HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS PROJECT, et al.,

Plaintiffs,

v.

JEFFERSON B SESSIONS, III, et al.,

Defendants.

CASE NO. C17-716 RAJ

ORDER

I. INTRODUCTION

This matter comes before the Court on Plaintiffs Northwest Immigrant Rights Project's ("NWIRP") and Yuk Man Maggie Cheng's Motion for Preliminary Injunction.[1] Dkt. # 37. The Government opposes the Motion.[2] Dkt. # 47. On July 24, 2017, the Court heard oral arguments on the matter. Dkt. # 64. For the reasons set forth below, the Court **GRANTS** Plaintiffs' Motion and converts the temporary restraining order into a preliminary injunction pursuant to the terms stated below.

[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."

II. BACKGROUND

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

In December 2008, EOIR published new rules regulating the professional conduct of attorneys who appear in immigration proceedings. Specifically, EOIR reserved the right to "impose disciplinary sanctions against any practitioner who . . . [f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative . . . when the practitioner has engaged in practice or preparation as those terms are defined in §§ 1001.1(i) and (k) . . . ." 8 C.F.R. § 1003.102(t) (hereinafter, "the Regulation"). EOIR defines "practice" and "preparation" as follows:

> The term practice means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS, or any immigration judge, or the Board [of Immigration Appeals].
>
> The term preparation, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely

> of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.

8 C.F.R. § 1001.1(i), (k).

The purpose of these amendments was to protect individuals in immigration proceedings by disciplining attorneys when it is within "the public interest; namely, when a practitioner has engaged in criminal, unethical, or unprofessional conduct or frivolous behavior." Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 73 Fed. Reg. 76914-01, at *76915 (Dec. 18, 2008). With these new rules, EOIR sought "to preserve the fairness and integrity of immigration proceedings, and increase the level of protection afforded to aliens in those proceedings. . . ." *Id.*

NWIRP recognizes the importance of attorney accountability, especially in the immigration context. Indeed, NWIRP became an ally to EOIR in its efforts to combat "notario fraud."[3] Dkt. # 1 (Complaint) at ¶ 3.12. However, NWIRP also recognizes that the Regulation poses challenges because NWIRP does not have the resources to undertake full representation of each potential client. *Id.* at ¶¶ 3.5, 3.21-3.23. To address these challenges, NWIRP alleges that it "met with the local immigration court administrator" soon after the Regulation was adopted to discuss the Regulation's impact and "agreed that it would notify the court when it assisted with any pro se motion or brief by including a subscript or other clear indication in the document that NWIRP had

[3] "Notario fraud" refers to "immigration consultants who are engaging in the unauthorized practice of law by using false advertising and fraudulent contacts and holding themselves out as qualified to help immigrants obtain lawful status, or performing legal functions such as drafting wills or other legal documents." Dkt. # 1 (Complaint) at 6 (internal punctuation omitted).

prepared or assisted in preparing the motion or application." *Id*. at ¶ 3.11; *see also* Dkt. # 38 (Baron Decl.) at ¶ 5.

Nearly nine years after promulgating the Regulation, EOIR sent a cease and desist letter to NWIRP asking the nonprofit to stop "representing aliens unless and until the appropriate Notice of Entry of Appearance form is filed with each client that NWIRP represents." Dkt. # 1 (Complaint) ¶ 3.14. EOIR's letter acknowledged that the disputed forms on which NWIRP assisted "contained a notation that NWIRP assisted in the preparation of the *pro se* motion." Dkt. # 1-1.

NWIRP filed suit against EOIR and others seeking injunctive relief from the enforcement of the Regulation. *See generally* Dkt. # 1 (Complaint). In moving for a temporary restraining order ("TRO"), NWIRP sought to maintain the status quo until the parties could be heard on a motion for preliminary injunction. Dkt. # 21.

On May 17, 2017, the Court heard oral arguments on the TRO. Dkt. # 31. The Court questioned the parties and discovered, among other things, that the Government had no evidence that NWIRP had engaged in substandard legal representation. Dkt. # 36 (Transcript of TRO Hearing) at 39.

Finding that Plaintiffs met their burden under the TRO standard, the Court granted the TRO. Dkt. # 33. The parties are now before the Court to argue whether the Court should convert the TRO into a preliminary injunction.

III. LEGAL STANDARD

Plaintiffs seek a preliminary injunction enjoining the Government from enforcing the notice of appearance regulation codified at 8 C.F.R. § 1003.102(t)(1). "A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right . . . ." *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (citation and internal quotation marks omitted). To obtain a preliminary injunction, the moving party must establish that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence

of preliminary relief; (3) the balance of equities tips in its favor; and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008).

Alternatively, "serious questions going to the merits" and a balance of hardships that tips sharply towards the plaintiffs can support issuance of a preliminary injunction, so long as plaintiffs also show that there is a likelihood of irreparable injury and that the injunction is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

IV. DISCUSSION

Plaintiffs allege claims for facial and as-applied violations of the First and Tenth Amendment. The Court will discuss the merits of each claim below.

A. First Amendment

At issue are Plaintiffs' actions in offering pro bono legal assistance to immigrants subject to removal proceedings. Such actions fall within the protections afforded by the First Amendment. *See In re Primus*, 436 U.S. 412, 426 (1978) ("Subsequent decisions have interpreted *Button* as establishing the principle that 'collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment.'") (citations omitted); *United Transp. Union v. State Bar of Mich*., 401 U.S. 576, 580 (1971) (finding that the First Amendment protected the Union's ability to give legal advice or counsel to an injured worker or his family concerning a FELA claim); *Conant v. Walters*, 309 F.3d 629, 637 (9th Cir. 2002) ("Attorneys have rights to speak freely subject only to the government regulating with 'narrow specificity.'") (citing *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 433 (1963)).

This case falls neatly within the precedent set by the Supreme Court in *Button* and its progeny. This line of authority embodies the principle that non-profit organizations may not be threatened when "advocating lawful means of vindicating legal rights." *Button*, 371 U.S. at 437. In *Button*, the Supreme Court invalidated a Virginia statute aimed at proscribing "solicitation of legal business by a 'runner' or 'capper,' [which

included] in the definition of 'runner' or 'capper,' an agent for an individual or organization which retains a lawyer in connection with an action to which it is not a party and in which it has no pecuniary right or liability." *Id.* at 423. Virginia claimed that the statute's purpose was to "further control the evils of solicitation of legal business." *Id.* at 424. The NAACP had for many years, without incident, openly solicited legal business to further desegregation efforts. *Id.* at 423. But Virginia courts found that these activities were prohibited under the new iteration of the statute. *Id.* at 426. The Supreme Court saw through this targeted enforcement, recognizing "a record devoid of any evidence of interference by the NAACP in the actual conduct of litigation, or neglect or harassment of clients[.]" *Id.* at 433. Though acknowledging Virginia's otherwise valid efforts to restrain the "oppressive, malicious, or avaricious use of the legal process for purely private gain," the Supreme Court rejected those efforts as applied to the NAACP. *Id.* at 443. The statute's justifications were simply not applicable to the NAACP's actions and they highlighted the reality of that era:

> [T]he militant Negro civil rights movement ha[d] engendered the intense resentment and opposition of the politically dominant white community of Virginia; litigation assisted by the NAACP ha[d] been bitterly fought. In such circumstances, a statute broadly curtailing group activity leading to litigation may easily become a weapon of oppression, however evenhanded its terms appear. Its mere existence could well freeze out of existence all such activity on behalf of the civil rights of Negro citizens.

Id. at 435–36.

In *United Transportation Union v. State Bar of Michigan*, the Supreme Court emphasized the broad application of *Button*. There, the Court refused to allow the Michigan State Bar to enjoin the Union "from engaging in activities undertaken for the

stated purpose of assisting their fellow workers, their widows and families, to protect themselves from excessive fees at the hands of incompetent attorneys in suits for damages under the Federal Employers' Liability Act." *United Transp. Union*, 401 U.S. at 577. The Court reversed the Michigan Supreme Court's narrow holdings, finding that the First Amendment broadly protects groups who "unite to assert their legal rights as effectively and economically as possible." *Id.* at 580. In doing so, the Court rejected the State Bar's insistence on a restrictive interpretation of the injunction; such an interpretation was so vague that it would "jeopardize the exercise of protected freedoms." *Id.* at 581. *United Transportation Union* made clear that "collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment." *Id.* at 585.

Non-profit organizations whose "primary purpose[is] the rendition of legal services" share equally in the fundamental protections of association and expression described in *Button*. *In re Primus*, 436 U.S. at 427 (internal quotations and citations omitted). In *Primus*, the Supreme Court leaned heavily on the precedent set by *Button* to invalidate South Carolina's professional ethics rule against solicitation. *In re Primus*, 436 U.S. 412. The Court had no issue extending the protections set forth in *Button* to an attorney associated with the ACLU because, in that context, the organization was interchangeable with the NAACP: both organizations educate the public, lobby for specific civil-rights related causes, and devote time and resources to specific litigation involving those civil-rights related causes. *Id.* at 427. Like it did in *Button*, the Court acknowledged the political undercurrent—wherein pregnant mothers were threatened with sterilization to maintain their Medicaid benefits—and the ACLU's engagement "in the defense of unpopular causes and unpopular defendants." *Id.* at 427. The Court recognized that the ACLU's litigation practice "has defined the scope of constitutional protection in areas such as political dissent, juvenile rights, prisoners' rights, military law, amnesty, and privacy." *Id.* at 427-28. Building on the conclusions from *Button*, the

Court embraced the idea that "efficacy of litigation as a means of advancing the cause of civil liberties often depends on the ability to make legal assistance available to suitable litigants." *Id.* at 431. With these circumstances in mind, the Court concluded that South Carolina's disciplinary rule invaded "the generous zone of First Amendment protection reserved for associational freedoms." *Id.* at 431-32. Without "proof of any of the substantive evils" that the rule aimed at preventing, South Carolina's vague disciplinary rule failed to withstand strict scrutiny. *Id.* at 433. The Court was quick to qualify its ruling by reiterating that states are free to reasonably regulate members of their Bars, but such regulations must be "narrowly drawn" to proscribe conduct that "in fact is misleading, overbearing, or involves other features of deception or improper influence." *Id.* at 438. Many times these regulations may be upheld as applied to individuals seeking pecuniary gain; it is doubtful, though, that such regulations will be applicable to non-profit organizations such as the ACLU or NAACP. *See, e.g.*, *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978).

Though framed around the protected freedoms of association and expression, these cases nonetheless support Plaintiffs' position. Therefore, to survive the Motion, the Regulation "must withstand the 'exacting scrutiny applicable to limitations to core First Amendment rights.'" *In re Primus*, 436 at 432 (quoting *Buckley v. Valeo*, U.S. 1, 44-45 (1976)). To do so, the Government must demonstrate a compelling interest that is narrowly tailored "to avoid unnecessary abridgment" of First Amendment freedoms. *Id.*

NWIRP is a non-profit organization that provides education to the community, advances its cause through systemic advocacy, and provides legal assistance to immigrants navigating the legal system, often in the context of removal proceedings. Dkt. ## 1 (Complaint) at ¶¶ 1.1, 3.1-3.3; 37 at 12. NWIRP is the primary non-profit legal services provider in Washington State, making it essential to low-income and indigent immigrants. Dkt. # 37 at 12. The Government agrees that the work done by NWIRP and similar non-profit organizations is crucial and admirable. Dkt. ## 36 (Transcript of TRO

Hearing) at 37-38, 45; 47 at 11-13 (explaining EOIR's commitment to ensuring that immigrants have available quality representation). Moreover, the Government does not dispute NWIRP's contention that the Regulation would deprive this "vulnerable population" of representation, essentially leading to an increase in avoidable deportations. Dkt. ## 47 at 11; 39-35 (Murray Decl.) at ¶ 4. The dichotomy between the Government's recognition of the importance of legal representation and acknowledgment that the Regulation will result in decreased services lays bare an uncomfortable reality. The effect of the Regulation as interpreted by the Government will be the inevitable chipping away at attorneys' fundamental rights. Under the circumstances of this case, EOIR is blindly seeking to impose its rules and regulations and spin precedent in a manner inconsistent with fairness. As W.E.B. DuBois once wrote, "[r]ule-following, legal precedence, and political consistency are not more important than right, justice and plain common-sense."

Similar to the states in *Button* and *Primus*, the Government justifies its Regulation by citing a host of evils associated with attorneys failing to file notices of appearances. Dkt. ## 47 at 14-17, 49 (Barnes Decl.) at ¶ 28-39. The Court does not deny that the Government's stated concerns are relevant to ensuring high quality representation in the immigration courts. In fact, the Court applauds the existence of regulations that seek to protect the rights of a vulnerable class of people. The Court does not find that *Button* and its progeny foreclose the Government's authority to regulate the conduct of lawyers, generally. However, the Government may not regulate in a way that chills the ability of non-profit organizations to obtain meaningful access to the courts, especially when that access is sought to advance civil-rights objectives. In this context, the Government may regulate "only with narrow specificity." *In re Primus*, 436 U.S. at 425 (citing *Button*, 371 U.S. at 433). The Government has not done so in this instance.

The Government's key objective in promulgating and enforcing the Regulation is to prevent notarios, as well as incompetent, unethical, unauthorized, or fraudulent

individuals from exploiting the plight of vulnerable immigrants. Dkt. ## 36 (Transcript of TRO Hearing) at 42, 47 at 15. Central to enforcement is the Government's ability to identify the practitioner who engaged in the unethical behavior and hold this individual accountable. *Id.* at 14-15. Here, the Government lacks any evidence that NWIRP committed wrongdoing or provided subpar representation to immigrants. Dkt. # 36 (Transcript of TRO Hearing) at 39-40; *see, generally*, Dkt. # 47. Moreover, even if there were evidence, the Government had no trouble identifying the author of the documents. There is no evidence or record before the Court of NWIRP having ever failed to clearly advise the immigration court of its participation in any litigation. NWIRP unambiguously identified itself on documents and indicated whether the organization provided assistance. Dkt. ## 49 (Barnes Decl.) at ¶¶ 50-52, 37 at 14. Because of this, EOIR was able to contact NWIRP's Legal Director. Dkt. # 49 (Barnes Decl.) at ¶ 54. It is questionable whether an actual notario or ne'er-do-well would have so clearly identified himself such that EOIR could attempt enforcement in the same way. Even if the Government's reasons for the Regulation could rise to a compelling level, the Regulation is not narrowly tailored to achieve its own ends.[4] As in *Button*, the Government has failed to advance any substantial regulatory interest, in the form of substantive evils flowing from NWIRP's activities, which can justify the broad prohibitions which it has imposed. *See Button*, 371 U.S. at 442-43. Nothing in the record justifies the breadth and vagueness of the Government's interpretations of the Regulation.

[4] During the hearing on the TRO, the Government argued that NWIRP's transparency is not enough. The Government wished to have "the name, the address of the attorney or practitioner, they can list a bar license number, so that the parties can verify whether there is actual bar membership." Dkt. # 36 (Transcript of TRO Hearing) at 41. As such, it appears that NWIRP could adjust its stamps in a way that allows EOIR to identify the author with more precision without submitting to full representation.

The Regulation is not only too broad, it is impermissibly vague. The Government created a moving target with regard to the definition of "practice" or "preparation." Section 1001.1(k) describes "preparation" as "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities," which could include the mere "incidental preparation of papers." 8 C.F.R. § 1001.1(k). NWIRP sought guidance from EOIR regarding which actions constitute "preparation" such that an attorney would need to file a notice of appearance. Dkt. # 52 at 9. EOIR indicated that workshops aimed at assisting immigrants complete asylum forms may trigger the Regulation. *Id.* During the TRO hearing, the Government was unable to offer a static definition or example of "preparation," instead claiming that experienced lawyers will "understand what providing legal advice is." Dkt. # 36 (Transcript of TRO Hearing) at 58-59. In this case, the "I know it when I see it" approach is outside the realm of "narrow specificity" required by the First Amendment. In its brief opposing a preliminary injunction, the Government sought to delineate what NWIRP could do without triggering the notice of appearance requirement. Dkt. # 47 at 23. But the Government immediately blurred the line by asserting that "EOIR applies section 1003.102(t) only to in court statements," thereby claiming the Regulation affects only those speaking in a nonpublic forum. *Id.* at 27, 42.[5] "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *Button*, 371 U.S. at 438. "In sum, the [Regulation] in [its] present form [has] a distinct potential for dampening the kind of 'cooperative activity that would make advocacy of litigation meaningful,' as well as for permitting discretionary enforcement against unpopular causes." *In re Primus*, 436 U.S. at 433 (quoting *Button*, 371 U.S. at 438).

[5] Of course, this cannot be the case. Attorneys who speak in such a forum—that is, as a representative inside the courtroom—have presumably filed a notice of appearance. It seems, then, that the Regulation must be triggered prior to an attorney's in-court appearance.

A regulation withstands intermediate scrutiny only if is "justified without reference to the content of the regulated speech, [is] narrowly tailored to serve a significant governmental interest, and . . . leave[s] open ample alternative channels for communication of the information." *McCullen v. Coakley*, 134 S. Ct. 2518, 2529 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). The Government's failure to narrowly tailor the Regulation or "leave open ample alternative channels for communication of the information" dooms it even under intermediate scrutiny. *Id.* EOIR presents NWIRP with a Hobson's choice: NWIRP must either fully represent or fully refuse to represent an immigrant. Or, NWIRP could maintain the status quo by offering immigrants limited representation and face serious consequences. On the other hand, EOIR is equipped to promulgate or interpret regulations in ways that satisfy its significant interest in promoting accountability without invading the First Amendment's guarantees. As such, the Regulation cannot withstand intermediate scrutiny; Plaintiffs are likely to succeed on their First Amendment claim.

The majority of briefing—both by the parties and amici—focuses on how this Regulation affects NWIRP and similarly situated non-profit organizations. Dkt. ## 37, 40, 47. The Court can conceive of situations—most likely when private attorneys represent immigrants with expectation of remuneration—in which EOIR could constitutionally enforce the Regulation. *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998), *as amended on denial of reh'g* (July 29, 1998). For that reason, the Court limits its ruling at this early stage to Plaintiffs' as-applied challenge.

B. Tenth Amendment

Plaintiffs argue that the Regulation violates Washington's right to regulate its attorneys under the Tenth Amendment. Dkt. # 37. Regulating and licensing attorneys is a matter left to the states. *Leis v. Flynt*, 439 U.S. 438, 442 (1979). "But 'the law of the State, though enacted in the exercise of powers not controverted, must yield' when

incompatible with federal legislation." *Sperry v. State of Fla. ex rel. Fla. Bar*, 373 U.S. 379, 384 (1963) (quoting *Gibbons v. Ogden*, 22 U.S. 1, 211 (1824)).

It is well established that Congress may authorize agencies to regulate attorneys appearing before them. *See Sperry*, 373 U.S. 379; *Goldsmith v. U.S. Bd. of Tax Appeals*, 270 U.S. 117 (1926); *Koden v. U.S. Dep't of Justice*, 564 F.2d 228 (7th Cir. 1977); *Touche Ross & Co. v. Sec. & Exch. Comm'n*, 609 F.2d 570 (2nd Cir. 1979). In such cases,

> A State may not enforce licensing requirements which, though valid in the absence of federal regulation, give the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions, or which impose upon the performance of activity sanctioned by federal license additional conditions not contemplated by Congress.

Sperry, 373 U.S. at 385.

Congress authorized EOIR to regulate the conduct of attorneys appearing before it. 8 U.S.C. §§ 1103(g), 1362. As such, EOIR may impose requirements on its practitioners that Washington does not. Accordingly, Plaintiffs' argument that EOIR may not regulate attorneys differently than Washington is unlikely to succeed on the merits. As noted, however, Plaintiffs' likelihood of success on their First Amendment claim is sufficient to warrant the entry of a preliminary injunction.

C. Irreparable Harm

Plaintiffs have met their burden to show they have suffered and will continue to suffer irreparable harm. This Order makes clear that Plaintiffs' "First Amendment rights were either threatened or in fact being impaired at the time relief was sought." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). "The loss of First Amendment freedoms, for even

minimal periods of time, unquestionably constitutes irreparable injury." *Id.* (citing *New York Times Co. v. U.S.*, 403 U.S. 713 (1971)).

Prior to the Court's issuance of a TRO, and in order to abide by the Government's cease and desist letter, Plaintiffs refrained from assisting at least four individuals. Dkt. ## 37 at 30, 4 at ¶ 12. Were the injunction lifted, Plaintiffs would likely encounter additional harm in being deprived of continuing their mission. *Button*, 371 U.S. at 435 ("It makes no difference whether such prosecutions or proceedings would actually be commenced. It is enough that a vague and broad statute lends itself to selective enforcement against unpopular causes.").[6]

That Plaintiffs may withdraw representation with leave of court is no solution. *See* Dkt. # 47 at 34. Quite simply, "[t]his misses the point." *Legal Servs. Corp. v. Valazquez*, 531 U.S. 533, 546 (2001). As applied to NWIRP, the Regulation threatens to "smother[] all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority." *Button*, 371 U.S. at 434. Just as NWIRP lacks resources to undertake full representation of each immigrant, it likely lacks resources to undertake full representation and then seek withdrawal. Moreover, if attorneys were able to assume full representation and then withdraw with impunity, the evils that EOIR seeks to remedy might instead be exacerbated.

D. Balance of Equities & Public Interest

Plaintiffs have met their burden to show that the balance of equities and public interest weigh in favor of granting the preliminary injunction. The parties agree that providing quality representation to vulnerable immigrants is a high priority. Moreover, the Government is not harmed by allowing NWIRP and other similarly situated organizations from continuing to provide competent representation. This is especially

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[6] As the myriad of attached declarations attest, NWIRP and other organizations may lose the ability to receive aid in furthering their cause. S*ee* Dkt. # 39 (Allen Decl.).

true in light of the Court's narrow ruling that authorizes EOIR to enforce the Regulation against those private attorneys who may actually be engaging in the evils so described. Finally, "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citations and internal quotation marks omitted).

V. PRELIMINARY INJUNCTION

1. Plaintiffs' Motion for Preliminary Injunction (Dkt. 37) is **GRANTED**.

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

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

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

3. The Preliminary Injunction is granted on a nationwide basis as to any other similarly situated non-profit organizations who, like NWIRP, self-identify and disclose their assistance on *pro se* filings. Therefore, the Court prohibits the enforcement of 8 C.F.R. § 1003.102(t) during the pendency of this preliminary injunction on a nationwide basis.

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

5. This preliminary injunction shall remain in effect until further Order of this Court.

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VI. CONCLUSION

For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion. Dkt. # 37. The Government is enjoined from enforcing the Regulation against NWIRP and any other similarly situated organizations, as outlined above.

Dated this 27th day of July, 2017.

The Honorable Richard A. Jones
United States District Judge