

From: (b)(6):
To: OPLA Field Personnel; OPLA HQ Personnel
Subject: Updated Broadcast Message: Settlement Agreement Impacting Aliens Who Did Not Receive Individualized Notice of the One-Year Deadline to File an Asylum Application – Mendez Rojas v. Johnson, No. 16-1024 (W.D. Wash. filed June 30, 2016)
Date: Thursday, April 7, 2022 10:47:34 AM

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Disseminated on behalf of Ken Padilla and Adam V. Loiacono . . .

This message updates the November 6, 2020 Broadcast Message: Settlement Agreement Impacting Aliens Who Did Not Receive Individualized Notice of the One-Year Deadline to File an Asylum Application – *Mendez Rojas v. Johnson*, No. 16-1024 (W.D. Wash. filed June 30, 2016) below.

Pursuant to the terms of the *Mendez Rojas* settlement agreement, ICE will accept as timely filed any asylum application from a Class Member that was filed on or before March 31, 2022, irrespective of the one-year filing deadline. **This date has since been extended by agreement of the parties to April 22, 2022.** Thus, all claims to class membership, including any motions to reopen and motions to recalendar administratively closed cases, must be raised to U.S. Citizenship and Immigration Services (USCIS), the Immigration Court, or the Board of Immigration Appeals, on or before April 22, 2022, in compliance with Section III.B.3.c. of the settlement agreement.

Questions about this message or the *Mendez Rojas* settlement agreement should be directed to FLO ADPLA (b)(6); (b)(7)(C) @ice.dhs.gov, ILPD ALA (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) @ice.dhs.gov, and DCLD ALA (b)(6); (b)(7)(C) @ice.dhs.gov.

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This message includes internal guidance provided for internal OPLA use only and is not intended for public disclosure. Please ensure that it is treated consistent with applicable guidance.

Thank you,

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From: (b)(6); (b)(7)(C) @ice.dhs.gov>

Sent: Friday, November 6, 2020 10:00 AM

To: OPLA HQ Personnel <(b)(7)(E) @ice.dhs.gov>; OPLA Field Personnel (b)(7)(E) @ice.dhs.gov>

Subject: Broadcast Message: Settlement Agreement Impacting Aliens Who Did Not Receive Individualized Notice of the One-Year Deadline to File an Asylum Application – Mendez Rojas v. Johnson, No. 16-1024 (W.D. Wash. filed June 30, 2016)

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On November 4, 2020, in *Mendez Rojas v. Wolf*, No. 16-1024 (W.D. Wash. filed June 30, 2016), the United States District Court for the Western District of Washington granted the parties' joint motion for approval of a settlement agreement to implement the permanent injunction issued in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. 2018), effective immediately. **This settlement agreement is applicable nationwide**, and is available [here](#).

The settlement applies to:

- Class A ("Credible Fear Class"): All individuals who were encountered by DHS upon arrival or within fourteen days of unlawful entry; were released by DHS after they have been found to have a credible fear of persecution or torture pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii) [INA § 235(b)(1)(B)(ii)] and 8 C.F.R. §§ 208.30, 1208.30, 1003.42; and did not receive individualized notice of the one-year deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B) [INA § 208(A)(2)(b)].

A.I.: All individuals in Class A who *are not* in removal proceedings and who either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

A.II.: All individuals in Class A who *are* in removal proceedings and who either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

- Class B ("Other Entrants Class"): All individuals who were encountered by DHS upon arrival or within fourteen days of unlawful entry; expressed a fear of return to their country of origin; were released by DHS upon issuance of an NTA; and did not receive individualized notice of the one-year deadline to file an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B) [INA § 208(A)(2)(b)].

B.I.: All individuals in Class B who *are not* in removal proceedings and who either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

B.II.: All individuals in Class B who *are* in removal proceedings and who

either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

See Mendez Rojas v. Wolf, No. 16-1024 (W.D. Wash. filed June 30, 2016), ECF Nos. 78 (SETTLEMENT AGREEMENT) and 82 (ORDER).

Individuals who fall within one of the four class definitions, and who otherwise meet the terms of the settlement agreement, are entitled to have their asylum application treated as timely filed by USCIS and EOIR. Subject to all other limitations set forth in the settlement agreement, Classes A(ii) and B(ii) include only individuals who were issued Notices to Appear (NTAs) and/or were in removal proceedings on or after June 30, 2016. Individuals who were issued NTAs on or after June 5, 2020, cannot establish Class membership, as this is the date DHS implemented the revised NTA, which includes notice of the one-year asylum application filing deadline.

Class members must assert their rights by March 31, 2022. The settlement agreement explains how Class members can assert their rights, including instructions for individuals whose removal proceedings have been administratively closed or who have received final orders of removal but who have not yet been removed from the United States. Class members are encouraged, but not required, to utilize template notices of class membership, motions to recalendar, and motions to reopen drafted by Class counsel.

OPLA attorneys should review the settlement agreement and consider the following practice pointers:

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The settlement agreement supersedes the parties' interim agreement, and the associated OPLA Field Legal Operations guidance, that were in place during the course of settlement negotiations.

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Thank you,

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