

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                                    |                                 |
|------------------------------------|---------------------------------|
| TERRA TAYLOR, in her official      | §                               |
| capacity as Commissioner of the    | §                               |
| Delaware Department of Correction, | § No. 393, 2026                 |
|                                    | §                               |
| Defendant Below,                   | § Court Below—Court of Chancery |
| Appellant,                         | § of the State of Delaware      |
|                                    | §                               |
| v.                                 | § C.A. No. 2026-0576            |
|                                    | §                               |
| WAUNYE CALM, BRANDON               | §                               |
| GATEWOOD, ISAIAH HARBER,           | §                               |
| JYAIRE HENRY, DEWITT               | §                               |
| JOHNSON, ZAKEE LLOYD,              | §                               |
| DENNIS WILLIAMS, and DEVON         | §                               |
| YOUNG,                             | §                               |
|                                    | §                               |
| Plaintiffs Below,                  | §                               |
| Appellees.                         | §                               |

Submitted: September 1, 2026

Decided: October 23, 2026

Before **SEITZ**, Chief Justice; **TRAYNOR** and **LEGROW**, Justices.

**ORDER**

After consideration of the notice of interlocutory appeal, the supplemental notice, and the exhibits, it appears to the Court that:

(1) In May 2026, Plaintiffs Below-Appellees—prisoners in the custody of the Delaware Department of Correction (the “Department”)—filed a putative class action on behalf of all incarcerated persons in Delaware against Defendant Below-Appellant Terra Taylor in her official capacity as Commissioner of the Department.

Plaintiffs alleged that correction officers sprayed them with *oleoresin capsicum* (“OC”), a chemical agent derived from the heat-generating compounds in chili peppers that causes intense pain, without facilitating decontamination after they became compliant and the area secured. They contended that the use of OC without decontamination constitutes cruel and unusual punishment in violation of Article I, Section 11 of the Delaware Constitution (the “Cruel Punishment Clause”). Plaintiffs sought declaratory relief as well as preliminary and permanent injunctive relief barring correction officers from using OC until the Department adopted an adequate decontamination policy. Defendant moved to dismiss the complaint on standing, ripeness, and mootness grounds.

(2) On July 17, 2026, the Court of Chancery issued a decision rejecting some of Defendant’s grounds for dismissal (the “July 17 Decision”).<sup>1</sup> The court held that: (i) Plaintiffs had standing to seek injunctive relief; (ii) Plaintiffs’ request for declaratory relief was ripe; and (iii) there is a private right of action for injunctive and declaratory relief under the Cruel Punishment Clause. The court did not resolve Defendant’s argument that the case was moot because the Department had adopted a written decontamination policy after the complaint was filed, ruling that this was

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<sup>1</sup> *Calm v. Taylor*, 2026 WL 2082677 (Del. Ch. July 17, 2026).

a fact-intensive issue dependent on evidence presented at the preliminary injunction hearing.

(3) On August 11, 2026, the court issued a decision denying Plaintiffs' application for a preliminary injunction (the "August 11 Decision").<sup>2</sup> The court found that Plaintiffs established a reasonable probability of success on the merits of their claims and a risk of irreparable harm but did not show that the balance of hardships weighed in favor of a preliminary injunction. In reaching this conclusion, the court held that: (i) the Department's recent adoption of a decontamination policy did not render the case moot because the policy was potentially inadequate; (ii) the Cruel Punishment Clause has meaning independent of the Eighth Amendment and how the United States Supreme Court has interpreted it; and (iii) the test for a violation of the Cruel Punishment Clause is not whether a prison official acted with cruel intent, but whether a condition of confinement creates an objectively significant risk of serious harm and, if so, whether the condition is reasonably necessary. The court ordered that trial occur within 120 days.

(4) On August 21, 2026, Defendant moved for certification of rulings adverse to the Department in the July 17 Decision and the August 11 Decision. Acknowledging that the certification application was not filed within ten days of the

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<sup>2</sup> *Calm v. Taylor*, 2026 WL 2322604 (Del. Ch. Aug. 11, 2026).

July 17 Decision as required by Rule 42,<sup>3</sup> Defendant contended that the issue of whether a private right of action exists under the Cruel Punishment Clause was raised in opposition to Plaintiffs' preliminary injunction motion and was arguably not appealable until that motion was adjudicated in the August 11 Decision. Alternatively, Defendant requested an extension of the ten-day period for seeking certification.

(5) Defendant argued that the August 11 Decision decided a substantial matter of material importance by holding that the Cruel Punishment Clause provided greater protection than the Eighth Amendment and by establishing a test for a violation of the Cruel Punishment Clause. Defendant also contended that the Rule 42(b)(iii) criteria weighed in favor of certification because the interlocutory rulings involved novel questions of law (Rule 42(b)(iii)(A)), conflicted with other trial court decisions (Rule 42(b)(iii)(B)), and interpreted the Delaware Constitution, which is at least important as a statute (Rule 42(b)(iii)(C)). Defendant also asserted that certification would serve the interests of justice and judicial economy.

(6) Plaintiffs opposed the application. As to rulings in the July 17, 2026 Decision, Plaintiffs argued that Defendant's certification application was untimely.

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<sup>3</sup> An application for certification "shall be served and filed within 10 days of the entry of the order from which the appeal is sought or such longer time as the trial court, in its discretion, may order for good cause shown." Supr. Ct. R. 42(c)(i).

Plaintiffs conceded that the August 11 Decision decided a substantial matter of material importance, but contended that all the Rule 42(b)(iii) criteria except 42(b)(iii)(A) weighed against certification.

(7) The Court of Chancery denied Defendant’s application for certification.<sup>4</sup> As an initial matter, the court ruled that the application for certification of the July 17 Decision was untimely. Even so, recognizing that this Court might decide otherwise, the trial court considered the Rule 42(b)(iii) criteria and found that one ruling in the July 17 Decision—the existence of a private right of action for injunctive and declaratory relief under the Cruel Punishment Clause—decided a substantial issue of material importance. The court concluded that its rulings on standing and ripeness did not decide substantial issues of material importance.

(8) As to the August 11 Decision, the court accepted Plaintiffs’ concessions and found its rulings that the Cruel Punishment Clause has meaning independent of the Eighth Amendment and that the test for violation of the Cruel Punishment Clause does not include cruel intent to be substantial issues of material importance. The court held that its rejection of Defendant’s mootness argument did not constitute a substantial issue of material importance. Finally, the court conducted “its own

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<sup>4</sup> *Calm v. Taylor*, 2026 WL 2581610 (Del. Ch. Sept. 4, 2026).

assessment of the most efficient and just schedule to resolve the case” and considered whether “the likely benefits of interlocutory review outweigh[ed] the probable costs, such that interlocutory review” would be “in the interests of justice.”<sup>5</sup> With trial scheduled for December and likely to be narrow in scope, the court concluded “that the most efficient and just schedule for resolving the case is for the Delaware Supreme Court to consider the appeal after the entry of a final judgment.”<sup>6</sup>

(9) Applications for interlocutory review are addressed to the sound discretion of this Court.<sup>7</sup> In the exercise of our discretion and giving due weight to the Court of Chancery’s view, we conclude that the application for interlocutory review does not meet the strict standards for certification under Rule 42(b). We agree with the Court of Chancery’s findings that the application for certification of the July 17 Decision was untimely and that the potential benefits of interlocutory review of the August 11 Decision do not outweigh the inefficiency, disruption, and probable costs caused by an interlocutory appeal.<sup>8</sup>

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<sup>5</sup> Supr. Ct. R. 42(b).

<sup>6</sup> *Calm*, 2026 WL 2581610, at \*16.

<sup>7</sup> Supr. Ct. R. 42(d)(v).

<sup>8</sup> *Id.* R. 42(b)(iii).

NOW, THEREFORE, IT IS ORDERED that this interlocutory appeal is  
REFUSED.

BY THE COURT:

/s/ Gary F. Traynor  
Justice