

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

ANSWER

ANSWER

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

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

1 Defendants, by and through undersigned Counsel, hereby answer Plaintiffs' Complaint as
2 follows:

3 The first two pages and first sentence of page 3 are not "claims or defenses in numbered
4 paragraphs" as required by Rule 10 of the Federal Rules of Civil Procedure, and contain
5 characterizations of the case to which no response is required.

6 **1 Parties**

7 1.1 Defendants admit that Plaintiff is a Washington organization. Defendants lack
8 sufficient information to admit or deny the remaining allegations in this paragraph and therefore
9 deny.

10 1.2 Defendants admit that Plaintiff Cheng is an attorney employed by NWIRP and
11 lack sufficient information to admit or deny whether she is licensed to practice law in
12 Washington and therefore deny the remaining allegations.

13 1.3 Admit.

14 1.4 Admit.

15 1.5 Defendants aver that EOIR Disciplinary Counsel Jennifer Barnes, as distinct from
16 the office of EOIR, issued the cease-and-desist letter at issue and admit all remaining allegations
17 in this paragraph.

18 1.6 Defendants deny that Juan Osuna is the director of EOIR and aver that James
19 McHenry is now the Acting Director of EOIR. Defendants aver that Mr. McHenry is sued in his
20 official capacity.

21 1.7 Admit.

22 **2 Jurisdiction and Venue**

23 **A. Defendants lack sufficient information to admit or deny the allegation in this**
24 **header and therefore deny.**

25 2.1 Defendants admit that the Court has jurisdiction under 28 U.S.C. § 1331 and deny
26 the remaining allegations of this paragraph.

2.2 Admit.

3 Facts

ANSWER

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

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1 3.1 Defendants lack sufficient information to admit or deny the allegations in this
2 paragraph and therefore deny.

3 3.2 Defendants lack sufficient information to admit or deny the allegations in this
4 paragraph and therefore deny.

5 3.3 Defendants lack sufficient information to admit or deny the allegations in this
6 paragraph and therefore deny.

7 3.4 Defendants lack sufficient information to admit or deny the allegations in this
8 paragraph and therefore deny.

9 3.5 Defendants lack sufficient information to admit or deny the allegations in the first
10 sentence of this paragraph and therefore deny. Defendants admit the remaining allegations in
11 this paragraph.

12 3.6 Defendants lack sufficient information to admit or deny the allegations in this
13 paragraph and therefore deny.

14 3.7 Defendants lack sufficient information to admit or deny the allegations in this
15 paragraph and therefore deny.

16 **B. Deny.**

17 3.8 Admit. Defendants additionally aver that EOIR rules governing practitioner
18 conduct apply to practitioners as well as attorneys.

19 3.9 Defendants deny the first sentence and admit the remaining allegations in this
20 paragraph.

21 3.10 Defendants deny the allegation that “limited appearances” are not permitted and
22 aver that a practitioner may enter an appearance for custody proceedings only. Defendants admit
23 the allegation in Footnote 1. Defendants admit that “unilateral withdrawals” are not permitted in
24 immigration court and aver that counsel may seek to withdraw from a case with leave from the
25 immigration court or the Board of Immigration Appeals (“BIA”). Defendants deny the
26 allegations in the second and third sentences. Defendants aver that an attorney who represents a
respondent before an immigration judge is not required to continue representation if the

ANSWER

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

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1 respondent appeals to the BIA. Defendants further aver that the attorney may seek permission to
2 withdraw from a case at any time and that, with good cause, such request may be granted.

3 3.11 Defendants lack sufficient information to admit or deny the allegations in this
4 paragraph and therefore deny. Defendants further aver that the EOIR local immigration court
5 administrator lacked legal authority to enter into the purported convention alleged in this
6 paragraph as it would have related to EOIR's professional conduct rules.

7 3.12 Defendants admit the first and third sentences of this paragraph. Defendants
8 admit the allegations in footnote 2. Defendants lack sufficient information to admit or deny the
9 remaining allegations in this paragraph and therefore deny.

10 3.13 Defendants admit that a call occurred between Ms. Burgie, Defendant Barnes, and
11 NWIRP representatives on October 11, 2016. Defendants deny the remaining allegations in this
12 paragraph.

13 3.14 Defendants deny that Defendant Barnes' letter was sent "on behalf of" EOIR's
14 Office of General Counsel, and that "EOIR was aware" of the remaining allegations in the first
15 sentence. Defendants aver that on April 5, 2017, Defendant Barnes sent a letter to NWIRP; that
16 Defendant Barnes, as EOIR Disciplinary Counsel, exercises regulatory authority under 8 C.F.R.
17 part 1003, subpart G and 8 C.F.R. § 1003.0(e); and that EOIR's Attorney Discipline Program is
18 administered by EOIR's Office of General Counsel. Defendants admit the remaining allegations
19 of this paragraph.

20 3.15 Defendants admit the first sentence of this paragraph, but deny the second
21 sentence. Defendants aver that the attached motions contained a notation that identified NWIRP
22 as assisting in the preparation of those motions but deny Plaintiffs' characterization that NWIRP
23 was "clearly identified."

24 3.16 Defendants admit that the motion was one page but lack sufficient information to
25 admit or deny whether it is a template motion, or the extent of preparation assistance provided by
26 a NWIRP advocate to the respondent. Defendants lack sufficient information to admit or deny
the remaining allegations of this paragraph and therefore deny.

ANSWER

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

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1 3.17 Because Ms. Cheng did not enter an appearance before filing, or in association
2 with, this motion, Defendants lack sufficient information to admit or deny whether she prepared
3 or submitted the referenced motion, as well as her level of assistance. Defendants admit that the
4 motion contained explanations for the alien’s failure to attend removal proceedings and admit
5 that the motion argued that the alien is eligible for asylum, withholding, and CAT protection, but
6 lack sufficient information to admit or deny whether the alien is in fact eligible for such relief.
7 Defendants admit the allegations in the fourth sentence. Defendants admit that Ms. Cheng was
8 identified as the individual preparing the application but deny Plaintiffs’ characterization that she
9 was “clearly” identified. Defendants admit the sixth sentence in this paragraph.

10 **C. Deny.**

11 3.18 Defendants admit that there is no right to government-funded appointed counsel
12 in removal proceedings. Defendants aver that government-funded counsel may be appointed to
13 certain detained, unrepresented individuals in Arizona, California and Washington who are
14 found to be incompetent to represent themselves in immigration proceedings because of a
15 serious mental disorder or defect. Defendants aver that these individuals are entitled to be
16 provided with a qualified representative in accordance with the obligations set forth in *Franco-*
17 *Gonzalez v. Holder*, No. CV 10-02211 DMG (DTBx) (C.D. Cal.). Defendants admit the
18 allegations of a “recent national study” or reports by TRAC only as to the existence and content
19 of those reports, but lack sufficient information to admit or deny the truth of alleged findings of
20 those reports and therefore deny all remaining allegations in this paragraph.

21 3.19 Defendants lack sufficient information to admit or deny the allegations in the first
22 two sentences of this paragraph and footnote six and therefore deny. Defendants admit the third
23 sentence of this paragraph. Defendants deny the fourth sentence, aver that documents in foreign
24 languages should be filed with the immigration court with an English translation in accordance
25 with regulations, and aver that while EOIR does not provide direct document translation
26 assistance, funds from EOIR’s Legal Orientation Program may be used to provide translation
assistance in some circumstances.

ANSWER

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

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1 7.8 Because the Court dismissed this cause of action, Defendants do not answer this
2 allegation.

3 **8 Fifth Cause of Action**

4 8.1 Deny.

5 8.2 Deny.

6 8.3 Deny.

7 8.4 Deny.

8 **Prayer for Relief**

9 The remaining parts of Plaintiff's complaint contains a prayer for relief for which no
10 response is required. To the extent a response is required, Defendants deny that Plaintiff is
11 entitled to any relief whatsoever.

12 In addition, Defendants assert the following affirmative defenses and reserve their right
13 to plead additional affirmative defenses according to proof:

14 **FIRST AFFIRMATIVE DEFENSE**

15 The Complaint, and each cause of action alleged therein, fails to state a claim upon which
16 relief can be granted.

17 **SECOND AFFIRMATIVE DEFENSE**

18 Defendants are entitled to judgment as a matter of law.

19 **THIRD AFFIRMATIVE DEFENSE**

20 Any purported convention described or alleged by Plaintiffs between NWIRP and a local
21 court administrator is unenforceable because the court administrator lacked authority to enter
22 into such a purported convention as it would have related to EOIR's professional conduct rules.

23 **FOURTH AFFIRMATIVE DEFENSE**

24 Defendants lawsuit is barred by the statute of limitations, 28 U.S.C. § 2401(a).

25 **FIFTH AFFIRMATIVE DEFENSE**

26 This Court lacks jurisdiction over Plaintiffs' complaint.

ANSWER

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

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1 Dated: January 2, 2018

Respectfully submitted,

2 CHAD A. READLER
Acting Assistant Attorney General

3 WILLIAM C. PEACHEY
4 Director
5 Office of Immigration Litigation

6 GISELA A. WESTWATER
7 Assistant Director

8 C. FRED SHEFFIELD
9 GLADYS STEFFENS-GUZMAN
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10 /s/ Victor M. Mercado-Santana
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21 *Counsel for Defendants*

22 ANSWER

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25 Washington, D.C. 20044
26 (202) 305-7181

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: January 2, 2018

Respectfully submitted.

/s/ Victor M. Mercado-Santana

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