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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LUIS JAVIER PEREZ-OLANO;)	Case No. CV 05-03604 DDP (RZx)
MANUEL GOMEZ; MICHAEL YUBAN)	
OBANDO; CASA LIBRE YOUTH)	ORDER DENYING DEFENDANTS' EX
SHELTER; LUCIA UREY; MAEJEAN)	PARTE APPLICATION FOR A STAY OF
ROBINSON; LUIS MIGUEL)	THE INJUNCTION
MORALES; YAN JUN LI; FREDDY)	
GARRIDO-MARTINEZ,)	[Defendants' Ex Parte Filed on
)	January 25, 2008]
Plaintiffs,)	
)	
v.)	
)	
ALBERTO GONZALEZ, Attorney)	
General; ROBERT S. MUELLER,)	
Director Federal Bureau of)	
Investigation; MICHAEL)	
CHERTOFF, Secretary of)	
Homeland Security; OFFICE OF)	
REFUGEE RESETTLEMENT,)	
)	
Defendants.)	
)	
_____)	

This matter is before the Court on Defendants' ex parte application for an emergency stay of this Court's Order enjoining Defendants' specific consent requirement for in-custody immigrant minors needing a state court dependency order as a predicate to apply for special immigrant juvenile ("SIJ") status under the

1 Immigration and Nationality Act ("INA"), 8 U.S.C. §§
2 1101(a)(27)(J). (See Order, January 8, 2008.) After reviewing the
3 papers submitted by the parties and considering the arguments
4 therein, the Court denies a stay of the injunction.

5
6 **I. BACKGROUND**

7 Pursuant to 8 U.S.C. § 1101(a)(27)(J), immigrant children may
8 petition the U.S. Immigration and Citizenship Services ("CIS"), a
9 bureau of the Department of Homeland Security ("DHS"), to be
10 recognized as special immigrant juveniles.¹ In order to be
11 eligible for SIJ classification, 8 U.S.C. § 1101(a)(27)(J) requires
12 that a state court make an SIJ-predicate order, finding 1) that the
13 child is dependent on the court or a state agency; 2) that the
14 child is eligible for long-term foster care due to abuse, neglect
15 or abandonment; and 3) that it would not be in the child's best
16 interest to be returned to his or her home country. 8 U.S.C. §
17 1101(a)(27)(J)(I-ii).

18 Under the statute, a state court may not "determine the
19 custody status or placement" of in-custody minors unless
20 Immigration and Customs Enforcement ("ICE"), a bureau of DHS,
21 specifically consents to state court jurisdiction. 8 U.S.C. §
22 1101(a)(27)(J)(iii)(I). Defendants had a policy that required in-
23 custody minors to obtain ICE's specific consent before proceeding
24 to state court for an SIJ-predicate order.

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26 ¹ The Homeland Security Act of 2002 ("HSA"), Pub. L. No. 107-
27 296, 116 Stat. 2153 (Nov. 25, 2002), transferred authority to
28 implement the SIJ benefit provisions from the Attorney General to
the Secretary of Homeland Security. HSA §§ 471(a), 451(b), and
462(c); see also F.L. v. Thompson, 293 F. Supp. 2d 86 (D.D.C.
2003).

1 In its January 8, 2008 Order, the Court granted summary
2 adjudication to Plaintiffs on their claim that Defendants' policy
3 was inconsistent with the plain language of 1101(a)(27)(J) by
4 improperly requiring specific consent for all SIJ-predicate orders.
5 The Court determined that such orders do not alter a minor's
6 custody status or placement, unless the state court orders a change
7 in a particular child custody arrangement, assigns the child to a
8 foster home, or takes some similar action. (Order 31-33.)
9 Therefore, the Court held that Defendants may not require specific
10 consent unless a state court order will alter custody status or
11 placement, as is provided in the statute. (Id. at 35-36.)

12 The Court issued an injunction prohibiting Defendants from
13 applying the unlawful policy on specific consent and requiring
14 Defendants to follow the law as articulated in the Order. (Order
15 38-39.) The Court found injunctive relief appropriate to remedy
16 the high likelihood of substantial and immediate irreparable injury
17 to immigrant minors and the inadequate remedies at law. The Court
18 had already certified a subclass of those in-custody minors subject
19 to Defendants' specific consent. Therefore, the Court ordered that
20 the injunction apply on a class-wide basis. (Order 39.)

21 Defendants have moved for a stay of the injunction pending a
22 decision whether to appeal the Court's Order.

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1 **II. DISCUSSION**

2 A. Standard for Stay of an Injunction

3 Federal courts have inherent power to stay an injunction
4 pending appeal. See Natural Res. Def. Council, Inc. V. Sw. Marine,
5 Inc., 242 F.3d 1163, 116 9th Cir. 2001). Federal Rule of Civil
6 Procedure 62(c) codifies this principle: "When an appeal is taken
7 from an interlocutory or final judgment granting, dissolving, or
8 denying an injunction, the court in its discretion may suspend,
9 modify, restore, or grant an injunction during the pendency of the
10 appeal. . . ."

11 Here, Defendants' application for a stay is premature under
12 Rule 62(c), as it is conceded that no appeal is currently pending.
13 (Defs.' Ex Parte 3) ("Defendants . . . move the Court to stay the
14 injunction pending the Solicitor General's determination of whether
15 to authorize appeal of the injunction.") As the Court has granted
16 a permanent injunction, Defendants may seek an interlocutory appeal
17 under 28 U.S.C. § 1292(a)(1), which grants us jurisdiction over
18 "[i]nterlocutory orders of the district courts . . . granting . . .
19 injunctions." The Court will nevertheless address Defendants'
20 request for a stay on the merits, having the inherent power to
21 grant a stay if appropriate.

22 B. Defendants' Request for a Stay of the Injunction

23 In considering whether to stay an injunction, a court
24 considers the following factors:

- 25 (1) whether the stay applicant has made a strong showing that
26 he is likely to succeed on the merits; (2) whether the
27 applicant will be irreparably injured absent a stay; (3)
28 whether issuance of the stay will substantially injure the

1 other parties interested in the proceeding; and (4) where the
2 public interest lies.

3 Hilton v. Brauskill, 481 U.S. 770, 776 (1987). The Ninth Circuit
4 has explained that "even 'failing' a strong likelihood of success
5 on the merits, the party seeking a stay may be entitled to prevail
6 if it can demonstrate a 'substantial case on the merits' and the
7 second and fourth factors militate in its favor." NRDC v. Winter,
8 502 F.3d 859, 863 (9th Cir. 2007).

9 1. Likelihood of Success on the Merits

10 The first factor inquires whether the party seeking a stay has
11 made a strong showing of likely success on the merits. Hilton, 481
12 U.S. at 776. The success on the merits factor cannot be rigidly
13 applied, because, if it were, an injunction would seldom be
14 granted. Stop H-3 Ass'n v. Volpe, 353 F. Supp. 2d 14, 16 (D. Haw.
15 1972).

16 In the Order granting the injunction, the Court outlined the
17 reasons for holding that Defendants' policy on specific consent was
18 inconsistent with the plain language of the statute. Here,
19 Defendants' recapitulate the arguments addressed by the Court in
20 that Order. The Court finds that these arguments do not set forth
21 a strong showing of likely success for several reasons. Defendants
22 essentially base their argument on a single statement of
23 legislative history, rather than the plain language of the statute.
24 This approach is contrary to a basic principle of statutory
25 interpretation. Additionally, Defendants base their arguments on
26 case law that they have conceded does not address the issue of the
27 scope of the specific consent requirement under the statute.

28

1 Finally, Defendants' policy is not written in any administrative
2 regulations, and is not entitled to Chevron deference.²

3 Additionally, Defendants argue that the Court's nationwide
4 class certification interferes with the jurisdiction of other
5 courts, and their ability to adopt conflicting interpretations of
6 the statute. However, the nationwide injunction is limited to
7 requiring that Defendants comply with the plain language of the
8 statute as set forth in the Court's Order on summary adjudication.
9 It is, therefore, "no broader than necessary to provide complete
10 relief to the named plaintiffs and [class] members. . . ."
11 Easyriders Freedom F.I.G.H.T. v. Hannigan, 92 F.3d 1486, 1496 (9th
12 Cir. 1996); see also Califano v. Yamasaki, 442 U.S. 682, 702-03
13 (1979). While the Supreme Court and Ninth Circuit have instructed
14 district courts to "take care" when issuing nationwide injunctive
15 relief, both have recognized that there is no bar to nationwide
16 injunctive relief when it is appropriate. Califano v. Yamasaki,
17 442 U.S. at 702-03; Bresgal v. Brock, 843 F.2d 1163, 1170 (9th Cir.
18 1987). The Court does not find that Defendants have made a strong
19 showing that nationwide injunctive relief was inappropriate in this
20 case, where the statutory language is clear on the specific consent
21 requirement, yet Defendants applied an overbroad policy
22 inconsistent with that language.

23 Thus, Defendants have not made a sufficiently strong showing
24 of likely success on the merits. The Court finds that this factor
25 does not favor granting a stay.

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27 ² Furthermore, contrary to Defendants' assertion, the Court in
28 its Order explicitly discussed the express consent provision, and
its relationship to the specific consent requirement. (See Order 4
n.3; 33 n.10; 34 n.11; 42.).

1 2. Irreparable Injury

2 The second factor considers whether the party requesting the
3 stay will suffer irreparable injury. Hilton, 481 U.S. at 776.
4 Defendants offer several reasons that the Court's injunction will
5 cause irreparable injury.

6 First, Defendants assert that the injunction impinges on the
7 jurisdiction of other courts. This alleged injury to third
8 parties, namely the courts, cannot support a showing of irreparable
9 injury to Defendants.

10 Second, Defendants contend that the injunction purportedly
11 takes away from Defendants any control over special immigrant
12 juvenile decisions. To begin with, Congress reasonably designed
13 the specific consent provision to avoid having immigration
14 officials becoming involved in child welfare decisions, which it
15 reserved for state courts. Further, the injunction, unlike
16 Defendants' suggestion, does not entirely preclude Defendants from
17 any participation in special immigrant juvenile determinations.
18 Defendants are free to submit information to state courts.
19 Finally, Defendants retain control of the ultimate decision whether
20 to expressly consent to SIJ status, and whether to grant SIJ-based
21 adjustment.

22 Defendants further argue that the injunction will strain their
23 resources. For example, Defendants will need to transport
24 juveniles to state court hearings and provide for security. That
25 resources may be expended to comply with a federal statute,
26 however, does not itself demonstrate irreparable injury. Sampson
27 v. Murray, 415 U.S. 61, 90 (1974) ("Mere injuries, however
28 substantial, in terms of money, time, and energy necessarily

1 expended in the absence of a stay, are not enough." Furthermore,
2 there is little showing that the injunction will interfere with
3 Defendants' custody or placement determinations.

4 Accordingly, the Court does not consider Defendants to have
5 sufficiently shown irreparable injury. The Court, therefore, does
6 not find this factor to favor a stay.

7 3. Substantial Injury to Plaintiffs / Subclass Members

8 The third factor concerns whether granting a stay will cause
9 substantial harm to the Plaintiffs, or subclass members, in this
10 action. Hilton, 481 U.S. at 776. The Court issued an injunction
11 based on findings of substantial and immediate irreparable injury
12 to immigrant minors and inadequate remedies at law. This clearly
13 outweighs the lacking irreparable harm to Defendants. This factor
14 strongly favors denial of a stay of the injunction.

15 4. Public Interest

16 This factor weighs the public interest and whether it supports
17 granting a stay. Hilton, 481 U.S. at 776. Defendants argue that
18 the public interest favors a stay because the injunction creates an
19 administrative burden and infringes the jurisdiction of other
20 courts. Defendants further argue that the injunction interferes
21 with a coordinate branch's lawful administration of SIJ benefits.
22 (Def.'s Ex Parte, citing INS v. Legalization Assistance Project of
23 the L.A. County Federation of Labor, 510 U.S. 1301, 1305-06
24 (1993).)

25 Defendants' lawful administration of SIJ benefits, and federal
26 immigration policy generally, clearly represent significant public
27 interests. However, the Court construes those interests to support
28 denial of a stay. As this Court explained in its Order, Congress

1 created SIJ classification to protect the highly vulnerable group
2 of abused, neglected, and abandoned immigrant youth through a
3 process allowing them to become legal permanent residents. The
4 statute provides that state courts lack jurisdiction to alter an
5 immigrant minor's custody status or placement without specific
6 consent, but says nothing about limiting a state court's power to
7 declare an immigrant minor abused, neglected, and abandoned as part
8 of an SIJ-predicate order.

9 Accordingly, on balance, the Court finds that the public
10 interest favors lawful administration of the immigration system in
11 accordance with the Congress's intent, which will be advanced by
12 Defendants' compliance with the plain language of the specific
13 consent requirement as articulated in the Court's Order on summary
14 adjudication. The Court, therefore, finds unavailing the
15 suggestion that an injunction instructing Defendants to follow the
16 law, as articulated by the plain language of the statute,
17 interferes with the lawful administration of SIJ benefits. This
18 factor militates against a stay.

19 **III. CONCLUSION**

20 For the foregoing reasons, the Court finds that the balance of
21 equities do not favor a stay. The Court, therefore, DENIES
22 Defendants' application for a stay of the injunction.

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24 IT IS SO ORDERED.

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26 Dated: February 5, 2008

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DEAN D. PREGERSON
United States District Judge