IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

R.B., A.C., J.R., and T.B., by and through their next friend, on their own behalf and on behalf of those similarly situated, Plaintiffs, vs. Dr. MARY LIVERS, in her official capacity as Deputy Secretary of the Louisiana Office of Juvenile Justice; NAMON REID III, in his Official capacity as Director of the Bridge City Center for Youth; DARON BROWN, in his Official capacity as Director of Jetson Center for Youth; and R.VICKIE SHOECRAFT, in her official capacity Director of Swanson Center for Youth Defendants.	**CLASS ACTION** 2:12-CV--1502

PLAINTIFFS' MOTION FOR IMMEDIATE PRELIMINARY INJUNCTION

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Plaintiffs hereby move this Court to enter an immediate preliminary injunction to protect their First and Fourteenth Amendment rights to adequate, meaningful and effective access to the courts and counsel. The named Plaintiffs seek preliminary relief on their own behalf and on behalf of a class of similarly situated children. Without immediate intervention by this Court, Defendants will continue to deny the class members' constitutional rights by blocking their access to counsel, not providing any meaningful and effective way to attain counsel, intimidating and harassing children with valid claims, and retaliating against any child who complains about abuse or any other

unconstitutional condition of confinement. Attached to this motion is a memorandum of law and supporting evidence.[1]

For the reasons stated above and in Plaintiffs' memorandum, Plaintiffs respectfully ask that the Court enter a preliminary injunction requiring the Defendants, their agents, employees, and all persons acting in concert with them to allow youth to meet with counsel of their choice by:

a. honoring written requests for legal visits, whether made by youth or by parents, without unnecessary delay;
b. assisting youth in making written requests for legal assistance;
c. posting a notice in each housing unit at all facilities housing youth in OJJ secure custody that informs youth of their right to speak with a lawyer to seek assistance;
d. establishing policies and procedures for all Plaintiffs to ensure that they are provided with meaningful and effective access to court and counsel;
e. refraining from harassing, intimidating, punishing, or otherwise retaliating against children who ask to or do speak with lawyers; and
f. protecting named Plaintiffs from any harassment, intimidation, punishment, or other retaliation as a result of their participation in this lawsuit.

[1] The exhibits submitted with this motion and memorandum in support are sufficient to carry Plaintiffs' burden under Rule 65. Nonetheless, if the Court believes an evidentiary hearing would be useful, Plaintiffs reserve the right to call the named representatives and other witnesses to testify in support of their motion. If a hearing is set, Plaintiffs would also request that their counsel be permitted to present oral argument.

In light of the strength of their claims and "the strong public interest involved," Plaintiffs respectfully request that the Court waive the bond requirement set forth in Fed. R. Civ. P. 65(c). *Moltan Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995). Finally, Plaintiffs seek compensation pursuant to 42 U.S.C. § 1988 for reasonable attorney fees incurred in the prosecution of this motion. *See Deerfield Med. Center v. City of Deerfield Beach*, 661 F.2d 328, 339 (5th Cir. 1981).

Respectfully Submitted,

/s/ John S. Williams
John S. Williams (T.A.)
Louisiana Bar No. 32270
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Blvd.
New Orleans, Louisiana 70113
jwilliams@jswlawoffices.com
Telephone: 504-486-0300

William E. Rittenberg, Esq.
Rittenberg, Samuel & Phillips, LLC
715 Girod Street, Suite 100
New Orleans, Louisiana, 70130
Telephone: (504) 524-5555 Ext. 18
Fax: (504) 524-0912
rittenberg@rittenbergsamuel.com

Carol Kolinchak, Esq.
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Boulevard
New Orleans, LA 70113
(504) 522-5437 x234
fax: (504) 522-5430
ckolinchak@jjpl.org

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of June 2012, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system. A copy of this document as well as a notice of electronic filing has been personally served on all non-CM/ECF participant Defendants:

Namon Reid
3225 River Road
Bridge City, LA 70094

R. Vickie Shoecraft
4701 South Grand St.
Monroe, LA 71202

Daron Brown
15200 Old Scenic Highway (at US Hwy 61),
Baton Rouge, LA 70874

Mary Livers
7919 Independence Blvd.
State Police Bldg., 1st Floor
Baton Rouge, LA 70806

/s/ John S. Williams
John S. Williams, Esq.
Louisiana Bar No. 32270
Attorney for Plaintiffs
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Blvd.
New Orleans, Louisiana 70113
jwilliams@jswlawoffices.com
Telephone: 504-486-0300
Fax: (504) 754-7671

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

R.B., A.C., J.R., and T.B., by and through their next friend, on their own behalf and on behalf of those similarly situated, Plaintiffs, vs. Dr. MARY LIVERS, in her official capacity as Deputy Secretary of the Louisiana Office of Juvenile Justice; NAMON REID III, in his Official capacity as Director of the Bridge City Center for Youth; DARON BROWN, in his Official capacity as Director of Jetson Center for Youth; and R.VICKIE SHOECRAFT, in her official capacity Director of Swanson Center for Youth Defendants.	**CLASS ACTION** 2:12-CV–1502

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR IMMEDIATE PRELIMINARY INJUNCTION

INTRODUCTION

Under the Defendants' unconstitutional policies, staff members and administration have created an environment where youth are abused by staff and other youth and have no ability to retain meaningful counsel or advocacy of their constitutional rights. The United States Constitution and the Constitution of Louisiana impose affirmative obligations to ensure that individuals in confinement have meaningful and effective access to courts. Because "[c]hildren, by definition, are not assumed to have the capacity to take care of themselves", the State must exercise special care to ensure that their rights are protected. *Schall v. Martin*, 467 U.S. 253, 265 (1984). Defendants have not only failed to assist the class members in accessing the courts but

have actively stood in their way by barring meaningful access to counsel, ignoring attorney-client confidentiality, and intimidating class members into not filing administrative grievances or contacting attorneys when their rights have been violated. Accordingly, Plaintiffs seek immediate injunctive relief to protect their rights to access the courts and counsel. They sue on their own behalf and on behalf of all current and future youth in Office of Juvenile Justice (OJJ) secure custody at Bridge City Center for Youth (BCCY), Jetson Center for Youth (JCY), Swanson Center for Youth (SCY), or any other parish or state facility that contracts with OJJ for the housing of youth adjudicated delinquent and in secure custody.

STATEMENT OF FACTS

The Plaintiffs have suffered and continue to suffer a denial of their right to counsel and their right of access to the courts. This denial of their constitutional rights poses a substantial threat of irreparable injury if it is not remedied. The Plaintiffs have experienced violations of their rights to adequate medical care, adequate food and education and have suffered physical and emotional abuse. Due to the denial of their right to counsel they have been unable to seek assistance in remedying these violations. Plaintiffs need to access courts and counsel, and subsequent denials and obstacles, have been actual and not speculative.

i. Defendant Bridge City Center for Youth, Swanson Center for Youth and Bridge City Center for Youth

J.R. was experiencing physical abuse during October 2011 at the hands of BCCY staff and needed access to legal counsel. During this time, J.R. had an altercation with a staff member and sustained multiple injuries, yet he was not given any medical attention and no report was filed regarding the injuries. In fact, J.R. received no medical treatment until he was transferred to Jefferson Parish Jail and booked with Battery on a Correctional Officer. J.R.'s family was never informed of his injuries or his subsequent arrest and transfer. BCCY did not investigate the

incident for which J.R. was arrested; yet this was the second physical altercation between J.R. and this staff member. Throughout this time, the phones in the dormitories were inaccessible for about eight days. J.R. wished to contact the Juvenile Justice Project of Louisiana (JJPL) regarding the physical abuse he was experiencing, but he was unable to do so because the phones were not accessible. Furthermore, Defendant spoke to J.R. about calling JJPL and informed J.R. that he "is the problem" and he shouldn't "rat on BCCY." J.R. has also reported that staff at BCCY listen to the legal calls made on the pay phones and reports them to the director of the facility, thus violating attorney-client confidentiality.[1]

Similarly, A.C. at BCCY was denied access to counsel while enduring physical abuse from Juvenile Justice Specialists. A.C. was placed on administrative segregation and was not permitted to attend school during "lockdown." He also reports that he was not given enough food and the food he was given was rotten or undercooked, making it unfit for consumption. A.C. reports that the bathrooms at BCCY are moldy and unsanitary and additionally, he is not given sufficient time to bathe properly. Yet, A.C. was unable to seek legal counsel or legal recourse for these circumstances because the phones at BCCY were not accessible for the first part of October 2011.[2]

In an article published on April 28, 2012 in The Times Picayune, the paper states, "Fights between youth were frequent last year in the state facilities, with data showing the problems are centered at BCCY. There were more than 550 "youth on youth" assaults or "youth on staff" assaults at BCCY in the first ten months of the year. The fights between youth accounted for 54 percent of such incidents statewide, though the center houses just one-third of the youngsters in secure care." Laura Maggi, *Bridge City Youth Center, Once a Model Correctional Facility, far*

[1] Please See Exhibit A, Affidavit of J.R.
[2] Please See Exhibit B, Affidavit of A.C.

from it now, The Times Picayune, April 28, 2012. Notwithstanding this level of violence, between July 2010 and July 2011, there were only eleven Administrative Remedy Procedure (ARP) grievances filed according to BCCY. *Public Records Request to Office of Juvenile Justice*, October 2011.

Upon information and belief, The Juvenile Justice Project of Louisiana (JJPL) is the only entity in the state that provides Plaintiffs with any access to legal counsel regarding various civil and juvenile delinquency legal matters. A large majority of Plaintiffs do not have access to the indigent defense counsel that they were appointed at their delinquency proceeding. Notwithstanding, JJPL attorneys and legal advocates have faced significant obstacles in attempting to provide legal advocacy or visit youth at BCCY, JCY, and SCY. Defendants have cancelled visits requested by Plaintiffs; rescheduled visits without informing counsel at JJPL therefore causing the youth to decline the visit after waiting for hours; failing to provide confidential communications; failing to provide access to legal mail in a timely manner; and many other acts that have made the access Plaintiffs have less than adequate and none effective. Notwithstanding, Plaintiffs complications with accessing counsel at JJPL, Defendants have failed to take affirmative steps to assure adequate, effective, and meaningful access, as required by state and federal law.

Plaintiffs housed at SCY have suffered abuse while experiencing a systematic denial of access to counsel. When youths are placed on "lockdown," they are not permitted to use the phones and thus cannot report abuses. However, routinely the phones are inoperable and there is no access to counsel. Plaintiffs suffer the lack of effective and meaningful access to legal mail because of the excessive delays. Defendant routinely informs JJPL that a youth is not housed at SCY creating further delays to Plaintiffs access because youth will in fact be housed

at the facility. Defendant OJJ has moved the "Winter Unit" to SCY and this unit is used as a "lockdown" unit. While on "lockdown" Plaintiffs have no access to courts or counsel and are housed inside a cell for a majority of the day. SCY fails to take affirmative steps to assure that youth have access to courts and counsel and further when counsel is available they stifle communication by Plaintiffs, making their access less than meaningful, adequate or effective.

While at JCY, R.B. was continuously denied access to counsel. R.B. needed to contact counsel because he was placed on suicide watch as a form of punishment. R.B. was brutalized by staff while being housed at JCY but was denied access to contact an attorney to report the violence perpetrated against him. R.B. also needed to contact legal counsel because he was afraid of possible retaliation by staff upon reporting these violations.[3] Many times when JJPL requests a visit with youth inside of JCY, Defendants ignore the request and do not respond, therefore stifling Plaintiffs access. Again, there are no other options for legal advocacy or consultation so the stifling of access to any source of legal assistance equates to an outright denial.

ii. Office of Juvenile Justice

When a child is adjudicated delinquent and placed in OJJ custody, Defendant Livers has "sole custody of the child . . . [and] shall determine the child's placement, care, and treatment, and the expenditures to be made therefor." La. R.S. 15:901. OJJ is responsible for contracting with facilities around the state to house female youth and other male youth not housed at BCCY, SCY, or JCY. The statutory and constitutional obligations owed to youth housed at OJJ contracted facilities is no less than that owed to youth housed in OJJ operated facilities. Defendant Livers must provide effective and meaningful access to counsel for all youth in the sole custody and control of OJJ regardless of where they are housed.

[3] Please See Exhibit C, Affidavit of R.B.

Plaintiff T.B. is housed at a facility that contracts with OJJ. T.B. is routinely treated poorly by staff. She is routinely threatened by staff with the filing of additional criminal/delinquency charges. T.B. is afraid to ask to speak with an attorney because every other youth is denied when they ask. T.B. is afraid to even have a real conversation with her probation officer and close family members because any call she is allowed to make is conducted on speakerphone with a staff member in the room. T.B. indicated that she was happy to visit with someone regarding her rights and that she would not call for assistance, out of fear, but "please come back and help" her.[4] Defendant Livers actions and lack of action has created an environment where youth housed in OJJ contracted facilities have no possibility to access the courts and counsel.

I. THERE IS A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

To prevail on a motion for a preliminary injunction, an applicant must establish the following:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Byrum v. Landreth, 566 F.3d 442, 445 (5th Cir. 2009) (citing *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th Cir. 2006)). Where, as here, the Plaintiffs have carried their burden on all four requirements, a preliminary injunction is appropriate.

To determine the likelihood of success on the merits, courts look to "standards provided by the substantive law." *Janvey v. Alguire*, 647 F.3d 585, 596 (5th Cir. 2011) (quoting *Roho, Inc. v. Marquis*, 902 F.2d 356, 358 (5th Cir. 1990)). In the case at hand, standards can be found in

[4] Please See Exhibit D, Affidavit of T.B.

leading Supreme Court cases. The Court has repeatedly held that incarcerated individuals have the constitutionally protected right to access the courts. *See generally Lewis v. Casey*, 518 U.S. 343, 346 (1996) (quoting *Bounds v. Smith*, 430 U.S. 817, 828 (1977)) (incarcerated persons have "the fundamental constitutional right of access to the courts"). That access must be meaningful. *See Lewis,* 518 U.S. at 355. For access to be meaningful, adequate resources must be provided to prisoners. *Id.* at 356. Where, as here, adequate resources are not provided, prisoners' constitutional rights are violated.

A. Incarcerated Persons Are Being Denied Their Constitutional Right to Access to the Courts.

"It is now established beyond doubt that prisoners have a constitutional right of access to the courts." *Patel v. Santana*, 348 F. App'x. 974, 975 n.3 (quoting *Bounds v. Smith*, 430 U.S. 817, 821 (1977)); *accord Lewis,* 518 U.S. at 350; *see also Woodford v. Ngo*, 548 U.S. 81, 122 (2006) (6-3 decision) (Stevens, J., dissenting) ("[T]he Constitution guarantees that prisoners, like all citizens, have a reasonably adequate opportunity to [access the courts] . . . because access to the courts is a fundamental right.").

The right to access the courts arises from two constitutional provisions. The First Amendment establishes the right to petition the government to redress grievances. U.S. Const. amend. I. *See also Jackson v. Procunier*, 789 F.2d 307, 310 (5th Cir. 1986). Second, the Fourteenth Amendment's due process clause establishes the right to due process of law – which includes access to the courts. *See Ryland v. Shapiro*, 708 F.2d 967, 971 (5th Cir. 1983) (denying citizens access to the courts violates the "procedural norms embodied in the Due Process Clause" of the Fourteenth Amendment.) *See also Snyder v. Nolen*, 380 F.3d 279, 291 (7th Cir. 2004)

(quoting *Jackson,* 789 F.2d at 308) ("[D]eprivation of the prisoner's constitutional right of access to the courts [is] in violation of the First Amendment and substantive due process.")

This right was originally recognized in the context of direct appeals and habeas petitions. However, the Supreme Court has "extended [the] universe of relevant claims . . . to 'civil rights actions' – *i.e.*, actions under 42 U.S.C. § 1983 to vindicate 'basic constitutional rights.'" *Lewis*, 518 U.S. at 354 (quoting *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974)). This extension reflects the Court's understanding that "civil rights actions are of fundamental importance . . . in our constitutional scheme because they directly protect our most valued rights." *Bounds*, 430 U.S. at 827 (internal quotations and citations omitted).

The case at hand deals with a basic constitutional right: the right to access the courts. This right is not limited to adults; it applies with equal force to children. *See In re Gault*, 387 U.S. 1, 13 (1967) ("[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone"); *see also Frazier v. Alexandre*, 555 F.3d 1292, 1297 n.10 (11th Cir. 2009) (same); *Troxel v. Granville*, 530 U.S. 57, 88 n.8 (2000) (same); *John L. v. Adams*, 969 F.2d 228, 233 (6th Cir. 1992) (holding that juveniles have the constitutional right to access courts). Thus it is clear that children have a constitutionally protected right to access courts.

i. <u>Access to Courts Must Be Adequate, Effective and Meaningful.</u>

Access to the courts is "one of, perhaps *the* fundamental constitutional right." *Cruz v. Hauck*, 475 F.2d 475, 476 (5th Cir. 1973). Thus, to pass a constitutional challenge, the Supreme Court has held that the State must ensure that "access to the courts is adequate, effective, and meaningful." *Terry v. Hubert*, 609 F.3d 757, 761 (5th Cir. 2010) (quoting *Bounds*, 430 U.S. at 822).

In order to provide "adequate, effective, and meaningful" access, the Supreme Court has "consistently required States to shoulder affirmative obligations to assure all prisoners [have] meaningful access to the courts." *Bounds*, 430 U.S. at 824 (emphasis added). Thus, the State must do more than stand aside; it must provide the "tools" that incarcerated people need to "challenge the conditions of their confinement." *Lewis*, 518 U.S. at 355; *see also, e.g., Bounds*, 430 U.S. at 828 (holding that the State must provide incarcerated people with "adequate law libraries or adequate assistance from persons trained in the law"); *Johnson v. Avery*, 393 U.S. 483, 488-90 (1969) (holding that prisons cannot prohibit consultations with "jailhouse lawyers" and "writ writers" in the absence of a "reasonable alternative to assist inmates."). The State's "affirmative obligation" does not take any particular form, but rather guarantees "the conferral of a capability – the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." *Lewis*, 518 U.S. at 356.

B. Access to Counsel is the Only Means of Ensuring that Incarcerated Children Have Meaningful and Effective Access to the Courts.

Although the State may confer the "capability" to access the courts on adults in a variety of ways, thereby fulfilling its constitutional obligations, *see id.*, "special concerns . . . are present when young persons, often with limited experience and education and with immature judgment, are involved." *Fare v. Michael C.,* 442 U.S. 707, 725 (1979); *see also Bellotti v. Baird*, 443 U.S. 622, 635 (1979) ("[A]lthough children generally are protected by the same constitutional guarantees against governmental deprivations as adults, the State is entitled to adjust its legal system to account for children's vulnerability . . . ."). The "touchstone" of the analysis in any access-to-courts claim is whether the proposed mechanism – here, access to counsel – is necessary to guarantee the plaintiff meaningful access to the courts. *Bounds,* 430 U.S. at 822, 825. This analysis requires a realistic assessment of the experience and intelligence of the

incarcerated persons. *See Iowa v. Tovar*, 541 U.S. 77, 88 (2004) (stating that the inmate's "education or sophistication" should be taken into account). Here, the incarcerated persons are children, some as young as ten years old. Many are dealing with illiteracy and mental or emotional disabilities.

"Children, by definition, are not assumed to have the capacity to take care of themselves." *Schall*, 467 U.S. at 265 (1984), *supra*. Accordingly, many approaches that work for adults are not adequate for children. The Supreme Court has recognized that children are particularly helpless in legal matters:

> Age 15 is a tender and difficult age for a boy . . . . He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens. This is the period of great instability which the crisis of adolescence produces. . . . [A child] needs counsel and support if he is not to become the victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, crush him.

Haley v. State of Ohio, 332 U.S. 596, 599-600 (1948); *see also Fare*, 442 U.S. at 725, *supra* ("[S]pecial concerns . . . are present when young persons, often with limited experience and education and with immature judgment, are involved."); *Hardaway v. Young*, 302 F.3d 757, 763 (7th Cir. 2002) (noting that even the most sophisticated child needs adult guidance in legal matters). In this case, while a prison law library may provide adults meaningful access to the courts, *see Bounds*, 430 U.S. at 826, this approach is not workable for children. *See John. L*, 969 F.2d 228, 234 ("merely providing [children] with access to a law library. . . would fail to assure meaningful access."). *See also Morgan v. Sproat*, 432 F. Supp 1130, 1158 (S.D. Miss., 1977) ("[W]ithout assistance [fifteen to twenty-year-old youth] could not make effective use of legal materials.").

For the same reasons, children's constitutional rights to access the courts cannot be entrusted to other youth, "no matter how sophisticated." *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (noting that even the most sophisticated child needs adult guidance in legal matters). In contrast to the "old hands" who served as "writ writers" in *Johnson*, the Supreme Court has held that:

> [A] 14-year-old boy, no matter how sophisticated, . . . is unable to know how to protect his own interests or how to get the benefits of his constitutional rights . . . . He cannot be compared with an adult in full possession of his senses . . . . Without some adult protection . . . , a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.

Gallegos, 370 U.S. at 54. Given the relative immaturity of children, the only means of ensuring "adequate, effective, and meaningful" access to the courts is to permit them to consult with an attorney. *See Bounds,* 430 U.S. at 822; *see also John. L.*, 969 F.2d at 230.

In order to insure that incarcerated children have adequate, effective, and meaningful access to courts, "the State must provide the juveniles with access to an attorney." *John L.*, 969 F.2d at 230. In the words of the Supreme Court, a "juvenile needs the assistance of counsel to cope with problems of law [and] to make skilled inquiry into the facts . . . . The child requires the guiding hand of counsel at every step in the proceedings against him." *Gault*, 387 U.S. at 36 (internal quotations, citations, and footnotes omitted).

Defendants have actively impeded access to counsel. As noted above, A.C. and J.R. were denied telephone access to contact representation for two weeks in October 2011. The Defendants have also denied legal visitation access to the children on multiple occasions. Furthermore, legal mail is not delivered to the incarcerated children in a timely matter. This denial of legal visit requests by Defendants Brown and OJJ amounts to a consistent denial of access to legal counsel.

Based on the foregoing case law, it is clear that where, as here, incarcerated children are denied access to their attorneys, they are denied their constitutional right to "effective and meaningful" access to the courts.

C. Plaintiffs' Constitutional Rights to Access the Courts Include the Right to be Free From Harassment and Other Retaliation.

Meaningful access to the courts is not possible for prisoners who fear retaliation. The Fifth Circuit has explicitly held that "prison officials may not retaliate against or harass an inmate because of the inmate's exercise of his right of access to the courts," nor may officials harass or "retaliat[e] against inmates who complain of prison conditions or official misconduct." *Gibbs v. King*, 779 F.2d 1040, 1046 (5th Cir. 1986) (internal quotations and citations omitted). Threats are sufficient on their own to interfere with the children's "fundamental constitutional right of access to the courts." *Bounds*, 430 U.S. at 828.

Plaintiffs in this case have been threatened. As a result, they live in a culture that promotes silence over action. For instance, as noted above, J.R. has had his calls to counsel monitored by facility staff persons. Based on such monitoring, Defendant went so far as to blame J.R. for his denial of access to a phone. Defendant told J.R. that he "shouldn't continue to rat on BCCY." Furthermore, staff persons stand inches from the door during attorney visitations, which not only violates attorney/client confidentiality, but also creates an atmosphere of fear during meetings with counsel. Also, Defendants' staff stands next to Plaintiffs or place calls on speaker phone when Plaintiffs make phone calls, therefore destroying any expectation of confidentiality. This atmosphere, in turn, creates a chilling effect on speech whereby Plaintiffs are intimidated from seeking redress.

Because of the foregoing reasons- lack of access to counsel, denial of legal mail, failure of Defendants to meaningful and effective system to access the courts, and the atmosphere of

harassment and retaliation created by Defendants' staff- a substantial likelihood of success on the merits has been established.

II. PRELIMINARY RELIEF IS ESSENTIAL TO PREVENT IRREPARABLE HARM.

This Court must act immediately to stop the ongoing, irreparable harm to Plaintiffs that is caused by denying them access to counsel. Any delay in access to counsel, and thus courts, causes per se irreparable harm in three ways: (1) the delay of justice itself; (2) the destruction of evidence; and (3) the creation of a chilling effect, which prevents future reports of misconduct.

First, the Plaintiff's claims in this case provide a classic illustration of the oft-quoted maxim "[j]ustice delayed is justice denied." *Coghlan v. Starkey*, 852 F .2d 806, 815 (5th Cir. 1988) (quoting *Stelly v. C.I.R.*, 761 F .2d 1113, 1116 (5th Cir. 1985)); *accord Road Sprinkler Fitters Local Union v. Cont'l Sprinkler Co.*, 967 F.2d 145, 148 (5th Cir. 1992) ("denying justice by delay"). The right to access the courts, "to petition the Government for a redress of grievances," is grounded in the First Amendment. U.S. Const. amend. I. Even a temporary deprivation of one's fundamental constitutional rights is per se irreparable harm. The Fifth Circuit has repeatedly held "the loss of First Amendment freedoms of even minimal periods of time constitutes irreparable injury justifying the grant of a preliminary injunction." *Palmer ex. Rel. Palmer v. Waxahachie Indep. Sch. Dist*., 579 F.3d 502, 506 (5th Cir. 2009) (citing *Deerfield Med. Ctr. V. City of Deerfield Beach*, 661 F.2d 328, 338 (5th Cir. 1981) (holding that violation of constitutional rights alone constitutes irreparable harm)) (emphasis added). Furthermore, for these children, each additional day during which access to counsel is denied is another day of enduring abuse.

Second, preliminary injunctive relief is necessary to prevent irreparable harm of a more tangible nature: the destruction of evidence. When a child is abused in state custody, anything

short of immediate access to counsel undermines the child's ability "to petition the Government for redress" of his injuries: bruises fade, as do the memories of potential witnesses; conditions of confinement claims become moot upon release; and deadlines pass unmet. For example, A.C., R.B., and J.R., all suffered verbal and physical abuse and were denied access to counsel in a timely manner. As time passes, not only does physical evidence of abuse fade, the clarity of memories diminishes as well. Considering the vulnerability of youth, a meaningful opportunity to access the courts, absent of retaliation and intimidation, is impossible.

Third, the constant threat of retaliation at Defendants' facilitites has a chilling effect on the willingness of children to report abuse. The latitude afforded prison officials in the control and discipline of inmates "does not encompass conduct that infringes on an inmate's substantive constitutional rights," *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995) (citing *Franco v. Kelly*, 854 F.2d at 590 (2d Cir. 1988). Monitoring attorney phone calls and visitations, in addition to explicit discouragement of attorney access by authoritative figures, create a culture of fear and silence, infringing on constitutional rights. "The law of this [5th] [C]ircuit is clearly established . . . that a prison official may not . . . harass an inmate for exercising the right of access to the courts, or for complaining to a supervisor about a guard's misconduct." *Woods*, 60 F.3d at 1164.

When a child thinks he will not gain prompt access to counsel, he is less likely to reveal poor conditions or details of abuse. Thus, the preliminary injunction would ease the substantial threats of per se irreparable harm outlined above.

III. THE THREATENED INJURY TO PLAINTIFFS OUTWEIGHS ANY HARM THAT THE INJUNCTION MIGHT CAUSE DEFENDANTS.

The third element that must be established in order to prevail on a motion for a preliminary injunction is that the threatened injury to the plaintiffs must outweigh any damage

that the injunction might cause the defendants. There is no question that this burden is met in this case. The relief requested by the Plaintiffs- access to attorneys- would impose little or no burden on the Defendants. While prison officials in the control and discipline of inmates do have a strong interest in maintaining safety and order, this interest "does not encompass conduct that infringes on an inmate's substantive constitutional rights". *Woods,* 60 F.3d at 1166; *see also State v. Perry*, 610 So.2d 746, 757 (La. 1992) ("Subject to the legitimate requirements of prison and security, prison inmates retain their fundamental constitutional rights and protections."). In contrast, the relief would be an enormously important first step in remedying grave constitutional and physical harm inflicted upon incarcerated children. *See Jackson*, 789 F.2d at 310 (stating that the right to "access to the courts is protected by the First Amendment…That right has also been found in the Fourteenth Amendment guarantees of procedural and substantive due process"). Thus, the threatened injury to the plaintiffs indeed outweighs any possible harm to the Defendants if the preliminary injunction is granted.

IV. PRELIMINARY RELIEF WOULD NOT DISSERVE THE PUBLIC INTEREST

Mandating access to counsel does not disserve the public interest. *See generally Bounds v. Smith*, 430 U.S. 817 (1997) (access to courts serves constitutional interests). In fact, humane treatment of prisoners serves the public interest.

> [The] public interest survives the judgment of conviction and appropriately carries over to an interest in how the convicted person is treated during his period of punishment and hoped-for rehabilitation.

Houchins v. KQED, Inc., 438 U.S. 1, 37 (1978). Prisoners are especially vulnerable to maltreatment, and thus the public has an increased interest in ensuring their protection. *See, e.g., Estelle v. Gamble*, 429 U.S. 97, 104, (1976) ("[I]t is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself") (quoting *Spicer v. Williamson*, 191 N.C. 487, 490 (1926)). This is even

more essential when dealing with incarcerated children who are more vulnerable and less able to care for themselves. *See Bellotti*, 443 U.S. at 635 (noting the vulnerability of children). Thus, not only does the requested preliminary relief not disserve the public interest, it in fact, serves it. Based on the well documented culture of violence inside these facilities the public interest is served by restoring constitutional safeguards for all youth in Defendants' custody.

a. The Requirement That a Bond Be Posted Should Be Waived

The Plaintiffs respectfully request that the Court exercise its discretion to waive the bond requirement customarily associated with the issuance of preliminary injunctive relief. *See* Fed. R. Civ. P. 65(c). Several courts have declined to require plaintiffs to post bond in connection with temporary restraining orders and preliminary injunctions. *See Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and "the strong public interest involved"); *Bookfriends, Inc. v. Talt*, 223 F. Supp. 2d 932, 953 (S.D. Ohio 2002) (declining to require bond based on finding that defendants would suffer no monetary damage in the event they were wrongfully enjoined); *Sluiter v. Blue Cross & Blue Shield*, 979 F. Supp. 1131, 1145 (E.D. Mich. 1997) ("Due to the strong likelihood of Plaintiffs' success on the merits and their demonstrated financial inability, the Court finds it would be improper to require any security in this matter."). In this case, several factors counsel in favor of waiver, including the strength of the claims, the Plaintiffs' indigency, the strong public interest involved, and the fact that a preliminary injunction would not require the defendants to incur any financial burdens.

Conclusion

For the foregoing reasons, Defendants must be ordered to create policies and observe the constitutional rights of Plaintiffs rather than impede Plaintiffs' access to counsel. *See Bounds*, 430 U.S. at 824 (requiring "States to shoulder affirmative obligations to assure all prisoners meaningful access to the courts"). Plaintiffs are not only entitled to meet with the attorney of their choice, they are also entitled to be advised of their right to access the courts, to have confidential conversations with their attorney or their representative, and be heard on matters relating to their disposition of delinquency and the conditions of their confinement. *See Id*. Finally, Plaintiffs are entitled to an order protecting them from harassment, intimidation, and other retaliation by Defendants and their officials, agents, and employees.

Accordingly, Plaintiffs request that their motion for an immediate preliminary injunction be granted and that the bond requirement be waived.

Respectfully submitted,

/s/ John S. Williams
JOHN S. WILLIAMS (T.A.)
Louisiana Bar No. 32240
Juvenile Justice Project of LA
1600 Oretha Castle Haley Blvd.
New Orleans, LA 70113
jwilliams@jswlawoffices.com
(504) 486-0300

William E. Rittenberg, Esq.
Rittenberg, Samuel & Phillips, LLC
715 Girod Street, Suite 100
New Orleans, Louisiana, 70130
Telephone: (504) 524-5555 Ext. 18
Fax: (504) 524-0912
rittenberg@rittenbergsamuel.com

Carol Kolinchak, Esq.
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Boulevard

New Orleans, LA 70113
(504) 522-5437 x234
fax: (504) 522-5430
ckolinchak@jjpl.org

CERTIFICATE OF SERVICE

I hereby certify that on 14th day of July 2012, I electronically filed the foregoing with the Clerk of court by using the CM/ECF system. A copy of this document as well as a notice of electronic filing has been personally served on all non-CM/ECF participant Defendants:

Namon Reid
3225 River Road
Bridge City, LA 70094

R. Vickie Shoecraft
4701 South Grand St.,
Monroe, LA 71202

Daron Brown
15200 Old Scenic Highway (at US Hwy 61),
Baton Rouge, LA 70874

Mary Livers
7919 Independence Blvd.
State Police Bldg., 1st Floor
Baton Rouge, LA 70806

/s/ John S. Williams
John S. Williams, Esq.
Louisiana Bar No. 32270
Attorney for Plaintiffs
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Blvd.
New Orleans, Louisiana 70113
jwilliams@jswlawoffices.com
Telephone: 504-486-0300
Fax: (504) 754-7671

EXHIBIT A

Affidavit of J.R., A Minor

State of Louisiana
Parish of Jefferson

In the State of Louisiana, Parish of Jefferson, I, J.R., being duly sworn, depose that I am a youth housed at Bridge City Center for Youth, and that I have had difficulty accessing legal mail from the Juvenile Justice Project of Louisiana (JJPL). I further depose that the lack of timely access to legal mail keeps me from being able to access the attorneys at JJPL or any other attorneys. In addition, I further depose the following statements of conditions at Bridge City Center for Youth:

I contacted the Juvenile Justice Project of Louisiana to complain about not receiving any mail, not having any clothes, and being isolated all day. In school I do work that is on an elementary school level that does not challenge me but rather keeps me occupied. On Wednesday, August 31, 2011, I asked a Bridge City staff person to take me out of the dorm I was in because I felt that a fight would happen between me and another youth. The staff member laughed at me and did not transfer me to another dorm. Later on that day, I was in my dormitory, and the youth that I told the staff member about, punched me in the head, exposing cartilage in my ear. I went to the infirmary, and was sent back to my dorm, with exposed cartilage, getting no medical treatment. I did not get any medical attention until Thursday, September 1, 2011 at 10:00 AM. The doctor came to the facility and saw me, giving me 3 stitches in my ear. I never went to the hospital for treatment. I am afraid to stay at Bridge City because of all the violence.

I have been told repeatedly not to contact the attorneys at JJPL by Bridge City staff and to stop being a "rat." When I am able to make calls to attorneys, my calls are not confidential and are listened to by Bridge City staff. I know that I have the right to feel safe in the facility, and that my rights are being violated. My access to an attorney to discuss the issues inside of Bridge City is limited.

I swear (or affirm) that the information I have provided is true and complete.

[redacted] J.R.

I, John S. Williams, a Notary Public of the State aforesaid, hereby certify that J.R. personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 27th day of March, 2012.

John S. Williams
Notary Public

John S. Williams
Notary Public
Bar No. 32270, ID No. 92049
State of Louisiana
My commission is for life

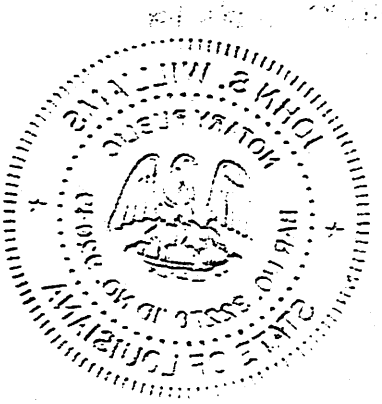

EXHIBIT B

Affidavit of R.B., A Minor

State of Louisiana
Parish of Ouachita

In the State of Louisiana, Parish of Ouachita, I, R.B., being duly sworn, depose that I am a youth housed at Jetson Center for Youth, and that I have had difficulty accessing legal mail from the Juvenile Justice Project of Louisiana (JJPL) or any other attorneys. I further depose that the lack of timely access to legal mail keeps me from being able to access the attorneys at JJPL or any other attorneys. In addition, I further depose the following statements of conditions at Bridge City Center for Youth:

I am currently housed in Swanson Center for Youth but I was formerly housed at Jetson Center for Youth. While in Jetson, I was routinely denied legal visits from attorneys and advocates at JJPL. I have been denied access to counseling services and place on suicide watch as a form of punishment. I have been retaliated against by facility staff for requesting a legal visit. During my time on lockdown I had no access to phones and I was not able to contact anyone, including legal advocates. There have been many occasions that I needed to speak with an attorney or legal advocate but I have not been able to access attorneys at JJPL or any other attorneys.

I swear (or affirm) that the information I have provided is true and complete.

R B

I, John Williams, a Notary Public of the State aforesaid, hereby certify that R.B. personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 18th day of April, 2012.

John S. Williams

John S. Williams
Notary Public
Bar No. 32270, ID No. 92049
State of Louisiana
My commission is for life

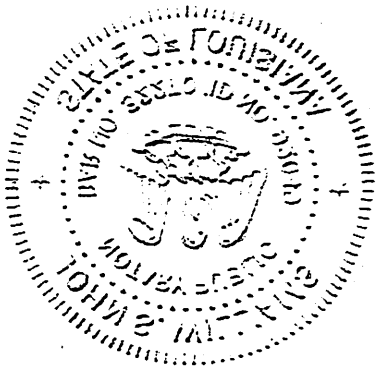

EXHIBIT C

Affidavit of A.C., A Minor

State of Louisiana
Parish of Jefferson

In the State of Louisiana, Parish of Jefferson, I, A.C., being duly sworn, depose that I am a youth housed at Bridge City Center for Youth, and that I have had difficulty accessing legal mail from the Juvenile Justice Project of Louisiana (JJPL) or any other attorneys. I further depose that the lack of timely access to legal mail keeps me from being able to access the attorneys at JJPL or any other attorneys. In addition, I further depose the following statements of conditions at Bridge City Center for Youth:

I have been mistreated by staff and I do not get to see the doctor when I have serious medical concerns. I was diagnosed with asthma before going to Bridge City and never got my medication. The Bridge City staff says that I complain too much, and that is why I do not get to see the doctor when I ask. I have been placed on lockdown and not provided edible food, allowed to go to school or allowed to contact legal advocates at JJPL.

A Bridge City staff person routinely threatens me by saying that I was going to be kicked out of Bridge City and sent to a facility more than 150 miles away from my family. The staff person also threatened that she would push my release date back because I talked to the attorneys at JJPL. I filed an administrative grievance because I was not being treated right, but my grievance was not acted on.

On September 13, 2011 at about 7:45 a.m., I was attacked by another youth. I was punched in the nose, and had bruises on my nose and under my left eye. I went to the infirmary for my injuries, but the nurse only took pictures for a report. The nurse never treated my injuries. Bridge City staff did nothing about this fight even though it was in clear view of a camera. Since the fight, I have problems breathing through my nose. I am depressed at Bridge City because of the youth on youth and staff on youth abuse that I have to go through everyday inside Bridge City Center for Youth. I have been in need of legal advocacy but I have not been able to access attorneys at JJPL or any other attorneys.

I swear (or affirm) that the information I have provided is true and complete.

A.C.

I, John Williams, a Notary Public of the State aforesaid, hereby certify that A.C. personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 27th day of March, 2012.

John S. Williams
Notary Public
Bar No. 32270, ID No. 92049
State of Louisiana
My commission is for life

John S. Williams

EXHIBIT D

Affidavit of T.B., A Minor

State of Louisiana
Parish of Red River Parish

In the State of Louisiana, Parish of Red River, I, T.B., being duly sworn, depose that I am a youth housed at Ware Youth Center, and that I have had difficulty accessing legal advocacy from the Juvenile Justice Project of Louisiana (JJPL) or any other attorneys. I further depose that I am fearful of talking to attorneys because of the lack of confidentiality and the possibility of retaliation. In addition, I further depose the following statements regarding the lack of meaningful and effective access to legal counsel and legal advocacy:

I have no way to contact legal advocacy at Ware unless I am contacted by legal advocates and attorneys at the Juvenile Justice Project of Louisiana. Additionally, after I was determined to be T.B a delinquent youth and placed in Office of Juvenile Justice custody I was housed in ~~St. James~~ Lafayette Parish Detention Center. During this time, I was sexually harassed by guards and forced to sleep in undergarments and tank tops. During this time, I had no way to contact an attorney or legal advocate from anywhere. All my calls at Ware youth Center are made on speakerphone with a Ware Youth Facility Staff member present. I have routinely wanted to speak with a lawyer regarding the lack of confidentiality and my treatment at St. James Parish Detention Center but due to the lack of confidentiality and access to legal counsel my ability to receive legal assistance is limited.

I swear (or affirm) that the information I have provided is true and complete.

TB
_____

I, John Williams, a Notary Public of the State aforesaid, hereby certify that T.B. personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 18th day of April, 2012.

John S. Williams
_____

John S. Williams
Notary Public
Bar No. 32270, ID No. 92049
State of Louisiana
My commission is for life