

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FLORENCE IMMIGRANT AND REFUGEE
RIGHTS PROJECT,
Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,
Defendants.

Civil Action No. 22-3118 (CKK)

ORDER
(April 11, 2023)

The Court is in receipt of Defendants' [93] Motion for Extension to Comply with Preliminary Injunction. On February 1, 2023, the Court entered a preliminary injunction requiring Defendants to, on or before April 3, 2023:

ensure that the Central Arizona Florence Correctional Complex in Florence, Arizona ("Florence"): (1) installs six private, confidential attorney-client visitation rooms in which counsel may utilize translation services and physically pass documents to and from their detainee client *or* (2) installs or transfigures a ratio of 25 detainees to one telephone that block all others from listening to legal calls while in progress.

Order and Preliminary Injunction, ECF No. 78. The Court further ordered Defendants to, on or before June 1, 2023, file a Notice with the Court with either a Certificate of Compliance certifying under oath that Florence is in compliance with the Court's Order or a detailed notice explaining steps taken so far and the current state of compliance at Florence.

Consistent with the Court's order, Defendants filed the [93] Motion on March 31, 2023, requesting 120 additional days to come into compliance with the preliminary injunction.

Defendants rely predominantly on delays in government contracting, representing that relevant expenditures are limited by contract with CoreCivic, a private prison company that operates

Florence. Defendants also rely on the Anti-deficiency Act's requirement that no federal agency authorize "an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law." 31 U.S.C. § 1341(a)(1)(A). This citation seems inapt, for it is surely the case that there are sufficient appropriations authorities for Defendants to comply with the Court's, including the \$22,997,000 appropriated for Defendant Immigration and Customs Enforcement ("ICE") approximately five months ago "for procurement, construction, and improvements." *See* Consolidated Appropriations Act, 2023, Title II, Pub. L. 117-328. In any event, it appears that there will not be much further delay in contracting, because ICE estimates that a contract effecting the Court's preliminary injunction "should be finalized and awarded within two weeks from" April 7, 2023. Declaration of Brittany Tobias ¶ 10, ECF No. 96-1.

Defendants provide no basis, however, for their representation that installation of the planned videophone booths will take up to three months. *See* ECF No. 96 at 1. Having failed to justify such a length of time, the Court will grant only four additional weeks to complete construction. If additional time is needed, Defendants shall explain why with specificity. If delays are associated with contracting issues, Defendants shall explain why the Court's order effecting the Constitution's prohibition against punitive detention should not override Defendants' internal processes.

Moreover, because Defendants continue to prevent detainees from confidentially conferring with their attorneys in violation of the Due Process Clause of the Fifth Amendment, the Court fashions additional interim relief. Within twenty-one days of the entry of this order, Defendants shall acquire and provide under reasonable circumstances a prepaid mobile phone to a FIRRP client upon request for the purposes of attorney-client communications. Defendants

shall ensure that the call is made as confidentially as possible under the circumstances. Florence staff may retrieve the phone at the end of the call. This interim relief shall stand until the installation of the videophone stations or further order of the Court. The Court reminds Defendants that they are presently holding Plaintiff FIRRP's clients in unconstitutional conditions of confinement and are subject to a preliminary injunction mandating that they remedy these unconstitutional conditions of confinement.

Accordingly, and for the foregoing reasons, it is hereby

ORDERED, that Defendants' [93] Motion for Extension of Time to Comply with Preliminary Injunction is **GRANTED IN PART AND DENIED IN PART**. It is further

ORDERED, that Defendants shall file a Certificate of Compliance with the Court's preliminary injunction or a motion to extend Defendants' deadline for compliance on or before **May 15, 2023**. It is further

ORDERED, that, within twenty-one days of the entry of this order, Defendants shall acquire and provide under reasonable circumstances a prepaid mobile phone to a FIRRP client upon request for the purposes of attorney-client communications. Defendants shall ensure that the call is made as confidentially as possible under the circumstances. Florence staff may retrieve the phone at the end of the call. This interim relief shall stand until the installation of the videophone stations or further order of the Court.

Date: April 11, 2023

/s/
COLLEEN KOLLAR-KOTELLY
United States District Judge