

Hon. Richard A. Jones

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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, 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

DEFENDANTS’ MOTION TO STAY
DISCOVERY PENDING RESOLUTION OF
THEIR MOTION TO DISMISS

Noted on motion calendar for:

Friday, August 18, 2017

Defendants respectfully request that this Court stay discovery deadlines (with the
exception of the August 11, 2017 and August 24, 2017 deadlines reflected in the parties’ July 12,
2017 Stipulation) and issuance of its Rule 16(b) scheduling order pending resolution of

DEFENDANTS’ MOTION TO STAY DISCOVERY PENDING
RESOLUTION OF THEIR MOTION TO DISMISS

(Case No. 2:17-cv-716)

P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
(202) 305-7181

1 Defendants' Motion to Dismiss, which was filed August 4, 2017.¹ Specifically, on July 17,
 2 2017, Plaintiffs filed the first discovery request, Plaintiffs' First Interrogatories and Requests for
 3 Production ("Plaintiffs' First Discovery request"), *see* Exh. 1 (NWIRP's First Interrogatories and
 4 Requests for Production to All Defendants), to which Defendants must reply by August 16,
 5 2017. Defendants hereby request that this court stay this August 16 deadline and all other
 6 discovery requests not reflected in the parties' Stipulation filed with this Court on July 12, 2017,
 7 pending resolution of their Motion to Dismiss. In addition, Defendants request that this court
 8 stay issuance of the Rule 16(b) scheduling order pending resolution of Defendants' Motion to
 9 Dismiss.

10 In the alternative, should the court not stay discovery-related deadlines pending
 11 resolution of the MTD, Defendants request, that the Court stay discovery deadlines until the
 12 Court issues a Rule 16(b) scheduling order. The parties exchanged views about Defendants'
 13 request to modify the foregoing dates, but were not able to reach an agreement. For the reasons
 14 described below, Defendants' request is supported by good cause.

15 **A. A stay of discovery-related deadlines pending resolution of Defendants' Motion to**
 16 **Dismiss will avoid unnecessary discovery if that motion is granted and provide**
 17 **guidance to discovery if it is denied.**

18 This Court has discretion to control discovery, including whether to stay discovery. *Little*
 19 *v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The court may, for good cause, issue an
 20 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden
 21

22 ¹ On July 12, 2017, the parties agreed to exchange Initial Disclosures on August 11, 2017, and file the Joint Status
 23 Report ("JSR") with this Court no later than August 22, 2017. No other discovery deadlines were accorded, and
 24 Defendants preserved their right to seek a stay of any discovery to be had in this case and/or related deadlines. *See*
 25 ECF No. 59. This Court approved the terms of the Stipulation the next day. *See* Block Order of July 13, 2017 (no
 26 docket number attached). While Defendants do not seek postponement of these August 11 and August 22 deadlines,
 Defendants request a stay of any other discovery production outside of these agreed-upon deadlines until after
 resolution of Defendants' Motion to Dismiss and issuance of this Court's Rule 16(b) scheduling order, which
 ordinarily follows exchange of initial disclosures and the parties' submission of the JSR. As such, Defendants'
 request includes a request to stay Defendants' deadline to respond to Plaintiffs' First Interrogatories and Requests
 for Production, served on July 17, 2017 and due August 16, 2017. Since this motion to stay will not be noticed for
 consideration until after August 16, Defendants are nevertheless working to provide responses to those requests as
 practicable and reasonable. However, Defendants will likely object to portions of Plaintiffs' requests as early and
 overbroad, as discussed in Section B of this motion.

1 or expense,” Fed. R. Civ. P. 26(c)(1), including an order that delays the commencement of
2 discovery while the Court decides a potentially dispositive motion. Extending the
3 commencement of discovery may be particularly appropriate where discovery can be disruptive
4 to a government entity. *See Jiron v. City of Lakewood*, 392 F.3d 410, 414 (10th Cir. 2004). The
5 Court may stay discovery pending resolution of a dispositive motion. *Heck v. Stern*, No. 06-cv-
6 5030, 2006 WL 2222348, at *1 (W.D. Wash. Aug. 2, 2006) (citing *DiMartini v. Ferrin*, 889 F.2d
7 922 (9th Cir. 1989); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (stating that doors of
8 discovery should not open to party who fails to adequately plead a cause of action).

9 In this case, a stay of discovery will highly benefit the “just, speedy, and inexpensive”
10 resolution of this case. Fed. R. Civ. P. 1. “If resolution of the motion to dismiss does *not*
11 dispose of the case, it will focus the scope of discovery by identifying the governing law and the
12 issues relevant to its application.” *Lazar v. Charles Schwab & Co. Inc.*, No. 14-cv-1511, 2014
13 WL 12551210, at *2 (D. Ariz. Sept. 19, 2014). But “if resolution of these purely legal issues
14 *does* dispose of the case . . . , a stay will have prevented waste of assets through needless fact
15 discovery.” *Id.* To the extent Plaintiffs present facial challenges to 8 C.F.R. § 1003.102(t) under
16 the First and Tenth Amendments, discovery is unnecessary as to those issues because a facial
17 challenge focuses on the language of the regulation itself. *Gen. Elec. Co. v. Johnson*, 362 F.
18 Supp. 2d 327, 338 (D.D.C. 2005) (“[A] facial challenge to the text of a statute does not typically
19 require discovery for resolution because the challenge focuses on the language of the statute
20 itself.”).

21 As for Plaintiffs’ as-applied challenges, a stay of discovery pending resolution of
22 Defendants’ motion to dismiss will guide the parties as to facts that may affect the analysis of
23 remaining claims. *See LASO v. LSC*, 561 F. Supp. 2d 1187, 1203-04 (D. Or. 2008) (noting that
24 legal questions in as-applied First Amendment challenge relating to regulation of legal aid
25 organization after resolution of motion to dismiss were “quite limited in scope”); *id.* at 1205
26 (stating that decision on motion to dismiss narrowed legal issues in as-applied challenge); *see*
also Igielski v. Riversource Life Insurance Company, 2015 WL 12025324 (W.D.Wa. May 22,

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1 2015) (Jones, J.) (“In an appropriate case, it makes sense to delay discovery while a dispositive
2 motion is pending.”). Defendants recognize that this Court found that Plaintiffs’ First
3 Amendment as-applied challenge has a likelihood of success before this Court. ECF No. 66.
4 However, that ruling does not necessarily mean that all issues raised by Plaintiffs in relation to
5 their First Amendment claim will be subject to discovery. As in *LASO*, the Court may narrowly
6 define the relevant issues in Plaintiffs’ as-applied challenge to 8 C.F.R. § 1003.102(t) in a way
7 that will inform the scope of relevant discovery.

8 Defendants and the public will be burdened if the motion to stay discovery is denied,
9 particularly in light of the overbroad scope of the first discovery requests. For example, EOIR is
10 the government agency tasked with managing the immigration courts, and Plaintiffs’ complaint
11 alleges facts relating to the Seattle and Tacoma immigration courts, two already overextended
12 courts. *See* Compl. ¶ 3.11, 3.18; *see also* Report to Congressional Requesters on Immigration
13 Courts, <http://www.gao.gov/assets/690/685022.pdf> (last visited on August 10, 2017) (concluding
14 that “[t]he doubling of the immigration courts’ backlog over the last decade . . . poses challenges
15 to EOIR in meeting its mission to adjudicate immigration cases by fairly, expeditiously, and
16 uniformly administering and interpreting federal immigration laws.”). It is well understood that
17 immigration courts are burdened, rendering any discovery distractions on immigration court staff
18 harmful to court efficiency. To the extent Plaintiffs seek discovery from immigration court staff,
19 this Court should minimize the burden on government employees in distracting them from their
20 critical functions in order to comply with potentially unnecessary discovery. *Cf. Harlow v.*
21 *Fitzgerald*, 457 U.S. 800, 819 (1982) (holding that in the context of qualified immunity, courts
22 should resolve jurisdictional question of qualified immunity and “avoid excessive disruption” of
23 government).

24 More so, the broad discovery sought by Plaintiffs evinces the need for guidance as to the
25 issues of this case – which a Court ruling on the dispositive motion can provide. Plaintiffs’ First
26 Discovery Request, for example, asks for information “of any facts or information alleged in the

1 complaint,” and documents that “refer or relate to facts or information alleged in the complaint.”
2 Exh. 1, at 5. But, their complaint alleges a large number of facts, including but not limited to:

- 3 (1) NWIRP and their work with the federal and state governments;
- 4 (2) The enactment of EOIR disciplinary regulations;
- 5 (3) Plaintiffs’ alleged conversations with unknown individuals at an unspecified
6 immigration court that took place almost 10 years ago;
- 7 (4) Two cases pending before the immigration courts;
- 8 (5) A conversation with the Disciplinary Counsel and with the Fraud Prevention Counsel;
- 9 (6) The Disciplinary Counsel’s issuance of a letter to NWIRP regarding compliance with
10 EOIR regulations;
- 11 (7) Allegations as to how EOIR’s regulations are inconsistent with practices permitted by
12 Washington; and
- 13 (8) Alleged harms to NWIRP arising out of the Disciplinary Counsel’s letter.

14 *See generally* Compl.

15 Plaintiffs’ overly-broad request itself best demonstrates a need for legal guidance as to
16 whether and what facts would be discoverable. A grant of the motion would alleviate the need
17 for any discovery and, to the extent that an opinion on the dispositive motion does not dismiss a
18 count of Plaintiffs’ complaint, it would provide guidance as to what facts relating to specific
19 counts are adequately subject to discovery. Accordingly, Discovery with respect to Plaintiffs’
20 First Discovery Request and any other discovery sought outside the scope of the discovery
21 already contemplated in the parties’ agreement of July 12, 2017, ECF No. 59, should therefore
22 be stayed until this Court adjudicates the pending motion to dismiss. *See* Fed. R. Civ. P. 33(a)(2)
23 (“[T]he court may order that the interrogatory need not be answered until . . . some other time);
24 Fed. R. Civ. P. 34(b)(A) (noting that the court may order a longer time to respond to Requests for
25 Production).

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1 In addition, because the disposition of the Motion to Dismiss will clarify what, if any,
 2 issues remain in the litigation, and therefore help to guide discovery, Defendants also move this
 3 Court to stay issuance of its Rule 16(b) scheduling order pending disposition of the motion.

4 **B. Alternatively, Defendants request that this Court stay discovery deadlines, including**
 5 **deadlines to respond to Plaintiffs' First Discovery Requests, until the Court issues a**
 6 **Rule 16 Scheduling Order.**

7 In the alternative, should this Court not stay discovery and issuance of its Rule 16(b)
 8 scheduling order pending resolution of the Motion to Dismiss, Defendants request, that this
 9 Court postpone discovery production, including the response to Plaintiffs' First Discovery
 10 Request, at least until after the exchange of initial disclosures (August 11), submission of a Joint
 11 Status Report and Discovery Plan to the Court (August 22),² entry of a protective order, and this
 12 Court's issuance of a Rule 16(b) scheduling order.

13 Plaintiffs' First Discovery Request is so broad in scope that it essentially requests
 14 completion of all relevant document production, and such production currently is due by August
 15 16 pursuant to Federal Rules of Civil Procedure 33(b)(2) and 34(b)(2). *See* Ex. 1, NWIRP's
 16 First Interrogatories and Requests for Production to All Defendants, at 5 (Interrogatory #1 asks
 17 for information regarding "any facts or information alleged in the complaint," and
 18 correspondingly, Request for Production #1 asks for documents that "refer or relate to facts or
 19 information alleged in the Complaint, the subject matter of this action, or this action
 20 itself."). However, Plaintiffs request for completion of this discovery before the Court has issued
 21 its Rule 16 scheduling order setting discovery deadlines, appears unusual, and not in the ordinary
 22 course. *See Recognicorp, LLC v. Nintendo Co. Ltd.*, 2013 WL 2099518, at *2 (W.D.Wa. May 8,
 23 2013) (Jones, J.) ("After obtaining a joint status report from the parties, the court issued a
 24 scheduling order..."); ECF No. 45, Order Regarding Initial Disclosures and Joint Status Report,

25 _____
 26 ² This is particularly important to Defendants given that a JSR and Discovery Plan includes the parties' views regarding the need for a protective order – indeed, such protective orders are essential to Defendants' ability to provide certain production in this case. *See, e.g.*, 8 C.F.R. § 1003.108 (confidentiality of preliminary attorney disciplinary actions under EOIR regulations); 8 C.F.R. § 208.6 (confidentiality of information contained in or pertaining to any asylum application).

1 sec. III (June 22, 2017) (this Court’s order states that the Joint Status Report and Discovery Plan
2 “will be used in setting a schedule for the prompt completion of the case”).

3 Defendants’ appearance in this case soon after the filing of the Complaint – thus
4 triggering the 60-day period for the Court to issue a scheduling order under Rule 16(b)(2) – was
5 attributable to Plaintiffs’ Motion for a Temporary Restraining Order. Plaintiffs subsequently
6 moved for a preliminary injunction. While Defendants recognize that discovery requests issued
7 during the preliminary injunction stage of a case are not invalid for that reason alone, *see Quest*
8 *Integrity USA, LLC v. A.Hak Industrial Services US, LLC*, 2016 WL 4533062, *2 (W.D.Wa.
9 March 23, 2016) (Jones, J.), responding to Plaintiffs’ requests for a TRO and preliminary
10 injunctive relief has already required the government to expend considerable time and resources.
11 Exh. 2 (Declaration of Michelle Curry).

12 Accordingly, this request should not be construed as an attempt to indefinitely frustrate
13 production of discovery that is relevant to the claims of the case. Rather, this request is fully
14 consistent with the ordinary course of discovery under the Federal Rules of Civil Procedure. *See*
15 *Fed. R. Civ. P. 16(b)(2)* (noting that a judge may delay issuance of a Rule 16(b) scheduling order
16 upon a showing of good cause). For example, the Federal Rules set the default timing for
17 issuance of a scheduling order – either 90 days after any defendant has been served, or 60 days
18 after any defendant has appeared, whichever is earliest, *see Fed. R. Civ. P. 16(b)(2)* – well *after*
19 the time by which most defendants will have been required to file their answer. *See Fed. R. Civ.*
20 *P. 12(a)(1)* (providing that defendants who are not the United States government must serve an
21 answer within 21 days after service).

22 While the 2015 Amendments to the Federal Rules of Civil Procedure reduced the time
23 period to issue a scheduling order from 120 days to 90 days, and from 90 days to 60 days, *see*
24 *Rule 16(b)(2)*, these changes were introduced to “reduce delay at the beginning of litigation,”
25 and were not intended to advance the commencement of discovery prior to defendants filing an
26 answer. *See Advisory Committee Note to 2015 Amendment to Rule 16*. Moreover, the 2015
Amendments also added a new provision by which “the court may find good cause to extend the

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1 time to issue a scheduling order.” *Id.* The Advisory Committee notes accompanying the
2 amendment explicitly recognize that “[l]itigation involving complex issues, multiple parties, and
3 large organizations, public or private, may be more likely to need extra time to establish
4 meaningful collaboration between counsel and the people who can supply the information
5 needed to participate in a meaningful way.” *Id.*

6 Postponing discovery responses until after this Court’s issuance of a scheduling order is
7 fully consistent with the Advisory Committee Notes to the 2015 Amendments, which explicitly
8 acknowledge the possibility that “[i]n some cases, it may be that the parties cannot prepare
9 adequately for a meaningful Rule 26(f) conference and then a scheduling conference in the time
10 allowed.” Advisory Committee Note to 2015 Amendment to Rule 16; *see* Fed. R. Civ. P. 1
11 (stating that all rules “should be construed, administered, and employed . . . to secure the just,
12 speedy and inexpensive determination of every action and proceeding”).

13 The complex and far-reaching nature of Plaintiffs’ claims as well as the size of the
14 agency at issue in this case favor postponing discovery responses, regarding discovery beyond
15 that agreed to by the parties on July 17, 2017, until the entry of a scheduling order. *See* ECF No.
16 59, *see also* Fed. R. Civ. P. 26(a)(1)(C) (linking the time of initial disclosures to the Rule 26(f)
17 conference). Allowing resolution of Defendants’ dispositive motion without engaging in heavy
18 discovery greatly enhances the likelihood that the parties will be able to coordinate a mutually
19 agreeable plan for discovery and, if possible, narrow the issues requiring discovery, thus
20 affecting the “subjects, timing, and potential phasing of discovery.” ECF No. 45, at 3; *see*
21 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 608 (D. Nev. 2011) (addressing situations where
22 staying discovery is appropriate during the pendency of a dispositive motion); *see also* *Rutman*
23 *Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (observing that the purpose
24 of a dispositive motion under Rule 12(b)(6) “is to enable defendants to challenge the legal
25 sufficiency of complaints without subjecting themselves to discovery”). Finally, given the
26 nationwide injunctive relief currently in place under the Court’s preliminary injunction, *see* ECF

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1 No. 66, Plaintiffs will not in any way be prejudiced by postponing the commencement of
2 discovery in the manner proposed.

3 * * *

4 “Where . . . the operative complaint is challenged by motion practice, delaying discovery
5 until the claims and defenses in the case are better defined reduces expenses, minimizes the
6 burden of unnecessary discovery, and conserves judicial resources.” *In re Morning Song Bird*
7 *Food Litig.*, No. 12-CV-1592, 2013 WL 12143947 at *3 (S.D. Cal. Jan 25, 2013), objections
8 overruled, No. 12-CV-1592, 2013 WL 12143948 (S.D. Cal. Apr. 3. 2013)). Good cause exists to
9 stay discovery until after Defendants’ motion to dismiss is resolved, or alternately, until after the
10 Court’s issuance of a scheduling order.

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(Case No. 2:17-cv-716)

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Dated: August 10, 2017

Respectfully submitted,

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DEFENDANTS' MOTION TO STAY DISCOVERY PENDING
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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I certify that all participants are CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: August 10, 2017

Respectfully submitted.

/s/ Gladys M. Steffens Guzman

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Counsel for Defendants

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The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS
PROJECT (“NWIRP”), a nonprofit Washington
public benefit corporation; and YUK MAN
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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; JUAN OSUNA, in
his official capacity as 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.

No. 2:17-cv-00716

NWIRP’S FIRST
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO ALL DEFENDANTS

TO: Defendant Jefferson B. Sessions III;
Defendant United States Department of Justice;
Defendant Executive Office for Immigration Review;
Defendant James McHenry;¹ and
Defendant Jennifer Barnes

AND TO: Victor M. Mercado-Santana, Gladys M. Steffens-Guzman, C. Frederick
Sheffield, and Gisela A. Westwater, U.S. Department of Justice (Office of
Immigration Litigation), their counsel of record.

¹ Substituted for Juan Osuna pursuant to Fed. R. Civ. P. 25(d).

1 Pursuant to Federal Rules of Civil Procedure 26, 33, and 34, Plaintiff Northwest
2 Immigrant Rights Project requests that each of Defendants Jefferson B. Sessions III, United
3 States Department of Justice (“DOJ”), Executive Office for Immigration Review (“EOIR”),
4 James McHenry, and Jennifer Barnes, within 30 days of service, respond to the following
5 interrogatories and produce for inspection and copying the documents described below at the
6 offices of Davis Wright Tremaine, 1201 Third Avenue, Suite 2200, Seattle, WA 98101-3045.

7 **INSTRUCTIONS**

8 A. In answering these interrogatories and requests for production, furnish all
9 information, documents, and things available to you regardless whether they were obtained
10 directly by you, your attorneys, through your agents, assigns, or representatives, or by anyone
11 acting on your or their behalf.

12 B. If you cannot answer these interrogatories and requests in full, answer to the
13 extent possible, specify the reasons for your inability to answer the remainder, and state
14 whatever information or knowledge you have concerning the unanswered portion.

15 C. Please mark each page or sheet you produce with an identification of
16 consecutive document control numbers.

17 D. If you object to answering any interrogatory or request for production, in whole
18 or in part, state your objection and the basis for it. If you object on grounds of privilege, please
19 also state the nature and extent of all allegedly privileged matters in sufficient detail to allow
20 Plaintiffs to decide whether to seek an order compelling disclosure of the information or
21 document in question. State the date, author(s), addresses, persons receiving copies of, and the
22 general subject matter of each document withheld under a claim of privilege, work product, or
23 on any other ground.

24 E. All documents shall be produced in a reasonably usable form. Electronically
25 stored information shall be produced in a form that preserves all native metadata and
26 functionality. This instruction may be superseded if and to the extent the parties reach
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1 agreement on a protocol for ESI discovery, as discussed during the parties' Rule 26(f)
2 conference.

3 F. If, after responding to these interrogatories and requests for production, you
4 subsequently learn that your disclosure or response is incomplete or incorrect, or if you obtain,
5 directly or indirectly, additional information between the time your responses are served and
6 the time of trial, you must promptly supplement your responses. If you fail to do so, Plaintiffs
7 may seek to exclude from evidence such information or documentation, or other relief.

8 **DEFINITIONS**

9 A. **"Person"** includes, in the plural as well as singular, any natural person, firm,
10 association, partnership, government agency, nonprofit organization, joint venture, corporation
11 or other entity, unless the context indicates otherwise.

12 B. **"Complaint"** shall mean the complaint filed on May 8, 2017, in this matter.

13 C. **"Cease and Desist Letter"** shall mean the cease and desist letter sent from
14 Defendant Jennifer Barnes, EOIR's Disciplinary Counsel, to Matt Adams and Northwest
15 Immigrant Rights Project on April 5, 2017.

16 D. **"You," "your," "Defendant,"** or **"Defendants"** means each and all of Jefferson
17 B. Sessions III, DOJ, EOIR, James McHenry, and Jennifer Barnes, and all present and former
18 attorneys, agents, employees, officials, contractors, representatives, or other persons who
19 possess, or who have obtained information for or on their behalf.

20 E. **"NWIRP"** means the Northwest Immigrant Rights Project, and each and all of
21 its attorneys, practitioners, agents, employees, and directors.

22 F. **"Documents"** means all physical material, electronically stored information, or
23 tangible things and includes but is not limited to those types of items specifically enumerated in
24 Rule 34(a)(1)(A).

25 G. **"Communication"** means any oral or written exchange by words or of thoughts
26 or ideas to another person, whether person to person, in a group, in a meeting, by telephone, by
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1 letter, by facsimile, by e-mail, by text message, or by any other process, whether oral, written,
2 electronic, or otherwise.

3 H. “Identify” means:

4 (1) With respect to documents: to provide separate identification of the date
5 of each document, its title, its format, the authors and recipients, its location, and its
6 general contents. In lieu of identifying a document, you may attach a copy of such
7 document(s) to your answers to these discovery requests;

8 (2) With respect to communications: to provide the date of each
9 communication; a description of its contents; the means of communication; the person
10 who initiated the communication and each other person who was a participant or
11 recipient; any document reflecting or referring to the communication; and its precise
12 words. For communications in a document or other tangible form, you may attach a copy
13 of such document to your answers to these discovery requests in lieu of identifying the
14 communications;

15 (3) With respect to persons: to provide the name of the person, his or her job
16 title and employer, and all known contact information, including without limitation his or
17 her present or last known address, phone numbers, and email addresses;

18 (4) With respect to anything else: to provide all characteristics that describe a
19 particular thing, place, activity, event, or instance for which an identification is sought,
20 including the date, persons involved, and substance thereof;

21 I. “And” and “or” are to be construed either disjunctively or conjunctively as
22 necessary to bring within the scope of these discovery requests all responses, disclosures, or
23 information that is otherwise responsive to a particular discovery request. These terms shall
24 not be narrowly construed as conjunctive or disjunctive in any particular context so as to
25 exclude any information otherwise within the scope of a particular discovery request.

1 **INTERROGATORIES & REQUESTS FOR PRODUCTION**

2 **INTERROGATORY NO. 1: Identify** each **person** who has knowledge of any facts or
3 information alleged in the **Complaint**, or who otherwise has knowledge concerning the subject
4 matter of this action, and describe the information known by each **person** so identified.

5 **ANSWER:**

6
7
8 **REQUEST FOR PRODUCTION NO. 1:** Produce all **documents**, including without
9 limitation **communications**, that refer or relate to facts or information alleged in the Complaint,
10 the subject matter of this action, or this action itself.

11 **RESPONSE:**

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14 **INTERROGATORY NO. 2: Identify** each **person** who participated in, had knowledge
15 of, or directed or contributed to the sending of the **Cease and Desist Letter**, and describe the
16 role that each such **person** played and the knowledge possessed by that **person**.

17 **ANSWER:**

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20 **INTERROGATORY NO. 3: Identify** all **communications you** sent or received that
21 refer or relate to the **Cease and Desist Letter**.

22 **ANSWER:**

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25 **REQUEST FOR PRODUCTION NO. 2:** Produce all **documents**, including without
26 limitation **communications**, that refer or relate to the **Cease and Desist Letter**.

27 **RESPONSE:**

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INTERROGATORY NO. 4: Identify all communications you have had with any person on or after August 1, 2016 that refer or relate to NWIRP and practitioner discipline.

ANSWER:

REQUEST FOR PRODUCTION NO. 3: Produce all documents that reflect, refer, or relate to the communications described in Interrogatory No. 4 or your answer thereto.

RESPONSE:

INTERROGATORY NO. 5: Identify all communications you have had with any person on or after August 1, 2016 that refer or relate to any change in or any emphasis or focus on practitioner disciplinary policy, interpretations, enforcement, priorities, or targets.

ANSWER:

REQUEST FOR PRODUCTION NO. 4: Produce all documents that reflect, refer, or relate to the communications described in Interrogatory No. 5 or your answer thereto, or which otherwise reflect, refer, or relate to any change in or any emphasis or focus on practitioner disciplinary policy, interpretations, enforcement, priorities, or targets on or after August 1, 2016.

RESPONSE:

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INTERROGATORY NO. 6: Identify all communications you have sent, received, or otherwise participated in, on or after January 1, 2016, that refer or relate to the same disciplinary rule and/or policy referred to in the **Cease and Desist Letter**.

ANSWER:

REQUEST FOR PRODUCTION NO. 5: Produce all **documents** that reflect, refer, or relate to the **communications** identified in response to Interrogatory No. 6.

RESPONSE:

1 DATED this 17th day of July, 2017.

2
3 DAVIS WRIGHT TREMAINE LLP
Attorneys for Northwest Immigrant Rights Project

4 By s/ James Harlan Corning
5 Michele Radosevich, WSBA #24282
6 Jaime Drozd Allen, WSBA #35742
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NORTHWEST IMMIGRANT RIGHTS
PROJECT
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CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2017, I caused the above document to be served upon Defendants' counsel of record by electronic mail pursuant to the parties' e-service agreement.

DATED: July 17, 2017

By s/ James Harlan Corning
James Harlan Corning, WSBA #45177

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**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 MICHELLE CURRY

I, MICHELLE CURRY, Associate General Counsel and eDiscovery Coordinator,
Executive Office for Immigration Review (“EOIR”), Office of General Counsel
(“OGC”), in Falls Church, VA 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 an Associate General Counsel in OGC, and, as part of my role, I am the eDiscovery Coordinator. In this role, I coordinate discovery requests for searches of EOIR's electronic files with the Office of Information Technology (OIT) for production in litigation. I am acting as eDiscovery Coordinator to coordinate EOIR's discovery efforts in this litigation, *NWIRP v. Sessions*, 2:17-cv-00716.

2. In my role as eDiscovery Coordinator, I have knowledge of the policies and practices relating to EOIR's eDiscovery tools.

3. Once the OGC requester identifies the individuals whose electronic files should be reviewed, I forward the eDiscovery request to OIT. OIT will then pull electronic files (not including emails) from local servers, and contact the Department of Justice's Justice Management Division (JMD) to coordinate retrieval of a copy of emails.

4. EOIR employees' email is maintained by JMD on Justice Consolidated Office Network ("JCON") Servers that are located in Rockville, Maryland and Pocatello, Idaho.

5. JMD IT retrieves the requested data from the appropriate server located in either Rockville or Pocatello.

6. JMD IT will then send the requested data to EOIR through a File Transfer Protocol (FTP).

7. EOIR verifies the data, loads the data onto its local server, and provides access to the data to the requester.

8. Depending upon the size and quantity of data requested, it takes JMD two weeks or more to provide EOIR with the requested data. The larger the data request, the longer it will take to receive the data and for EOIR to upload the data on its local servers.

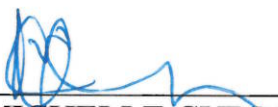
9. For data requests that involve .pst (Outlook email) files, these requests are especially voluminous and quite unstable. They can corrupt repeatedly during transfer, slowing down the process. Additionally, EOIR recently migrated to Microsoft Office 365. OIT has advised me that the stability of the new system is still being tested and could cause additional corruption or other vulnerability to .pst files.

10. After the data is uploaded locally on EOIR's servers I place the data in our eDiscovery tool, Veritas, to allow the requester to filter and run appropriate queries on that data for responsive information to the discovery request. Data can only be uploaded into Veritas after normal working hours due to the burden it places on the network.

11. Given the breadth and scope of the request received from OGC to respond to Plaintiffs' request in the *NWIRP, et. al. v. Sessions* litigation, and thus, the number of EOIR employees' electronic information that must be searched, I

estimate it will be at least 4 – 6 weeks from the date of this declaration before OGC will have access to the data to review. In my experience, once OGC attorneys receive the data to review, they run appropriate queries on the data in order to identify information that is responsive to the discovery request, which takes additional time.

10 August 2017
Date



MICHELLE CURRY
Associate General Counsel
Falls Church, VA