

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

HILDA GONZALEZ GARZA and	§	
ROSBELL BARRERA	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 7:18-cv-00046
	§	
STARR COUNTY, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**PLAINTIFFS’ REPLY IN SUPPORT OF SECOND EMERGENCY APPLICATION FOR
TEMPORARY RESTRAINING ORDER**

Plaintiffs Hilda Gonzalez Garza and Rosbell Barrera (“Plaintiffs”) respectfully submit this Reply in Support of their Second Emergency Application for Temporary Restraining Order.

First, Defendants’ statement that the current Building and Property Use Policy (“Policy”) does not ban Plaintiffs’ use of “any County cemetery, memorial, or park” on County holidays directly contradicts the plain language of the Policy. *Compare* Dkt. 40 (Defendants’ Response) at 2 to Dkt. No. 36-2 (Policy) at 12-13, §§ 3(a)-3(d) (County “‘facilities’ include structures and surrounding property belonging to Starr County, including, but not limited to, formal meeting spaces, porticos and greens . . .County facilities are not available for use on County holidays.”).

Second, Defendants’ unverified representation to the Court that they will not enforce the Policy, *see* Dkt. 40 at 2 (“Starr County does not, and will not, prohibit public gatherings honoring veterans at any County cemetery, memorial or park . . . on Memorial Day”), is

insufficient to rebut the need for an injunction. *See, e.g., United States v. Stevens*, 559 U.S. 460, 480 (2010).

For these reasons, as further set out below, Plaintiffs respectfully request that the Court enter an order enjoining Defendants from enforcing or implementing the provisions of the Policy restricting Plaintiffs' right to speak and assemble peaceably on County property on Memorial Day.

I. Background

The Policy Bans Speech and Assembly on County Property on County Holidays

The challenged Policy prohibits all speech and assembly on County property, including on sidewalks and in grassy areas, during County holidays. *See* Dkt. No. 36-1 at 12, 26, 31. Specifically, the Policy provides that "County facilities are not available for use on County holidays." Dkt. No. 36-2 at 13, § 3(d). "Buildings" and "facilities" under the Policy "include structures and surrounding property belonging to Starr County, including, but not limited to, formal meeting spaces, porticos, and greens." *Id.* at § 3(a).

Plaintiffs Proposed an Agreed Order and Defendants Responded Insufficiently

On May 22, 2018, the Court ordered Defendants to respond to Plaintiffs' request for an injunction against the Policy's provisions prohibiting use of all County facilities on County holidays. *See* Dkt. No. 38. The Court also "encourage[d] the parties to attempt to reach an amicable resolution of the proposed Memorial Day gathering honoring veterans, and to advise the Court promptly if they are able to reach a resolution." *Id.* at 2.

Pursuant to the Court's order, Plaintiffs sent Defendants a proposed Agreed Order that addressed the imminent Memorial Day gathering honoring veterans on County property. *See* Exhibit 1. The proposed Agreed Order is limited to an injunction of the provisions of the Policy

that prohibit speech and assembly on County property on County holidays. *Id.* Defendants neither accepted Plaintiffs’ request to file a joint motion for entry of that Agreed Order nor suggested alternative language for a proposed Agreed Order. Instead, Defendants filed a response making the counter-factual claim that the challenged Policy does not prohibit use of County property on County holidays. *See* Dkt. No. 40 at 2.¹

II. Argument

Even considering the County’s purported claim of non-enforcement, courts should not “uphold an unconstitutional statute merely because the Government promised to use it responsibly.” *See Stevens*, 559 U.S. at 480 (“the First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*.”). Defendants’ representation, without more, that they will not enforce the Policy is wholly inadequate to protect Plaintiffs’ First Amendment rights to speech and assembly.

Injunctive relief is particularly imperative here where the County has previously enforced invalidated portions of the Policy. *See id.* (noting that previous enforcement is “itself evidence of the danger in putting faith in government representations of prosecutorial restraint.”). For example, the County enforced enjoined portions of the Policy on Election Day for the 2018 Texas primary election on the Starr County Courthouse lawns and at the El Cenizo polling location. *See* Dkt. No. 36-2 at 7-8, ¶ 26.

Finally, absent a Court order, the challenged Policy will continue to chill Plaintiffs’ constitutionally-protected speech. In their response, Defendants do not commit to instruct their

¹ Specifically, Defendants stated:

“Starr County does not, and will not, prohibit public gatherings honoring veterans at any County cemetery, memorial or park, and encourages citizens to demonstrate their support for our veterans and to remember our nation’s fallen heroes on Memorial Day. The prohibition on use of buildings and facilities on County holidays, as described in the Starr County Building and Property Use Policy, does not extend to these public spaces.”

employees, including law enforcement officials, not to enforce the Policy. Defendants similarly do not commit to notify the public of their position that the Policy does not prohibit Plaintiffs' speech and assembly on County property on County holidays and that Defendants will not implement or enforce those provisions in their Policy. Instead, Defendants simply ask the Court to take them at their word. That is insufficient. *See Stevens*, 559 U.S. at 480.

III. Conclusion

WHEREFORE, Plaintiffs respectfully request that the Court enter an order enjoining the County from implementing or enforcing the provisions of the challenged Policy that prohibit speech and assembly on Memorial Day.

Dated: May 23, 2018

Respectfully submitted,

**MEXICAN AMERICAN LEGAL DEFENSE
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that she has electronically submitted a true and correct copy of the above and foregoing via the Court's electronic filing system on the 23rd day of May 2018, which will serve a copy on all counsel of record for Defendants.

/s/ Alejandra Ávila
Alejandra Ávila

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

HILDA GONZALEZ GARZA, *et al.*,

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CIVIL ACTION NO. 7:18-CV-00046

AGREED ORDER

Pending before the Court is a Motion for Entry of Agreed Order, filed by Plaintiffs Hilda Gonzalez Garza and Rosbell Barrera (“Plaintiffs”) and Defendants Starr County, Texas, Omar Escobar, Jr., Victor Canales, Jr., Eloy Vera, Jaime Alvarez, Raul Peña, Eloy Garza, Ruben Saenz, and Rene “Orta” Fuentes (collectively, “Defendants”). After considering the motion and the terms of this Agreed Order (“Order”), the Court **GRANTS** the motion.

This Order enjoins the provisions of the Starr County Building and Property Use Policy, adopted by the Starr County Commissioners’ Court on April 9, 2018, (the “Policy”) that prohibit speech and assembly on County property on County holidays.

IT IS THEREFORE ORDERED AND ADJUDGED that Defendants, together with their agents, servants, employees, attorneys and those persons in active concert or participation with them, are permanently enjoined from implementing or enforcing, in its entirety, Section 3(d) of the Policy, which states: “County facilities are not available for use on County holidays. If the holiday falls on a Monday or Friday, the weekend preceding or the weekend following the holiday, respectively, shall be considered a holiday.”

IT IS FURTHER ORDERED AND ADJUDGED that Defendants, together with their agents, servants, employees, attorneys and those persons in active concert or participation with them, are permanently enjoined from implementing or enforcing, on County holidays, the portion of Section 3(b) of the Policy that states: “Buildings and facilities that are excluded from Attachment A are not available for use by private citizens, unless otherwise allowed under the Policy.” Any and all county property not addressed by the Policy, including, but not limited to, the Starr County Cemetery in Rio Grande City, may be used by private citizens on County holidays.

The Court shall retain jurisdiction over this case to enter any further orders necessary to ensure that Defendants comply with this Order.

IT IS SO ORDERED.

SIGNED this ____ day of _____, 2018.

The Honorable Randy Crane
United States District Judge

AGREED AS TO FORM AND SUBSTANCE:

**MEXICAN AMERICAN LEGAL DEFENSE
AND EDUCATIONAL FUND**

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