

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DAKOTA HINES, et al.,	:	
	:	Case No. 2:17-cv-0436
Plaintiffs,	:	
	:	JUDGE ALGENON L. MARBLEY
v.	:	
	:	Magistrate Judge Kemp
LARRY R. MINCKS, et al.,	:	
	:	
Defendants.	:	

AGREED PRELIMINARY INJUNCTION ORDER

This matter is before the Court on the Motion of Plaintiffs Daniel Buchman, Dakota Hines, and Joey Brooks (together, “Plaintiffs”) for a Temporary Restraining Order and Declaratory and Injunctive Relief. (Doc. 7.) For the reasons set forth below, Plaintiffs’ Motion is **GRANTED**.¹

I. BACKGROUND

Plaintiffs are indigent inmates and pretrial detainees in the Washington County Jail (the “Jail”) who allege that their Sixth Amendment right to the assistance of counsel is being infringed by the Jail’s restrictive telephone call and written correspondence policy. They therefore move this Court for an order restraining and enjoining Defendants Larry R. Mincks, individually and in his official capacity as Washington County Sheriff, and Washington County/Washington County Board of Commissioners (“Defendants”) from enforcing this policy.

Currently, the Jail’s telephone call policy requires: (1) indigent inmates to pay for attorney-client phone calls, or place them collect; and (2) that attorney-client phone calls be

¹ At the Local Rule 65.1 Conference, the Court granted Plaintiffs’ motion for a temporary restraining order. Rather than continually renewing the TRO, the parties agreed to injunctive relief under the terms set by the Court. The terms of the injunction will last for sixty (60) days from the date of this Order, to allow the parties to mediate this dispute.

recorded. (*See* Doc. 7-1 at 1; Compl., Doc. 2, ¶ 1.) Until August 31, 2016, indigent inmates could use the Jail’s phones to make “free, unrecorded, and unlimited calls to their public defenders.” (Doc. 2 ¶ 14.) Prior to August 2016, the Office of the Ohio Public Defender (which provides public defense services in Washington County), would occasionally forward inmates’ phone calls to friends and family members to try and arrange for them to post bond. (*Id.* ¶¶ 57–58.) Plaintiffs allege that Defendants knew about and permitted this practice. (*Id.* ¶ 58.) During August 2016, the Public Defender’s office “inadvertently forwarded a call from a client to the victim of his crime.” (*Id.* ¶ 59.) That inmate “abused the system and violated a protection order.” (*Id.*)

As a result, on August 31, 2016, Defendants contacted the Public Defender’s office and informed them that, going forward, the Jail’s telephone call policy would change. Now, all calls to the Public Defender’s office are recorded, and normal billing rates (\$4.50 for a twenty-minute call to another Ohio resident) apply to indigent inmates. (*See id.* ¶¶ 15, 60.) Although the Director of the Public Defender’s office notified the Washington County Prosecutor and Sheriff that this new policy would “shut down the phone system for indigent inmates” and offered to “cease the Public Defender’s practice of forwarding client calls to family and friends,” Defendants nonetheless instituted the new telephone call policy. (*Id.* ¶ 61.)

With regard to inmate mail, the Jail has a written policy informing inmates that their “incoming mail will be inspected by the Sheriff or jail staff. The mail sent to you by the court or your attorney may be inspected in your presence for contraband only.” (Doc. 2-5 at 1.) Plaintiffs allege, however, that Jail officials collect inmates’ mail (including attorney letters) before sealing the correspondence, and do not seal the envelopes in the inmates’ presence; thus, Plaintiffs have no way of knowing whether Jail officials are reading their mail. (*See* Doc.

2 ¶ 41.) Plaintiffs also believe that Jail officials are reading incoming mail from their attorneys outside their presence. (*See id.* ¶ 42.)

II. LAW AND ANALYSIS

In determining whether to grant a TRO under Federal Rule of Civil Procedure 65(b), the Court must balance four factors: (1) whether the movant has shown a strong or substantial likelihood of success on the merits; (2) whether irreparable harm will result without an injunction; (3) whether issuance of an injunction will result in substantial harm to others; and (4) whether the public interest will be advanced by the injunction. *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008). The Court, however, “need not reach all of the factors,” and a focus on “[t]he irreparability and immediacy of harm” remains consistent with the commands of Rule 65(b). *Women’s Med. Prof’l Corp. v. Baird*, No. 03-CV162, 2008 WL 545015, at *1–2 (S.D. Ohio Feb. 27, 2008) (Marbley, J.).

The two relevant factors are easily met here. As a matter of law, an “individual is irreparably injured when his constitutional rights are violated.” *Lynch v. Leis*, No. 1:00-CV-274, 2002 WL 33001391, at *7 (S.D. Ohio Feb. 19, 2002) (citing *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001)). “Absent justification, restrictions which impose severe constraints on a pretrial detainee’s ability to contact his attorney and discuss matters of substance violate the Sixth Amendment.” *Lynch*, 2002 WL 33001391, at *5 (citations omitted). In *Lynch*, this Court struck down as a violation of the Sixth Amendment a policy that permitted inmates to make only collect calls, which made it impossible for the plaintiff to contact his attorney during a twenty-day detention period. *See id.* at *2, *5. Similarly, in *Nordstrom v. Ryan*, the Ninth Circuit Court of Appeals held that “prison officials may *inspect*, but may not *read*, an inmate’s outgoing legal mail in his presence.” No. 16-15277, 2017 WL 2174547, at *4 (9th Cir. May 18, 2017). Under

Lynch and *Nordstrom*, it is clear that Defendants' policies are unconstitutional and thus Plaintiffs have been irreparably harmed.

In terms of the immediacy of the harm, Plaintiffs have been jailed for weeks without speaking to their attorneys, and with hearings quickly approaching. (*See* Doc. 7-1 at 12–13.) One Plaintiff is facing felony charges and has never spoken to his attorney on the phone. (*Id.*) There is no doubt that Plaintiffs' rights to contact and discuss substantive legal matters with their attorneys have been "severe[ly] constrain[ed]," *Lynch*, 2002 WL 33001391, at *5, and Plaintiffs' Sixth Amendment right to the assistance of counsel will not be vindicated unless they are able to speak with their attorneys prior to upcoming legal proceedings.

III. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion is **GRANTED**. As explained above, the Court finds that the factors necessary to grant a TRO under Rule 65(b) have been met. However, the parties have agreed to extended injunctive relief, in the nature of a preliminary injunction, under the conditions set by the Court. The Court orders as follows:

- The Jail must reinstate its pre-August 2016 inmate telephone call policy. That is, indigent inmates must be permitted to call the Public Defender no cost. These telephone calls must not be recorded.
- Non-indigent inmates' telephone calls with their attorneys must not be recorded. Non-indigent inmates must still pay for their telephone calls to their attorneys.
- The Public Defender *may not forward* any inmate telephone calls or facilitate three-way telephone calls.
- The Jail must modify its written "Phone Calls and Correspondence" policy to read: "Your incoming mail will be inspected by the Sheriff or jail staff. The mail sent to you

by the court or your attorney *will be* inspected in your presence for contraband only.”

Outgoing mail must also be sealed in the inmates’ presence.

- This Court’s Order will be distributed to the Office of the Ohio Public Defender and the Office of the Washington County Public Defender by Plaintiffs’ counsel.

Although Plaintiffs moved for a TRO, the parties have agreed to the entry of a preliminary injunction to allow them an opportunity to mediate the merits of this case. The terms of the preliminary injunction will last for **60 days**, and the parties will mediate the case before Magistrate Judge King within **30 days**. They agreed to waive the requirement of a bond. The parties are to inform the Court of the mediation date. The Court will retain jurisdiction over this matter.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: May 25, 2017