

1 THE HONORABLE RICHARD A. JONES

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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NORTHWEST IMMIGRANT RIGHTS
PROJECT (“NWIRP”), a nonprofit
11 Washington public benefit corporation; and
YUK MAN MAGGIE CHENG, an
12 individual,

13 Plaintiffs,

14 v.

15 JEFFERSON B. SESSIONS III, in his
official capacity as Attorney General of the
16 United States; UNITED STATES
DEPARTMENT OF JUSTICE;
17 EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; JUAN
18 OSUNA, in his official capacity as Director
of the Executive Office for Immigration
19 Review; and JENNIFER BARNES, in her
official capacity as Disciplinary Counsel for
20 the Executive Office for Immigration
Review,

21 Defendants.
22

No. 2:17-cv-00716

ORDER

23 This matter comes before the Court on Plaintiffs Northwest Immigrant Rights
24 Project (“NWIRP”) and Yuk Man Maggie Cheng’s Motion for a Temporary Restraining
25 Order (“TRO”).¹ Dkt. # 2. The Government opposes the motion.² Dkt. # 14. The
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27 ¹ The Court refers to the Plaintiffs collectively as “NWIRP” or “Plaintiffs.”

² The Court refers to the Defendants collectively as “EOIR” or “the Government.”

ORDER-1

1 Court heard oral argument on May 17, 2017. For the reasons stated below, the Court
2 GRANTS the motion and enters a TRO with terms as stated at the conclusion of this
3 order.

4 I. BACKGROUND

5 Washington nonprofit Northwest Immigrant Rights Project (“NWIRP”) provides
6 free and low-cost legal services to thousands of immigrants each year. Dkt. # 1. The
7 Executive Office for Immigration Review (“EOIR”), an office within the Department of
8 Justice (“DOJ”), oversees the adjudication of immigration cases. *Id.* at ¶ 1.5. In
9 seeking to improve immigrants’ access to legal information and counseling, EOIR
10 provides an electronic list of pro bono legal services providers. With regard to
11 Washington, EOIR’s entire list of recognized pro bono organizations includes one
12 group—the NWIRP. Dkt. ## 2 at 17, 3 (Warden-Hertz Decl.) at ¶ 4.

13 In December 2008, EOIR published new rules regulating the professional
14 conduct of attorneys who appear in immigration proceedings. Specifically, EOIR
15 reserved the right to “impose disciplinary sanctions against any practitioner who . . .
16 [f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or
17 Representative . . . when the practitioner has engaged in practice or preparation as those
18 terms are defined in §§ 1001.1(i) and (k)” 8 C.F.R. § 1003.102(t). The purpose of
19 these amendments was to protect individuals in immigration proceedings by disciplining
20 attorneys when it is within “the public interest; namely, when a practitioner has engaged
21 in criminal, unethical, or unprofessional conduct or frivolous behavior.” Professional
22 Conduct for Practitioners—Rules and Procedures, and Representation and Appearances,
23 73 Fed. Reg. 76914-01, at *76915 (Dec. 18, 2008). With these new rules, EOIR sought
24 “to preserve the fairness and integrity of immigration proceedings, and increase the
25 level of protection afforded to aliens in those proceedings” *Id.*

26 NWIRP recognizes the importance of attorney accountability, especially in the
27 immigration context. Indeed, NWIRP became an ally to EOIR in its efforts to combat

1 “notario fraud.” Dkt. # 1 (Complaint) at ¶ 3.12. However, NWIRP also recognizes that
2 section 1003.102(t) has harmful consequences because NWIRP does not have the
3 resources to undertake full representation of each potential client. *Id.* at ¶¶ 3.5, 3.21-
4 3.23. Accordingly, NWIRP alleges that it “met with the local immigration court
5 administrator to discuss” the rule’s impact and “agreed that it would notify the court
6 when it assisted with any pro se motion or brief by including a subscript or other clear
7 indication in the document that NWIRP had prepared or assisted in preparing the
8 motion or application.” *Id.* at ¶ 3.11.

9 Nearly nine years after promulgating the rule, EOIR sent a cease and desist letter
10 to NWIRP asking the nonprofit to stop “representing aliens unless and until the
11 appropriate Notice of Entry of Appearance form is filed with each client that NWIRP
12 represents.” *Id.* at ¶ 3.14. EOIR’s letter acknowledged that the disputed forms on
13 which NWIRP assisted “contained a notation that NWIRP assisted in the preparation of
14 the *pro se* motion.” Dkt. # 1-1.

15 NWIRP filed suit against EOIR, among others, seeking injunctive relief from the
16 enforcement of section 1003.102(t). *See, generally*, Dkt. # 1 (Complaint). In moving
17 for a temporary restraining order, NWIRP seeks to maintain the status quo until the
18 parties can be heard on a motion for preliminary injunction. Dkt. # 21; *see also Granny*
19 *Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*
20 *Cty*, 415 U.S. 423, 439 (1974). EOIR responds by denying that it has violated any
21 constitutional rights by promulgating and enforcing its own rules. *See, generally*, Dkt. #
22 14. EOIR opposes the issuance of any injunctive relief. *Id.*

23 **II. LEGAL STANDARD**

24 To obtain preliminary injunctive relief, NWIRP must “establish that [it] is likely
25 to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of
26 preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is
27 in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7,

1 20 (2008). The standard for a temporary restraining order is substantially the same.
2 *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001)
3 (noting that preliminary injunction and temporary restraining order standards are
4 “substantially identical”).

5 The Ninth Circuit employs a “sliding scale” approach to preliminary injunctions,
6 according to which the four elements are balanced, “so that a stronger showing of one
7 element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*,
8 632 F.3d 1127, 1131 (9th Cir. 2011). Within this “sliding scale” approach lays the
9 “serious question” test: “a preliminary injunction could issue where the likelihood of
10 success is such that ‘serious questions going to the merits were raised and the balance of
11 hardships tips sharply in [plaintiff’s] favor.’” *Id.* at 1131 (citations omitted). However,
12 to succeed under the “serious question” test, a plaintiff must show that it is likely to
13 suffer irreparable harm and an injunction is in the public interest. *Id.* at 1132.

14 Regardless of the test used, the burden is on the moving party to show that such
15 extraordinary relief is warranted. *Winter*, 555 U.S. at 22.

16 **III. DISCUSSION**

17 The Court finds that NWIRP has satisfied the standards described above—both
18 those outlined in *Winter* and in the “serious question” test—and this Court should issue
19 a TRO. NWIRP has shown that it is likely to succeed on the claims that entitle it to
20 relief; NWIRP has already suffered and is likely to continue suffering irreparable harm
21 in the absence of temporary injunctive relief; the balance of the equities tips in
22 NWIRP’s favor; and granting this TRO is in the public interest. Alternatively, NWIRP
23 has at least presented serious questions that go to the merits of its claims, and, as the
24 Court previously noted, NWIRP satisfies the remaining *Winter* elements.

25 The Court finds that NWIRP met its burden to show that it is immediately and
26 irreparably harmed, and will continue to be so harmed, as a result of EOIR’s
27 enforcement of 8 C.F.R. § 1003.102(t) against NWIRP attorneys. NWIRP’s

1 constitutional rights are violated by EOIR's potentially targeted enforcement of section
2 1003.102(t). These harms are significant and ongoing, and the Court therefore finds
3 that entering this TRO against the Government is necessary to maintain the status quo
4 until such time as the Court may hear and decide the matter of a preliminary injunction.

5 **IV. TEMPORARY RESTRAINING ORDER**

6 1. Plaintiffs' Motion for a Temporary Restraining Order (Dkt. # 2) is
7 GRANTED.

8 2. Defendants Jefferson B. Sessions III, the United States Department of
9 Justice, the Executive Office for Immigration Review, Juan Osuna, and Jennifer Barnes,
10 and all of their officers, agents, servants, employees, attorneys, successors, assigns, and
11 persons acting in concert or participation with them are hereby ENJOINED and
12 RESTRAINED from

13 (a) Enforcing the cease-and-desist letter, dated April 5, 2017, from Defendant
14 Barnes and EOIR's Office of General Counsel to NWIRP; and

15 (b) Enforcing or threatening to enforce 8 C.F.R. § 1003.102(t) against
16 Plaintiffs and all other attorneys under their supervision or control, or who
17 are otherwise associated with them.

18 3. Counsel for the Government represented during the hearing on the TRO
19 that it desired to continue issuing cease and desist letters to non-profit organizations
20 providing legal services to immigrants. As such, the Court grants this TRO on a
21 nationwide basis. Therefore, the Court prohibits the enforcement of 8 C.F.R. §
22 1003.102(t) during the pendency of this TRO on a nationwide basis.

23 4. No security bond is required under Federal Rule of Civil Procedure 65(c).

24 5. The parties shall, within 2 days of this Order, propose a briefing schedule
25 and noting date with respect to Plaintiffs' forthcoming motion for a preliminary
26 injunction. At that time, the Court may schedule a hearing on Plaintiffs' motion for a
27 preliminary injunction, if necessary, following receipt of the parties' briefing.

