

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

**RHONDA FLEMING,
CHARLSA LITTLE,
JEANETTE DRIEVER,
and BRENDA RHAMES,**

Plaintiffs,

VS.

UNITED STATES OF AMERICA, et al.,

Defendants.

§

Case No. 7:17-CV-00009-O

The Honorable Reed C. O'Connor

Oral Argument Requested

MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs Rhonda Fleming, Brenda Rhames, Charlsa Little, and Jeanette Driever respectfully move this Court for a preliminary injunction to enjoin Defendants from enforcing the Defendants' Transgender Offender Manual and related policies and regulations in such a manner as to place male inmates in federal prisons that normatively incarcerate only female inmates and further, at least until Defendants have removed all males currently incarcerated in female facilities at Carswell Federal Medical Center and Bryan Prison Camp, to relocate the Plaintiffs to a safe minimum security facility where males are not intermingled with the female inmate population and services are available at a level sufficient to address Plaintiffs' medical and mental health needs.

Plaintiffs also respectfully request that this Court waive the Rule 65 bond requirement for a preliminary injunction. Courts in the Fifth Circuit have discretion to determine an appropriate amount and may require “no security at all.” *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th

Cir. 1996) (quoting *Corrigan Dispatch Co. v. Casa Guzman, S. A.*, 569 F.2d 300, 303 (5th Cir. 1978)). The burden on the government if an injunction issues would only be the adjustment of extant policies and relocating a few inmates, which is simply part of the routine of prison administration. Hence, in respect to Defendants, “the risk of harm is remote, [and] the court has discretion to require only a nominal bond or no bond at all.” *Texans for Free Enter. v. Texas Ethics Comm’n*, No. A-12-CA-0845-LY, 2012 WL 12874899, at *7 (W.D. Tex. Dec. 6, 2012), *aff’d*, 732 F.3d 535 (5th Cir. 2013).

Waiving the bond requirement is also warranted because the Plaintiffs seek to vindicate constitutional and statutory rights, and so their lawsuit is in the public interest. *See Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 803 n.8 (3d Cir. 1989) (collecting cases); *City of Atlanta v. Metro. Atlanta Rapid Transit Auth.*, 636 F.2d 1084, 1094 (5th Cir. 1981) (noting that courts have recognized that public interest litigation is an exception to the Rule 65 bond requirement); *Crowley v. Local No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, & Packers*, 679 F.2d 978, 1000 (1st Cir. 1982), *rev’d* on other grounds, 467 U.S. 526 (1984) (“no bond is required in suits to enforce important federal rights or public interests.”) (quotation marks omitted). The Plaintiffs raise important claims that serve the public interest by vindicating inmates’ constitutional and statutory rights as set forth in the Memorandum of Law supporting this motion. The federal Defendants will not be harmed by the issuance of an injunction, because the government cannot be harmed when it is prevented from enforcing unconstitutional laws. *Joelner v. Vill. of Wash. Park, Ill.*, 378 F.3d 613, 620 (7th Cir. 2004).

Finally, Plaintiffs Fleming, Little, and Driever are proceeding *in forma pauperis*¹ (see filing fee orders granting *in forma pauperis* status, ECF Nos. 46-48) and it is clear “that indigents, suing individually or as class plaintiffs, ordinarily should not be required to post a bond under Rule 65(c).” *Bass v. Richardson*, 338 F. Supp. 478, 490 (S.D.N.Y. 1971). To do otherwise would be to disincentivize citizens vindicating their constitutional and statutory rights against government overreach and “would condition the exercise of plaintiffs’ constitutional rights upon their financial status.” *Smith v. Bd. of Election Comm’rs for City of Chi.*, 591 F. Supp. 70, 72 (N.D. Ill. 1984). And just as in the *Smith* case, the “likelihood that this matter may be resolved through prompt appellate review of our ruling” is a mitigating factor that favors waiving the bond as Plaintiffs respectfully request. *Id.*

This motion is made on the grounds specified in this motion, in the Plaintiffs’ memorandum of law in support thereof, and the Appendix providing the factual materials in support of this motion.

Respectfully submitted this 26th day of June, 2017.

By: s/ Gary S. McCaleb

¹ Ms. Rhames did not move for *in forma pauperis* status as her filing fee was paid by counsel.

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CERTIFICATE OF SERVICE

In accordance with Local Rule 5.1(d), the foregoing pleading was served in accordance with the CM/ECF filing system and FRCP 4.

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