IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSHUA VASQUEZ, and MIGUEL CARDONA,	)	
Plaintiffs,	)	No. 16 C 8854
v.	)	Judge St. Eve
ANITA ALVAREZ, in her official capacity as the State's Attorney of Cook County, and the CITY OF CHICAGO, a municipal corporation,	)	Magistrate Judge Finnegan
Defendants.	)	

PLAINTIFFS' MOTION FOR EMERGENCY INJUNCTIVE RELIEF

Plaintiffs Joshua Vasquez and Miguel Cardona, through counsel, respectfully request that this Honorable Court enter a temporary restraining order pursuant to Fed. R. Civ. P. 65 prohibiting Defendants from forcing Plaintiffs to vacate their homes pursuant to 720 ILCS 5/11-9.3(b-10) and from instituting criminal charges against Plaintiffs for violation of that law. In support thereof, Plaintiffs state as follows.

I. BACKGROUND

A. Introduction

This case challenges the constitutionality of 720 ILCS 5/11-9.3(b-10) ("the residency restrictions"), a section of the Illinois criminal code that prohibits individuals classified as "child sex offenders" from living within 500 feet of certain prohibited locations, including daycare centers and playgrounds. Pursuant to this

statute, individuals classified as child sex offenders can be forced to vacate their homes any time that a day care or other prohibited facility opens within 500 feet of their homes. It is the City's practice to give individuals 30 days to vacate their residences after a prohibited facility moves in. Plaintiffs challenge the constitutionality of the statute and the City's enforcement practices on the grounds that they violate the Ex Post Facto Clause, the Fifth Amendment Takings Clause, and the Fourteenth Amendment guarantee of due process.

Plaintiffs Miguel Cardona and Joshua Vasquez have both been notified by Chicago police that they must vacate their homes within 30 days (Mr. Cardona by no later than Friday, September 16, and Mr. Vasquez by no later than Saturday, September 24) because day care facilities have opened within 500 feet of their residences. See Ex. 1, Notices Issued to Plaintiffs. If the Plaintiffs do not leave their homes, the City has threatened to arrest and prosecute them. *Id*.

Forcing Plaintiffs to leave their homes will have serious and immediate consequences. Neither Plaintiff has the funds to obtain new housing and will be homeless if forced to vacate their homes. Further, Mr. Cardona lives with and is the sole caretaker for his mother, who has lung cancer and is undergoing chemotherapy. Mr. Vasquez has a nine-year-old daughter from whom he will be separated if forced to move.

As set forth below, Plaintiffs seek a temporary restraining order prohibiting the Defendants from forcing them to leave their homes and from arresting and/or prosecuting them for remaining in their homes.

B. The Plaintiffs

1. Joshua Vasquez

Plaintiff Joshua Vasquez was convicted of one count of possession of child pornography in 2001, making him a child sex offender under Illinois law. Vasquez currently resides in the second-floor apartment at 4834 W. George Street in Chicago, Illinois, with his wife and their nine-year-old daughter. Vasquez's daughter attends a Chicago public school that is walking distance from their home. Mr. Vasquez and/or his wife walk their daughter to school every day.

When Mr. Vasquez and his family rented this residence, Chicago police confirmed that it was compliant with the restrictions set forth in 720 ILCS 5/11-9.3(b-10). Vasquez and his family have lived at this address for three years and currently have a one-year lease that they recently renewed. The lease runs until August 19, 2017.

On August 25, 2016, Vasquez went to Chicago police headquarters to complete his annual registration requirements. After Vasquez completed his registration, Chicago Police Officer Scott Brownley handed him a form stating that his address is in violation of 720 ILCS 5/11-9.3(b-10) because of a home daycare that has opened at 4918 W. George Street, which is approximately 480 feet from Vasquez's residence. The form states that Vasquez must move by no later than Saturday, September 24, 2016, and that if he fails to move by that date he can be arrested and prosecuted.

Vasquez has been looking for compliant housing since receiving this notice,

but he has been unable to locate a suitable address where he can afford to live. If forced to vacate his home by September 24, he will be homeless and will be separated from his wife and daughter.

Vasquez has not received any hearing prior to being forced to vacate his home. No judge has made a determination that Vasquez poses a risk to the community or to children who may attend a daycare in his neighborhood.

Since Vasquez and his family have lived at 4834 W. George Street, there has been a home daycare center located at 4924 W. George Street—two doors west of the new daycare at 4918 W. George and approximately 550 feet from Vasquez's residence. There have been no problems posed by Vasquez's family living in this proximity to a home daycare center.

2. Miguel Cardona

Plaintiff Miguel Cardona was convicted of indecent solicitation of a child in 2004, making him a child sex offender as defined in 720 ILCS 5/11-9.3(d)(1). He is required to register with the State of Illinois as a sex offender until 2017.

Cardona has not re-offended since his 2004 conviction. Since his release from custody, he completed cosmetology training and obtained a cosmetology license from the State of Illinois. In addition to cutting hair, Cardona is the full-time caretaker for his mother, who has lung cancer and is currently undergoing chemotherapy.

Cardona resides with his mother at 3152 S. Karlov Street in Chicago, Illinois. Cardona has lived at this address for approximately 25 years. He has been the owner of the building since 2010. From 2006 to 2015, each time that Cardona

completed his annual sex offender registration, Chicago police have confirmed that the address is compliant with the restrictions set forth in 720 ILCS 5/11-9.3(b-10).

On August 17, 2016, Cardona went to Chicago police headquarters to complete his annual registration requirements. After Cardona completed his registration, Chicago Police Officer Scott Brownley handed him a form stating that his address is in violation of 720 ILCS 5/11-9.3(b-10) because of a home daycare at 3123 S. Keeler Street, which is approximately 475 feet from Cardona's residence. The form states that Cardona must move by no later than Friday, September 16, 2016, and that if he fails to move by that date he can be arrested and prosecuted.

Cardona does not have the means to obtain new housing in such a short period of time. If forced to vacate his home by September 16, he will ask friends who live at a compliant address to take him in temporarily. Cardona is the sole caretaker for his mother. Due to her illness and medical treatment, she needs substantial help with daily activities such as grocery shopping, preparing meals and going to doctor's appointments. If Cardona is forced to move, his mother will be left without her son's assistance.

Cardona has not received any hearing prior to being forced to vacate his home. No judge has made a determination that Cardona poses a risk to the community or to children who may attend a daycare in his neighborhood.

According to the website for the Illinois Department of Children and Family Services, there has been a group day care home at 3123 S. Keeler since 2014. Chicago police did not consider Cardona's property to be non-compliant until

this year and there have been no problems with Cardona and his mother living in this proximity to a home daycare. Cardona was not aware of this daycare until now.

C. The Statute At Issue

The Illinois legislature enacted 720 ILCS 5/11-9.3(b-10) in 2000. When first enacted, the statute prohibited individuals classified as "child sex offenders" from living within 500 feet of a "playground or a facility providing programs or services exclusively directed toward persons under 18 years of age." The legislature amended the statute in 2006 to add a prohibition on individuals classified as "child sex offenders" from living within 500 feet of "a child care institution, day care center, or part day child care facility." The legislature amended the statute again in 2008 to add a prohibition on individuals classified as "child sex offenders" from living within 500 feet of "a day care home or group day care home." The statute applies retroactively to all individuals classified as child sex offenders whether their offense was committed before or after the effective date of the statute. The only exception is that an individual designated as a child sex offender who owns his or her home and purchased it prior to the effective date of the statute (and each amendment thereto) is not subject to the restrictions. This exception does not apply to either Plaintiff because Mr. Vasquez is a renter and Mr. Cardona did not own his home until 2010.

An individual classified as a child sex offender who purchased his or her home after the effective date of the statute is subject to its restrictions and can be forced to move if a prohibited location or facility opens within 500 feet of the home,

even if the residence complied with the restrictions at the time he or she purchased the home. Likewise, an individual classified as a child sex offender who rents his or her residence can be forced to move if a prohibited location or facility opens within 500 feet of the residence, even if the residence complied with the restrictions set forth in 720 ILCS 5/11-9.3(b-10) at the time he or she rented the property.

People convicted of a qualifying offense and classified as child sex offenders are subject to 720 ILCS 5/11-9.3(b-10) for the rest of their lives, including after they are no longer required to register as sex offenders with the State. Thus, Illinois residents classified as child sex offenders face the possibility of being repeatedly uprooted and forced to abandon their homes to comply with the restrictions in 720 ILCS 5/11-9.3(b-10).

III. ARGUMENT

A. Plaintiffs Meet the Standard for Issuing a Temporary Restraining Order

It is well established that to be entitled to a Temporary Restraining Order a plaintiff must demonstrate: "(1) some likelihood of succeeding on the merits, and (2) that he has 'no adequate remedy at law' and will suffer irreparable harm…" if relief is denied. *Abbott Laboratories v. Mead Johnson & Co.,* 971 F.2d 6, 11 (7th Cir. 1992). If these two elements are established, a court should consider: "(3) the irreparable harm the non-moving party will suffer if preliminary relief is granted, balancing that harm against the irreparable harm to the moving party if relief is denied; and (4) the public interest, meaning the consequences of granting or denying the injunction to non-parties." *Id.* In deciding this motion, the court,

"sitting as would a chancellor in equity," weighs all four factors, "seeking at all times to minimize the costs of being mistaken." *Id.* As the Seventh Circuit explained in *Curtis v. Thompson,* 840 F.2d 1291 (7th Cir. 1988):

> This circuit employs a 'sliding scale' approach in deciding whether to grant or deny preliminary relief; so that even though a plaintiff has less than a 50 percent chance of prevailing on the merits, he may nonetheless be entitled to the injunction if he can demonstrate that the balance of harms would weigh heavily against him if the relief were not granted.

For the following reasons, Plaintiffs request that a TRO be granted in this case as set forth in the Proposed Order attached hereto as Exhibit 2.

B. Plaintiffs Have a Likelihood of Success on the Merits.

1. The Statute Violates Plaintiffs' Fourteenth Amendment Due Process Rights

a. Forcing Plaintiffs to Vacate their Homes without any Hearing Violates their Right to Procedural Due Process

Enforcement of this statute against Plaintiffs will have a severe and immediate impact on their constitutional rights. In particular, both Plaintiffs have a protectable liberty interest in choosing where and with whom they live and a fundamental right to arrange their family affairs as they see fit, including the choice to live with members of their families. Moreover, Plaintiff Vasquez has a fundamental constitutional right to maintain a custodial parental relationship with his daughter. If the Plaintiffs are forced to move by the deadlines the City has provided, they will be separated from their families, denied the right to live in a place of their choosing with family members of their choosing and forced into

homelessness.

Pursuant to 720 ILCS 5/11-9.3(b-10) and the City's enforcement policies, Plaintiffs are being denied their constitutional liberties without due process of law. Prior to ordering Plaintiffs to vacate their homes, neither the City nor the state provided any hearing or other procedure to determine whether Plaintiffs pose a threat to the community or whether their living within 500-feet of a daycare poses any risk to children in the community. Thus, the Defendants are arbitrarily restricting Plaintiffs' rights without a scintilla of evidence that doing so is necessary to protect any legitimate state interest.

The Supreme Court explained in *Mathews v. Eldridge*, 424 U.S. 319 (1976) that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests ... This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest." *Id*. at 333 (citing *Wolff v. McDonnell*, 418 U.S. 539, 557-558 (1974); *Phillips v. Commissioner*, 283 U.S. 589, 596-597 (1931) and *Dent v. West Virginia*, 129 U. S. 114, 124-125 (1889)). The Court went on to explain that "identification of the specific dictates of due process generally requires consideration of ... the private interest that will be affected by the official action; ... the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest ...." *Id*. at 335.

Here, Plaintiffs have not received any hearing of any kind before the

deprivation of their constitutional rights. Defendants should be temporarily restrained from enforcement of 720 ILCS 5/11-9.3(b-10).

b. The Statute and the City's Enforcement Procedures Fail Rational Basis Review

While lawmakers have broad latitude to legislate in the public interest, where, as here, a law disadvantages a politically unpopular group, it can only be upheld if it "is rationally related to a legitimate governmental interest." *USDA v. Moreno*, 413 U.S. 528, 533 (1973). The Supreme Court has held that a law fails rational basis review when the evidence supporting the government's purported interest is scant or contradicted by other evidence. See *Moreno*, 413 U.S. at 356-58 (Denial of food stamps to households comprised of non-relatives violated due process because evidence suggested a legislative animus toward "hippie communes" seeking food stamp benefits.); *Plyler v. Doe*, 457 U.S. 202, 228 (1982) (interest served by excluding undocumented children from schools was contradicted by other evidence and therefore irrational). Courts have also aggressively scrutinized the rationality of legislation when, as here, the burdens imposed on a disfavored class of persons are severe and disproportionate to their intended purpose. See *U.S. v. Windsor*, 133 S. Ct. 2675, 2693, 2696 (2013) (without invoking heightened scrutiny, striking down federal Defense of Marriage Act on due process grounds notwithstanding "Congress['s] great authority to design laws to fit its own conception of sound national policy").

As discussed in Plaintiffs' Complaint, there is scant evidence supporting the ostensible public safety rationales for the burdens imposed people classified as child

sex offenders under 720 ILCS 5/11-9.3(b-10). See Complaint, Dkt. 1 at ¶¶55–63. In fact, recent studies suggests that residency restrictions such as those Illinois imposes have no impact on recidivism among sex offenders and actually may increase the risk that people will re-offend by isolating them from their families and sources of community support, limiting their employment opportunities, and all too often forcing them into homelessness.

In a recent decision finding Michigan's scheme of regulating sex offenders unconstitutional, the Sixth Circuit observed that such regulations actually run counter to their purported public-safety purpose. The Court wrote:

> [O]ne statistical analysis in the record concluded that laws such as SORA actually *increase* the risk of recidivism, probably because they exacerbate risk factors for recidivism by making it hard for registrants to get and keep a job, find housing, and reintegrate into their communities. ... Tellingly, nothing the parties have pointed to in the record suggests that the residential restrictions have any beneficial effect on recidivism rates. And while it is intuitive to think that at least some sex offenders—*e.g.*, the stereotypical playground-watching pedophile—should be kept away from schools, the statute makes no provision for individualized assessments of proclivities or dangerousness ....

Does v. Snyder, No. 15-1536 (6th Cir. August 25, 2016) (Batchelder, J.) (emphasis in original). Likewise, the Supreme Court of California recently struck down San Francisco residency restrictions on paroled sex offenders because they failed rational basis review. *In Re Taylor*, 60 Cal. 4th 1019, 1038 (Cal., 2015) (a residency law that "imposed harsh and severe restrictions" on where parolees could live "while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons ... bears no rational relationship to advancing the

state's legitimate goal of protecting children from sexual predators.")

Defendants should be temporarily restrained from enforcing the residency restrictions because, as in *Snyder* and *In Re Taylor*, they are not rationally related to a legitimate government interest.

2. The Statute Violates Plaintiffs' Fifth Amendment Rights

The Fifth Amendment prohibits government "takings" of private property without just compensation. As the Supreme Court recognized in *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005), a government regulation that falls short of a "direct appropriation or ouster" may still violate the takings clause if it is "so onerous" that its effect is to substantially impair the property's beneficial economic use taking into account the "economic impact on the landowner," the extent to which the regulation "interferes with reasonable investment-backed expectations," and the "interests promoted by the government action." *Id.*

In *Mann v. Georgia Dept. of Corrections*, 653 S.E. 2d 740 (Ga. 2007), the Georgia Supreme Court struck down a regulatory scheme under which sex offenders could be forced to vacate their homes if a "child care facility, church, school or area where minors congregate" opened within 1,000 feet of the residence. *Id.* at 741. The Court wrote that the law was "functionally equivalent to the classic taking in which government directly... ousts the owner from his domain." *Id.* at 744 (citing *Lingle*, 544 U.S. at 539.

Here, as in *Mann*, the residency restrictions are being applied to the Plaintiffs in a way that violates their Fifth Amendment rights. Accordingly, the

Defendants should be temporarily restrained from enforcing the restrictions against Plaintiffs.

3. The Statute Violates the Ex Post Facto Clause

Finally, the Court should grant Plaintiffs' motion for a temporary restraining order because they have a likelihood of success on their claim that the residency restrictions of 720 ILCS 5/11-9.3(b-10) violate the Ex Post Facto Clause.

Both Plaintiffs were convicted before the effective dates of the 2006 and 2008 amendments that added the prohibition on living within 500 feet of a "daycare" and "child care center" to 720 ILCS 5/11-9.3(b-10). Specifically, Mr. Vasquez was convicted in 2001 and Mr. Cardona was convicted in 2004. Nonetheless, the Defendants seek to apply this prohibition to Plaintiffs and to force them to vacate the homes where they reside with their families.

As the Sixth Circuit recognized in *Snyder*, retroactive application of residency restrictions that severely impact where sex offenders may live violates the Ex Post Facto Clause. See, *Does v. Snyder*, No. 15-1536 (6th Cir. Aug. 25, 2016) ("[Michigan's Sex Offender Registration Act] brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live.")

Because Plaintiffs have a likelihood of success on their claim that the residency restrictions violate the Ex Post Facto Clause, Defendants should be

temporarily restrained from enforcing the restrictions against Plaintiffs.

C. There is No Adequate Remedy at Law and Plaintiffs Will Suffer Irreparable Harm If the Requested Relief is Not Granted.

In addition to establishing a likelihood of success on the merits of their claim, Plaintiffs can establish that they lack an adequate remedy at law and will suffer irreparable harm in the absence of a temporary restraining order.

As set forth above, Plaintiffs will suffer an immediate loss of their constitutional rights and will be separated from their families and forced into homelessness if the Defendants are not restrained from enforcing 720 ILCS 5/11-9.3(b-10). When deprivation of a constitutional right is alleged, "most courts hold that no further showing of irreparable injury is necessary." *Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (quoting Alan Wright et al., Federal Practice and Procedure § 2948.1 (2d ed. 1995)).

D. The Balance of Harms Weighs Strongly in Favor of Granting Plaintiffs the Relief Requested

There is no evidence that the public interest will be harmed if the Court grants temporary injunctive relief. First, the public has a powerful interest in protecting constitutional rights that is well served by granting injunctive relief here. See, *ACLU v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012) ("[T]he public interest is not harmed by preliminarily enjoining the enforcement of a statute that is probably unconstitutional.") Second, there is no reason to believe that there is any risk to public safety posed by allowing Plaintiffs to remain in their homes. Indeed, as set forth in the Complaint, both Plaintiffs have lived within a few blocks of day

care centers for many years and there have been no problems posed by their present living arrangements. There is no evidence that either Plaintiff has attempted or will attempt to interact with children at these day care centers.

E. Plaintiffs Have Given As Much Notice to the Defendants as Reasonably Necessary.

A motion for temporary restraining order may be granted without notice of any kind to the defendants. See Fed. R. Civ. P. 65. The Rule requires, however, that counsel advise the Court of what notice was attempted. Plaintiffs are making service of the Complaint and this motion via hand-delivery promptly after filing on September 13, 2016. Courts have found that as little as a half hour's notice may be sufficient. See, e.g. *Am. Warehousing Services, Inc. v. Weitzman*, 169 Ill. App. 3d 708, 715, 533 N.E. 2d 366, 370 (1st Dist. 1988). Thus, in this case, the Court should find that the notice provided was sufficient under the circumstances and that Plaintiffs have complied with the requirements of Rule 65.

F. No Bond or Security Should be Required in Excess of $10

It is well established at common law that, in deciding whether to grant a TRO, the "court may dispense with security where there has been no proof of likelihood of harm to the party enjoined." *International Controls Corp. v. Vesco*, 490 F.2d 1334, 1356 (2d Cir.1974). The rules applicable to proceedings in this Circuit require that some bond be posted, however, and Plaintiffs therefore request that $10 be found sufficient security for posting under Rule 65 in this case. See also *Wayne Chemical, Inc. v. Columbus Agency Service Corp.*, 567 F.2d 692, 701 (7th Cir.1977) ("Finally, it was not error for the District Court to issue the preliminary

injunction without a bond. Under appropriate circumstances bond may be excused, notwithstanding the literal language of Rule 65(c).")

III. CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant a temporary restraining order enjoining Defendants from forcing Plaintiffs to vacate their homes and/or arresting them for violation of 720 ILCS 5/11-9.3(b-10) and grant such additional and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark G. Weinberg
/s/ Adele D. Nicholas
/s/ Richard J. Dvorak
/s/ Adrian Bleifuss Prados
Counsel for Plaintiffs

Mark G. Weinberg
Law Office of Mark G. Weinberg
3612 N. Tripp Avenue
Chicago, Illinois 60641
773-283-3913

Adele D. Nicholas
Law Office of Adele D. Nicholas
5707 W. Goodman Street
Chicago, Illinois 60630
847-361-3869

Richard J. Dvorak
Adrian Bleifuss Prados
DVORAK LAW OFFICES, LLC
6262 Kingery Highway, Suite 305
Willowbrook, IL 60527
(312) 593-7146