

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

Beata Mariana de Jesus Mejia-Mejia,)	
)	<u>EMERGENCY MOTION</u>
Petitioner-Plaintiff,)	
)	
v.)	Case No. 1:18-cv-1445
)	
U.S. Immigration and Customs)	
Enforcement (“ICE”), et al.)	
)	
Respondents-Defendants.)	

**PLAINTIFF’S EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER**

Pursuant to Fed. R. Civ. P. 65 and LCvR 65.1, Plaintiff, by and through undersigned Counsel, hereby moves this Court for a Temporary Restraining Order enjoining Defendants, U.S. Immigration and Customs Enforcement, a federal agency, U.S. Department of Homeland Security, a federal agency, U.S. Customs and Border Protection, a federal agency, U.S. Citizenship and Immigration Services, a federal agency, U.S. Department of Health and Human Services, a federal agency, Office of Refugee Resettlement, a federal agency, Jefferson Beauregard Sessions III, United States Attorney General, Thomas Homan, Acting Director, U.S. Immigration and Customs Enforcement, Kirstjen M. Nielson, Secretary, U.S. Department of Homeland Security, Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection, L. Francis Cissna, Director, U.S. Citizenship and Immigration Services, Alex Azar,

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Secretary, U.S. Department of Health and Human Services, Scott Lloyd, Director, Office of Refugee Resettlement, Henry Lucero, Director, Phoenix Field Office, U.S. Immigration and Customs Enforcement, Michael Zackowski, Assistant Director, Phoenix Field Office, U.S. Immigration and Customs Enforcement, and Williams K. Brooks, Tucson Field Director, U.S. Customs and Border Protection, from retaining custody of the minor child D.M. (A-Number 215541170). In support of this Motion, Plaintiff relies upon the attached Memorandum of Points and Authorities. A proposed order is attached. Oral argument is respectfully requested.

Dated: June 19, 2018.

/s/John M. Shoreman
John M. Shoreman (#407626)

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**PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

Pursuant to Fed. R. Civ. P. 65 and LCvR 65.1, Plaintiff, an individual, by and through undersigned counsel, respectfully requests this Court enter an Order enjoining the Defendants from maintaining custody of the Plaintiff’s minor child D.M. (**A-Number 215541170**).

Beata Mariana de Jesus Mejia-Mejia (“Ms. M.”), the Plaintiff herein, fled from her home country with her minor child D.M. Upon entry into the United States, at the border, Ms. M. was apprehended by Border Patrol agents at the border and requested asylum. Ms. M. was taken peacefully into custody and placed in a cell. Then her nightmare began. The Defendants then separated Ms. M. from her child and sent her to a separate detention facility in Arizona. Ms. M. had no contact with her child for approximately a month and received no

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information about the health and welfare of her child during that time. She was given a credible fear assessment and found to present with such a fear.

Eventually, Ms. M. was presented to an Immigration Court Judge and provided a bond during the pendency of her asylum petition.

Through the assistance of Libre by Nexus, Ms. M. was able to secure her bond and was released from immigration detention. She was then given one phone call with her child. She was not provided, and still has not been provided, any information on the location of her child, the conditions her child is being held in, or who is caring for or surrounding her child. She has had no further contact with her child since her release. No one, except a parent, can fully understand the anguish Ms. M. has suffered, and continues to suffer, at the loss of her child. Ms. M. came to America seeking asylum and upon contact with border agents sought to pursue that claim legally. Through no wrong of her own, Ms. M. has had her child ripped from her care by the heartless, destructive, and illegal policy of the Defendants to separate all families arriving in America with children, in an effort to deter such immigration.

This policy is a stain on the United States, violates multiple treaties the United States has signed and ratified, and violates the Constitutional Protections of the families it is heartlessly applied to.

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FACTUAL BACKGROUND

As more fully set forth in the Plaintiff's Complaint, the Plaintiff travelled to the United States from Guatemala in an effort to seek asylum. Ms. M. was apprehended by Border Patrol agents at the border and requested asylum. She was taken into custody and sent to an immigration facility in Phoenix, Arizona. Upon her transfer to that facility, Ms. M. had her child taken from her. Despite a finding of credible fear, and without any determination relating to the best interest of the child or any finding of harm to the child, Ms. M. has been deprived of custody of her child, the familial bond, and loving companionship between mother and child. Ms. M. has not seen her child since he was taken from her in immigration detention. She has no information on where he is located and how he is being treated. Ms. M. has not ever mistreated her child, nor has she ever been less than a loving mother. Indeed, Ms. M. sought and continues to seek asylum in large part because of her credible fear of the harm that her child would suffer if he remained any longer in her home country.

ARGUMENT

I. Legal Standard

The legal standard for granting a Temporary Restraining Order is well established in this District. Gomez v. Kelly, 237 F.Supp.3d 13, 14 (D.D.C. 2017).

This Court may issue interim injunctive relief when the movant demonstrates: 1)

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a substantial likelihood of success on the merits; 2) that she would suffer irreparable injury if the injunction is not granted; 3) that an injunction would not substantially injure other interested parties; and 4) that the public interest would be furthered by the injunction. Judicial Watch, Inc. v. Department of Commerce, 501 F.Supp.2d 83, 88 (D.D.C. 2007).

A district court facing a motion for a temporary restraining order must balance the strengths of the requesting party in each of the required areas. Sibley v. Obama, 810 F.Supp.2d 309, 311 (D.D.C. 2011). “In applying this four-factored standard, district courts employ a sliding scale under which a particularly strong showing in one area can compensate for weakness in another.” Citizens for Responsibility and Ethics in Washington v. Cheney, 577 F.Supp.2d 328, 334-35 (D.D.C. 2008).

II. Likely to Succeed on the Merits

The Plaintiff in this case has asserted various claims relating to the forced, inexplicable separation of her child from her care, custody, or control: a separation that occurred where there was absolutely no finding that Plaintiff was unfit or posed a threat to her child; all as part of a policy aimed at deterring immigration into the United States. (ECF1, ¶¶ 26, 33-34, 59-61.) The Plaintiff alleges that this separation was done without any protections of due process and

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in violation of United States law and the treaty obligations of the United States.

Id.

Under the Due Process Clause of the Fifth Amendment, no person shall be deprived of life, liberty, or property, without due process of law. U.S. CONST. AM. V. It cannot be doubted that non-citizens on US soil have constitutional rights, including the right to due process of law. Yick Wo v. Hopkins, 118 U.S. 356, 368-69 (1886); Matthew v. Diaz, 426 U.S. 67, 77 (1976). It is also well settled that the liberty interests protected by the Fifth Amendment includes the right to family integrity and association. Quillion v. Walcott, 434 U.S. 246, 255 (1978). Therefore, there can be no dispute that the Plaintiff is entitled to the protections of the Fifth Amendment, nor that those protections include protections of her right to family integrity and association with her child.

In depriving Ms. M. of her right to family integrity and association, the Defendants made no finding of unfitness or that the Plaintiff posed a threat to her child. (ECF 1, ¶¶ 59-61.) Instead, without any attempt at due process, the Defendants ripped Ms. M.'s child from her. Id. This action is taking place as a matter of course to thousands of children as part of a policy of the Defendants to deter immigration. Id. As has been recently noted by courts addressing this issue, this allegation squares directly with that pointed out by the Aguilar court in the First Circuit as sufficient to state a Due Process claim; “were a substantial

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number of young children knowingly placed in harm's way, it is easy to imagine how viable claims might lie." Aguilar v. U.S. Immigration and Customs Enforcement Div. of Dept. of Homeland Sec., 510 F.3d 1, 22 (1st Cir. 2007). The interest of parents in the care, custody, and control of their offspring is among the most fundamental rights protected by the Fifth Amendment. See Troxel v. Granville, 530 U.S. 57, 66, 120 S.Ct. 2054, 174 L.E.2d 49 (2000). Deprivations of such rights without any particularized finding of unfitness or threat to the child violate the Plaintiff's Due Process rights. Quillion, 434 U.S. at 255 (noting that the Court has little doubt "the Due Process Clause would be offended if a State were to attempt to force the breakup of a natural family ... without some showing of unfitness") (internal citations omitted). Further, such actions shock the conscience. Cty of Sacramento v. Lewis, 523 U.S. 833, 847 n.8 (1998) (holding that a 'shocks the conscience' standard applies to due process claims).

Plaintiff has alleged that the Defendants, in an effort to serve ulterior immigration goals, have deprived the Plaintiff, and thousands of others, of her rights to her child. (ECF 1, ¶¶ 35, 43-47, 59-61.) This persecution has been visited upon the Plaintiff merely because she entered this country and then legally sought asylum protection from persecution in her home country. Id. Now, the US government has become the persecutors, taking up where those in her home country left off by knowingly subjecting Ms. M. and her son to the

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severely traumatic experience of being inexplicably and forcibly separated from one another, in clear violation of the Plaintiff's Due Process rights. Id.

These allegations alone are sufficient to provide a high likelihood of success on the Plaintiff's claims, satisfying this factor. However, Plaintiff has also asserted various claims under § 1983, claims for habeas relief, and ICARA claims. (ECF 1.) These various claims demonstrate that the Defendants' actions were unlawful under various international treaties to which the US is a signator and, therefore, which constitute the law of the land. U.S. CONST. ART. VI. Indeed, the Chief of the United Nations recently announced that the United States policy at issue in this case violates international law and several treaties the US has signed. Nick Cumming-Bruce, U.N. Civil Rights Cief Tell U.S. to Stop Taking Migrant Children from Parents, June 18, 2018, <https://www.nytimes.com/2018/06/18/world/europe/trump-migrant-children-un.html> (noting that this is a violation of children's rights and international law). For these reasons, the Plaintiff has a high likelihood of success and this Court should grant this Motion for a Temporary Restraining Order.

III. Irreparable Injury if Injunction is Not Granted

To be irreparable, a harm must be "certain and great, actual and not theoretical, and of such imminence that there is a clear and present need for

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equitable relief” as well as “beyond remediation ... mere injuries ... in terms of money, time, and energy necessarily expended in the absence of a stay are not enough.” Fraternal Order of Police Library of Cong. Labor Comm. v. Library of Cong., 639 F.2d 20, 24 (D.D.C. 2009).

The Plaintiff’s irreparable harm is clearly, and easily, established in this case. In the R.I.L-R v. Johnson case, this Court addressed a TRO request on behalf of a class of Central American immigrant mothers, accompanied by their minor children, who fled to America seeking asylum and were held under a “No-Release Policy,” after a determination of credible fear was made, in order to deter future immigration. R.I.L-R v. Johnson, 80 F.Supp.3d 164, 172 (D.D.C. 2015). Finding irreparable harm, this Court noted the “myriad ways” such detention harms those held. Id. at 191. Such detention is “particularly harmful to minor children.” Id.; see also Julie M. Linton, Marsha Griffin, Alan J. Shapiro, Detention of Immigrant Children, Pediatrics, Volume 139, Num. 4, April, 2017. The deprivations and harms suffered by Plaintiff in this case, and her minor child, are only magnified by the needless, punitive, separation that is clearly not in the best interest of the child. See Petition from Mental Health Professionals: Stop Border Separation of Children from Parents, Child’s World America <https://childsworldamerica.org/stop-border-separation/stop-border->

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separation-text-preview/ (noting the extensive research and clinical experience demonstrating negative impacts of separation of children from their parents).

Further, as the Court found in Johnson, these injuries are “beyond remediation.” Johnson, 80 F.Supp.3d at 191. Unlike economic harm, the harms from detention are long-lasting, perhaps permanent, and cannot be remediated by monetary awards after the fact. Id.; Linton, Detention of Immigrant Children, pg. 6 (describing the various long-lasting effects of detention, including physical and psychological damage). This severe, permeant, and irreparable harm demonstrates that this Court should grant this Motion for a Temporary Restraining Order.

IV. No Substantial Injury to Other Parties and Public Interest

The Government “cannot suffer harm from an injunction that merely ends an unlawful practice or reads a statute as required to avoid constitutional concerns.” Johnson, 80 F.Supp.3d at,191 (citing Rodriguez, 715 F.3d at 1145.) Further, “the public interest is served when administrative agencies comply with [the requirements of US law].” Id.

As previously stated, the actions of the Defendants in separating parents and children seeking asylum violates the Due Process Clause of the Fifth Amendment, international treaties, and U.S. law. Supra, Section II. Further, releasing the Plaintiff’s child to her custody cannot cause any harm to the

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Defendants as the child is accused of no crime, the Plaintiff is rendered no more likely to commit any crime, and the Defendants are relieved of the costs and burdens of housing and providing for the child. As such, there is no injury to the Defendants from the granting of this Motion.

Therefore, all four elements of the test governing the consideration of a TRO request demonstrate that such relief is appropriate in this case.

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CONCLUSION

WHEREFORE, the Plaintiff respectfully requests that this Court enter the proposed order restraining and enjoining the Defendants from retaining custody of the minor child D.M. (A-Number 215541170).

Dated: June 19, 2018.

/s/John M. Shoreman
John M. Shoreman (#407626)

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CERTIFICATION OF COUNSEL PURSUANT TO LCvR 65.1(a)

Pursuant to LCvR 65.1(a), I hereby certify that for each Defendant, true and correct copies of the Plaintiff's Complaint, Emergency Motion for Temporary Restraining Order, Memorandum of Points and Authorities in Support of Motion for Temporary Restraining Order, and all other papers filed with the Court on June 19, 2018, were delivered to Jessie K. Liu, United States Attorney for the District of Columbia, 555 4th Street, NW, Washington, DC 20530, who represents the Defendants. Plaintiff, by counsel, has also provided notice to Jessie K. Liu, United States Attorney for the District of Columbia, 555 4th Street, NW, Washington, DC 20530, who represent the Defendants, of Plaintiff's intent to file the foregoing papers with this Court on June 19, 2018, and that the Plaintiff is requesting a hearing at the Court's earliest available date on the Motion for Temporary Restraining Order.

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June 19, 2018.

/s/John M. Shoreman
John M. Shoreman (#407626)

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PROPOSED ORDER

Upon consideration of the Plaintiff’s Motion for Temporary Restraining Order, the Memorandum, any opposition, any reply thereto, and any oral argument, it is hereby;

ORDERED that Plaintiff’s Motion for Temporary Restraining Order is GRANTED;

IT IS FURTHER ORDERED that a Temporary Restraining Order is hereby entered against the Defendants.

IT IS FURTHER ORDERED that pursuant to the Order, the Defendants shall release the minor child to the Plaintiff pending determination of the underlying case on the merits or until further order of this Court.

SO ORDERED.

DATED: June __, 2018. _____

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United States District Judge

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**NAMES OF PERSONS TO BE SERVED
WITH PROPOSED ORDER UPON ENTRY**

In accordance with LCvR 7(k), listed below are the names and address of the attorneys and parties entitled to be notified of the proposed order's entry:

U.S. Immigration and Customs Enforcement
500 12th St., SW
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U.S. Department of Homeland Security
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Kirstjen M. Nielson
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U.S. Department of Homeland Security
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Kevin K. McAleenan
Acting Commissioner
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1300 Pennsylvania Ave., NW
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U.S. Citizenship and Immigration Services

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20 Massachusetts Ave, NW
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Alex Azar
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