

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

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4            HABEAS CORPUS RESOURCE CENTER AND  
5            THE OFFICE OF THE FEDERAL PUBLIC  
6            DEFENDER FOR THE DISTRICT OF  
7            ARIZONA,

8                                    Plaintiffs,

9                                    vs.

Case No.: C-13-  
4517-CW

ORDER EXTENDING  
TEMPORARY  
RESTRAINING ORDER

10            UNITED STATES DEPARTMENT OF  
11            JUSTICE AND ERIC H. HOLDER, IN  
12            HIS OFFICIAL CAPACITY AS UNITED  
13            STATES ATTORNEY GENERAL,

14                                    Defendants

15            On October 18, 2013, this Court issued a temporary  
16            restraining order and order to show cause why a preliminary  
17            injunction should not issue, and enjoined Defendants during the  
18            pendency of these proceedings from putting into effect the rule  
19            entitled "Certification Process for State Capital Counsel  
20            Systems," published at 78 Fed. Reg. 58,160 (Sept. 23, 2013). The  
21            order was set to expire on November 1, 2013. On October 23, 2013,  
22            the parties submitted a stipulation for an extended briefing  
23            schedule in which they agreed to extend the temporary restraining  
24            order for an additional fourteen days. On October 25, 2013, the  
25            Court granted the parties' stipulation. Pursuant to the parties'  
26            stipulation, the Court set the hearing for November 14, 2013 and  
27            set the temporary restraining order to expire on November 15,  
28            2013.

1 On November 14, 2013 the Court heard oral arguments on  
2 Plaintiffs' motion for preliminary injunction. The Court hereby  
3 extends the temporary restraining order while the preliminary  
4 injunction order is prepared. See State of Me. v. Fri, 483 F.2d  
5 439, 441 (1st Cir. 1973) ("Of course, as long as the hearing on the  
6 preliminary injunction is held expeditiously within the  
7 appropriate time frame, the district court should be able to  
8 extend the restraining order while it prepares its decision.");  
9 SEC v. Unifund Sal, 910 F.2d 1028, 1034 (2d Cir. 1990) (district  
10 court is not prevented from continuing temporary restraining order  
11 while reserving decision on motion for preliminary injunction).

12 Neither party has addressed the issue of what bond should be  
13 required pursuant to Federal Rules of Civil Procedure Rule 65(c).  
14 Courts have discretion to dispense with the security requirement  
15 in circumstances where requiring security would effectively deny  
16 access to judicial review. See Cal. ex rel. Van De Kamp v. Tahoe  
17 Reg'l Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985)  
18 (finding proper the district court's exercise of discretion in  
19 allowing environmental group to proceed without posting a bond),  
20 amended on other grounds, 775 F.2d 998 (9th Cir. 1985); Barahona-  
21 Gomez, 167 F.3d at 1237 (determining \$1,000 bond in class action  
22 not to be an abuse of discretion in light of the showing that "the  
23 vast majority of aliens [affected by class action] were very  
24 poor"). Courts also waive bonds to prevent a chilling effect on  
25 public interest litigation. Landwatch v. Connaughton, 905 F.  
26 Supp. 2d 1192, 1198 (D. Or. 2012). Accordingly, the Court  
27 requires no bond.  
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Defendants remain enjoined from effecting the rule entitled  
"Certification Process for State Capital Counsel Systems,"  
published at 78 Fed. Reg. 58,160 (Sept. 23, 2013), until this  
order is lifted or replaced with a preliminary injunction.

IT IS SO ORDERED.

Dated: 11/15/2013

  
CLAUDIA WILKEN  
United States District Judge