Court’s Judgment demands (for which there is currently no adequate funding), while also trying to prepare for TDCJ’s existing plans to obligate the funds it reasonably believes it can operationalize if Defendant’s appeal is successful.

C. A stay will not substantially injure Plaintiffs, as TDCJ intends to continue moving forward with its plans to install air conditioning throughout Texas.

The Court’s Judgment wholesale adopts Plaintiffs’ claims of urgency, without accounting for the demonstrable results Defendant’s heat mitigation efforts have objectively achieved. There are several, undeniable bases why Plaintiffs will not be substantially injured if this Court grants a stay of the Judgment. These include many of the same reasons why Defendant is entitled to a stay while seeking the Fifth Circuit’s review, all the while TDCJ will be continuing its reasonable efforts to achieve system-wide air conditioning installation.

⁵ See, Trial Transcript, Day 2, Pg. 29:21-23.

First, Defendant's trial testimony showed that, going into calendar year 2028, there will be almost 90,000 "cool beds" completed. *See*, Trial Transcript, Day 2, Pgs. 331:22-332:6. The Court may disagree with the pace of installation, but it cannot deny that it is ongoing. If the Fifth Circuit ultimately reverses this Court's Judgment, disrupting the current installation plans for a new, significantly bigger construction requirement will have been counterproductive to the Court's stated goal of quicker installation.

Second, the evidence at trial showed that the number of heat-related grievances submitted by prisoners has drastically fallen in the past few years. *See*, Trial Transcript, Day 2, Pgs. 328:328:4-329:11. This is undeniable evidence that TDCJ's heat mitigation efforts are working to reduce inmate discomfort from the summer heat. With finite resources and funding, the undetermined and unknown path forward under the Judgment's mandate could well affect the allocation of those resources to TDCJ's heat mitigation efforts. This evidence shows that TDCJ's continued focus on heat mitigation and compliance oversight is alleviating the dangers of extreme heat.

Third, Defendant disputes the findings adopted by the Court concerning the number of prisoner deaths attributed solely, or in significant part, to heat. As Defendant's medical experts testified, for almost every death Plaintiffs claimed was a heat-related death, there were other, competing factors relevant to those prisoner deaths. Illegal narcotic use and the prisoner's pre-existing health conditions were two of the biggest competing factors at play in the trial testimony of the deceased inmates. That Defendant reasonably believed the opinions of TDCJ's medical partners does not show deliberate indifference warranting systemwide relief within the next three years.

V. CONCLUSION

For these reasons, Defendant respectfully requests a stay of the Judgment until the matter is resolved on appeal.

KEN PAXTON

Attorney General of Texas

BRENT WEBSTER

First Assistant Attorney General

RALPH MOLINA

Deputy First Assistant Attorney General

WILLIAM D. WASSDORF

Deputy Attorney General for Civil Litigation

BRIANA M. WEBB

Chief, Law Enforcement Defense Division

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

Law Enforcement Defense Division

P.O. Box 12548, Capitol Station

Austin, Texas 78711-2548

Telephone: (512) 936-1700

Fax: (512) 457-4410

Brandon.Mickle@oag.texas.gov

Kyle.Tebo@oag.texas.gov

Abigail.Carter@oag.texas.gov

Lauren.McGee@oag.texas.gov

/s/ Brandon J. Mickle

BRANDON J. MICKLE

Deputy Chief

Law Enforcement Defense Division

Texas State Bar No. 24123140

KYLE S. TEBO

Special Counsel

Texas State Bar No. 24137691

ABIGAIL K. CARTER

Assistant Attorney General

Texas State Bar No. 24126376

LAUREN MCGEE

Assistant Attorney General

Texas State Bar No. 24128835

COUNSEL FOR DEFENDANT

CERTIFICATE OF CONFERENCE

I, Brandon J. Mickle, hereby state that I conferred via email with Plaintiffs' counsel regarding their position on Defendant's motion to stay. On September 26, 2026, counsel for Plaintiffs indicated that Plaintiffs were opposed.

/s/ Brandon J. Mickle

BRANDON J. MICKLE

Deputy Chief

Law Enforcement Defense Division

CERTIFICATE OF SERVICE

I, Brandon J. Mickle, hereby certify that on October 8, 2026, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Brandon J. Mickle
BRANDON J. MICKLE
Deputy Chief
Law Enforcement Defense Division

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ORDER GRANTING DEFENDANT’S MOTION TO STAY
PENDING APPEAL

On this day the Court considered Defendant's Opposed Motion Stay Pending Appeal. After consideration, the Court is of the opinion that Motion is meritorious and hereby GRANTS the motion.

Therefore, it is **ORDERED** that Defendant's Motion is **GRANTED**.

SIGNED on _____, 2026.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE