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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

PLAINTIFFS-PETITIONERS' EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND MEMORANDUM IN SUPPORT OF APPLICATION

ORAL ARGUMENT REQUESTED

EXPEDITED CONSIDERATION REQUESTED

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MOTION

Plaintiffs Innovation Law Lab ("Law Lab") and Luis Javier Sanchez Gonzalez, by Xochitl Ramos Valencia as next friend ("Sanchez Gonzalez"), respectfully move this Court for a Temporary Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure. Plaintiffs have filed a Complaint in this Court, which is incorporated herein and made part of this motion by reference.

Defendants are currently incarcerating more than one hundred immigration detainees, with little to no way of meaningfully communicating with families and immigration attorneys, at the Federal Correctional Institution Sheridan ("FCI Sheridan"), a federal prison in Sheridan, Oregon. Since the detainees were first transferred to FCI Sheridan in June 2018, Defendants have denied all meaningful attorney access to the detainees. As a result of Defendants' denial of access, the detainees face summary removal from the United States without the legal assistance to which they are entitled.

Pursuant to Rule 65(b) and District of Oregon Local Rule 65-1, Plaintiffs respectfully move this Court for an emergency order (1) requiring adequate attorney visitation and phone access for immigration detainees at FCI Sheridan, as described in the below memorandum; (2) permitting Plaintiff Law Lab to conduct "know your rights" trainings for the detainees; (3) barring Defendants from restricting attorney visitation hours to immigrant detainees to less than 8 hours on weekdays and 4 hours on weekends; and (4) barring Defendants from proceeding with the detainees' cases or deportations until the detainees have an opportunity to consult with an attorney and attend a training by Plaintiff Law Lab. A temporary restraining order should

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issue here because, as Plaintiffs explain below, "immediate and irreparable injury, loss, or irreversible damage will result" if the order does not issue. Fed. R. Civ. P. 65(b).

This application is supported by the below accompanying memorandum of points and authorities and the attached declarations and exhibits thereto.

I. INTRODUCTION

The federal government is currently imprisoning several hundred individuals, with little to no way of meaningfully communicating with family members and immigration attorneys, at the FCI Sheridan Medium Security Prison. Beginning in June 2018, the government transferred these individuals—who are being detained under the color of the immigration laws—to the Sheridan prison from other parts of the country. The government's decision to hold immigration detainees in a federal prison is highly unusual and unprecedented in Oregon. The federal government has refused to allow attorneys to visit or contact the detainees or, it appears, permit the detainees to contact an attorney.

The government's repeated denial of attorney access plainly is unlawful. Long-standing and fundamental principles of constitutional law forbid the government from holding people incommunicado without permitting them an opportunity to communicate with their attorneys. *Halvorsen v. Baird*, 146 F.3d 680, 688–89 (9th Cir. 1998) ("There is a well established tradition against holding prisoners incommunicado in the United States. It would be hard to find an American who thought people could be picked up by a policeman and held incommunicado, without the opportunity to let anyone know where they were, and without the opportunity for anyone on the outside looking for them to confirm where they were."). The federal government's standard operating rules governing individuals imprisoned for immigration

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proceedings likewise forbid the government from barring attorneys from entering the prison's doors when they seek to represent their clients or provide legal assistance.[1]

Absent relief from this Court, the detainees at FCI Sheridan will face immediate and irreparable harm because they may be summarily deported without critically needed legal assistance, may be forced to proceed with asylum interviews without the assistance of counsel, or, in all events, will be held incommunicado in violation of their fundamental constitutional rights. ICE, through its agents and officers, has refused to provide Plaintiff with assurances that deportations scheduled for the FCI Sheridan detainees will not proceed without first providing the requested attorney access. If ICE proceeds with asylum interviews of any of the detainees, *which it has stated will begin next week*, the detainees will not have the legal assistance to which they are entitled during those interviews. And, so long as the conditions in which these detainees are being held remains unchanged, each day that passes amounts to yet another day in which the detainees are stripped of their fundamental constitutional rights.

These detainees also potentially have no way to contact their children or other family members from whom they have been forcibly separated as result of the federal government's newly instituted "zero-tolerance" policies. Irreversible damage has already resulted, and will continue to result, unless this Court provides the relief that Plaintiffs seek. Plaintiffs ask that Defendants comply with the law and afford the same access to these detainees as must be afforded immigration detainees at all facilities across the United States.

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[1] In an analogous case in the Central District of California, the federal government was imposing nearly identical restrictions on immigration detainees held at a federal prison complex in Victorville, California. The ACLU filed a complaint and an emergency motion for a temporary restraining order, which was issued on June 21, 2018. *See* Temporary Restraining Order and Order to Show Cause, *Gustavo Rodriguez Castillo et al. v. Kirstjen Nielsen et al.*, No. 5:18-cv-01317 (C.D. Cal. June 21, 2018). A copy of the temporary restraining order issued in Castillo is attached as **Exhibit 1** to this memorandum.

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II. FACTS

The federal government is currently incarcerating at least 120 immigration detainees, with little to no way of meaningfully communicating with family members and immigration attorneys, at the FCI Sheridan Medium Security Prison. The facility is a "medium security federal correctional institution" that typically houses prisoners serving sentences for criminal convictions.[2] ICE officials recently announced that they intend to house approximately 130 noncitizens at the prison.[3] Using a federal prison to incarcerate people held under immigration laws is "highly unusual."[4] Officials claim that the additional detention space is needed because of the federal government's recently instituted "zero-tolerance" policies, under which the government intends to prosecute all misdemeanor illegal entry violations and to forcibly separate noncitizens subject to prosecution from their children and their family members.[5]

On or about June 8, 2018, the federal government began transferring noncitizens to FCI Sheridan from other parts of the country. It appears, based on Plaintiffs' information and belief, that nearly all of the noncitizens currently housed at FCI Sheridan have pending immigration proceedings. Many are likely seeking protection under the asylum laws. They are incarcerated pending an initial screening known as a "credible fear" interview and, if found to have a "credible fear," pending immigration court proceedings. *See* 8 C.F.R. § 208.30.

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[2] https://www.bop.gov/locations/institutions/she/.

[3] The agreement between the ICE and the Federal Bureau of Prisons permitting the use of FCI Sheridan for immigration detention provides for a maximum of 130 bends for the confinement of ICE detainees.

[4] https://www.npr.org/2018/06/08/618182740/ice-to-send-1-600-detainees-to-federal-prisons.

[5] http://www.latimes.com/local/lanow/la-me-ln-Sheridan-ice-detention-20180607-story.html.

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Other detainees at FCI Sheridan were likely apprehended in the interior of the country and are detained pending immigration court proceedings at which they can litigate defenses to removal or request relief from removal under the immigration laws.

A. Denial of access to counsel

Since the federal government first transferred immigration detainees to FCI Sheridan almost two weeks ago, Defendants have denied virtually all attempts by attorneys providing pro bono representation through Plaintiff Law Lab's pro bono project to visit, communicate with, or contact detainees incarcerated at the facility. As of the date of this application, Plaintiff Law Lab's attorneys have been denied access at least five times, including twice for the purpose of providing requested pro bono representation to Plaintiff Sanchez Gonzelez. Because of Defendants' repeated denial of meaningful access to counsel, Plaintiff Sanchez Gonzalez and other similarly situated immigrant detainees at FCI Sheridan are at risk of imminent and irreparable injury.

1. Plaintiff Innovation Law Lab's Sheridan Pro Bono Project

One June 8, 2018, Stephen W. Manning, Executive Director of Plaintiff Law Lab, learned that immigration authorities, including Defendants, were using FCI Sheridan to civilly detain 123 immigrant men. Decl. of Stephen W. Manning ISO Ex Parte Motion for Temporary Restraining Order (Manning Decl.) ¶ 2, 7. In response to that news, Manning and his staff at Plaintiff Law Lab made an organizational choice to provide pro bono legal representation to every immigrant detainee in the Sheridan cohort. Manning Decl. ¶ 7. If the FCI Sheridan immigrant detainees are not provided meaningful access to counsel—which includes "know-your-rights" presentations, an intake screening, an individualized client conference, one or more meetings as required by

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each client to prepare for fear interviews with ICE officials, and accompaniment to fear interviews—they likely will be unable to pursue meritorious claims for relief or identify defenses to which they are entitled. Manning Decl. ¶ 32. As a result, they could face a real and imminent risk of deportation and, ultimately, physical harm, violence, or death. Manning Decl. ¶ 32.

To facilitate meaningful access to counsel for the FCI Sheridan detainees, the Law Lab, through Manning, designed a pro bono representation project to facilitate such access to all of the FCI Sheridan immigrant detainees. In doing so, the Law Lab, through Manning, determined that, on average, each individual detained at FCI Sheridan would need, at a minimum, three attorney contacts in order to obtain constitutionally adequate access to counsel: (1) a know-your-rights group orientation that provides an overview of immigration relief; (2) an individualized screening with a trained advocate; and (3) an individualized client conference. Manning Decl. ¶ 8. For the Sheridan cohort, Law Lab and Manning determined that at least three (and more likely four) know-your-rights orientations of 60 to 90 minutes would be necessary to orient them on their rights. Manning Decl. ¶ 8. Individualized screenings take, on average, approximately one hour, and individualized client conferences take, on average, two to three hours. Manning Decl. ¶ 8. Know-your-rights orientations, individualized screenings, and the individualized client conferences generally are best held on separate days because of client and attorney exhaustion. Manning Decl. ¶ 8.

Representation of a noncitizen in immigration proceedings also requires preparation for fear interviews, immigration court hearings, and release applications, among other potential elements of the individual's unique case. Manning Decl. ¶ 9. For each of these instances of representation, the attorney needs access to her client to adequately perform her duties as the

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client's lawyer. Manning Decl. ¶ 9. Some of this contact can be by telephone or video and some is best in person. Manning Decl. ¶ 9. In-person contact is especially critical when it involves language interpretation of complex facts and legal concepts. Manning Decl. ¶ 9.

The most critical element of meaningful representation is the individualized attorney conference. Manning Decl. ¶ 10. Without the individualized attorney conference, the client does not actually receive any legal advice, so to speak, about what he or she should do for their particular case. Manning Decl. ¶ 10. Simply attending a group presentation about the immigration process does not adequately prepare a client. Manning Decl. ¶ 10. Using the pro bono representation model described above, the Law Lab is prepared to facilitate meaningful access to counsel to all of the FCI Sheridan immigrant detainees upon their request. Manning Decl. ¶ 27.

On June 8, 2018, the Law Lab was contacted by the partner of one of the detained men, J.V.F., who asked the Law Lab to represent the detainee. Manning asked Philip Smith, a local immigration attorney with substantial experience representing individuals in immigration proceedings, to conduct an intake screening for legal services in accordance with the pro bono representation model that the Law Lab designed for FCI Sheridan. Manning Decl. ¶ 11.

Also on June 8, 2018, Manning wrote a letter to FCI Sheridan Warden Josias Salazar and Acting Field Office Director for U.S. Immigration and Customs Enforcement ("ICE") in Oregon, Elizabeth Godfrey. Manning Decl. ¶ 12. In Manning's letter, he asked the Warden and Ms. Godfrey to provide access to counsel and other legal resources to all of the immigrant detainees, whom the Law Lab intended to represent. Manning Decl. ¶ 12, Ex. A. The same day, the Law Lab created a hotline with a local telephone number to allow anyone detained as a civil

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immigrant detainee to call the Law Lab for legal assistance. Manning Decl. ¶ 12. Through the Mexican Consulate in Oregon, delegates from which visited FCI Sheridan last week, Manning provided that telephone number to ICE. Manning Decl. ¶ 12. The letter is also published on the Law Lab website. Manning Decl. ¶ 12.

2. ICE's repeated denials of access to counsel

Over the next few days, and as described below, many of the Law Lab's pro bono attorneys were denied access to speak with the detainees when they requested such access from ICE.

a. Denial of access to counsel on June 9, 2018

On Saturday, June 9, 2018, Mr. Smith called FCI Sheridan to follow up on Manning's referral and inform FCI Sheridan staff that he needed to meet with his client. Declaration of Philip Smith ISO Ex Parte Application for Temporary Restraining Order (Smith Decl.) ¶ 3. Smith was told that attorney visits were permitted seven days a week and that he could arrange a visit through a counselor the following day. Smith Decl. ¶ 3. Following instructions he was provided by FCI Sheridan staff, Smith left a message with FCI Sheridan staff member Sean Price, identifying himself, explaining the reason for his call, and requesting a legal visit on Sunday. Smith Decl. ¶ 3. Smith left his phone number and his client's identifying information, but he did not receive a call back. Smith Decl. ¶ 3. On Sunday, June 10, when Smith went to FCI Sheridan for his legal visit, he was denied access and informed that legal visits could occur only between Monday and Friday. Smith Decl. ¶ 6-8. When Smith requested to meet with his client in the public visitation area, as opposed to an attorney remove, that request was also denied. Smith Decl. ¶ 10.

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b. Denial of access to counsel on June 15–17, 2018

On June 12, 2018, when Manning learned that Smith had been denied access, Manning sent another letter to the Warden and Godfrey by e-mail. Manning Decl. ¶ 13. In the letter, Manning provided the Warden and Godfrey a list of approximately 100 noncitizens who he understood were detained at Sheridan and requested meaningful access on an individual basis to each of them. Manning Decl. ¶ 13.

By June 14, 2018, having received no access to any immigration detainee at FCI Sheridan, Manning became increasingly concerned that the detainees would begin to be interviewed for credible fear, the first step in the asylum process, without representation. Manning Decl. ¶ 14. At that time, the FCI Sheridan immigrant detainees were still not able to access telephones, despite being at Sheridan for more than a week. Manning Decl. ¶ 14. To facilitate free legal calls, as is required for any facility holding immigration detainees by ICE's Performance-Based Detention Standards,[6] the Law Lab created a toll-free hotline number. Manning Decl. ¶ 14. Manning provided this number to the Mexican Consulate, who he knew was visiting Mexican nationals at Sheridan that day. Manning Decl. ¶ 14. He later learned, however, that, despite providing the toll-free number, the immigrant detainees at FCI Sheridan could not place free legal phone calls because FCI's Sheridan's phone system, contrary to the Detention Standards, does not allow them. Manning Decl. ¶ 17. Without access to free legal calls, attorneys cannot adequately represent their clients in detention. Manning Decl. ¶ 17.

During the Mexican Consulate visit on June 14, 2018, attorney Luis Garcia visited FCI Sheridan and was permitted to speak with five Mexican national immigrant detainees.

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[6] ICE Performance-Based Detention Standards 2011 ("Detention Standards"), available at https://www.ice.gov/detention-standards/2011.

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Declaration of Luis Garcia ISO Ex Parte Application for Temporary Restraining Order (Garcia Decl.) ¶ 3–4. Each of the detainees with whom Garcia spoke had requested asylum relief. Garcia Decl. ¶ 5. None had been asked whether they wanted to speak with the Mexican Consulate; they had learned of the visit only through word of mouth in the prison. Garcia Decl. ¶ 6. None had any contact with or ability contact legal counsel, and only two had any contact with their families. Garcia Decl. ¶ 7. Two of them—Damian and Luis—had been immediately separated from their families once they were detained. Garcia Decl. ¶ 7. Neither Damian nor Luis had any contact with their families or any idea where their families were located. Garcia Decl. ¶ 7. They were extremely worried and desperate for any information, as it had been "months." Garcia Decl. ¶ 7. On the day of Garcia's visit, four men were in urgent need of medical care but neither had been treated. Garcia Decl. ¶ 8. All of the five men with whom Garcia spoke requested legal representation. Garcia Decl. ¶ 11.

The same day as the Mexican Consulate visit, Manning received referrals from Lisa Hay, the Federal Defender for the District of Oregon, and the Mexican Consulate in Oregon, for 13 FCI Sheridan detainees who had requested an immigration attorney. Manning Decl. ¶ 15–16.

Also that day, Manning submitted to Chad Allen, a Supervisory Detention and Deportation Officer, a list of 13 men who had requested access to immigration counsel, together with a list of the legal team members who would be visiting FCI Sheridan the following day to serve them. Mr. Allen approved the visit by e-mail. Manning Decl. ¶ 18. On June 15, 2018, at around 8 a.m., when the legal team already was en route to Sheridan, Officer Allen informed Manning by email that the attorneys' access was denied and that BOP would not permit the attorneys to enter the facility. Manning Decl. ¶ 19. Officer Allen informed Manning that the

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attorneys' access would be denied until some specified time in the evening, and no earlier than 4:45 p.m. Manning Decl. ¶ 19. In light of that denial, Manning requested weekend access, which was also denied. Manning Decl. ¶ 20.

c. Denial of access to counsel on June 18, 2018

Without weekend access, the attorneys decided to plan a visit for the next available day, Monday, June 18, 2018. Garcia Decl. ¶ 14. Thus, on Friday, June 15, 2018, at 7:25 a.m., attorney Chanpone Sinlapasai wrote an email to Officer Allen asking for the languages spoken by each of the immigration detainees on the list that Manning had provided, so that they attorneys could arrange for in-person interpreters to participate in the attorney consultations. Declaration of Chanpone Sinlapasai ISO Ex Parte Application for Temporary Restraining Order (Sinlapasai Decl.) ¶ 5. Later that day, Manning spoke on the telephone with Officer Allen about the denial of access to counsel. Manning Decl. ¶ 21. Manning was informed that attorney visitation would be limited to a single room for three hours a day, Monday through Friday, that no immigration library materials were available, and that an "ABA know your rights" video would be provided by ICE. Manning Decl. ¶ 21. Officer Allen confirmed to Manning that the free direct call platform was not, and had not been, operational. Manning Decl. ¶ 21.

On Sunday, June 17, 2018, Manning submitted to ICE a list of nine individuals who had requested immigration attorney representation. The next morning, Sinlapasai spoke with Officer Michael T. Louie, an officer with Portland's ICE office, who confirmed that the attorneys would be permitted to visit the nine individuals. Sinlapasai Decl. ¶ 8. Manning and his colleagues, including Sinlapasai, left Portland for Sheridan early that morning. Around 11 a.m., Officer Michael T. Louie, an officer with Portland's ICE office, notified Manning and his colleagues via

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e-mail that their access was denied, notwithstanding Officer Louie's own earlier assurances to the contrary. Manning Decl. ¶ 22; Sinlapasai Decl. ¶ 11. Officer Louie then advised that legal visitations would only occur on Tuesday, Wednesday, and Friday from 12:30 p.m. to 3:30 p.m. Manning Decl. ¶ 22.

After receiving notice of their denial from Officer Louie, Manning contacted Corey Heaton, ICE's Assistant Field Office Director in Portland. Manning Decl. ¶ 24. Manning first e-mailed Director Heaton as a follow up to earlier conversation they had that day, during which they had discussed different options for the Law Lab's know-your-rights presentation, and during which Heaton stated that ICE intended to schedule asylum interviews the week of June 25. Manning Decl. ¶ 24. Manning explained in his e-mail the Law Lab's model for providing pro bono representation, which requires that pro bono attorneys be provided individual access to their clients in the days and weeks after the group know-your-rights presentation. Manning Decl. ¶ 24. Manning emphasized the importance of this access, access to telephones, and access to an adequate law library, all of which are required by both the Detention Standards and the U.S. Constitution. Manning Decl. ¶ 24. Manning sent Director Heaton a later e-mail to emphasize the Law Lab's desire to work collaboratively on achieving individual attorney access and emphasizing the importance of such access to representing individuals. Manning Decl. ¶ 24.

On June 19, 2018, Manning sent Director Heaton another e-mail requesting that they continue the conversation around individual attorney access and the specific logistics around scheduling. Manning Decl. ¶ 24. The same day, Manning received two more referrals for men detained at FCI Sheridan who had requested an immigration attorney. Manning Decl. ¶ 25. With respect to at least one of those referrals, the man had fled his home country because he

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feared for his life and had come to the United States to seek asylum and protection. Manning Decl. ¶ 25. He fears that he would be subjected to serious harm and mistreatment if returned to his home country. Manning Decl. ¶ 25.

d. Denial of access to counsel on June 20, 2018

On Wednesday, June 20, 2018, attorney Chelsea Strautman visited FCI Sheridan to meet with immigration detainees. Declaration of Chelsea Strautman ISO Ex Parte Application for Temporary Restraining Order (Strautman Decl.) ¶ 5. Strautman did not have plan to meet with any specific detainee, but informed ICE when she arrived that she wanted to make herself available for immigration detainees who had requested access to counsel. Strautman Decl. ¶ 3. ICE denied her access. Strautman Decl. ¶ 5–6.

Also on June 20, attorney Sinlapasai spoke with Godfrey, who confirmed that Sinlapasai and her colleagues were authorized to provide know-your-rights training at FCI Sheridan the following day, June 21. Sinlapasai Decl. ¶ 12.

e. Denials of access to counsel on June 21, 2018

On Thursday, June 21, 2018, Strautman, Ian Philabaum, and Leland Baxter-Neal, all visited FCI Sheridan seeking to provide pro bono legal representation to immigration detainees who had requested access to counsel through the Law Lab's pro bono program. Strautman Decl. ¶ 7–8; Declaration of Ian Philabaum ISO Ex Parte Application for Temporary Restraining Order (Philabaum Decl.) ¶ 5; Declaration of Leland Baxter-Neal ISO Ex Parte Application for Temporary Restraining Order (Baxter-Neal Decl.) ¶ 5; When they arrived, they were stopped at the gates to the property by a BOP official. The official requested Philabaum's and Baxter-Neal's names and identification. Philabaum and Baxter-Neal provided their identification, and

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then were denied access. Philabaum Decl. 6–8; Baxter-Neal Decl. 6–8; Strautman Decl. ¶ 11–13. Later that day, Philabaum returned to FCI Sheridan to provide the know-your-rights training that Sinlapasai had arranged the previous afternoon, *see* Sinlapasai Decl. ¶ 12, but was again denied access, Philabaum Decl. ¶ 10. Philabaum was informed at that time that ICE officers had left the premises at 3:30 p.m. that day. Philabaum Decl. ¶ 10.

As of today, the pro bono representation project facilitated by Plaintiff Law Lab at FCI Sheridan has more than 50 requests for representation. Manning Decl. ¶ 27. As of today, only one attorney associated with the project to represent all detained immigrants held at FCI Sheridan has been able to meet with his client. Manning Decl. ¶ 28. That meeting lasted one hour and was a preliminary consultation. Manning Decl. ¶ 28. Subsequently, the client was transferred to the North West Detention Center in Tacoma. Manning Decl. ¶ 28. Despite the Law Lab's public commitment to engage every person detained at FCI Sheridan, no other attorney associated with the project to represent all detained immigrants held at FCI Sheridan has been able to secure meaningful access to any of the dozens of men who have requested legal assistance. Manning Decl. ¶ 28.

The Law Lab, through pro bono attorneys, will engage and represent all of the men detained at FCI Sheridan as soon as attorneys are allowed access to their clients as required by the Detention Standards and the U.S. Constitution. Manning Decl. ¶ 27. At this time, however, ICE and FCI Sheridan's limitations on in-person and telephone access that the immigrant detainees at Sheridan prison face are immense, and they functionally act to deny access in its entirety. Manning Decl. ¶ 29. Within this limitation, if more than 100 clients need access to a single visitation room, which is only available for 9 hours a week for multiple instances of

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representation, at different stages of each proceeding, there is simply no representation system that can permit an attorney to competently provide legal services and zealous representation. Manning Decl. ¶ 29.

Attorney representation is often the single most important factor in whether an immigration detainee is able to prevail in his or her immigration case. Garcia Decl. ¶ 16. If the men detained at FCI Sheridan who are seeking asylum are not provided meaningful access to counsel, which includes know-your-rights presentations, an intake screening, an individualized client conference, one or more meetings as required by each client to prepare for fear interviews with ICE officials, and accompaniment to fear interviews, they will likely be unable to pursue meritorious claims for relief or identify defenses to which they are entitled. Manning Decl. ¶ 32. Asylum interviews that are conducted without meaningful access to counsel—which ICE has stated its intent do conduct *as soon as next week*, Manning Decl. ¶ 24, cannot be undone. As a result of their lack of access, these men could face a real and imminent risk of deportation and, ultimately, physical harm, violence, or death. Manning Decl. ¶ 32. Because many, if not all, of the men detained at FCI Sheridan have existing removal orders, ICE could and, Plaintiffs believe, will begin deportations immediately. Manning Decl. ¶ 32.

B. The FCI Sheridan detainees are harmed as long as they are denied meaningful access to counsel.

The government's denial of attorney access to the Sheridan prison causes serious irreparable harm to the immigration detainees incarcerated there. Unlike in criminal proceedings, individuals in immigration proceedings are not entitled to appointed counsel if they cannot afford one. *See generally CJLG v. Sessions*, 880 F.3d 1122, 1128 (9th Cir. 2018). Because attorneys are not automatically provided by the government, immigration detainees seeking representation

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must contact a private attorney to retain them or rely on a patchwork of legal service providers who provide "know your rights" trainings and, in some cases, pro bono representation. By denying attorney access, the federal government has effectively prevented detainees from retaining counsel or obtaining any legal assistance. In addition, the government's practices prevent counsel who have been retained from consulting with their clients, preparing for hearings, or communicating important matters with their clients about the status of their pending cases.

The assistance of an attorney is essential for noncitizens navigating the notoriously complex immigration system. The immigration laws "have been termed second only to the Internal Revenue Code in complexity." *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) (internal quotation marks omitted); *see also Baltazar-Alcazar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004) (emphasizing the complexity of immigration laws and noting that lawyers may be the only ones capable of navigating through it).

Legal assistance is particularly critical for noncitizens at the outset of their cases, who must make important decisions about what claims or defenses to pursue. For noncitizens seeking asylum, "credible fear" interviews may conducted in a matter of days after apprehension. A denial of "credible fear" may result in the noncitizen's immediate deportation to the country where they believe they will be persecuted, tortured or worse. *See* 8 C.F.R. § 208.30(g)(1)(ii). For such individuals, the assistance of counsel may mean the difference between life and death.

III. ARGUMENT

A temporary restraining order should be issued if "immediate and irreparable injury, loss, or irreversible damage will result" to the applicant in the absence of immediate relief. Fed. R.

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Civ. P. 65(b). The standard for issuing a temporary restraining order is the same as the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). "A preliminary injunction is appropriate when a plaintiff demonstrates . . . that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011) (quoting *Lands Council v. McNair*, 537 F.3d 981, 97 (9th Cir. 2008) (en banc)). As set forth below, Defendants' denial of attorney access at FCI Sheridan violates clearly established constitutional and statutory law. Plaintiffs will suffer immediate and irreparable harm absent emergency relief.

A. Plaintiffs are Likely to Prevail on their Constitutional and Statutory Claims.

1. Denial of Access to Counsel Violates Due Process

Defendants' blanket denial of all access to counsel violates Plaintiffs' due process rights in three distinct respects. **First**, the Due Process Clause of the Fifth Amendment safeguards the rights of noncitizens, including Plaintiff Sanchez Gonzalez and other FCI Sheridan immigrant detainees, to hire and consult with attorneys. *See Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554, 565 (9th Cir. 1990) (recognizing "aliens have a due process right to obtain counsel of their choice at their own expense," and affirming injunction against government practices "the cumulative effect of which was to prevent aliens from contacting counsel and receiving any legal

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advice," including the practice of denying visits with counsel); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005) ("The right to counsel in immigration proceedings is rooted in the [Fifth Amendment] Due Process Clause"); *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) ("[A]n alien who faces deportation is entitled to a full and fair hearing of his claims and a reasonable opportunity to present evidence on his behalf.").

Plaintiffs are being denied this fundamental constitutional right. Immigrants have been detained in the Sheridan prison for at least two weeks. Because noncitizens in removal proceedings typically are not entitled to appointed counsel at the government's expense, immigration detainees rely on nonprofit legal providers to deliver "know your rights" trainings and, where possible, pro bono representation. Plaintiff Law Lab is one such service provider: its attorneys are ready and willing to conduct legal presentations informing detainees of their substantive and procedural rights, and to provide representation in certain cases. To date, Plaintiff Law Lab's attorneys have been turned away at the FCI Sheridan prison gates, despite complying with ICE and BOP procedures and instructions from BOP officials. As a result, immigration detainees at Sheridan have been denied their constitutional right to consult with an attorney. They could—*as early as Monday*—be forced to participate in asylum interviews or hearings conducted by government officials with life-or-death implications, but none has had the benefit of legal advice, even though it is available to them.

The Constitution prohibits this result. Due process requires "that aliens have the opportunity to be represented by counsel. The high stakes of a removal proceeding and the maze of immigration rules and regulations make evident the necessity of the right to counsel." *Biwot*, 403 F.3d at 1098. To effectuate this right, immigrants are entitled to "reasonable time to locate

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counsel, and permit counsel to prepare for the hearing." *Rios-Berrios v. INS*, 776 F.2d 859, 862 (9th Cir. 1985). When the Government incarcerates immigrants, it cannot impose restrictions on access to attorneys that undermine the opportunity to obtain counsel. *Orantes-Hernandez*, 919 F.2d at 554, 565 ("The INA specifically requires the Attorney General to . . . assure the right of counsel of one's choice.").

Here, Defendants have denied the detainees at FCI Sheridan, including Plaintiff Sanchez Gonzalez and other FCI Sheridan immigrant detainees, *all access* to attorneys who may advise them of their legal rights in immigration proceedings—including the right to counsel itself. That unquestionably violates the Due Process Clause.

Second, due process requires that detainees have adequate opportunities to visit and communicate with *retained* counsel. Impediments to communication after transfer to a remote facility can constitute a "constitutional deprivation" where they obstruct an "established on-going attorney-client relationship." *Comm. of Cent. Am. Refugees v. INS*, 795 F.2d 1434, 1439 (9th Cir. 1986). Defendants' practices here unquestionably have obstructed established attorney-client relationships. These obstacles to communication amount to a complete deprivation of the detainees' constitutional rights. *See Comm. of Cent. Am. Refugees*, 795 F.2d at 1439; *cf. Chlomos v. INS*, 516 F.2d 310, 313 (3d Cir. 1975) (concluding that it was "unfair" for petitioner who had retained counsel in one state and been transferred to another to be denied a continuance to guarantee sufficient time to communicate with his lawyer, especially where the court did not notify the lawyer of the hearing date: "It was particularly aggravating here, where petitioner was incarcerated and under a handicap in communicating with his lawyer.").

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Third, Defendants' conduct violates the Fifth Amendment's universal prohibition against holding a prisoner or a detainee incommunicado. "There is a well-established tradition against holding prisoners incommunicado in the United States. It would be hard to find an American who thought people could be picked up by a policeman and held incommunicado, without the opportunity to let anyone know where they were, and without the opportunity for anyone on the outside looking for them to confirm where they were." *Halvorsen v. Baird*, 146 F.3d 680, 688–89 (9th Cir. 1998). This right applies to civil detainees as well as those in criminal custody. *Id.* ("That a person is committed civilly . . . cannot diminish his right not to be held incommunicado.").

This fundamental requirement protects not only attorney access, but also detainees' rights to communicate with family members: "Communication has value even if it would not get a person released. A phone call could reduce the mental distress to the person confined. It could also reduce the anxiety of those who might wonder where he was, such as a spouse, parent, or unsupervised child." *Id*. at 688.

Many of the FCI Sheridan detainees, including Plaintiff Sanchez Gonzalez, have been detained for going on two weeks without being permitted to make contact with the outside world, including with their attorneys and their families. Despite their repeated attempts, Plaintiff Law Lab's attorneys have been barred from providing crucial legal assistance—legal assistance that the U.S. Constitution requires—to noncitizens faced with imminent and potentially severe deportation consequences. For those reasons, Plaintiffs are likely to succeed on the merits of their Fifth Amendment claim.

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2. Denial of Access to Counsel Violates the First Amendment

The First Amendment guarantees all persons—including those in detention and their attorneys—the freedom of speech. *See Pell v. Procunier*, 417 U.S. 817, 822 (1974) ("A prisoner retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system."); *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002) ("We sensibly and expansively define the First Amendment right at issue in this case as the right to communicate with persons outside prison walls."). This protection encompasses the right to make telephone calls, exchange correspondence, and receive in-person visitors. *Valdez*, 302 F.3d at 1048.

The complete absence of any justification for Defendants' blanket denial of all attorney access at Sheridan renders that denial of access unconstitutional under the First Amendment. *See Valdez*, 302 F.3d at 1048 (applying test established by *Turner v. Safley*, 482 U.S. 78 (1987) to First Amendment claims for incarcerated persons). There is no legitimate government interest in holding detainees for weeks or more without access to anyone beyond the prison walls. *See Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000); *Halvorsen*, 146 F.3d at 688. Plaintiffs are simply asking that Defendants afford them the comparable procedural protections in place at other immigration detention facilities across the country. *See* Detention Standards 5.7.J.2; *Lyon v. ICE*, 171 F. Supp. 3d 961 (N.D. Cal. 2016).

The First Amendment separately protects the Plaintiffs' right to hire and consult with an attorney. *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (2005), *as amended on denial of reh'g* (9th Cir. July 21, 2005). Although the government may impose time, place, and manner regulations, it may not unreasonably restrict this right. *Mothershed*, 410 F.3d at 611

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(restrictions must be narrowly tailored to serve a significant government interest). Defendants' *complete* denial of communication, in-person visitation, and legal assistance unconstitutionally restrains the First Amendment right to hire and consult with counsel.

Finally, the First Amendment protects an *attorney's* right to advise both detained clients and prospective litigants. *See NAACP v. Button*, 371 U.S. 415, 428-429 (1963) (striking down state statute that limited nonprofit attorneys' right to advise prospective litigants about seeking legal assistance on First Amendment grounds). There is no "compelling state interest" that justifies Defendants' wholesale prohibition on attorneys seeking to speak with immigration detainees at the Sheridan prison. The blanket prohibition on contact plainly does not provide the "precision of regulation" that the Constitution requires. *Button*, 371 U.S. at 438.

For the foregoing reasons, Plaintiffs are likely to succeed on the merits of their First Amendment claim.

3. Denial of access to counsel violates the Immigration and Nationality Act

The Immigration and Nationality Act (INA) guarantees noncitizens the right to counsel. 8 U.S.C. § 1229a(b)(4)(A); *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). This protection necessarily entails the right to consult with an attorney in advance of any hearing—especially a hearing at which a noncitizen faces potentially permanent removal from the United States. *Rios-Berrios*, 776 F.2d at 862.

The same substantive standards that protect the Plaintiffs' right to counsel under the Due Process Clause apply to their statutory right under the INA. *See Agyeman v. INS*, 296 F.3d 871, 877 (9th Cir. 2002) ("If an alien is prejudiced by a denial of the applicable procedural protections, he is denied his constitutional guarantee of due process."); *Zahedi v. INS*, 222 F.3d

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1157, 1164 n.6 (9th Cir. 2000) (noting "due process principles animat[e]" the statutory protections of 8 U.S.C. § 1229a(b)(4)(B)).

For the same reasons discussed in Sections III.A.1 and III.A.2, above, the FCI Sheridan detainees, including Plaintiff Sanchez Gonzalez and others, have been denied their statutory right to counsel. They are being held without access to the attorneys who are ready and willing to provide information about immigration law, what awaits detainees in removals proceedings, and their legal rights in those proceedings. Without the relief that Plaintiffs seek, the immigration detainees at FCI Sheridan may face the unacceptable risk of having to articulate their claims for asylum at a credible fear interview without ever understanding the nature of the procedure, let alone learning that counsel is available. For many of the detainees, the outcome could well be a matter of life or death.

For those reasons, the Plaintiffs are likely to prevail on their claim that Defendants have violated the Immigration and Nationality Act.

4. Denial of access to counsel violates the Administrative Procedure Act

Both ICE and BOP rules require attorney access for immigration detainees. ICE's Detention Standards, which govern immigration detainees, provide that "each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days . . . and a minimum of four hours per day on weekends and holidays." Detention Standards 5.7.J.2. In addition, the Detention Standards provide for "know your rights" presentations by authorized nonprofit organizations. *Id*. at 6.4.I ("This detention standard protects detainees' rights by providing all detainees access to information presented by authorized persons and organizations for the purposes of informing them of U.S. immigration

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law and procedures. . ."). "All facilities are required to cooperate fully with authorized persons seeking to make such presentations." *Id*. Further, detainees have the right to "communicate and correspond with representatives" of such groups. *Id*. at 6.4.II.5.

Similarly, the Bureau of Prisons' standards require attorney visits to be available all seven days of each week. "The Warden shall provide the opportunity for pretrial inmate-attorney visits on a seven-days-a-week basis. Attorney visits for pretrial inmates may be conducted at times other than established visiting hours with the approval of the Warden or designee." BOP Policy re Pretrial Inmates, 7331.04; *see also id*. at 5 (classifying ICE detainees as "pretrial" for purposes of the BOP regulations).[7]

Defendants' unexplained failure to comply with their own procedures constitutes "arbitrary, capricious" conduct in violation of the Administrative Procedure Act ("APA"). 5 U.S.C. 706(2)(A); *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *FCC v. Fox Television Stations*, Inc., 556 U.S. 502 (2009). This principle—often referred to as the *Accardi* doctrine—applies not only to formal agency rules and regulations (such as those codified in the Code of Federal Regulations), but also to informal internal agency rules. *See Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (applying *Accardi* to internal IRS manual); *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004) (observing that "courts have recognized that the so-called *Accardi* doctrine extends beyond formal regulations" and collecting cases).

In addition to being arbitrary and capricious, Defendants' blanket denial of attorney access at Sheridan also violates the APA because it is not "in accordance with law," 5 U.S.C. 706(2)(A)—namely, 8 U.S.C. 1229a(b)(4)(A) and the U.S. Constitution.

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[7] *See* https://www.bop.gov/policy/progstat/7331_004.pdf

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For the foregoing reasons, Plaintiffs are likely to succeed on their APA claims.

B. Plaintiffs satisfy the remaining factors for emergency relief

Plaintiffs easily satisfy the remaining factors for issuance of a temporary restraining order. *See Stormans, Inc.*, 586 F.3d at 1127.

Plaintiffs are likely to suffer immediate irreparable harm in the absence of emergency relief. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). In the case of imprisoned immigrants facing imminent deportation, the risk of irreparable harm is especially high. *See Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017). Immigrants in detention face extraordinary hurdles in gathering the evidence they need to defend against deportation—hurdles made all but insurmountable by Defendants' total denial of access to counsel and communication with the outside world. As a result, an FCI Sheridan detainee with a bona fide claim for asylum may be deported to a country where he or she faces persecution, torture, or death. Detainees with long-settled lives in the United States could face permanent separation from their families and homes.

The balance of equities and the public interest also favor Plaintiffs. The relief requested requires that Defendants provide immigrants detained in the FCI Sheridan prison with comparable protections afforded at other immigration detention facilities across the country. *See* Detention Standards 5.7.J.2; *Lyon*, 171 F. Supp. 3d at 961. Any "administrative cost" to the government would be "far outweighed by the considerable harm to Plaintiffs' constitutional rights" in the absence of an injunction. *Hernandez*, 972 F.3d at 996. Finally, the public interest favors granting the injunction because it would ensure that the government's conduct complies

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with the Constitution. *See id.*; *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("Generally, public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

C. An order requiring basic protections is necessary to vindicate Plaintiffs' statutory and constitutional rights

Plaintiffs respectfully request that this Court issue an order requiring Defendants to provide three basic protections: (1) provide adequate attorney visitation and phone access for immigration detainees at FCI Sheridan, (2) permit Plaintiff Law Lab to conduct "know your rights" trainings for the detainees, and (3) prohibit Defendants from proceeding with the detainees' cases or deportations until they have had an opportunity to attend a training and consult with any available attorneys.

These protections are necessary to protect Plaintiffs' statutory and constitutional rights to attorney access. It is well-established that a district court has broad power to remedy constitutional wrongs, and the nature and scope of a remedy must be "determined by the violation." *Milliken v. Bradley*, 433 U.S. 267, 281–82 (1977); *Toussaint v. McCarthy*, 801 F.2d 1080, 1087 (9th Cir. 1986). Here, the relief requested is appropriately tailored to ensure that immigration detainees at Sheridan have an adequate opportunity to obtain legal advice and consult with an attorney. Because the immigration detainees have been held incommunicado for going on two weeks without any access to counsel, the Court should prohibit the government from processing their cases—or deporting them—until they have had a sufficient opportunity to seek legal assistance.

Plaintiffs request that the Court order Defendants to do the following:

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(1) Provide Plaintiffs with access to FCI Sheridan's four attorney visitation rooms for a minimum of six hours per day, including weekends, in order to perform group "know your rights" training and individualized interviews;

(2) Install four telephone lines per unit, with each line capable of placing free direct calls to legal service providers, including to Plaintiff Innovation Law Lab;

(3) Allow immigration detainees to access the telephones referred to in (b), above, during facility waking hours, or between 8 am and 8 pm, seven days a week;

(4) Provide written notice to Plaintiff Law Lab of any scheduled credible fear screenings or asylum interviews;

(5) Allow attorneys to use laptops in accordance with BOP security guidelines while performing legal services on behalf of any immigration detainee in FCI Sheridan.

Although the undersigned counsel do not presently represent all immigration detainees at FCI Sheridan—*because the undersigned counsel too have been denied access*—this Court nonetheless has the authority to require that Defendants provide the relief sought herein for all immigration detainees at FCI Sheridan. Plaintiffs have demonstrated that the violations of their constitutional and statutory rights stem from policies or practices that the Defendants have established throughout the FCI Sheridan prison, and a Court may properly enter an injunction to the extent of the violation established. *See Clement v. Cal. Dep't of Corr.*, 364 F.3d 1148, 1152 (9th Cir. 2004) (affirming a statewide permanent injunction against a prison policy where plaintiff demonstrated the policy was contrary to the First Amendment); *Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir. 2000) (stressing the deference due a district court in crafting remedies and affirming court's decision declining to lift a facility-wide injunction in action brought by one

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resident). This principle is particularly warranted here, where Defendants are holding the detainees incommunicado and effectively preventing them from independently seeking redress from the courts.

IV. CONCLUSION

Plaintiffs have demonstrated that they will suffer immediate and irreparable harm in the absence of emergency relief from this Court. They respectfully request that the Court grant this motion for a temporary restraining order and issue an emergency order.

DATED this 22nd day of June, 2018.

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O

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,

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

II. BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. LEGAL STANDARD

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

IV. DISCUSSION

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

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

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

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

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

(1) Defendants-Respondents shall permit Attorney Lopez to conduct an attorney-client conversation, either in person or by phone (as she prefers), with Castillo;

(2) Defendants-Respondents shall permit other detainees held at FCI Victorville to communicate, both in person and by phone, with other immigration attorneys who wish to communicate with them—the in-

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

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

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

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

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