

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

JOSHUA DAVIS, individually and on behalf  
of all others similarly situated

v.

PATRICIA COYNE-FAGUE, in her capacity  
As the Acting Director of the State of Rhode  
Island Department of corrections, and  
WAYNE SALISBURY, in his capacity as  
Warden of the Anthony Trivisano Intake  
Service Center.

C.A. No. 19-

CLASS ACTION COMPLAINT

**INTRODUCTION**

Plaintiff is an inmate incarcerated by the State of Rhode Island Department of Corrections at (RIDOC) the Anthony Trivisano Intake Service Center (Intake) located in Cranston, Rhode Island. Plaintiff is being held in protective custody in the “M Mod” of the facility. Plaintiff and all other inmates located in M Mod and N Mod have been denied adequate heat for their cells and “Mod” areas for more than one and a half months. Plaintiff brings this action on behalf of himself and all others similarly situated.

Plaintiff and all others similarly situated are guaranteed the right to be free from cruel and unusual punishment, as set forth in the Eighth Amendment to the U.S. Constitution. Defendants have denied these rights through failure to provide sufficient heat such that the cells of “M and N Mod” have become dangerously cold.

Defendants’ prolonged denial of adequate heat has negatively impacted the psychological and physical well-being of plaintiff and the represented class. The M and N Mods are dangerously cold and pose risk of hypothermia. Prisoners in the M and N Mod report having numb extremities when they are exposed to the air. Plaintiff has been unable to do anything that requires him to

expose his hands or limbs from under the covers on his bunk, to include reading, writing, performing legal research or other normal inmate activities. Defendants have been repeatedly made aware of the prisoners' suffering, and continue to deny them sufficient heat to be housed safely in the cells or in the M or N Mod.

### **NATURE OF THE ACTION**

1. Plaintiff brings Count I of this action pursuant to 42 U.S.C. §1983 to redress violations of Plaintiff's rights under the Eighth Amendment to the U.S. Constitution to be free from cruel and unusual punishment. In connection with Count I, Plaintiff seeks injunctive and declaratory relief against Defendants Patricia Coyne-Fague and Warden Wayne Salisbury, in their official capacities, as well as attorneys' fees and costs.

### **JURISDICTION AND VENUE**

2. Jurisdiction is conferred upon this Court for Count I pursuant to 28 U.S.C. §§1331, 1343, and 2201 because the matters in controversy arise under the Constitution and the laws of the United States.

3. Venue is proper in this Court under 28 U.S.C. §1391(b) because the events that give rise to Plaintiff's claims took place in Cranston, Rhode Island.

4. This Court has authority pursuant to 42 U.S.C. 1983 to order injunctive and declaratory relief, and has authority under 42 U.S.C. §1988 to award attorney fees and costs to successful civil rights plaintiffs.

5. Prior to the filing of this action, Plaintiff satisfied the exhaustion requirements of the Prison Litigation Reform Act, 42 U.S.C. §1997e(a), in that class member Troy Paolilli, also housed in M Mod, on December 20, 2018, filed a written request to submit a grievance raising the lack of ventilation and heat, which was denied. A copy of said request is attached hereto and incorporated

herein as Exhibit A.

**CLASS ALLEGATIONS**

6. Plaintiff brings this action under Federal Rule of Civil Procedure Rule 23(a) and (b)(2) on behalf of a class defined as follows:

All inmates who are currently, or in the future will be, housed in the M and N Mods of the Anthony Trivisano Intake Center

7. The class is so numerous that joinder of all members is impracticable. In addition, the class consists of individuals in “protective custody” whose identity is not readily available or accessible to plaintiff or class counsel and, as to future class members, who are subject to assignment to these cells at the defendants’ discretion at any time, whose identity is also not readily available, making joinder of all members of the class a practical impossibility. Upon information and belief, at least 19 inmates are currently housed in M and N Mods with a capacity of up to 48 single cells.

8. There are numerous questions of fact and law common to the class concerning whether all class members are being subjected to dangerous environmental conditions constituting cruel and unusual punishment.

9. The individual Plaintiff seeking to represent the class presents claims that are typical of the claims of the class. Both the named Plaintiff and absent members of the class have been subjected to dangerously cold conditions due to lack of adequate heat and a malfunctioning ventilation system which produces cold air.

10. Declaratory and injunctive relief are appropriate with respect to the class as a whole, because Defendants have acted and failed to act on grounds applicable to the class.

11. The named Plaintiff and the proposed class are represented by Sonja Deyoe and Lynette Labinger, cooperating counsel for the American Civil Liberties Union Foundation of Rhode Island.

The attorneys are experienced in civil rights and class action litigation and will adequately represent the class.

### **PARTIES**

12. Plaintiff Joshua Davis is a male prisoner who has been sentenced to life without parole and is being held in the intake center in M Mod in protective custody. Plaintiff Davis has been at M Mod with inadequate heat during numerous days in the last month and a half, roughly December 5, 2018 to the present. Plaintiff Davis has experienced decreased physical and psychological well-being as a result of being deprived of adequate heat for this period and has experienced prolonged periods of extremity numbness, shivering, and lack of mental clarity.

13. Defendant Patricia Coyne-Fague is at all times relevant hereto the Acting Director of the State of Rhode Island Department of Corrections and is and at all relevant times has been the individual responsible for running the RIDOC as a whole. As such, Defendant Coyne-Fague has acted or failed to act under color of state law. Defendant Coyne-Fague is aware of multiple complaints from prisoners and the ACLU of Rhode Island about the lack of heat in the M and N Mod in the last month and a half. Defendant Coyne-Fague is sued in her official capacity.

14. Defendant Wayne Salisbury is and at all relevant times has been the Warden of the Anthony Travisano Intake Service Center. Defendant Salisbury responds to complaints from prisoners with respect to environment conditions at the intake service center. As such, Defendant Salisbury has acted or failed to act under color of state law. Defendant Salisbury is aware of multiple complaints from prisoners about the lack of heat in the M and N Mod in the last month and a half. Defendant Salisbury is sued in his official capacity.

15. It has been well established for many years through federal case law and through numerous other standards that inmates are entitled to adequate heat. The State of Rhode Island has also adopted housing standards, including those set forth in the International Property Maintenance Code

adopted by the State of Rhode Island, which define minimum standards for habitability to require the use of heating systems that maintain 68 degrees Fahrenheit, and Rhode Island General Laws § 45-24.3-9 also requires that “Every dwelling must have heating facilities properly installed and maintained in safe and working condition, and capable of safely and adequately heating all habitable rooms, . . . in every dwelling unit . . . under average winter conditions to a temperature of at least sixty-eight degrees (68°) fahrenheit.”

16. By depriving prisoners at the M and N Mod of the Intake Facility of adequate heat, such that it creates dangerously cold conditions, for prolonged periods of time, Defendants Coyne-Fague and Salisbury have violated this well-established law. Through numerous verbal requests, attempted grievances, and communications between plaintiff class members, Plaintiff’s counsel and defendants, Defendants Coyne-Fague and Salisbury have been made aware of a substantial risk of serious harm to prisoners in the M and N Mod of the intake facility, and have not taken reasonable measures available to them to alleviate that risk.

17. Acting under the color of state law, Defendants Coyne-Fague and Salisbury have taken action they knew or reasonably should have known would violate plaintiff’s right to be free from cruel and unusual punishment by denying plaintiff and the members of the class of adequate heat and allowing them to be held in dangerously cold cells/Mods. Defendants Coyne-Fague and Salisbury have personally participated in violations of Plaintiff’s right to be free from cruel and unusual punishment.

**GENERAL ALLEGATIONS**  
**Anthony Travisano Intake Service Center**

18. The Anthony Travisano Intake Service Center (“Intake”) opened in 1982.

19. The Intake Service Center houses prisoners in sixteen Housing Units of which M and N Mods are two units on what is commonly known as the ACI grounds in Cranston, Rhode Island.

20. M Mod holds only adult males incarcerated in so-called “protective custody” due to the nature of their alleged and/or convicted crime(s), enemy status with other prisoners or gangs, or participation as a government witness. N Mod currently holds one juvenile male incarcerated in so-called “protective custody.”

21. Prisoners in the M and N Mods have been denied sufficient heat and exposed to dangerously cold conditions over the last month and a half, such that their health and safety has been endangered.

22. During this period, either cold air has been blowing into M and N Mods, no heat has been coming from the heating system whatsoever, or a combination of both. With extremely low exterior temperatures during the winter months, there have been repeated periods of successive days where Plaintiff, like the class members, despite wearing undergarments, thermals, his normal uniform, and an over garment sweat suit has been unable to stay warm enough in his cell and has been subjected to dangerous effects of cold including shivering and numbness in his extremities, unless he stayed under two blankets and did not expose any of his body or limbs to the cold air. This has prevented Plaintiff Davis from leaving his bunk.

23. Upon information and belief, Defendants have been aware for many years that the heating and ventilation system serving M and N Mods had deteriorated and required replacement but have deferred or delayed replacement. Upon information and belief, Defendants are aware that the current system is no longer capable of sustained repair to provide adequate levels of heat in M and N Mods.

24. Many feasible options exist to provide prisoners in the M and N Mods with access to adequate heat to include, but not be limited to, relocating said inmates to other heated Mods in intake services or in other buildings in the prison, or providing said prisoners with alternative heat options, such as space heaters.

**COUNT I.**

**DEFENDANTS' FAILURE TO PROVIDE HEAT SUCH THAT THEY EXPOSED PLAINTIFF TO A DANGEROUSLY COLD CONDITION CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT OF THE U.S. CONSTITUTION.**

25. Plaintiff repeats and re-alleges the allegations contained in paragraphs 1 through 24 as fully restated here.

26. As detailed above, the constitutional right to adequate heat, such that a dangerously cold condition does not exist, is well-established and has been for many years. Access to adequate heat is a basic human need. Deprivation of heat so as to create dangerously cold conditions for Plaintiff and other individuals housed in M and N Mod is a serious deprivation of a human need and amounts to inhumane treatment. Despite this, Plaintiff and other prisoners housed in M and N Mod regularly go days without access to adequate heat and are forced to live in these inhumane conditions.

27. Defendants have been deliberately indifferent to the deprivation of this well-established constitutional right. Defendants have known that M and N Mod prisoners are deprived of adequate heat and subjected to dangerously cold conditions, particularly given that overnight outside temperatures reached lows of 10 degrees Fahrenheit on January 20, 2019, 1 degree Fahrenheit on January 21, 2019, and 5 degrees Fahrenheit on January 22, 2019, which resulted in very cold ambient temperatures in the M and N Mods given that adequate heat did not exist to mitigate against these dangerously cold conditions. Defendants have known that depriving prisoners of adequate heat detrimentally affects their psychological and physical well-being and is causing them harm. Defendants received multiple verbal complaints, attempted grievances and communications detailing the lack of heat causing a dangerously cold condition. Defendants continue to deny adequate heat to Plaintiff and other inmates in M and N Mod.

28. Deprivation of heat to M and N Mod prisoners has no valid penological justification.

**WHEREFORE,** Plaintiff respectfully requests that this Court:

- A. Certify this action to proceed as a class action;
- B. Declare Defendants have engaged in cruel and unusual punishment in violation of the Eighth Amendment to the U.S. Constitution by depriving plaintiff and those similarly situated of heat sufficient to ameliorate dangerously cold conditions which create hazards to their health and well-being;
- C. Issue a temporary restraining order and preliminary injunction: (i) directing Defendants, their successors and other current and future employees of the State of Rhode Island Department of Corrections to provide prisoners in M and N Mod located in the Anthony Travisano Intake Service Center with heat sufficient to ameliorate dangerously cold conditions or relocate them to other locations providing heat pending determination on the merits of this action and, after trial thereon, issue corresponding permanent injunctive relief.
- D. Award Plaintiff costs and reasonable attorneys' fees pursuant to 42 U.S.C. §1988.

Dated this 25th day of January, 2019.

Plaintiff Joshua Davis,  
By his Cooperating Attorneys,  
American Civil Liberties Union  
Foundation of Rhode Island

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EXHIBIT A

### INTAKE SERVICE CENTER REQUEST FORM

*Gallegos*

TO: LT ~~ISOM~~

DATE: 12/20/18

I RESPECTFULLY REQUEST: I NEED A GRIEVANCE FOR A Living  
Condition, There is no Ventilation or HEAT,  
I need FRESH AIR. NO Lights, Plumber Is Messed UP  
XXXXX Thank you XXXXX

INMATE NAME: Troy Paolilli

INMATE ID: 106462

WORK ASSIGNMENT: n/a

CELL NUMBER: M-17-B

OFFICERS SIGNATURE: *[Signature]*

SUPERIOR'S RESPONSE: DENIED, you are in THE SAME  
Living conditions as HIGH SECURITY to WHICH  
you NEVER GRIEVE.

LIEUTENANT'S SIGNATURE: *[Signature]*