

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

J.D., L.E., AND R.A., MINORS

CIVIL ACTION

VERSUS

NO. 07-9755

C.RAY NAGIN, ET AL

SECTION B(4)

ORDER AND REASONS

Before the Court is Plaintiffs' Emergency Motion for an Order Prohibiting Obstruction of Access to Counsel (Rec. Doc. No. 20). After review of the pleadings and applicable law, and for the reasons that follow,

IT IS ORDERED that Plaintiff's Motion is **GRANTED**.

Further, within 5 days of the signing of this Order, Plaintiffs shall provide Defendants with a list of the names of their representative Plaintiffs as well as the guardians of those Plaintiffs.

BACKGROUND

Plaintiffs filed suit on December 21, 2007 against the Mayor of New Orleans as well as various other local officials on behalf of all children who are now or in the future will be confined at the Youth Study Center in New Orleans, Louisiana. Plaintiffs

allege, among other things, that the conditions at the Youth Study Center are unsanitary, that the staff is inadequately trained, that the children confined there are denied basic needs and access to courts, and that they lack adequate medical care and right to counsel. Plaintiffs seek declaratory and injunctive relief on the grounds that the conditions violate the students' constitutional rights. Along with the Complaint, Plaintiffs also filed a motion for class certification which is currently pending before this Court.

Plaintiffs allege that before this lawsuit was filed, attorneys and paralegals working for the Juvenile Justice Project of Louisiana, the group representing Plaintiffs in this case, were allowed to privately meet with the children confined at the Youth Study Center. Plaintiffs allege, however, that once counsel for the Defendants learned that this suit had been filed, they denied all attorneys representing the Plaintiffs as well as paralegals working with them any access to the children confined at the Youth Study Center. Plaintiffs' counsel were originally denied access to the named Plaintiffs as well as putative members of the class action. Plaintiffs allege that Defendants' counsel then modified this prohibition and allowed communication between Plaintiffs' counsel and named Plaintiffs as well as communication between Plaintiffs' counsel and other confined youths who actually requested meetings with such counsel. Defendants' counsel

continued, however, to prohibited Plaintiffs' counsels' access to other youths who may be potential members of the class but who did not request meetings. On January 22, 2008 Plaintiffs filed this Motion to prohibit Defendants' alleged obstruction of access to these putative class members. Rec. Doc. No. 20.

Plaintiffs contend that Defendants are violating the local rules for the United States District Court for the Eastern District of Louisiana as well as Supreme Court precedent by prohibiting communication between Plaintiffs' counsel and putative class members without a court order. Defendants argue that to allow Plaintiffs' counsel access to putative class members is an abuse of the Federal Rules of Civil Procedure and would cause injustice to Defendants. Defendants also argue that under the Prison Litigation Reform Act, this Court cannot grant the relief sought by Plaintiffs' Motion.

DISCUSSION

Fed. R. Civ. Pro. 23 addresses the procedure for class actions in Federal Court. Fed. R. Civ. Pro. 23(d) provides that "[i]n conducting an action under this rule, the court may issue orders that...impose conditions on the representative parties or on intervenors." Fed. R. Civ. Pro. 23(d). Rule 23(D) of the Local Rules for the Untied States District Court for the Eastern District of Louisiana also addresses class action procedure. It provides:

1. Whenever a party or counsel desires to prohibit another party or counsel from communicating concerning such action with any potential or actual class member not a formal party to the action, he or she shall apply in writing to the court for such an order. In such application, the parties must set forth with particularity the abuses they fear will result from such communication, along with the form of remedy they believe would be appropriate to prevent frustration of the policies of Rule 23.

2. The court will not enter an order prohibiting communication with members of the class in the absence of a clear record (and when necessary, an evidentiary hearing) reflecting:

a. specific findings regarding the abuse the court seeks to prevent;

b. the need for such an order, weighing the abuse sought to be corrected and the effect it will have on the right of a party to proceed pursuant to Rule 23 without interference.

Local Rule 23(D). The text of Local Rule 23(D) tracks the Supreme Court's reasoning in *Gulf Oil Co. v. Bernard*, 452 U.S. 89 (1981). In that case, the Supreme Court addressed a District Court's discretion in controlling a class action. The Court stated that "an order limiting communications between parties and potential class members should be based on a clear record and specific findings that reflect a weighing of the need for a limitation and the potential interference with the rights of the parties. Only such a determination can ensure that the court is furthering, rather than hindering, the policies embodied in the Federal Rules."

Gulf Oil, 452 U.S. at 101-02. The Court stated that a district court cannot issue orders restricting communications

without a specific record showing by the moving party of the particular abuses by which it is threatened. Moreover, the district court must find that the showing provides a satisfactory basis for the relief and that the relief sought would be consistent with the policies of Rule 23 giving explicit consideration to the narrowest possible relief which would protect the respective parties.

Id. at 102 (quoting *Coles v. Marsh*, 560 F.2d 186, 189 (3rd Cir. 1977)).

In the present case, there is no dispute that Defendants are seeking to restrict Plaintiffs' counsels' access to putative class members. Defendants, however, have filed no motion with this Court seeking to restrict such access. Defendants argue that by restricting such access, they are attempting "to prevent the injustice that is dealt upon defendants where counsel is permitted to solicit additional putative plaintiffs in support of a lawsuit that has been filed but in which no class has been certified and no specific facts have been advanced." Defendants, however, have not set forth with particularity the abuses they fear will result from such communication. The Court is aware, as Defendant points out, that this case involves a detention center, therefore, proper precautions must be taken such that access to putative class members does not create a threat to security. The Court finds, however, that under the Supreme Court's reasoning in *Gulf Oil* as

well as the requirements set forth in Local Rule 23(D), this Court cannot prohibit Plaintiffs' counsels' access to putative class members at this time without a clearer record warranting such relief.

Defendants also argue that under the Prison Litigation Reform Act ["PLRA"], this Court cannot grant Plaintiffs' Motion allowing Plaintiffs' counsel access to children detained at the Youth Study Center. The PLRA provides:

Prospective relief in any civil action with respect to prison conditions shall extend no further than necessary to correct the violation of the Federal right of a particular plaintiff or plaintiffs. The court shall not grant or approve any prospective relief unless the court finds that such relief is narrowly drawn, extends no further than necessary to correct the violation of the Federal right, and is the least intrusive means necessary to correct the violation of the Federal right.

18 U.S.C. § 3626(a)(1). The term "prospective relief" is defined under the PLRA as "all relief other than compensatory monetary damages." 18 U.S.C. § 3626(g)(7). Defendant argues that the relief Plaintiffs are seeking in the present Motion, the right of Plaintiffs' counsel to access children confined at the Youth Study Center, is, in fact, "prospective relief" as defined under the PLRA. Defendant argues that because this Court can only grant such relief to correct a "violation of a Federal right" and because this Court has not yet determined that a Constitutional violation exists, it cannot at this time grant the relief Plaintiffs seek.

The Court is not persuaded by Defendants' argument. Defendants' denial of access to detained children has apparently come about as a result of the instant litigation. Nowhere does Defendant dispute that prior to the filing of this suit, Plaintiffs' counsel were permitted to meet with children detained at the Youth Study Center. While Plaintiff's Complaint might seek injunctive relief regarding conditions at the Youth Study Center, the present Motion simply attempts to grant Plaintiffs' counsel a right they apparently had prior to filing this suit. Additionally, Although Defendants focus on § 3626(a)(1) of the PLRA, § 3626(a)(2) provides that

In any civil action with respect to prison conditions, to the extent otherwise authorized by law, the court may enter a temporary restraining order or an order for preliminary injunctive relief. Preliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.

18 U.S.C. § 3626(a)(2). Thus, an order of this Court allowing Plaintiffs' counsel limited access to other children detained at the Youth Study Center is lawful under § 3626(a)(2) of the PLRA. Accordingly,

IT IS ORDERED that Plaintiffs' Emergency Motion for an Order Prohibiting Obstruction of Access to Counsel is **GRANTED**.

Further, within 5 days of the signing of this Order, Plaintiffs shall provide Defendants with a list of the names of

their representative Plaintiffs as well as the guardians of those Plaintiffs.

New Orleans, Louisiana this 4th day of March, 2008.

A handwritten signature in black ink, appearing to read "Louis L. Rendell", written over a horizontal line.

UNITED STATES DISTRICT JUDGE