

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

GARY PEREZ and MATILDE TORRES,

Plaintiffs,

V.

CITY OF SAN ANTONIO,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. SA-23-CV-977-FB

**ORDER CONCERNING MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Before the Court is the Motion for Temporary Restraining Order and Preliminary Injunction filed by the Plaintiffs on August 10, 2023, at 8:15 p.m. (docket #5). Plaintiffs, who state they are members of the Lipan-Apache Native American Church, seek a temporary restraining order and preliminary injunction enjoining the City of San Antonio from “(1) preventing Plaintiffs from holding a religious ceremony at the Sacred Area on August 12, 2023 and from accessing the Sacred Area at other times for religious services; (2) engaging in activities to deter the double-crested cormorant bird from nesting within the Park; and (3) removing trees and other habitat from the Park.” Motion for TRO & Preliminary Injunction, docket #5 at page 1. Plaintiffs state they believe their request is justified due to the Defendant denying them access to the riverbend on the south side of Lambert Beach which the Plaintiffs consider sacred and “engaging in activities to drive the double-crested cormorant, a bird that is essential to Plaintiffs’ religious beliefs, from its ancestral rookery in the Park and threaten[ing] to move ‘with all deliberative speed’ in the removal of trees that support the spiritual ecology of the land within the Park.” Plaintiffs assert that unless the Defendant is restrained they will not “have access to the Sacred Area on August 12, 2023 to perform their religious ceremony (or more generally to conduct

other religious services) in the Sacred Area,” “the double-crested cormorant, an important part of Plaintiffs’ religious practices, will continue to be deterred from nesting in the Park,” and the spiritual ecology within Brackenridge Park will be destroyed by the removal of trees. *Id.* at 1-2.

Plaintiffs explain that since February 3, 2023, to the present, the Defendant has prevented them from “accessing the Sacred Area to perform religious ceremonies or connect with its spiritual ecology by erecting chain link fencing around the site.” Memorandum in Support of Motion for TRO and Preliminary Injunction, docket #5-1 at page 10. Plaintiffs maintain that they and other members of the Native American Church must perform special religious ceremonies at the Sacred Area, which much like a church, the “Park and the Sacred Area are critical sites for Plaintiffs’ routine worship.” *Id.* at page 9. Plaintiffs state they “require general access to the Park and the Sacred Area for ceremonies, prayer, fellowship, and religious education, which are all critical to and compelled by their religious belief.” *Id.* Plaintiff state that on July 26, 2023, they requested access to the Sacred Area, which is currently blocked by fencing, to perform a religious ceremony on August 12, 2023. (Docket #5-1 at page 11). Plaintiffs explain that approximately 15 to 20 members of the Native American Church plan to perform this ceremony “to atone for the harm being done to the cormorants in the Park,” beginning at 5:30 a.m. on August 12, 2023. *Id.* Plaintiffs note that the Defendant initially said it could accommodate Plaintiffs’ request but the accommodation offered “did not permit Plaintiffs to access the Sacred Area where Plaintiffs believe the religious ceremony needs to occur. Instead, the City offered access to a different part (the wrong part) of the Park that was already open to the public.” *Id.* The Defendant, upon receiving clarification from the Plaintiffs as to why they needed access to the Sacred Area, reconsidered the request, but late in the day on August 9, 2023, the City told Plaintiffs that “it was denying them access to perform the ceremony on August 12.” *Id.* Therefore, Plaintiffs ask this Court

to grant their request for a temporary restraining order while it considers the motion for a preliminary injunction. Plaintiffs believe they have shown the elements required to obtain a preliminary injunction: a substantial likelihood plaintiffs will prevail on the merits; a substantial threat of irreparable injury if the injunction is not granted; the threatened injury outweighs the threatened harm to the party to be enjoined; and that granting the preliminary injunction will not disserve the public interest. In addition, Plaintiffs contend the temporary restraining order will prevent “further irreparable harm until the Court considers their motion for preliminary injunction.”

Defendant City of San Antonio filed a response at 3:28 p.m. on this date opposing Plaintiffs’ requested relief and said the City was notified of this motion by Plaintiffs at approximately 8:30 p.m. on August 10. The Defendant raises significant public safety issues in its response and multiple offers over the last few weeks to accommodate Plaintiffs’ concerns. The Defendant argues that Plaintiffs seek to change the status quo by their emergency TRO request and ask the Court to deny the request and allow the issues to be fully addressed by the Court at a preliminary injunction hearing.

Based on the arguments and authorities presented at this time and a review of the affidavits presented, the Court does not find that Plaintiff has sufficiently shown immediate and irreparable harm in light of significant public safety issues raised by the Defendant. Nothing precludes the parties from presenting their factual and legal arguments in further proceedings.

Accordingly, ITS HEREBY ORDERED that the Motion for Temporary Restraining Order (docket #5) is DENIED.

It is so ORDERED.

SIGNED this 11th day of August, 2023.



FRED BIERY
UNITED STATES DISTRICT JUDGE