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Attorneys for Plaintiffs-Petitioners

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

INNOVATION LAW LAB and LUIS
JAVIER SANCHEZ GONZALEZ by
XOCHITL RAMOS VALENCIA as next
friend,

Plaintiffs-Petitioners,

v.

KIRSTJEN NIELSEN, Secretary, Department
of Homeland Security, THOMAS HOMAN,
Acting Director, Immigration and Customs
Enforcement, ELIZABETH GODFREY,
Acting Field Office Director, Seattle Field
Office of ICE, JEFFERSON BEAUREGARD
SESSIONS, III, U.S. Attorney General,
HUGH J. HURWITZ, Acting Director,
Federal Bureau of Prisons, JOSIAS
SALAZAR, Warden, FCI Sheridan Medium
Security Prison, in their official capacity only,

Defendants-Respondents.

Case No. 3:18-cv-01098

**MOTION TO AMEND AND CLARIFY
TEMPORARY RESTRAINING ORDER**

Plaintiffs Innovation Law Lab (“Law Lab”) and Luis Javier Sanchez Gonzalez (“Sanchez Gonzalez”), by Xochitl Ramos Valencia as next friend (collectively, “Plaintiffs”), respectfully move this Court to amend and clarify the terms of the Temporary Restraining Order (“the Order”) issued on June 25, 2018.

Since the Court issued the Order last Monday, the Law Lab’s volunteer immigration attorneys have driven to Sheridan every day to meet with immigrant detainees who have requested legal representation. On many occasions, however, those meetings have been either limited in time or cancelled, due to failures by Defendants Bureau of Prisons (BOP) and Immigration and Customs Enforcement (ICE) to comply fully with terms of the Order. To the extent that Law Lab’s attorneys have been able to visit the individual detainees, those attorneys report that various BOP and ICE practices have made it difficult for the attorneys to provide efficient and effective legal services, and have further reported that certain terms of the Order remain unclear. Accordingly, as set forth below, Plaintiffs request that the Court amend or clarify its previously issued Order as follows:

1. Require Defendants to allow attorney visitation for a minimum of eight, rather than six, hours per day.

In its Order, the Court provided for six hours of attorney visitation per day. Currently, however, delays associated with, among other things, access to the facility itself, clearing security, transferring detainees to visitation rooms, and limited staffing at FDC Sheridan, have made it such that six hours of attorney visitation per day does not and cannot suffice. *See* Declaration of Erin M. Pettigrew (“Pettigrew Decl.”) ¶¶ 8–11. Every day this past week, attorney visitation hours at FDC Sheridan were limited—sometimes by two to three hours—as a

result of those delays. *Id.* To maximize Law Lab’s ability to provide effective and timely legal representation, Plaintiffs request that the Court amend its Order to require Defendants to provide Law Lab’s attorneys with access to at least two attorney visitation rooms for a minimum of eight, rather than six, hours per day, seven days a week. Doing so will also bring FDC Sheridan in compliance with ICE’s own weekday detention standards, which require the same. 2011 ICE Performance-Based National Detention Standards (“PBNDS” or “Detention Standards”) § 5.7.V.J.2.¹

2. Clarify whether the current Order requires Defendants to allow immigrant detainees and attorneys to use attorney visitation room telephones to contact individuals other than interpreters or interpretation services.

Paragraph 3 of this Court’s Order requires Defendants to provide Law Lab’s pro bono attorneys with access to at least two of FDC Sheridan’s attorney visitation rooms and to ensure that those rooms are equipped with “outside-line telephones that have speakerphone capability, to facilitate the attorney’s consultation with a detainee who does not speak English by calling a telephone-accessible interpreter or interpretation service.” Order at 20. At the time the Order issued, Plaintiffs’ understood paragraph 3 to *include* outside-line telephone access to other individuals as necessary in the investigation and/or preparation of a client’s immigration claims, and specifically to require speakerphone capability to facilitate communication through the use of interpreters. Since the Order issued, however, BOP staff has instructed Law Lab attorneys that the phones may *only* be used to place to calls to interpretation services. Pettigrew Dec. ¶ 4. Plaintiffs seek clarification on the scope of permissible use of the attorney visitation room phones. To the extent that the Order does not require Defendants to permit attorneys and

¹ The Detention Standards are available online at <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

individual detainees to place calls to individuals other than interpreters or interpretation services, Plaintiffs request that the Court amend the Order accordingly.

It is a matter of routine when conducting factual intake and legal consultation appointments that attorneys and legal workers place phone calls—for instance, to family members of the detained individual to ascertain dates, locations, and additional details and facts central to an individual’s immigration history and claim. Additionally, an attorney or legal worker may need to contact a supervisor, pro-bono project coordinator, or expert during the course of the individual consultation.

Without broader telephone access, the ability of Law Lab’s pro bono attorneys to efficiently and effectively perform legal services at Sheridan is significantly impaired. Because the BOP does not allow legal visitors to bring personal cell phones into the facility, an attorney needing to contact a client’s family member, for instance, must take the following steps: she must be escorted by a BOP employee to leave the facility, go to her vehicle to place the call from her personal cell phone, return to the facility, be processed through security, and be escorted back to her client. Under those circumstances, each phone call the attorney needs to make adds potentially 30 to 60 minutes to the legal consultation. Pettigrew Decl. ¶ 6. Such a delay substantially impedes the already limited time that attorneys and clients have been allotted for legal consultations at FDC Sheridan. *Id.*

Attorneys and legal workers visiting the immigrant detainees at FDC Sheridan are professionals bound by ethical obligations and rules of professional conduct. They are trained and oriented by Plaintiff Law Lab. Allowing the attorneys and legal workers to place phone calls that further the provision of legal services poses no security risk to FDC Sheridan and have little, if any, impact on its day-to-day operations.

For those reasons, Plaintiffs request that the Court clarify that paragraph 3 of its Order presumes that outside-line telephones in attorney visitation rooms may be used to place calls to individuals other than interpreters or interpretation services, so long as such calls are for the purpose of conducting a legal visit. If it does not, Plaintiffs request that the Court amend the Order to require Defendants to allow attorneys and immigrant detainees to make telephone calls from the attorney visitation room lines to family members, potential witnesses, and others as necessary in the investigation and/or preparation of the individual detainee's immigration proceedings.

3. Authorize attorneys to use laptops without warrantless or probable-cause-related searches.

Plaintiffs request that the Court amend its Order to allow volunteer attorneys to bring laptops to legal appointments without being subjected to warrantless or probable-cause-related searches, and to bring portable hotspots so that attorneys can access the internet.

As this Court is aware, Plaintiff Law Lab provides pro bono representation to detainees at immigrant detention centers by organizing, training, and vetting volunteer attorneys, legal workers, and interpreters. Law Lab is a grant-funded, nonprofit organization that depends on its volunteers to, among other things, use their own laptop computers when they provide pro bono legal services. Law Lab does not have the resources to provide its volunteers with dedicated laptops.

Law Lab's volunteer attorneys often maintain their own, separate law practices and clients. Thus, the laptops they bring are likely to contain privileged, confidential client information relating not only to clients at FDC Sheridan, but also to clients from the volunteer attorneys' outside practices.

As noted above, the Law Lab's volunteers are trained, vetted professionals and must be trusted to bring a basic tool of their profession—a laptop computer—into FDC Sheridan without the threat of an intrusive search that may put client confidences at risk. Without it, the ability of Law Lab's attorneys to efficiently and effectively perform legal services at FDC Sheridan is significantly impaired

Plaintiffs' counsel attempted to confer with Defendants on this issue, but Defendants were unwilling to deviate from BOP's existing laptop policy. Plaintiff Law Lab now requests that the Court amend the Order to permit the use of laptop computers, without being subject to random search, but otherwise within the terms of the BOP's existing laptop policy.

4. Clarify whether Law Lab attorneys may leave documents and items with clients in accordance with existing ICE Detention Standards and obtain copies of clients' A-Files in accordance with existing ICE Detention Standards.

Plaintiffs also seek clarification on whether Law Lab attorneys may leave documents and items with their clients in accordance with ICE's Detention Standards and obtain copies of their clients' A-Files in accordance with those Detention Standards.

ICE's Detention Standards require that attorneys be allowed to exchange documents with detainees:

10. Materials Provided to Detainees by Legal Representatives

The facility's written legal visitation procedures must provide for the exchange of documents between a detainee and the legal representative or assistant, even when contact visitation rooms are unavailable. Documents or other written material provided to a detainee during a visit with a legal representative shall be inspected but not read. Detainees are entitled to retain legal material received for their personal use. Quantities of blank forms or self-help legal material in excess of those required for personal use may be held for the detainee with his/her property. The detainee shall be permitted access to these documents utilizing the established avenues of communication.

PBNDS § 5.7.V.J.1, at p. 400. They also require that the A-File be provided to the detainee's attorney upon request. PBNDS § 7.1.V.F, at p. 443–44.

At present, Law Lab attorneys are not allowed to leave documents or papers with the immigrant detainees at FDC Sheridan. This imposes significant challenges and limitations on the attorneys' ability to consult and prepare detainees for legal proceedings, and further slows down the consultation process. For instance, attorneys routinely need clients to fill out immigration applications or forms, such as an application for asylum. When a detainee can do this on his or her own time, it allows the attorney to use the limited visitation hours for gathering information or providing legal advice. Or, an attorney may want a detainee to spend time writing a declaration in his own words, a task that currently is impossible at FDC Sheridan. Given that the Law Lab recently learned that the detainees had been issued expedited removal orders, Plaintiffs also seek to clarify that the Court's Order permits them access to those orders.

5. Clarify whether background check may be processed upon arrival in accordance with the PBNDS.

Plaintiffs also request clarification on whether the paperwork necessary to admit legal visitors may be processed upon arrival. Although BOP initially was willing to do so, its position currently is to require 48 hours' advance filing of background check paperwork for all Law Lab volunteers. This requirement, which is inconsistent with ICE's PBNDS, has made Law Lab's ability to provide legal representation substantially more difficult. In recent days, Law Lab volunteers were either turned away or delayed entry by several hours.

On Friday, June 29, BOP staff member Tiffany MacCormack told Law Lab coordinating attorney Erin Pettigrew that all volunteers must "complete and return both the NCIC form and the application to enter the institution 48 hours prior to any scheduled legal appointment."

Pettigrew Decl. ¶ 13, Ex. A. MacCormack further stated “the NCIC form MUST have a ‘wet’ signature; meaning, the original signature on the NCIC form must be hand signed, the form cannot contain a computer font signature. An originally hand signed form may be scanned and email for processing.” *Id.* Finally, McCormack further advised that “[i]f the system we use to process the forms cannot be accessed, anyone not already approved will not be allowed entry in to the institution.” *Id.* The new rules constituted a drastic departure from how BOP had handled volunteers earlier in the week and resulted in an immediate loss of volunteer time for individuals whom Law Lab could not get approval for well in advance.

This new request will substantially curtail Law Lab’s ability to provide legal services in an efficient and timely manner. The immigrants held at FDC Sheridan speak 16 different languages. Law Lab depends on volunteer interpreters from across Oregon to travel to FDC Sheridan to assist with in-person interpretation for know-your-rights trainings and other legal visits. Those interpreters include some elder, first-generation immigrants who may themselves have limited access to computers and/or printers and scanners to comply with the BOP policy. In some circumstances, Law Lab simply may not have 48 hours’ notice that a needed interpreter is able to volunteer. Pettigrew Decl. ¶ 14.

What is more, ICE’s own PBNDS do not require such advance submission of background check applications. Under those standards,

Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days (Monday through Friday), and a minimum of four hours per day on weekends and holidays.

PBNDS § 5.7.V.J.1., at p. 398.

Prior to each visit, all legal representatives and assistants shall be required to provide appropriate identification, such as a bar card from any state, a document demonstrating partial or full accreditation from the U.S. Department of Justice

(DOJ) Executive Office for Immigration Review (EOIR), or a letter of authorization from the legal representative or attorney under whose supervision the individual is working as detailed above.

Id. at p.399. With respect to legal assistants:

Legal Assistants: Upon presentation of a letter of authorization from the legal representative under whose supervision he/she is working, an unaccompanied legal assistant may meet with a detainee during legal visitation hours. The letter shall state that the named legal assistant is working on behalf of the supervising legal representative for purposes of meeting with the ICE/ERO detainee(s).

Id. at p.399. And with respect to interpreters:

Translators and Interpreters: The facility shall permit translators and interpreters to accompany legal representatives and legal assistants on legal visits, subject to “Visitor Identification and Search Procedures” detailed above.

Id. The “Visitor Identification Search Procedures” referred to above provides, as relevant here, “Staff shall verify each adult visitor’s identity before admitting him/her to the facility. No adult visitor may be admitted without government-issued photo identification.” *Id.* at p.396. It states further, “The facility administrator may establish a procedure for random criminal background and warrant checks for the purpose of ensuring facility safety, security and good order.” *Id.* at p.396-97.

ICE’s own detention standards allow for admission to the facility for lawyers and legal assistants upon showing the proper identification. Interpreters are to be treated similarly. No provision of ICE’s detention standards requires a “wet” signature delivered to BOP at FDC Sheridan at least 48 hours in advance, and such a rule unnecessarily inhibits Law Lab’s ability to provide timely legal services.

6. Require Defendants to provide the immigrant detainees with adequate access to a law library.

Plaintiffs request that the Court amend its Order to require Defendants to provide the immigrant detainees at FDC Sheridan with adequate access to a law library. Such access is standard in circumstances of incarceration, especially where individuals are not guaranteed the assistance of counsel. Again, under ICE's own detention standards,

Each facility shall provide a properly equipped law library in a designated, well-lit room that is reasonably isolated from noisy areas and large enough to provide reasonable access to all detainees who request its use. It shall be furnished with a sufficient number of tables and chairs to accommodate detainees' legal research and writing needs.

PBND § 6.3.V.A., at p.422. The law library must have, among other requirements, "[s]ufficient writing implements, paper, photocopiers and related office supplies shall be provided to detainees to prepare documents for legal proceedings, special correspondence or legal mail." *Id.*

CONCLUSION

Plaintiffs recognize that some of the above requests depart from typical FDC Sheridan or BOP protocol. But the present circumstances—in which the government has decided to house noncriminal immigrant detainees at a federal prison—are anything but typical, and the challenges that these circumstances have created are entirely of the government's own creation. Attorney access and other conditions at FDC Sheridan fall well below the standards that generally govern immigration detention centers. Each of Plaintiffs' requests serves to improve those conditions, only furthering the Law Lab's (and, presumably, the government's) goal of providing timely, effective, and ethical legal services to these immigrant detainees.

DATED this 1st day of July, 2018.

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