



Prisoners Legal Advocacy Network (PLAN)
National Lawyers Guild – Delaware-New Jersey Chapter
C/o Prison Law Project
132 Nassau Street, Room 922
New York, NY 10038

September 13, 2017

TO: Dale Wainwright, Chairman, Texas Board of Criminal Justice
Bruce Toney, Inspector General, Texas Board of Criminal Justice
Bryan Collier, TDCJ Executive Director
Sharon Felfe Howell, TDCJ General Counsel
Emma Guerra, TDCJ Ombudsman

Via Hand Delivery

Texas Department of Criminal Justice
209 West 14th Street
Price Daniel Building, 5th Floor
Austin, TX 78701

Via United States Mail

Texas Department of Criminal Justice
P.O. Box 13084 – Capitol Station
Austin, TX 78711-3084

The Prisoners Legal Advocacy Network (PLAN) administered by the Delaware-New Jersey chapter of the National Lawyers Guild hereby advises you of the persistently unconstitutional conditions of confinement that are reportedly being endured by both prisoners in storm-affected area TDCJ facilities whom the Texas Department of Criminal Justice elected not to evacuate before, during, or after the devastating Hurricane Harvey, and also prisoners in TDCJ facilities that received prisoners from those units that were evacuated. We hereby demand the rectification of these alleged violations, and the provision of constitutional conditions of confinement, such as adequate drinking water, food, medical care, and sanitation.

1. The National Lawyers Guild (NLG) is the oldest and largest human rights bar association in the United States, and the only public interest bar organization that includes jailhouse lawyers as full participating members. The Prisoners' Legal Advocacy Network (PLAN) administered by the NLG Delaware-New Jersey chapter unites lawyers, legal workers, law students, and jailhouse lawyers to advocate for constitutional conditions of confinement for prisoners.
2. The Department of Homeland Security (DHS), Federal Emergency Management Agency's (FEMA) Risk Mapping, Assessment, and Planning (Risk MAP) program "identifies flood hazards, assesses flood risks and partners with states and communities to provide accurate flood hazard and risk data to guide them to mitigation actions."¹
3. Through FEMA's flood hazard mapping program, Risk Mapping, Assessment and Planning (MAP), FEMA "provides states, tribes, and local communities with flood risk information and tools that they can use to increase their resilience to flooding and better protect their citizens. By pairing accurate floodplain maps with risk assessment tools and planning and outreach support, Risk MAP has transformed traditional flood mapping efforts into an integrated process of identifying, assessing, communicating, planning for, and mitigating flood-related risks."²
4. The October 2014 FEMA Flood Risk Report for Jefferson County Coastal Project Area, Texas found that, in the vicinity of Beaumont: "Natural drainage is generally poor as many of the streams have shallow meandering channels. ... Principal flooding problems include stream overflow cause by rainfall runoff, ponding, and sheet flow, **and from tidal surges caused by hurricanes and tropical storms.**" (emphasis added)³
5. It is well-documented fact that coastal regions and floodplains are vulnerable to tropical storms and hurricanes. All indications are that the Texas Department of Criminal Justice has long had access to considerable information and support, from agencies such as FEMA, to plan for and mitigate flood-related risks.

¹ <https://www.fema.gov/national-flood-insurance-program-flood-hazard-mapping>

² https://map1.msc.fema.gov/data/FRP/FRR_Jefferson_Coastal_20160303.pdf?LOC=3bfc777e28ea79dee0ba3fc6aa416784

³ FEMA, *Flood Risk Report: Jefferson County Coastal Project Area, Texas*. Washington, DC, 10/15/2014, page 18.

6. The vulnerability of Texas prisons to hurricane conditions is a well-known and longstanding problem that traces back at least to Hurricane Ike (2008). We note, for example, that in excess of 130 lawsuits were filed by prisoners housed in a Beaumont, Texas facility administered by the Texas Department of Criminal Justice in late 2008, asserting that “the living conditions after the storm [Hurricane Ike] violated their civil rights.” Prisoners also formally contested prison officials’ failure to evacuate prisons in the storm’s path at that time.⁴
7. The Texas Department of Criminal Justice had adequate foreknowledge of the flood risk in the vicinity of Beaumont, Texas and Houston, Texas.
8. The Texas Department of Criminal Justice also had ample notice of the widespread concerns about alleged constitutional rights violations that emerged following a previous failure to evacuate a TDCJ Unit in the path of a forecasted hurricane.
9. Hurricane Harvey made landfall on the Texas Gulf Coast on August 25, 2017, with wind speeds exceeding 130 miles per hour. The Houston and Beaumont areas experienced flooding and damage to infrastructure (such as power outages) following the storm.
10. The Texas Department of Criminal Justice represents that its Mission includes administering prison environments that are “safe” and accords with “constitutional and statutory standards.” This Mission is consistent with TDCJ policy provisions responsive to prisoners’ constitutional right to be free from cruel and unusual punishment, as interpreted by prevailing case law.
11. Prisoners are entirely dependent upon prison administrators for their safety and wellbeing. They have no means of preparing for, or protecting themselves from the effects of, natural disasters while incarcerated.
12. Please be advised that we are in contact with dozens of prisoners in the custody of TDCJ and their family members. We are in receipt of both direct eyewitness accounts of events at TDCJ, and reports from family members who are in sustained contact with facility prisoners, to include affidavits that attest to representations under penalty of perjury.

⁴ Colin Guy, “Prisoners in LeBlanc Unit File Suit, Claim Hurricane Ike Should Have Prompted Evacuation,” *Beaumont Enterprise*, December 12, 2008.

13. These reports of conditions from the time of Hurricane Harvey to the present day – at both storm-affected TDCJ facilities and TDCJ units that received prisoners from evacuated facilities – are remarkably consistent. Reports of unconstitutional conditions of confinement at various TDCJ facilities are independently corroborated through these wide-ranging reports, which we consider credible.
14. There are compelling indications that formal Texas Department of Criminal Justice statements assuring adequate food and water supply, and that areas of facilities housing prisoners were not affected by flooding, are not accurate representations of fact. Attached as EXHIBIT A is an indicative account, received by a relation of a TDCJ prisoner, regarding reports of facility flooding; lack of access to sanitary and fully functioning toilet facilities; disrupted community communications that cannot be explained by exigent circumstances alone; and deprivation of adequate food and water.
15. Prisoners at affected TDCJ facilities have reportedly received daily water rations that are half the allotment recommended by the Federal Emergency Management Agency for adults in non-extreme heat environments: “Having an ample supply of clean water is a top priority in an emergency. A normally active person needs to drink at least two quarts (half gallon) of water each day. People in hot environments, children, nursing mothers, and ill people will require even more. You will also need water for food preparation and hygiene. Store at least one gallon per person, per day. ... If supplies run low, never ration water. Drink the amount you need today, and try to find more for tomorrow. You can minimize the amount of water your body needs by reducing activity and staying cool.”⁵
16. Accounts of prisoners’ inadequate access to toilet facilities appear to be corroborated by Civil Air Patrol aerial photographs dated September 1, 2017, accessed by way of the United States Geological Survey. The indicative photographs referenced in EXHIBIT B provide unobstructed views of the grounds of TDCJ Gist, LeBlanc, and Stiles units, to include clear views of the outdoor facility grounds covered by structural overhangs.

The U.S. Department of Labor’s Occupational Safety & Health Administration has issued detailed Standards addressing portable sanitation for construction (1926.51) and field sanitation (1928.110). Both of the Standards require toilets at a rate of 1:20 workers. ...[B]oth the construction and the field sanitation Standards require the use of potable water.

⁵ “Emergency Water Supplies” in *Food and Water in an Emergency*, Federal Emergency Management Agency (FEMA 477, August 2004).

The Portable Sanitation Association International (PSAI), administered through the American National Standards Institute (ANSI), has developed several standards for sanitation, including ANSI Z4.1 – Sanitation in Places of Employment; ANSI Z4.3 Sanitation – Non-Sewered Waste Disposal Systems (enclosed); and ANSI Z4.4 – Sanitation – In Fields and Temporary Labor Camps. ANSI 4.3 – 1995 is more stringent than the OSHA Standard, specifying portable toilets on a 1:10 worker basis. In 2009, the ANSI standard A10.25-2009 was released, which again reflects the 1:10 worker basis, and also includes Section 4.4, which calls for the provision of hand-washing facilities for jobsite workers.

The International Code Council, established in 1994, is dedicated to developing a set of national construction codes, many of which have been adopted by governments and municipalities throughout the United States. Section 311.1 of the International Plumbing Code references and adopts the Standards put forth in ANSI Z4.3. The International Plumbing Code is the standard most cited by local inspectors on job sites.

In 1998, the U.S. Food and Drug Administration released its “Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables.” This guide highlights eight basic principles the department targeted as points of prevention. Two of the principles (#3 and #8) specifically deal with human hygiene and sanitation. Sections IV through VI (pages 25-32) deal exclusively with portable sanitation and worker hygiene. This report does not dictate requirements for portable sanitation, but outlines several suggestions.

We have received reports that TDCJ prisoners have not been permitted consistent access to portable toilets, instead being “told they were not for them but only for the correctional officers to use.” However, even if TDCJ prisoners have been permitted access to said facilities, the U.S. Government photographs attached here, dated more than a week after Hurricane Harvey, document a number of portable toilet facilities not even approaching minimum standards, as most generously construed, for the publicly documented population sizes in these units.

17. As a government agency funded by taxpayer dollars, the Texas Department of Criminal Justice has an obligation not to mislead the public through knowing and intentional misrepresentations of fact. Enclosed here as EXHIBIT C is a screen shot of an official update communicated to the public by way of the TDCJ Facebook page on September 3, 2017, with select corresponding photographs as posted by the Department:

Leadership from the department traveled to the Stiles, Gist, and LeBlanc units today to tour the facilities and meet with staff and offenders.

The Beaumont area was significantly impacted by flood waters associated with Hurricane Harvey. During the storm, the city's water system was damaged. Beaumont officials are currently working to get it restored.

Offenders at the 3 affected facilities have access to bottled water, toilets, and hot meals are being served. Laundry is being washed at other TDCJ facilities.

The department has brought in additional staff and resources to Stiles, Gist, and LeBlanc units while the city works to repair their water system:

**6,000 & two 5,000 gallon water tankers are onsite*

**Approximately 240,000 bottles of water have been delivered*

**Portable toilets are being utilized*

**Additional food, ice, & medicine have been delivered*

The department continues to work with local, state, and federal partners. The command center remains operational and we are closely monitoring the situation. We will provide updates as they become available.

At the conclusion of this formal TDCJ statement, accompanied with a series of TDCJ-provided photographs and video,⁶ appears the following TDCJ representation:

“Photos below were taken Sunday afternoon.”

We have received independently corroborated reports that one staff member who appears in these photographs is no longer employed at the facility. It has been reported to us that these visuals relate to an incident earlier this year when facility water pipes were cut during grounds maintenance, at which time water trucks were dispatched and water bottles distributed to prisoners.

There are compelling indications that TDCJ has repurposed visuals from a previous incident in order to impart the misleading impression that post-Harvey conditions in TDCJ facilities are less dire than is actually the case.

⁶<https://www.facebook.com/TexasDepartmentofCriminalJustice/posts/1476249262458706>

18. Prisons are obligated under both the ADA Title II and Rehabilitation Act Section 504 to ensure meaningful access to a public or federal entity's programs, activities, and services for deaf and disabled people, including through provision of plain language information, qualified sign language interpretation, and other reasonable accommodations to the same programs, activities, and services that other incarcerated people are provided. Reported lack of access to medically necessary prescriptions in the immediate aftermath of the storm, and during evacuation periods, could reasonably be expected to have a disproportionately large effect upon prisoners with physical and mental disabilities, and could, therefore, arguably constitute both a conditions of confinement issue and an accessibility issue. Sudden and unexpected withdrawal from many types of prescription medications can cause severe physically and mentally distressing symptoms, as well as significantly reduce a person's ability to function even under normal conditions, let alone adverse ones such as during a natural disaster.
19. Taken together with the various reports received, available facts and evidence establish convincingly a pattern and practice of inhumane living conditions and deprivation of adequate access to food, water, medical care, toilet facilities, and bathing facilities at unevacuated storm-affected TDCJ facilities in the aftermath of Hurricane Harvey (Gist, LeBlanc, and Stiles Units).
20. All evidences and appearances are that those prisoners at TDCJ facilities that the Texas Department of Criminal Justice did elect to evacuate are also experiencing unconstitutional conditions of confinement.
21. It has been publicly reported that Jester III, Ramsey, Terrell, Stringfellow, and Vance Units were evacuated, and that Eastham, Ellis, Estelle, Ferguson, Glossbrenner SAF, Glen Ray Goodman Transfer, Goree, Wallace Pack, and Young Units received prisoner evacuees.
22. Many of these destination facilities were reportedly already over-crowded prior to Hurricane Harvey evacuations, housing prisoners in excess of the population size for which the facilities were intended. Some had been the object of court rulings finding unconstitutional conditions of confinement.

23. On July 19, 2017, United States District Judge Keith P. Ellison issued an emergency order to relocate about 1,000 medically vulnerable prisoners to facilities with air-conditioned cellblocks, ruling that the Wallace Park Unit was dangerously hot for such prisoners.⁷ Of the approximately 1,000 TDCJ prisoners who were recently evacuated to Wallace Park Unit in association with Hurricane Harvey, it has been estimated that about 600 of those transported from the Stringfellow Unit may be among those too medically vulnerable to withstand extreme heat. The arguable violation of Judge Ellison's emergency order aside, it defies logic to seek to evacuate prisoners from one unconstitutional setting by transporting them to another unconstitutional environment.
24. We note with concern compelling indications that some of these inhumane conditions may be ongoing at the present time.
25. All evidences and appearances indicate that the Texas Department of Criminal Justice failed to uphold its due diligence obligations to make reasonable preparations for foreseeable storm conditions, and to respond appropriately to Hurricane Harvey, and that grave human suffering has been the direct result.
26. The Texas Department of Criminal Justice cites in its organizational Mission its responsibility to "effectively manage" its facilities, and to "provide... rehabilitation and reintegration" to the prisoners entrusted to its care. TDCJ acknowledges its responsibility to provide a "positive environment empowering individuals to achieve life-long success" in accordance with "constitutional and statutory standards."⁸
27. The Texas Department of Criminal Justice thereby formally acknowledges the direct relationship between the Department's provision of humane prison living conditions and the attainment of the Department's mission to facilitate prisoners' successful return to community life.
28. As this nation incarcerates a larger proportion of its population than any other country, all those resident in the United States have a vested economic interest in the successful re-integration of releasing prisoners into community life. If prisoners do not achieve self-sufficiency upon their release, taxpayers bear related costs. When prisons endanger, mistreat, and otherwise violate the constitutional rights of prisoners entrusted to their care, spirits are broken; trust in American institutions is undermined; and post-release re-entry into community life is jeopardized.

⁷ *Keith Cole et al v. Bryan Collier et al*, U.S. District Court (Southern District of Texas, Houston Division), Civil Action No. 4:14-CV-1698, Document 737.

⁸ <http://www.tdcj.texas.gov/divisions/cid/index.html>

29. To the degree that the Texas Department of Criminal Justice failed to prepare for, and respond to, Hurricane Harvey appropriately, the Department has failed not only TDCJ prisoners, but also the wider community.
30. When the Texas Department of Criminal Justice becomes aware of incident(s) that could potentially lead to litigation, pre-litigation preservation obligations are triggered. Having now been informed of the reported concerns cited herein, it is incumbent upon the Texas Department of Criminal Justice to preserve any material(s) that may be relevant to any future court action that might be brought. Any destruction of internal prison records or materials of potential relevance to the topic matter cited herein (including standard procedure data over-writing of digital records, such as surveillance video that documents conditions) could, therefore, be sanctionable. It has been widely held that it is for prison counsel – not prisons officials lacking law licensure – to determine what constitutes potentially relevant material.
31. Please be advised that we will continue to consolidate facts and evidence related to incidents described herein.
32. We consider reasonable and appropriate the following demands being communicated to the Texas Department of Criminal Justice by those TDCJ prisoners affected by Hurricane Harvey, and their loved ones:
 - A. Immediately institute the following emergency measures:
 - 1) Provide at least one gallon of water per prisoner per day.
 - 2) Turn on facility water (which is reportedly partially functional) periodically to enable the flushing of human waste.
 - 3) Dispense all medications as prescribed and, and provide regularized access to medical consultations (“sick call”), in accordance with applicable policies.
 - 4) Provide sanitary wipes in ample quantity for as long as shower facilities remain non-operational.

- B. If constitutional conditions of confinement cannot be immediately restored, evacuate prisoners to facilities that can uphold their rights to safe and humane living conditions.

We define safe and humane living conditions include:

- 1) Full restoration of running water that is safe to drink;
 - 2) Functioning toilet facilities in adequate number for population size, as defined by governing regulatory agencies;
 - 3) Timely access to unspoiled food in adequate quantity at mealtimes, consistent with all applicable policies;
 - 4) Weekday mail delivery consistent with all applicable policies; and
 - 5) Consistently undisrupted access to community contact by way of phone, electronic messaging, and visiting facilities in accordance with all applicable policies and standard operating procedures.
33. We defer in closing to the above-cited emergency order issued by Judge Ellison on July 19, 2017: “As Dostoyevsky said more than 150 years ago, ‘The degree of civilization in a society can be judged by entering its prisons.’ Prisoners are human beings with spouses and children who worry about them and miss them. Some of them will likely someday be shown to have been innocent of the crimes of which they are accused. But, even those admittedly guilty of the most heinous crimes must not be denied their constitutional rights. We diminish the Constitution for all of us to the extent we deny it to anyone.”⁹

Served this 13th day of September, 2017 by:

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⁹ Ibid., page 100

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EXHIBITS

EXHIBIT A

Statement of Lindsey Disheroon
Family Member of TDCJ Stiles Unit

EXHIBIT B

United States Geological Survey Photographs

- Gist Unit
- Leblanc Unit
- Stiles Unit North
- Stiles Unit Northwest 1
- Stiles Unit Northwest 2
- Stiles Unit Northeast 1
- Stiles Unit Northeast 2

EXHIBIT C

Screen shot of official update communicated to the public by way of the TDCJ Facebook page on September 3, 2017, with select corresponding photographs as posted by the Department

To Whom This May Concern,

My name is Lindsey Disheroon and I am sending this to speak out about what my loved one is enduring behind prison walls due to negligence of TDCJ. I have been informed by my common law husband, Clifton Cloer, that soon after the hurricane hit their cells flooded. They were given what they call johnnies which consist of very little to eat, and these are only given twice a day with only two 16 ounce bottles of water. As the week progressed the meals got worse and smaller and smaller in portions. The following is a list of what was served in paper sacks to our loved ones on the Stiles Unit located in Beaumont, Texas.

Meals consisted of:

only one boiled egg and a very small amount of raisins

one cold burrito

a small plastic child sized cereal bowl

a stale peanut butter and jelly sandwich (a small ice cream scoop of PB&J right in the middle)

cold hot dogs with no bread

a cold chicken patty

These are just a few of what was served during this past week. Mind you the unit claims it never lost power.

Our loved ones have been without proper bathroom and shower facilities for over a week. There were port-a-potties brought in and our loved ones were told they were not for them but only for the correctional officers to use. Besides the fact that TDCJ lets things that are unsanitary go on in all of their units without a natural disaster striking this is at the utmost inhumane thing to be put thru. When you call the unit or the TDCJ hotline you are assured that everything is okay and that the unit is running as it normally would, but the truth is that all this is lies to keep them in the clear. I am sure some where in state and federal guidelines this should not be happening at all. The only way for our loved ones to communicate with us besides thru the telephones is the postal service. However it has been almost two full weeks since any mail has been distributed or taken up to be sent out to family members.

I, myself, have served time in the TDCJ system and could tell you things that happen on days that aren't any where near this condition. There are things that go on behind the prison walls and wire that no one is aware of. Some of the horror stories are fabricated

but then majority of them are not. When I state majority I am estimating about 95% are true and only the other 5% are lies. If no one speaks out then there is no way to help the offenders. Our forefathers did not mean for our country to be like this when the Constitution was put into action. I pray that even if I am the only one to speak out on this tragic event and in general of the way that TDCJ units are ran someone some where will help push this all in the right direction and get something done about all this. It truly breaks my heart every time I speak to my husband for him to tell me how nasty it is or how it smells and how hungry he is due to not getting fed properly. I know I am not the only one that feels like this. Not only are our loved ones behind those walls hurting but we out here are as well due to the lies and improper communication that is being given. If TDCJ expects our loved ones that are incarcerated to do the right thing and change then TDCJ needs to do so as well.

I give you permission to repost any of this email and my name. I do not want to remain anonymous.

Sincerely,

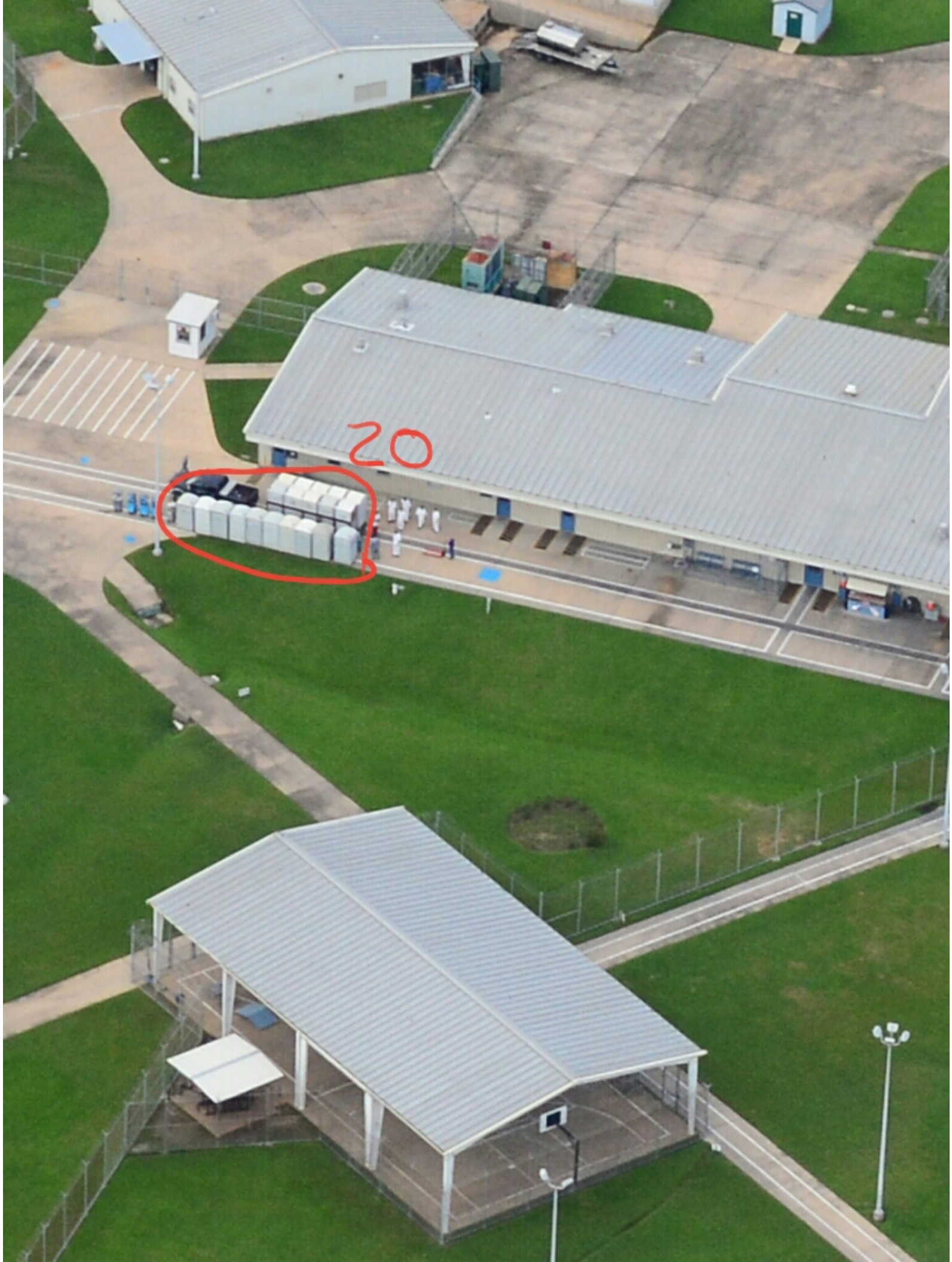
Lindsey Disheroon

PO Box 1427

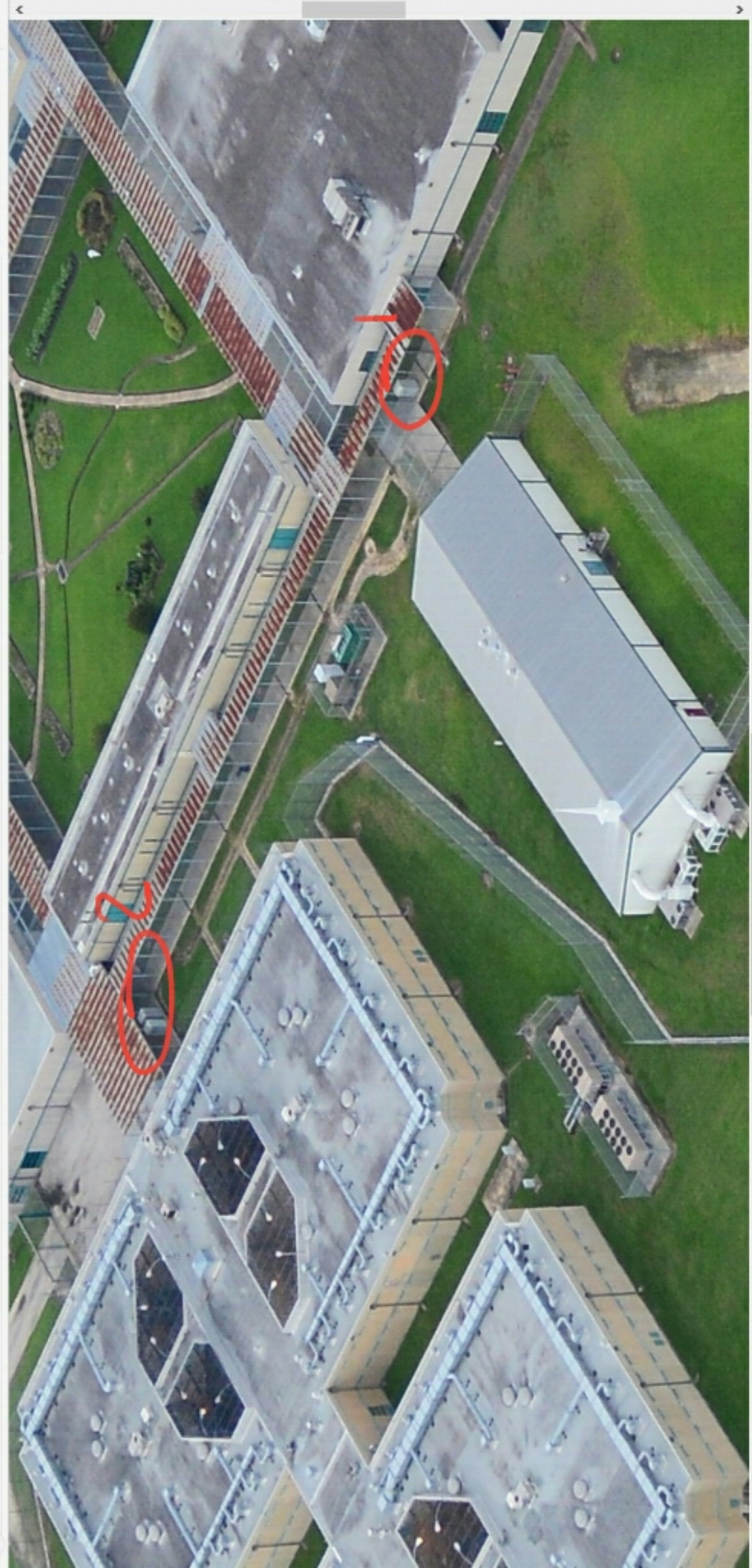
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[903-220-2723](tel:903-220-2723)











UNDO REDO SHARE



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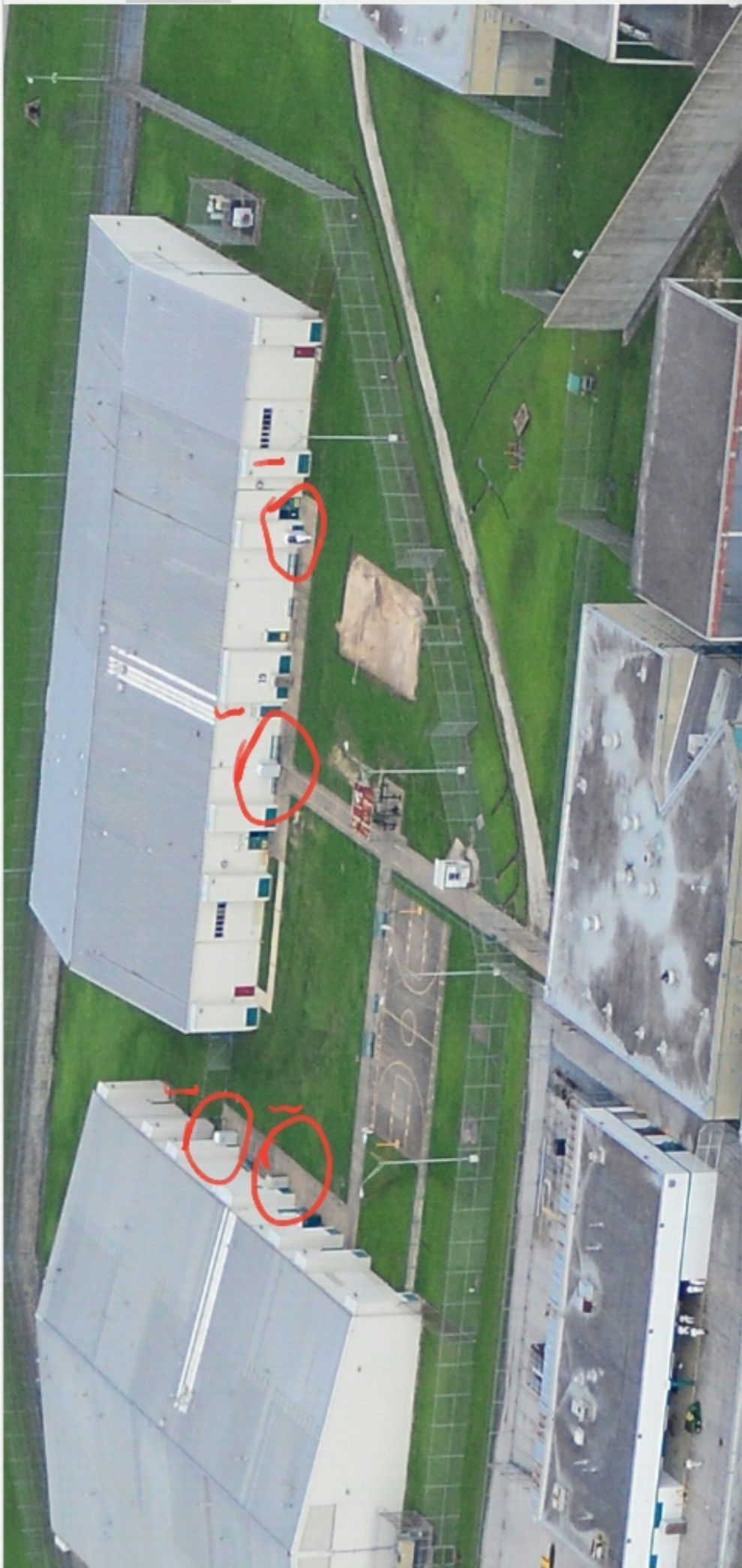
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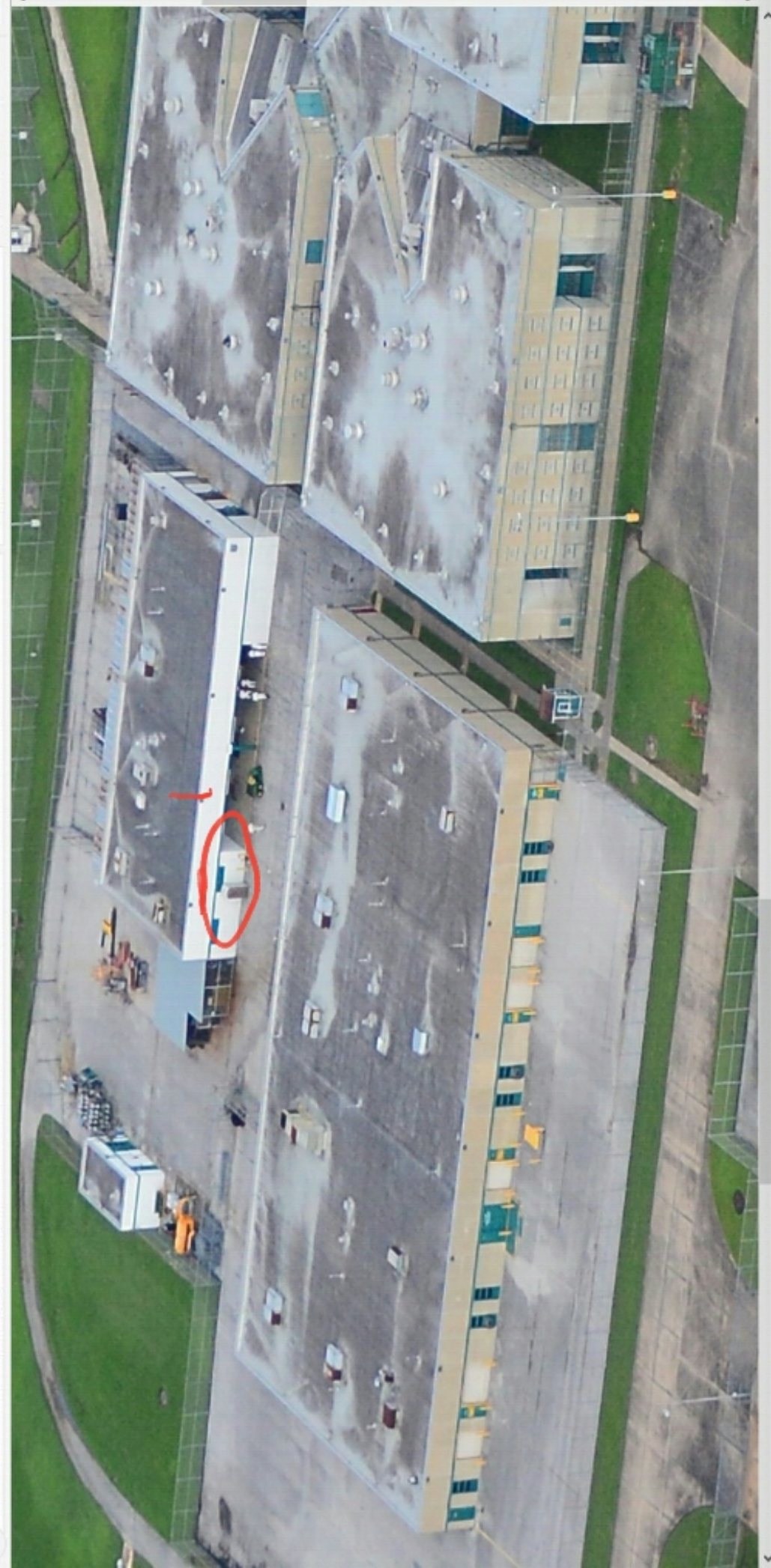
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Texas Department of Criminal Justice added 7 photos and a video.

September 3 at 1:00pm ·

Leadership from the department traveled to the Stiles, Gist, and LeBlanc units today to tour the facilities and meet with staff and offenders.

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- *6,000 & two 5,000 gallon water tankers are onsite
- *Approximately 240,000 bottles of water have been delivered
- *Portable toilets are being utilized
- *Additional food, ice, & medicine have been delivered

The department continues to work with local, state, and federal partners. The command center remains operational and we are closely monitoring the situation. We will provide updates as they become available.

Photos below were taken Sunday afternoon.





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the situation. We will provide updates as they become available.
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- **Shamesha Lee** Henry lol
[Like](#) · [Reply](#) · 1 · [September 4 at 4:50am](#)
- **Guy Meglitorino** Guess inmates don't have to tuck their shirts in anymore.
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- **Blake Hunt** gist?
[Like](#) · [Reply](#) · [September 4 at 1:51pm](#)
- **Jeannie Guffey** Good to see Bryan Collier and Oscar Mendoza there to check on things first hand.
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the situation. We will provide updates as they become available.
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Loucindy Hickey Kelly Cupit Hickey*
Like · Reply · September 3 at 4:57pm




Kelly Cupit Hickey I just shared the story
Like · Reply · 1 · September 3 at 4:58pm




Kelly Lindsey Brunch! Kool-aid and milk today!
Like · Reply · September 3 at 8:21pm



Johnny Johnson watered down milk
Like · Reply · September 3 at 9:36pm



Judy Breton Forbes what unit is this?
Like · Reply · September 4 at 6:43am



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20 Chronological



Gabrielle Geiger Well this is not at the Gist unit.. they did increase the port o pots to 3 for each building (200 + in each building) instead of the one they had for the last 2 days.
Like · Reply · 1 · September 3 at 2:08pm



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Mona Bevan Mr. Motal has always been kind to me at Powledge.

Like · Reply · September 4 at 7:06am



Pamela Brewer Gault Way to go Boss! Motal was my Lt 21 years ago at Hodge! So proud of him! He is good people!! 😊

Like · Reply · September 4 at 10:04am



Brenda Junghans Sadler I thought that was Motal! Looks the same as he did 20 years ago!

Like · Reply · 1 · September 4 at 11:52am



Michael Ford Laura Copeland Motal, Bill Motal..... HEY there old friend !

Like · Reply · 2 · September 4 at 5:45pm



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Michelle Mesecke Jack Scopel

Like · Reply · September 3 at 7:44pm

Marshall Hudgins Now that is a water wagon!

Like · Reply · September 5 at 12:46pm

Write a comment...

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Derrick Edmond Kendrick KD Edmond

Like · Reply · 1 · September 4 at 7:00am

Adriana Prince So apparently everything is broken except the phones. Praise the Lord. 😊

Like · Reply · 2 · September 4 at 7:03am

2 Replies

Ash Mo Jones Brittany Miller is this one of the units?

Like · Reply · September 4 at 7:28am

1 Reply

Michelle Maldonado Susanna Perez

Like · Reply · September 4 at 7:29am

Linell Moody Thank You

Like · Reply · September 4 at 7:38am

Brittany Miller Karen Davis is this were Scotty is

Like · Reply · September 4 at 7:40am

1 Reply

Lori Lynn Lauren Cantu

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