

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LIVING WATER BAPTIST CHURCH,
Plaintiff,
v.
KYU BUM YIM,
Defendant.

Case No. [15-cv-05417-PSG](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR TEMPORARY
RESTRAINING ORDER**

(Re: Docket No. 11)

Ordinarily, “[a] church’s selection of its own clergy is a . . . core matter of ecclesiastical self-governance with which the state may not constitutionally interfere.”¹ In this unusual case, however, Plaintiff Living Water Baptist Church asks the court to intervene against its own pastor.² In particular, LWBC seeks a temporary restraining order barring Defendant Kyu Bum Yim from continuing to serve as the church’s pastor for the most secular of reasons—LWBC’s fear of violating immigration laws.³

At the direction of a prior pastor, LWBC hired Yim in 2012.⁴ Sometime in 2015, several of LWBC’s deacons became concerned that Yim did not have legal authorization to work in the United States.⁵ In September 2015, the church’s Board of Deacons voted to remove Yim from his

¹ *Bollard v. Cal. Province of the Society of Jesus*, 196 F.3d 940, 946 (9th Cir. 1999).

² *See* Docket No. 1

³ *See* Docket No. 11.

⁴ *See id.* at ¶ 10; Docket No. 12 at 3; Docket No. 12-1 at ¶ 3.

⁵ *See* Docket No. 1 at ¶¶ 9-12; Docket No. 12-1 at ¶¶ 4-5.

1 position at the church, and they sent him a letter memorializing the decision and asking him to
2 stop acting on behalf of the church.⁶

3 Yim, however, has refused to leave.⁷ Instead, he still holds himself out as LWBC’s pastor,
4 and he continues to conduct all church services.⁸ Yim claims that LWBC’s congregation supports
5 him, to the point that two-thirds of its members have voted unanimously to expel the deacons who
6 fired Yim and remove them from leadership positions.⁹ In fact, Yim believes that those two
7 former deacons are prosecuting this case on behalf of the church without authority to do so.¹⁰

8 The court does not need to resolve this last issue. Instead, after weighing the parties’
9 submissions and their arguments at yesterday’s hearing,¹¹ the court finds that at this point LWBC
10 has failed to show that it is likely to succeed on the merits of its present claims. The motion for a
11 TRO is DENIED.

12 **I.**

13 The parties consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c) and
14 Fed. R. Civ. P. 72(a).¹²

15 **II.**

16 The standard for issuing a TRO is the same as that for a preliminary injunction.¹³ The
17 latter is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff
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19 ⁶ See Docket No. 1 at ¶ 12; Docket No. 12-1 at ¶ 4; Docket No. 19, Ex. A.

20 ⁷ See Docket No. 1 at ¶ 13; Docket No. 12-1 at ¶ 7.

21 ⁸ See Docket No. 12-1 at ¶ 9.

22 ⁹ See Docket No. 17 at ¶¶ 3-5; *id.*, Ex. A (meeting minutes); *id.*, Ex. C (letter from deacon).

23 ¹⁰ See Docket No. 17 at ¶ 4.

24 ¹¹ See Docket No. 20.

25 ¹² See Docket Nos. 7, 14.

26 ¹³ See *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2 (1977).

1 is entitled to such relief.”¹⁴ “The proper legal standard for preliminary injunctive relief requires a
2 party to demonstrate [1] ‘that he is likely to succeed on the merits, [2] that he is likely to suffer
3 irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his
4 favor, and [4] that an injunction is in the public interest.’”¹⁵ Here, however, the likelihood of
5 success on the merits is so low that the court need not reach the remaining factors.

6 LWBC’s complaint raises only two causes of action: (1) declaratory relief against Yim for
7 violating the Immigration and Nationality Act¹⁶ and (2) a preliminary injunction pursuant to Fed.
8 R. Civ. P. 65.¹⁷ LWBC argues that, by continuing to employ Yim, it subjects itself to liability for
9 employing or harboring an unauthorized worker.¹⁸ But as drafted, the complaint effectively seeks
10 to enforce the INA against Yim. In particular, LWBC asks the court to grant “declaratory relief
11 for enforcement of violations by [Yim] of the INA”¹⁹ and to “declare that [Yim] is in violation of
12 INA Section 237(a)(1)(C)(i).”²⁰

13 As Yim points out, LWBC has no power to enforce the INA in a civil proceeding. The
14 statute provides for no express private right of action, and LWBC has not even argued that it
15 implies such a right.²¹ Regardless of any injury that LWBC might suffer by continuing to employ
16 Yim, it has not stated a cognizable cause of action against him. LWBC therefore has no likelihood
17 of success on the merits of its current complaint. The “extraordinary remedy” of a temporary

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19 ¹⁴ *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008).
20 ¹⁵ *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).
21 ¹⁶ 8 U.S.C. §§ 1101, *et seq.*
22 ¹⁷ See Docket No. 1 at ¶¶ 15-31.
23 ¹⁸ See 8 U.S.C. § 1324a(a)(1)(B), (a)(2); *id.* § 1324(a)(1)(A).
24 ¹⁹ Docket No. 1 at 3.
25 ²⁰ *Id.* at ¶ 25 (citing 8 U.S.C. § 1227(a)(1)(C)(i)).
26 ²¹ *Cf. Nieto-Santos v. Fletcher Farms*, 743 F.2d 638, 641 (9th Cir. 1984) (finding that 8 U.S.C.
27 § 1101(a)(15)(H)(ii) did not grant an express or implied private right of action).

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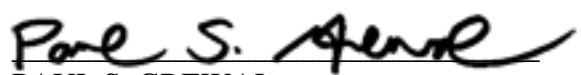
restraining order is not warranted.²²

III.

The motion for a TRO is DENIED. The court will hold a hearing on the motion for a preliminary injunction on April 5, 2016, at 10:00 AM. The parties also are referred to United States District Judge Lucy H. Koh for a settlement conference. The parties shall contact Judge Koh's chambers as soon as possible and schedule a conference within the next 30 days.

SO ORDERED.

Dated: February 9, 2016


PAUL S. GREWAL
United States Magistrate Judge

²² *Winter*, 555 U.S. at 22.