

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

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

Plaintiffs,

v.

JEFFERSON B. SESSIONS III, in his official
capacity as Attorney General of the United States;
UNITED STATES DEPARTMENT OF
JUSTICE; EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW; JAMES
MCHENRY,¹ in his official capacity as Acting
Director of the Executive Office for Immigration
Review; and JENNIFER BARNES, in her official
capacity as Disciplinary Counsel for the Executive
Office for Immigration Review,

Defendants.

CASE NO. 2:17-cv-00716

DECLARATION OF PRINT MAGGARD

I, PRINT MAGGARD, Deputy Chief Immigration Judge, Executive Office for Immigration Review (“EOIR”), Office of the Chief Immigration Judge (“OCIJ”), in San Francisco, California do hereby declare under penalty of perjury that the

¹Under Federal Rule of Civil Procedure 25(d), current Acting Director of EOIR James McHenry is substituted for former Director Juan Osuna.

following statements are true and correct to the best of my knowledge, information, and belief:

1. I am a Deputy Chief Immigration Judge (“DCIJ”) with supervisory responsibility for the Executive Office for Immigration Review (“EOIR”) for the courts from the West Coast to the Mississippi River, and some northeastern courts. I work for the Office of the Chief Immigration Judge (“OCIJ”) which provides overall program direction and articulates policies and procedures for the Immigration Courts nationwide. As a DCIJ, my responsibilities include supervising the Assistant Chief Immigration Judges (“ACIJs”) and managing the dockets and daily activity in the immigration courts.

2. I was appointed as a DCIJ in November 2015. Prior to my appointment as a DCIJ, I served as the Acting Chief Immigration Judge from July 2015 to March 2016, and as an Assistant Chief Immigration Judge from January 2012 to July 2015. I served as an Immigration Judge at the San Francisco Immigration Court from May 2009 to December 2011, and continue to preside over immigration cases in the San Francisco Immigration Court.

3. As a DCIJ, I have knowledge of the policies and practices relating to immigration court operations, including operations of the San Francisco Immigration Court.

Notice of Entry of Appearance

4. I am aware that the failure to file a Notice of Entry of Appearance form by a practitioner when a practitioner drafts a document on behalf of a pro se respondent that is ultimately filed with the Immigration Court is a violation of EOIR’s rules of professional conduct, specifically 8 C.F.R. 1003.102(t). If an Immigration Judge is unable to identify the individual who drafted a document, it would be much more difficult for Immigration Judges in my supervisory area to provide a complaint to EOIR’s Disciplinary Counsel. Moreover, in the rare

instances that an Immigration Judge is able to identify the individual who may have drafted the document filed by a pro se respondent – perhaps a pro se respondent has identified an individual by name who he or she believes is their attorney, or there is identifying information on a motion drafted by an individual who has not filed a Notice of Entry of Appearance form – an Immigration Judge cannot directly compel that individual to come to Immigration Court as a means of clarifying the scope of his or her representation. While an Immigration Judge could issue a subpoena to require the identified individual to appear in Immigration Court, *see* 8 C.F.R. 1003.35(b)(1) and 8 U.S.C 1229a(b)(1), an Immigration Judge has no authority to enforce the subpoena should the individual fail to appear. Instead, the Immigration Judge must request that the local U.S. Attorney’s Office request that a federal district court issue an order enforcing the subpoena, on behalf of EOIR. *See* 8 C.F.R 1003.35(b)(6).

5. For these reasons, I believe it is in the best interest of pro se respondents and the efficiency of immigration court proceedings as a whole to require a Notice of Entry of Appearance form for any practitioner seeking to file documents with an immigration court on a respondent’s behalf.

Concerns Regarding Temporary Restraining Order

6. In line with the concerns raised above, respectfully, I am concerned that if this Court extended the current temporary restraining order that prohibits enforcement of 8 C.F.R. § 1003.102(t) into a preliminary injunction, doing so would harm immigrants in proceedings before the immigration courts. This is because prohibiting enforcement of § 1003.102(t) would remove the EOIR Disciplinary Counsel’s ability to enforce current rules that require a notice of appearance and disallow ghostwriting. Most importantly, a preliminary injunction would frustrate Immigration Judges from submitting complaints to EOIR’s Disciplinary Counsel regarding any harmful behavior that could result from failure

to file a notice of appearance and/or ghostwriting. Without the ability to report such suspected misconduct, I am concerned that such conduct will continue, and perhaps increase, given the impunity for such behavior.

Conclusion

I declare under penalty of perjury of the laws of the United States and the State of California that the foregoing is true and correct to the best of my knowledge and belief.

June 26, 2017

Date



PRINT MAGGARD

Deputy Chief Immigration Judge
San Francisco, California