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**United States District Court
Central District of California**

GUSTAVO RODRIGUEZ CASTILLO;
GABRIELA M. LOPEZ; IMMIGRANT
DEFENDERS LAW CENTER,

Plaintiffs-Petitioners,

v.

KIRSTJEN NIELSEN, Secretary
Department of Homeland Security;
THOMAS HOMAN, Acting Director,
Immigration and Customs Enforcement;
DAVID MARIN, Field Office Director,
Los Angeles Field Office of ICE;
JEFFERSON BEAUREGARD
SESSIONS, U.S. Attorney General;
HUGH J. HURWITZ, Acting Director
Federal Bureau of Prisons; DAVID
SHINN, Warden of FCI Victorville
Medium I/II., in their official capacity
only,

Defendants-Respondents.

Case No. 5:18-cv-01317-ODW-MAA

**TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE [4]**

I. INTRODUCTION

Plaintiffs Gustavo Rodriguez Castillo, Gabriela M. Lopez, and Immigrant Defenders Law Center (“IDLC”) bring this action challenging the policies and practices related to immigrant detainees (“detainees”) held at FCI Victorville Medium Security Prison (“FCI Victorville”). Plaintiffs have applied ex parte for a temporary restraining order requiring Defendants to: (1) permit Lopez to meet with her client,

1 Castillo, by phone or in person; (2) permit other detainees at FCI Victorville to
2 communicate, both in person or by phone, with immigration attorneys who wish to
3 communicate with them; (3) permit IDLC to conduct “know your rights” trainings for
4 the detainees at FCI Victorville; and (4) stop immigration proceedings of detainees at
5 FCI Victorville, or deportation of any such detainees, until the detainees have had an
6 opportunity to consult with an attorney and attend a training by IDLC. (Appl., ECF
7 No. 4.) For the following reasons, the Court **GRANTS** Plaintiffs’ Application.

8 **II. BACKGROUND**

9 Plaintiffs allege that on June 12, 2018, the federal government began
10 transferring detainees to FCI Victorville from other parts of the country. (Compl.
11 ¶ 19, ECF No. 1.) The detainees are incarcerated pending an initial screening known
12 as a “credible fear” interview and, if found to have “credible fear,” pending
13 immigration court proceedings. (*Id.* ¶ 20 (citing 8 C.F.R. § 208.30).) Plaintiffs allege
14 that, since their incarceration at FCI Victorville, detainees have been denied the ability
15 to visit, consult with, or contact an attorney. (*Id.* ¶ 22.)

16 Plaintiff Castillo is currently detained at FCI Victorville. (Decl. of Gabriela
17 Lopez (“Lopez Decl.”) ¶ 10, ECF No. 4-4.) Plaintiff Lopez is Castillo’s attorney. (*Id.*
18 ¶ 3.) On June 6, 2018, Castillo’s aunt called Lopez seeking legal representation for
19 her nephew. (*Id.* ¶ 4.) Castillo’s aunt learned that Castillo had already had a credible
20 fear interview and was awaiting further processing in the San Luis Regional Detention
21 Center in San Luis, Arizona. (*Id.* ¶ 5.) Castillo told his aunt that he needed an
22 attorney. (*Id.*) While in Arizona, Castillo was able to contact his aunt almost daily,
23 until the phone calls abruptly stopped on June 6, 2018. (*Id.*) Castillo’s aunt retained
24 Lopez to investigate Castillo’s case and assist in locating Castillo, who had stopped
25 communicating with her. (*Id.* ¶ 6.)

26 On June 14, 2018, Lopez discovered that Castillo was being held at FCI
27 Victorville. (*Id.* ¶ 11.) Lopez called FCI Victorville numerous times on June 14 and
28 15, 2018, with no answer. (*Id.*) She then called Immigration Customs Enforcement

1 (“ICE”) at the Imperial Regional Detention Facility, and they were unable to assist.
2 (*Id.*) She called FCI Victorville another time, but there was, again, no response. (*Id.*)

3 On June 18, 2018, Lopez was able to learn Castillo’s Bureau of Prisons
4 (“BOP”) ID number from ICE Officer Linares in Adelanto, California. (*Id.* ¶ 12.)
5 Officer Linares told Lopez that all inquiries and requests to speak with her client had
6 to be directed to the BOP at Victorville. (*Id.*) She called FCI Victorville, but no one
7 answered. (*Id.*) She emailed a contact listed on the Victorville BOP website and later
8 that day received a call from Jess Pino, Public Information Officer at the Bureau of
9 Prisons. (*Id.* ¶ 13.) Pino told Lopez that ICE—not the BOP—would be handling calls
10 and visits to Victorville. (*Id.* ¶ 14.) Pino also informed her that BOP does not have a
11 practice established for visitors, does not have visiting forms ready, and that BOP
12 anticipates allowing visits for immediate family members only. (*Id.*) Pino indicated
13 that BOP was working with ICE to establish protocols but was unsure what the result
14 would be. (*Id.*)

15 Since Castillo left San Luis, Arizona, he has had no contact with family. (*Id.*
16 ¶ 16.) He has not talked to his attorney since he was detained. (*Id.*)

17 Lindsay Toczyłowski is the Executive Director of Plaintiff IDLC, a non-profit
18 agency located in Los Angeles, California that provides pro bono legal representation
19 and assistance to individuals in immigration court proceedings. (Decl. of Lindsay
20 Toczyłowski (“Toczyłowski Decl.”) ¶ 2, ECF No. 4-3.) IDLC representatives
21 routinely visit immigration detention facilities to meet with and screen immigration
22 detainees to determine whether they may be eligible to receive free legal
23 representation in their removal proceedings. (*Id.*)

24 On June 8, 2018, Toczyłowski learned that detainees had been transferred to
25 FCI Victorville. (*Id.* ¶ 3.) On June 11, 2018, Toczyłowski called FCI Victorville
26 three times to determine the guidelines for visiting detainees, but no one answered the
27 phone. (*Id.* ¶ 4.) On June 12, 2018, she drove to Victorville and arrived at the facility
28 at approximately 10:00 a.m. (*Id.* ¶ 5.) Toczyłowski asked to meet with certain

1 detainees for pro bono representation. (*Id.* ¶ 6.) After being told by one officer that
2 they were not sure of the procedure for such visits, Toczyłowski met with one
3 representative who told her that she could not meet with any detainees that day as the
4 facility was not set up for visits. (*Id.* ¶ 8.) Toczyłowski was told that there was a
5 visitation ban in place, including attorney visits, because there was no space for
6 attorneys to meet with detainees and because ICE had not authorized any visits. (*Id.*)
7 The representative took the list of detainees with whom Toczyłowski sought to meet
8 and said that ICE would contact her shortly. (*Id.* ¶ 11.) On June 14, 2018,
9 Toczyłowski's paralegal submitted a formal visitation request to FCI Victorville. As
10 of June 20, 2018, IDCL has not received a response. (*Id.* ¶ 16.)

11 Plaintiffs initiated this lawsuit and applied ex parte for a temporary restraining
12 order on June 19, 2018. Defendants opposed Plaintiffs' Application on June 20, 2018.
13 (Opp'n, ECF No. 7.)

14 Defendants argue that the relief Plaintiffs seek is either moot or unripe. ICE
15 began transferring large groups of detainees to FCI Victorville between June 8, 2018,
16 and June 12, 2018. (Decl. of Jess Pino ("Pino Decl.") ¶ 4, ECF No. 7-1.) BOP staff
17 had to then conduct initial screening of the detainees to determine their name, obtain
18 identifying information, and assign a register number to them. (*Id.*) BOP staff had to
19 conduct medical screenings to prevent the potential spread of communicable diseases.
20 (*Id.* ¶ 5.) Due to these administrative tasks, BOP was not able to finalize visitation
21 procedures for the detainees until June 19, 2018. (*Id.* ¶ 6.)

22 Defendants now claim that such visitation procedures have been implemented.
23 (*Id.* ¶ 7.) Social and legal visits may take place Tuesday through Friday, other than
24 Federal Holidays, from 8:30 a.m. through 3:00 p.m. (*Id.*) Attorneys must present a
25 valid form of non-expired identification, a valid bar card or other credential showing
26 their active status, and provide the name and either Alien number or Register number
27 of the detainee with whom they wish to visit. (*Id.*) The attorney must also provide
28 two standard BOP forms, a Visiting Attorney Statement and an Application to Enter

1 Institution as Representative (if a non-lawyer is also present). (*Id.*) Attorneys must
2 also fill out the “Notification to Visitor” form prior to being admitted. (*Id.*)
3 Defendants state that one attorney visit was allowed with a detainee on June 20, 2018,
4 and they are in the process of updating their website to include information regarding
5 detainee attorney visits. (*Id.* ¶ 8.)

6 Defendants also explain that a few exceptions to the visitation policies apply;
7 namely that detainees placed on medical quarantine may not leave their housing until
8 the quarantine is lifted and that visitation is only allowed Tuesday through Friday,
9 because federal inmates also housed in Victorville have visitation Saturdays, Sundays,
10 Mondays, and Federal Holidays.

11 Due to the implementation of these procedures, Defendants argue that
12 Plaintiffs’ requests for relief regarding access to attorney visits are moot. (Opp’n 5–
13 6.) Additionally, Defendants argue that Plaintiffs’ request for relief regarding the
14 “know your rights” training session is not ripe, because Plaintiffs have not shown that
15 they have complied with the proper protocol or that they have specifically requested to
16 conduct such trainings and were then denied. (*Id.* at 6.)

17 III. LEGAL STANDARD

18 The standard for issuing a temporary restraining order is “substantially
19 identical” to that for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co. v.*
20 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). “A plaintiff seeking a
21 preliminary injunction must establish that he is likely to succeed on the merits, that he
22 is likely to suffer irreparable harm in the absence of preliminary relief, that the
23 balance of equities tips in his favor, and that an injunction is in the public interest.”
24 *Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)
25 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 129 S. Ct. 365, 374 (2008)).

1 **IV. DISCUSSION**

2 Plaintiffs meet their burden, and establish they are entitled to a temporary
3 restraining order. Despite Defendants’ representations regarding the new visitation
4 procedures, Plaintiffs still maintain that injunctive relief is necessary.

5 First, Plaintiffs argue that Defendants’ new protocol does not address phone
6 calls, which are particularly important because of the limited time permitted for
7 visitation for the 800+ detainees. (Reply 1, ECF No. 8.) The Court agrees that the
8 lack of any protocols regarding phone calls, when the proposed visitation schedule
9 provides such a limited time frame for a large number of detainees, is troubling.

10 Second, Plaintiffs argue that they would be happy to follow any reasonable
11 protocols and clearances to become a “Legal Orientation Provider” in order to conduct
12 “know your rights” clinics, but that they did not have an opportunity to even begin
13 that process until June 19, 2018. Additionally, Plaintiffs explain that Defendants have
14 not affirmatively stated that they would allow such trainings to take place in a prison.

15 Further, the parties do not dispute that many of the detainees were without
16 access to legal communication for as many as to 9 to 13 days, possibly longer as in
17 Castillo’s case. Defendants have made no representations regarding the status of
18 removal proceedings for those detainees who have not had access to counsel. The
19 Court finds these circumstance the most concerning.

20 The Court finds that Plaintiffs will suffer irreparable harm if injunctive relief is
21 not granted. The Court also finds that such relief is in the public interest. Therefore,
22 the Court **ORDERS** as follows:

- 23 (1) Defendants-Respondents shall permit Attorney Lopez to conduct an
24 attorney-client conversation, either in person or by phone (as she
25 prefers), with Castillo;
- 26 (2) Defendants-Respondents shall permit other detainees held at FCI
27 Victorville to communicate, both in person and by phone, with other
28 immigration attorneys who wish to communicate with them—the in-

1 person visitations may proceed according to the protocol Defendants set
2 forth in their Opposition (ECF No. 7);

3 (3) No later than **July 9, 2018**, Defendants-Respondents shall implement a
4 protocol to permit Plaintiff Immigrant Defenders Law Center to conduct
5 “know your rights” trainings for the immigration detainees at FCI
6 Victorville; and

7 (4) Defendants-Respondents shall not proceed with the immigration
8 proceedings of immigration detainees at FCI Victorville, nor shall it
9 deport any such detainees, until the detainees have had an opportunity to
10 consult with an attorney or attend a “know your rights” training by
11 Plaintiff Immigrant Defenders Law Center or another immigration legal
12 service provider.

13
14 Defendants are hereby **ORDERED TO SHOW CAUSE** why a preliminary
15 injunction shall not issue. Any declarations, affidavits, points and authorities, or
16 other submissions in opposition to the issuance of such a preliminary injunction shall
17 be filed with the Court no later than 8:00 p.m. on June 22, 2018. Any reply shall be
18 filed no later than 9:00 a.m. June 25, 2018. The hearing on the order to show cause
19 shall be on **June 25, 2018 at 1:30 p.m.** The briefing and hearing dates on the Court’s
20 Order to Show Cause can be continued if Defendants consent to the temporary
21 restraining order remaining in effect until the new date scheduled for the hearing.
22 Indeed, the Court encourages the parties to meet and confer to attempt to reach an
23 amicable resolution of this dispute. The next available hearing date after June 25,
24 2018, is July 9, 2018.

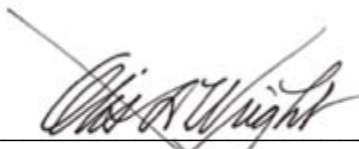
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IV. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Plaintiffs' Ex Parte Application for a Temporary Restraining Order. (ECF No. 4.) The hearing on the order to show cause shall be on **June 25, 2018, at 1:30 p.m.**

IT IS SO ORDERED.

June 21, 2018



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE