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Project

Final Settlement Agreement Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications

Frequently Asked Questions¹ **Updated March 25, 2021**

Overview

Under U.S. law, a person must apply for asylum within one year of their last arrival to the United States. 8 U.S.C. § 1158(a)(2)(B). In *Mendez Rojas v. Wolf*, plaintiffs challenged the government's failure to provide adequate notice of this one-year filing deadline to certain asylum seekers who were in the custody of the U.S. Department of Homeland Security (DHS) shortly after their last arrival. The lawsuit also challenged the government's failure to provide a mechanism that allows asylum seekers to file their asylum applications in a timely manner.

On March 29, 2018, the district court issued a permanent injunction, requiring Defendants to 1) provide appropriate notice of the one-year filing deadline, 2) recalculate the deadline from the date of the appropriate notice, and 3) implement a mechanism that ensures asylum seekers have an appropriate opportunity to timely submit their applications for asylum. *Mendez Rojas v. Johnson*, 305 F.Supp.3d 1176 (W.D. Wash. 2018). The parties then entered settlement negotiations as to how the injunction should be implemented. On November 4, 2020, the court adopted the [final settlement agreement](#) reached between the parties in the case. Under the terms of the settlement agreement, the government: (1) agreed to provide adequate notice of the one-year filing deadline to asylum seekers going forward; (2) agreed to create a uniform procedural mechanism (UPM) that would allow asylum seekers to timely file their asylum applications in the future; and (3) agreed to provide relief for certain asylum seekers who were harmed because of the government's failure to provide adequate notice of the one-year filing deadline in the past.

Therefore, certain asylum seekers who applied for asylum more than one year after they entered the United States, and certain asylum seekers who have already been in the United States over one year and have not yet applied for asylum, may benefit from the settlement agreement. Even asylum seekers who were denied asylum already may benefit from the settlement agreement. To benefit from the *Mendez Rojas* settlement agreement, an individual must establish he or she is a member of one of the classes of asylum seekers protected by the lawsuit.

¹ Copyright (c) 2018 American Immigration Council, Dobrin & Han, PC, and the Northwest Immigrant Rights Project. [Click here](#) for information on reprinting this document. The information contained in this FAQ is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. We are grateful for the assistance of Patrick Taurel, of Clark Hill, PLC, for drafting a Notice of Class Membership which is adapted and attached to this FAQ.

A class member must come forward to establish her class membership and request relief under the settlement. **All claims for relief under the *Mendez Rojas* settlement agreement must be submitted on or before April 22, 2022.**²

Detailed information about the *Mendez Rojas* litigation and the terms of the final settlement agreement, including eligibility requirements for class membership and the process through which to request relief, may be found below.

Background

On March 29, 2018, the U.S. District Court for the Western District of Washington granted summary judgment on behalf of the classes presented in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. 2018), holding that the government's failure to provide adequate notice of the one-year filing deadline for asylum applications constitutes a violation of the immigration statute, the Administrative Procedure Act (APA), and class members' due process rights under the Fifth Amendment. In addition, the court held that the government's failure to provide a uniform mechanism through which class members can timely file their asylum applications also violates the immigration statute and the APA.

The government initially appealed the court's decision, but the parties entered into an interim stay agreement pending resolution of settlement negotiations on how to implement the district court's order. Under the terms of the interim stay agreement, Defendants agreed to treat as timely filed all pending and newly filed asylum applications that were adjudicated during the stay filed by class members who did not have final orders of removal. Furthermore, during the pendency of the interim stay agreement, the government agreed to use a broad reading of the class definition, which included individuals who fell within one of the class definitions "regardless of when class members were released from custody, by which component they were detained, the length of their detention, or when the NTA [Notice to Appear] was issued."

After settlement negotiations, the parties reached a final settlement agreement, which was approved by the court on November 4, 2020. **Although similar to the interim stay agreement in many ways, the final settlement agreement incorporates modified class definitions and provides final forms of relief.**

Under the terms of the final settlement agreement, **Defendants will accept as timely filed any asylum application from a class member that was filed or is filed on or before April 22, 2022, where the class member files the appropriate notice of class membership. In order to benefit from the agreement, the class member must take action before April 22.** Detailed information

² Although the final settlement agreement lists the date by which asylum applications or claims of class membership must be filed to receive the benefit of the settlement as March 31, 2022, the correct date is **April 22, 2022**. This is because the parties agreed that the deadline would be dependent upon the date by which Defendants *both* issued prospective notice of the one-year filing deadline and implemented the new uniform procedural mechanism. Because there was a delay in implementing the new uniform procedural mechanism, the deadline for class members to file asylum applications under the terms of the final settlement agreement that would be treated as timely filed for purposes of the one-year deadline was extended to April 22, 2022.

about how to benefit from this relief depending on the stage of immigration proceedings may be found below. *See* Questions 6-10.

1. Who is a member of the *Mendez Rojas* classes?

To benefit from the final settlement agreement, an individual must be a member of one of the two classes certified in the case, as modified by the final settlement agreement:

Class A comprises individuals who:

- Were encountered by DHS upon arrival or within fourteen days of unlawful entry;
- Were released by DHS after having been found to have a credible fear of persecution or torture within the meaning of 8 U.S.C. § 1225(b)(1)(B)(ii) and 8 C.F.R. §§ 208.30, 1208.30, 1003.42;
- Did not receive individualized notice of the one-year filing deadline for asylum applications; and
- Either
 - Have not filed an asylum application; or
 - Filed an asylum application more than one year after their last arrival in the United States.

Class A is divided into two sub-classes: i) those who *are not* in removal proceedings; and ii) those who *are* in removal proceedings.

Class B comprises 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 from DHS custody upon issuance of an NTA;
- Did not receive individualized notice of the one-year filing deadline for asylum applications; and
- Either
 - Have not filed an asylum application; or
 - Filed an asylum application more than one year after their arrival in the United States.

Class B is divided into two sub-classes: i) those who *are not* in removal proceedings; and ii) those who *are* in removal proceedings.

2. What is “individualized notice”?

For purposes of the class definitions, only notice provided by an employee of the Defendants constitutes individualized notice. The Defendants in this case include DHS and the Executive Office for Immigration Review (EOIR). Notice provided by a third party, including “Legal Orientation Program” (LOP) presentations provided by subcontractors to EOIR, does not constitute individualized notice.

3. How do I determine if my client “expressed a fear of return to their country of origin”?

While Class A membership is readily ascertainable based on the credible fear proceedings, Class B membership focuses on whether the individual “expressed a fear of return to their country of origin.” The expression of fear element of Class B membership captures whether the individual placed DHS on notice that they may be seeking protection from persecution or torture. A class member does not have to use specific words to assert a fear. A determination of whether a client expressed a fear of return will depend on what the individual recalls saying to any DHS official about why she came to the United States. Credible testimony or a signed affidavit attesting to an expression constitutes sufficient evidence of an expression of fear. However, practitioners should be aware that DHS may seek to introduce evidence that the individual did not express a fear. For example, DHS may seek to introduce a Form I-213, Record of Deportable/Inadmissible [Noncitizen], if the Form I-213 affirmatively indicates that the individual did not express a fear. In such cases, practitioners should review the facts to determine whether there is a basis to challenge any reliance on the Form I-213.³

4. Are there any limitations to *Mendez Rojas* class membership?

Yes. In addition to establishing the elements of membership in one of the *Mendez Rojas* classes *see* Question 1, *Mendez Rojas* class membership is limited by the following temporal restrictions:

- For potential class members in removal proceedings—Class A(ii) or Class B(ii)—only individuals who were issued NTAs and/or were in removal proceedings **on or after June 30, 2016** qualify for class membership.
- No one who received individualized notice in the form of a revised Form I-862, Notice to Appear, after January 26, 2021, will be considered a class member. The government began issuing revised NTAs with adequate notice of the one-year filing deadline as of June 5, 2020. The government publicly deployed the new uniform procedural mechanism for filing asylum applications on January 26, 2021. Therefore, as of January 26, 2021, the government has complied with its obligations under the final settlement agreement with respect to prospective relief.

However, if individuals remain unable to timely file asylum applications despite the new uniform procedural mechanism, please contact class counsel at mendezrojas@nwirp.org.

5. What are the benefits of the final settlement agreement?

***Relief.* Defendants will accept as timely filed any asylum application from a class member that was filed or is filed on or before April 22, 2022, finding that it complies with the one-**

³ See Collopy, et al., *Challenges and Strategies Beyond Relief* (American Immigration Lawyers Association, Dec. 29, 2015), at 523-25 (Challenging the Form I-213), *available at* <https://www.aila.org/File/Related/11120750b.pdf>.

year filing deadline. Detailed information about how to benefit from this relief depending on the stage of immigration proceedings may be found below. *See* Questions 6-10.

Prospective notice. **Rolled out on June 5, 2020**, the government revised Form I-862, Notice to Appear, to contain the following language:

One Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Asylum seekers who receive the revised Form I-862 will be considered to have been adequately notified of the one-year filing deadline.

The government also revised the Form M-444, Information about Credible Fear Interview in Expedited Removal Cases, to contain similar language. However, the failure to receive the revised Form M-444 will not be considered evidence of a failure to adequately notify an asylum seeker of the one-year deadline.

Uniform procedural mechanism (UPM). The new UPM addresses remaining problems⁴ that arise when the government fails to file an NTA with the immigration court in a timely manner. As a result of this delay, asylum seekers had trouble, and were often prevented from, filing their asylum applications within the one-year deadline. Because DHS had issued an NTA, USCIS would assert a lack of jurisdiction over the application and refuse to accept an affirmatively filed asylum application. However, if DHS had not yet filed the NTA with the immigration court, the immigration court likewise would assert a lack of jurisdiction and refuse to accept a defensive asylum application. The new UPM seeks to account for the lapse in time between when an NTA is issued and when it is subsequently filed and docketed with the immigration court, to ensure that asylum seekers have a means through which to submit their applications within the one-year deadline.

A detailed, step-by-step description of the new UPM is available on USCIS's website at www.uscis.gov/i-589 at "Where to File" and on EOIR's website at <https://www.justice.gov/eoir/page/file/1334796/download>.

Significantly, the UPM includes a "Grace Period Rule," to account for the time between when an asylum applicant will have used the UPM to determine where to file her asylum application and

⁴ Shortly after Plaintiffs filed this case, Defendants changed their policy to address a separate filing issue that Plaintiffs challenged—namely, Defendants' prior policy of requiring persons in removal proceedings to wait to file their asylum application in person at their next master hearing, even though many applicants would not have their hearing until after the first year elapsed. On September 14, 2016, EOIR issued [OPPM 16-01](#), changing its practice to begin allowing asylum applications to be filed at the court window or by mail, rather than requiring that they be filed at a hearing.

when the application arrives at the destined location. The passage of time typically impacts asylum seekers whose NTAs are filed with an immigration court after the asylum application has been mailed to USCIS, but before USCIS has processed it. In the past, USCIS would reject these applications, with potential implications for meeting the one-year deadline. Under the Grace Period Rule, if USCIS determines at the time of receiving the asylum application that an NTA has already been filed and docketed with the immigration court:

If the NTA has been filed and docketed for 21 calendar days or fewer, USCIS will accept the application, note the date that the application is received by USCIS as the filing date for purposes of making a determination for the one-year deadline, and transfer the filing date and forward the application for adjudication to EOIR.

If the NTA has been filed and docketed for 22 calendar days or more, USCIS will reject the application and return it to the asylum applicant with a rejection notice that informs the applicant that the application must be filed with EOIR, informs the applicant of the one-year filing deadline, and provides the applicant with EOIR's Hotline number and Online Automated Case Information, as well as a link to the EOIR website containing a list of immigration courts.

For this reason, practitioners and asylum applicants are strongly encouraged to file their asylum applications as soon as possible after checking the UPM for where to file.

6. How can class members with cases pending before EOIR or USCIS benefit from the final settlement agreement?

Potential class members bear the burden of establishing their class membership. For class members with cases pending before EOIR or USCIS, practitioners should notify the relevant decision maker of the final settlement agreement in *Mendez Rojas* and their client's class membership. Absent evidence that indicates an individual is *not* a class member, credible testimony or a signed affidavit outlining each element of class membership should constitute sufficient evidence. **Please note that in most cases the class member must submit a written notice claiming class membership.** Accompanying this advisory are sample Notices of Class Membership for cases pending before the [Immigration Court](#), the [Board of Immigration Appeals](#) (BIA), and [USCIS](#). See Attachments A, B, & C, respectively.

Practitioners must send such notice to the USCIS asylum office, the immigration judge, or the BIA, depending on where their client's case is currently pending, **on or before April 22, 2022.**

Immigration Court/BIA: For cases pending in Immigration Court or before the BIA, **practitioners must submit notice of class membership in writing** (and for the Immigration Court, in accordance with the standard filing deadlines unless otherwise directed by the immigration judge). Only pro se applicants may make the claim orally before the immigration court.

USCIS: For cases pending before the Asylum Office, notice of class membership **may be made in writing** to the USCIS asylum office with jurisdiction over the pending asylum application either before or after the asylum interview **or orally** during an asylum interview with a USCIS officer. Unless your client is currently scheduled for an interview, it would

be advisable to submit written notice to the asylum office, rather than waiting for the interview to be scheduled or for an NTA to be filed.

If the individual's immigration record contains relevant evidence that the individual may have received individualized notice of the one-year deadline, the government may submit such evidence to the relevant adjudicator to rebut class membership. Practitioners may contest the existence or sufficiency of this evidence of individualized notice, including the timing of the notice.

7. Can class members who are not yet in proceedings (i.e., who have been issued an NTA that has not yet been filed with an immigration court) benefit from the final settlement agreement?

Yes. The final settlement agreement also applies to class members who are not yet in proceedings. Individuals in this situation must receive the benefit of the final settlement agreement as discussed above and practitioners should [notify USCIS](#) of the final settlement agreement in *Mendez Rojas* and their client's class membership when they submit the asylum application. See Attachment C. However, practitioners with class members in this situation should use the new uniform procedural mechanism, see Question 5, to determine the relevant adjudicator of the asylum claim as of the date of filing, in case the NTA has recently been filed with an immigration court. If the asylum application has already been submitted to USCIS the applicant or their representative must make sure to submit their written or oral notice of class membership before April 22, 2022.

8. Does a class member need to be represented by an attorney to receive the benefit of the final settlement agreement?

No. Class members do not need to be represented by attorneys to receive the benefit of the final settlement agreement, but the same burdens and standards apply to both represented and unrepresented class members, with one exception regarding asserting class membership before the Immigration Court:

Immigration Court: For cases pending before the Immigration Court, potential class members who are unrepresented may submit their notice of class membership **orally during a recorded Immigration Court proceeding, or in writing** to the Immigration Court with jurisdiction over the proceedings.

We recommend potential class members review their case with an attorney to determine if they are a class member and what action is needed to claim class member benefits.

9. Can class members with cases that are administratively closed benefit from the final settlement agreement?

Yes. To benefit from the final settlement agreement, potential class members must move to recalendar their cases **on or before April 22, 2022**. Accompanying this advisory as Attachment D is a [sample template motion to recalendar](#). If the government moves to recalendar the case, the potential class member still must submit notice of class membership and, if applicable, the asylum

application **on or before April 22, 2022** to benefit from the terms of the final settlement agreement.

For administratively closed cases where an asylum application was either never filed with the immigration court or was withdrawn from consideration prior to administrative closure, represented or unrepresented potential class members must submit:

- A written [motion to recalendar](#) (*see* Attachment D)
- Notice of class membership (*see* Attachments A or B)
- An asylum application (Form I-589)

The motion and accompanying documents should be filed either with the Immigration Court or with the BIA, depending on which entity the case was last before. Potential class members also should provide an updated mailing address via Form EOIR-33, Change of Address Form. The motion should otherwise be in compliance with existing procedures relating to such motions, including service requirements.

For administratively closed cases where an asylum application was pending at the time the case was administratively closed (and remains pending), represented or unrepresented potential class members must submit:

- A written [motion to recalendar](#) (*see* Attachment D)
- Notice of class membership (*see* Attachments A or B)

The motion and accompanying documents should be filed either with the Immigration Court or with the BIA, depending on which entity the case was last before. Potential class members also should provide an updated mailing address via Form EOIR-33, Change of Address Form. The motion should otherwise be in compliance with existing procedures relating to such motions, including service requirements.

10. Can class members with final administrative orders of removal benefit from the final settlement agreement?

Yes. Potential class members issued a final administrative order of removal on or after June 30, 2016, based *wholly or in part* on the one-year deadline, may file one motion to reopen (MTR) their removal proceedings **by or on April 22, 2022**.

A class member may file a single MTR filed pursuant to the *Mendez Rojas* settlement agreement that is *exempt from statutory and regulatory time and number requirements*. Thus, if the class member has already filed a motion to reopen based on a separate argument, they still may file a *Mendez Rojas* class member motion to reopen.

No fee is required for filing an MTR pursuant to the *Mendez Rojas* settlement agreement.

Accompanying this advisory as Attachment E is a [sample template motion to reopen](#). An MTR filed pursuant to the *Mendez Rojas* settlement agreement also should include notice of class membership (*see* Attachments A or B) and the potential class member should provide an updated mailing address via Form EOIR-33, Change of Address Form.

The motion should otherwise be in compliance with existing procedures relating to such motions, including service requirements.

In Absentia Orders: For individuals with *in absentia* orders of removal, *Mendez Rojas* class membership **may not** be used as an independent basis to move to reopen a case. Potential class members may still assert their class membership on or before April 22, 2022, if the case is reopened, but must otherwise meet the statutory requirements for reopening an *in absentia* order under 8 U.S.C. § 1229a(b)(5)(C).

11. I filed a Notice of Class Membership with the relevant adjudicator while the interim settlement agreement was pending. What do I need to do now?

If practitioners have previously submitted written notice of class membership during the interim period to the relevant adjudicator in a client's case, this should be sufficient for purposes of the settlement. However, to ensure that there is no confusion, practitioners may now want to submit an additional notice, verifying that their client has submitted notice of class membership pursuant to the terms of the settlement.

12. I received a determination on my *Mendez Rojas* claim under the interim settlement agreement. Is that determination still valid?

Yes. A prior adjudication acknowledging class membership determination should remain valid.

As noted above, the class definitions were modified as part of the final settlement agreement. However, the modifications should not impact class members whose claims were adjudicated during the interim time period.

But, if the claim was not adjudicated prior to November 4, 2020 (the date the court approved this settlement), then the terms from the final settlement are controlling.

13. I received a letter from USCIS titled Notice of One-Year Filing Deadline for Asylum Applications. What is this?

As part of the final settlement agreement, Defendants agreed to send retrospective notice about the agreement to certain, potential class members and relied upon information in Defendants' custody to do so. This retrospective notice was sent only to potential Class A members whom Defendants were able to identify and for whom they had a non-detained U.S. mailing address on file as of June 5, 2020. For this subset of Class A members, USCIS identified the last known mailing address of the asylum seeker and the last known attorney of record, and sent notice to both. Notice was not sent to members of Class B. Receipt of such a notice indicates that the government has reason to believe the asylum seeker listed *may be* a *Mendez Rojas* class member. Receipt of the notice is not determinative of class membership. Therefore, this notice is both over inclusive and under inclusive. An asylum seeker still must adhere to the other requirements of the final settlement agreement—set out above—and assert class membership by or on April 22, 2022—to benefit from the final settlement agreement.

14. I received a letter from USCIS titled Notice of One-Year Filing Deadline for Asylum Applications for someone I do not represent/have never represented. What should I do?

Defendants have acknowledged they erred in their initial distribution of notices to attorneys relating to both the A numbers of potential class members and the attorney addresses. Specifically, many notices lacked a complete A number or client name and were misdirected to practitioners with no record of representing the individual asylum seeker. Class counsel suggest that practitioners who receive notice for someone you or your organization do not and have not represented send the notice back to the government at the following address with a letter stating so:

USCIS
Asylum Division
5900 Capital Gateway Dr.
Camp Springs, MD 20588-0009

Defendants have agreed to reissue notices to the correct representative addresses with corrected A numbers, with the corresponding name of the potential class member. Consequently, many individuals may receive two separate notices.

* * *

Any class member or their attorney who believes that their case was wrongly denied based on the terms of the final settlement agreement may contact class counsel at mendezrojas@nwirp.org.

ATTACHMENT A

**TEMPLATE NOTICES OF CLASS MEMBERSHIP
UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT
TO THE IMMIGRATION COURT**

These template notices are not a substitute for independent legal advice supplied by a lawyer familiar with your case.

Only use one of these template notices if:

- You are a member of one of the classes in *Mendez Rojas v. Wolf* (see below);
- You are in removal proceedings that are or were pending before the immigration court; and
- You received a Form I-862 Notice to Appear (NTA) or were in removal proceedings on or after June 30, 2016.

If your case is on appeal to the Board of Immigration Appeals (BIA) or you are not in removal proceedings and your asylum application is pending with U.S. Citizenship and Immigration Services (USCIS), you should use the template notices for cases before those agencies.

If your case is administratively closed, you should also use a **template motion to recalendar**. If you have already been ordered removed (deported) and your case is not still on appeal to the BIA, you may be able to reopen your case and should review the **template motions to reopen**.

Class Membership

Class A

- You are a member of Class A if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You received a screening interview with an asylum officer (a credible fear interview) and DHS released you after the interview because the asylum officer found that you had a credible fear of persecution or torture;
 - The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**
 - You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.
- Subclasses:
 - You are a member of Subclass A.I if you **are not** in removal proceedings.
 - You are a member of Subclass A.II if you **are** in removal proceedings.

Class B

- You are a member of Class B if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You told an immigration officer you were afraid to return to your country of origin and then DHS released you from detention and gave you a Notice to Appear (NTA)

- before an immigration judge in removal proceedings (Form I-862);
- The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**
- You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.
- Subclasses:
 - You are a member of Subclass B.I if you **are not** in removal proceedings.
 - You are a member of Subclass B.II if you **are** in removal proceedings.

When preparing a notice of class membership, please note:

You only need to submit one notice. **Template notice #1** below is for *Mendez Rojas* Subclass A.II members, and **template notice #2** is for *Mendez Rojas* Subclass B.II members.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

If you do not have an attorney, you may **either** give the immigration court a notice of class membership in writing **or** tell the immigration judge that you are a *Mendez Rojas* class member during a hearing at the immigration court. Because asylum applicants do not control the scheduling of their hearings, filing your notice in writing may be the only way to file by the **April 22, 2022** deadline for notices of class membership.

If you are represented by an attorney, you must submit a notice of class membership in writing to the immigration court.

If you have not already submitted an asylum application, you **must** submit one along with the notice of class membership.

- A notice of class membership is not a substitute for an asylum application.
- Instructions on filing a Form I-589, Application for Asylum and for Withholding of Removal, can be found at www.uscis.gov/i-589.

Deadline for Filing

You must notify the immigration court of your class membership under the *Mendez Rojas* Settlement Agreement by **April 22, 2022**.

This means that the immigration court must **receive** the notice on or before **April 22, 2022**.

It is strongly recommended that you mail the notice by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

You must send the notice of class membership and all supporting documents to the immigration court where your removal proceedings are or were pending. The addresses for immigration courts are available online at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

You must send **a copy** of the notice of class membership and all supporting documents to the U.S. Immigration and Customs Enforcement Office of Chief Counsel (also known as the Office of the Principal Legal Advisor). The addresses for these offices are available online at www.ice.gov/contact/legal. You must send the documents to the Office Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently heard.

TEMPLATE NOTICE #1: SUBCLASS A.II

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:)
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

File No.: A[]

Immigration Judge: [NAME]
Next Individual Calendar Hearing: [DATE] at [TIME]

**RESPONDENT'S NOTICE OF *MENDEZ ROJAS* CLASS MEMBERSHIP
(SUBCLASS A.II)**

RESPONDENT’S NOTICE OF MENDEZ ROJAS CLASS MEMBERSHIP

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,¹ Respondent hereby notifies the Immigration Court that **he/she** is a member of a class certified in *Mendez Rojas* and that, therefore, this Court must deem **his/her** asylum application to have been timely filed. *See* Exhibit A (*Mendez Rojas* Settlement Agreement).

Respondent in this case is a member of *Mendez Rojas* Subclass A.II, because:

1. Respondent is in removal proceedings.
2. **[Either:** Respondent was encountered by the Department of Homeland Security (DHS) upon arrival. **or** Respondent was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
3. Respondent was released from DHS custody, after **he/she** was deemed to have a credible fear of persecution or torture.
4. Respondent did not receive individualized notice of the one-year filing deadline.
5. Respondent applied for asylum more than one year after **his/her** last arrival.

See Exhibit B (Respondent’s Declaration).

Pursuant to the *Mendez Rojas* Settlement Agreement, this Court must deem Respondent’s asylum application to have been timely filed because it was filed on or before **April 22, 2022**.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name] _____
Date

¹ The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

[CITY, STATE]

In the Matter of:)
)
)
 [RESPONDENT'S NAME],) File No.: A[]
)
 Respondent,) Next Individual Calendar Hearing: [DATE]
) at [TIME] before Immigration Judge
 In Removal Proceedings.) [NAME]
)
)

Exhibit List in Support of Respondent's Notice of Mendez Rojas Class Membership

Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement

Exhibit B Respondent's Declaration

EXHIBIT B

DECLARATION OF [RESPONDENT'S NAME]

1. My name is [RESPONDENT'S NAME]. I am in removal proceedings.
2. **[Either:** I was encountered by the Department of Homeland Security (DHS) upon arrival.
OR I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I was released from DHS custody, after DHS found that I have a credible fear of persecution or torture.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[RESPONDENT'S NAME]

Respondent

Date

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Notice of *Mendez Rojas* Class Membership (Class A.II) by **first class mail** to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

TEMPLATE NOTICE #2: CLASS B.II

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
[CITY, STATE]

)	
In the Matter of:)	
[RESPONDENT'S NAME],)	
Respondent,)	File No.: A[]
)	
In Removal Proceedings.)	
)	

Immigration Judge: [NAME]
Next Individual Calendar Hearing: [DATE] at [TIME]

RESPONDENT'S NOTICE OF MENDEZ ROJAS CLASS MEMBERSHIP
(SUBCLASS B.II)

RESPONDENT’S NOTICE OF MENDEZ ROJAS CLASS MEMBERSHIP

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,² Respondent hereby notifies the Immigration Court that **he/she** is a member of a class certified in *Mendez Rojas* and that, therefore, this Court must deem **his/her** asylum application to have been timely filed. *See* Exhibit A (*Mendez Rojas* Settlement Agreement).

Respondent in this case is a member of *Mendez Rojas* Subclass B.II, because:

1. Respondent is in removal proceedings.
2. **[Either:** Respondent was encountered by the Department of Homeland Security (DHS) upon arrival **OR** Respondent was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
3. Respondent expressed a fear of return to **his/her** country of origin.
4. DHS released Respondent upon issuance of a Notice to Appear.
5. Respondent did not receive individualized notice of the one-year filing deadline.
6. Respondent applied for asylum more than one year after **his/her** last arrival.

See Exhibit B (Respondent’s Declaration).

Pursuant to the *Mendez Rojas* Settlement Agreement, this Court must deem Respondent’s asylum application to have been timely filed because it was filed on or before **April 22, 2022**.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name] _____
Date

² The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

[CITY, STATE]

_____)
In the Matter of:)
)
[RESPONDENT'S NAME]) File No.: A[]
)
Respondent,) Next Individual Calendar Hearing: [DATE]
) at [TIME] before Immigration Judge
In Removal Proceedings.) [NAME]
_____)

Exhibit List in Support of Respondent's Notice of *Mendez Rojas* Class Membership

- Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement
- Exhibit B Respondent's Declaration

EXHIBIT B

DECLARATION OF [RESPONDENT'S NAME]

1. My name is [RESPONDENT'S NAME]. I am in removal proceedings.
2. [Either: I was encountered by the Department of Homeland Security (DHS) upon arrival.
OR I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I expressed a fear of return to my country of origin.
4. I was released from DHS custody, after DHS issued a Notice to Appear placing me in removal proceedings.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[RESPONDENT'S NAME]
Respondent

Date

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Notice of *Mendez Rojas* Class Membership (Class B.II) by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

ATTACHMENT B

**TEMPLATE NOTICES OF CLASS MEMBERSHIP
UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT TO
THE BOARD OF IMMIGRATION APPEALS**

These template notices are not a substitute for independent legal advice supplied by a lawyer familiar with your case.

Only use one of these template notices if:

- You are a member of one of the classes in *Mendez Rojas v. Wolf* (see below);
- You either were or are currently are in removal proceedings before the Board of Immigration Appeals (BIA); and
- You received a Form I-862 Notice to Appear (NTA) or were in removal proceedings (including having a pending BIA appeal) on or after June 30, 2016.

If your case is pending before an immigration court or your asylum application is pending with U.S. Citizenship and Immigration Services (USCIS), you should use the template notices for cases before those agencies.

If your case is administratively closed, you should also use a **template motion to recalendar**. If you have already been ordered removed (deported) and your case is not still on appeal to the BIA, you may be able to reopen your case and should review the **template motions to reopen**.

Class Membership

Class A

- You are a member of Class A if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You received a screening interview with an asylum officer (a credible fear interview) and DHS released you after the interview because the asylum officer found that you had a credible fear of persecution or torture;
 - The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**
 - You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.
- Subclasses:
 - You are a member of Subclass A.I if you **are not** in removal proceedings.
 - You are a member of Subclass A.II if you **are** in removal proceedings.

Class B

- You are a member of Class B if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You told an immigration officer you were afraid to return to your country of origin and then DHS released you from detention and gave you a Notice to Appear (NTA) before an immigration judge in removal proceedings (Form I-862);
 - The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**

- You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.
- Subclasses:
 - You are a member of Subclass B.I if you **are not** in removal proceedings.
 - You are a member of Subclass B.II if you **are** in removal proceedings.

When preparing a notice of class membership, please note:

You only need to submit one notice. **Template notice #1** below is for *Mendez Rojas* Subclass A.II members, and **template notice #2** is for *Mendez Rojas* Subclass B.II members.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

Your notice of class membership must be submitted **in writing** to the BIA.

If you have not submitted an asylum application already, you **must** submit one along with the notice of class membership.

- A notice of class membership is not a substitute for an asylum application.
- Instructions on filing a Form I-589, Application for Asylum and for Withholding of Removal, can be found at www.uscis.gov/i-589.

Deadline for filing:

You must file a notice of class membership with the BIA under the *Mendez Rojas* Settlement Agreement by **April 22, 2022**.

This means that the BIA must **receive** the notice on or before **April 22, 2022**.

It is strongly recommended that you mail the notice by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

You must send the notice of class membership and all supporting documents to:

Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

You must also send **a copy** of the notice of class membership and all supporting documents to the U.S. Immigration and Customs Enforcement Office of Chief Counsel (also known as the Office of the Principal Legal Advisor). The addresses for these offices are available online at www.ice.gov/contact/legal. The documents should be sent to the Office of Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently decided.

TEMPLATE NOTICE #1: SUBCLASS A.II

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**RESPONDENT'S NOTICE OF *MENDEZ ROJAS* CLASS MEMBERSHIP
(SUBCLASS A.II)**

RESPONDENT’S NOTICE OF MENDEZ ROJAS CLASS MEMBERSHIP

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,¹ Respondent hereby notifies the Board of Immigration Appeals that **he/she** is a member of a class certified in *Mendez Rojas* and that, therefore, this Board must deem **his/her** asylum application to have been timely filed. *See* Exhibit A (*Mendez Rojas* Settlement Agreement).

Respondent in this case is a member of *Mendez Rojas* Subclass A.II, because:

1. Respondent is in removal proceedings.
2. **[Either:** Respondent was encountered by the Department of Homeland Security (DHS) upon arrival. **OR** Respondent was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
3. Respondent was released from DHS custody, after **he/she** was deemed to have a credible fear of persecution or torture.
4. Respondent did not receive individualized notice of the one-year filing deadline.
5. Respondent applied for asylum more than one year after **his/her** last arrival.

See Exhibit B (Respondent’s Declaration).

Pursuant to the *Mendez Rojas* Settlement Agreement, the Board must deem Respondent’s asylum application to have been timely filed because it was filed on or before **April 22, 2022**.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Date

¹ The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:)
)
)
 [RESPONDENT'S NAME],) File No.: A[]
)
 Respondent,)
)
 In Removal Proceedings.)
)
)

Exhibit List in Support of Respondent's Notice of *Mendez Rojas* Class Membership

- Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement
- Exhibit B Respondent's Declaration

EXHIBIT B

DECLARATION OF [RESPONDENT'S NAME]

1. My name is [RESPONDENT'S NAME]. I am in removal proceedings.
2. **[Either:** I was encountered by the Department of Homeland Security (DHS) upon arrival.
OR I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I was released from DHS custody, after DHS found that I have a credible fear of persecution or torture.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[RESPONDENT'S NAME]

Respondent

Date

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Notice of *Mendez Rojas* Class Membership (Class A.II) by **first class mail** to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

TEMPLATE NOTICE #2: SUBCLASS B.II

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NOT DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:)
)
 [RESPONDENT'S NAME],)
) File No.: A[]
 Respondent,)
)
 In Removal Proceedings.)
)

**RESPONDENT'S NOTICE OF *MENDEZ ROJAS* CLASS MEMBERSHIP
(SUBCLASS B.II)**

RESPONDENT’S NOTICE OF MENDEZ ROJAS CLASS MEMBERSHIP

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,² Respondent hereby notifies the Board of Immigration Appeals that **he/she** is a member of a class in *Mendez Rojas* and that, therefore, the Board must deem **his/her** asylum application to have been timely filed. See Exhibit A (*Mendez Rojas* Settlement Agreement).

Respondent in this case is a member of *Mendez Rojas* Subclass B.II, because:

1. Respondent is in removal proceedings.
2. **[Either:** Respondent was encountered by the Department of Homeland Security (DHS). **OR** Respondent was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
3. Respondent expressed a fear of return to **his/her** country of origin.
4. DHS released Respondent upon issuance of a Notice to Appear.
5. Respondent did not receive individualized notice of the one-year filing deadline.
6. Respondent applied for asylum more than one year after **his/her** last arrival.

Pursuant to the *Mendez Rojas* Settlement Agreement, the Board must deem the Respondent’s asylum application to have been timely filed because it was filed on or before **April 22, 2022.**

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Date

² The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. See 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:)
)
)
[RESPONDENT'S NAME],) File No.: A[]
)
Respondent,)
)
In Removal Proceedings.)
)

Exhibit List in Support of Respondent's Notice of *Mendez Rojas* Class Membership

- Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement
Exhibit B Respondent's Declaration

EXHIBIT B

DECLARATION OF [RESPONDENT'S NAME]

1. My name is [RESPONDENT'S NAME]. I am in removal proceedings.
2. [Either: I was encountered by the Department of Homeland Security (DHS) upon arrival.
OR I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I expressed a fear of return to my country of origin.
4. I was released from DHS custody, after DHS issued a Notice to Appear placing me in removal proceedings.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[RESPONDENT'S NAME]
Respondent

Date

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Notice of *Mendez Rojas* Class Membership (Class B.II) by **first class mail** to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

ATTACHMENT C

**TEMPLATE NOTICES OF CLASS MEMBERSHIP
UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT
TO THE USCIS ASYLUM OFFICE**

These template notices are not a substitute for independent legal advice supplied by a lawyer familiar with your case.

Only use one of these template notices if:

- You are a member of one of the classes in *Mendez Rojas v. Wolf* (see below);
- You received a Form I-862 Notice to Appear (NTA) on or after June 30, 2016;
- The U.S. Department of Homeland Security (DHS) did not provide the NTA to an immigration court; and
- You are applying for asylum with U.S. Citizenship and Immigration Services (USCIS).

If your case is currently being heard by an immigration court or the Board of Immigration Appeals, you should use the template notices for cases before those courts.

Class Membership

Class A

- You are a member of Class A if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You received a screening interview with an asylum officer (a credible fear interview) and DHS released you after the interview because the asylum officer found that you had a credible fear of persecution or torture;
 - The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**
 - You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.
- Subclasses:
 - You are a member of Subclass A.I if you **are not** in removal proceedings.
 - You are a member of Subclass A.II if you **are** in removal proceedings.

Class B

- You are a member of Class B if:
 - You were detained by DHS *either* (i) when you came to the United States; *or* (ii) within fourteen days of entering the United States without permission;
 - You told an immigration officer you were afraid to return to your country of origin and then DHS released you from detention and gave you a Notice to Appear (NTA) before an immigration judge in removal proceedings (Form I-862);
 - The government did not notify you that your asylum application had to be filed within one year of your arrival to the United States; **and**
 - You are applying, or you applied, for asylum more than one year after the last time you arrived in the United States.

- Subclasses:
 - You are a member of Subclass B.I if you **are not** in removal proceedings.
 - You are a member of Subclass B.II if you **are** in removal proceedings.

When preparing a notice of class membership, please note:

You only need to submit one notice. **Template notice #1** below is for *Mendez Rojas* Subclass A.I members, and **template notice # 2** is for *Mendez Rojas* Subclass B.I members.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

You may **either** give the USCIS asylum office a notice of class membership in writing **or** tell the asylum officer that you are a *Mendez Rojas* class member at your asylum interview. Because asylum applicants do not control the scheduling of their interviews, filing your notice in writing may be the only way to file by the **April 22, 2022** deadline for notices of class membership.

If you have not submitted an asylum application already, you **must** submit one along with the notice of class membership.

- A notice of class membership is **not** a substitute for an asylum application.
- Instructions on filing a Form I-589, Application for Asylum and for Withholding of Removal, can be found at www.uscis.gov/i-589.

Deadline for Filing

You must notify the asylum office of your class membership under the *Mendez Rojas* Settlement Agreement by **April 22, 2022**.

This means that USCIS must **receive** the notice on or before **April 22, 2022**.

It is strongly recommended that you mail the notice by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

If your asylum application has already been filed with USCIS, your notice of class membership and all supporting documents should be mailed to the asylum office with jurisdiction over your application. The addresses for USCIS asylum offices are available online at <https://egov.uscis.gov/office-locator/#/asy>.

If you have not yet filed your asylum application, you must send the application, the notice of class membership, and all supporting documents to the appropriate USCIS service center. The instructions on filing a Form I-589, Application for Asylum and for Withholding of Removal, include information about where you must file your application. They are available online at www.uscis.gov/i-589.

TEMPLATE NOTICE #1: SUBCLASS A.I

[DATE]

[ADDRESS OF SERVICE CENTER OR ASYLUM OFFICE]

RE: [CLASS MEMBER'S NAME], A []
Notice of Membership in *Mendez Rojas* Class (Subclass A.I)

To Whom It May Concern:

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,¹ [APPLICANT'S NAME] hereby notifies U.S. Citizenship and Immigration Services (USCIS) that he/she is a member of a class certified in *Mendez Rojas* and that, therefore, USCIS must deem his/her asylum application to have been timely filed. See Exhibit A (*Mendez Rojas* Settlement Agreement).

The applicant is a member of *Mendez Rojas* Subclass A.I, because:

1. [Either: The applicant was encountered by the Department of Homeland Security (DHS) upon arrival Or The applicant was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
2. The applicant was released from DHS custody, after he/she was deemed to have a credible fear of persecution or torture.
3. The applicant did not receive individualized notice of the one-year filing deadline.
4. The applicant was issued a Notice to Appear in Removal Proceedings.
5. The applicant applied for asylum more than one year after his/her last arrival.

See Exhibit B (Applicant's Declaration). Pursuant to the *Mendez Rojas* Settlement Agreement, USCIS must deem his/her asylum application to have been timely filed because it was filed on or before April 22, 2022.

Sincerely,

[Applicant's or, if represented, Attorney's Name]

Enclosed: Exhibit A (*Mendez Rojas* Settlement Agreement)
Exhibit B (Applicant's Declaration)

¹ The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. See 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

EXHIBIT B

DECLARATION OF [APPLICANT'S NAME]

1. My name is [APPLICANT'S NAME].
2. [Either: I was encountered by the Department of Homeland Security (DHS) upon arrival.
OR I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I was released from DHS custody, after DHS found that I have a credible fear of persecution or torture.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[APPLICANT'S NAME]
Declarant

Date

TEMPLATE NOTICE #2: SUBCLASS B.I

[DATE]

[ADDRESS OF SERVICE CENTER OR ASYLUM OFFICE]

RE: [APPLICANT'S NAME], A[]
Notice of Membership in *Mendez Rojas* Class (Subclass B.I)

To Whom It May Concern:

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,² [APPLICANT'S NAME] hereby notifies U.S. Citizenship and Immigration Services (USCIS) that he/she is a member of a class certified in *Mendez Rojas* and that, therefore, USCIS must deem his/her asylum application to have been timely filed. See Exhibit A (*Mendez Rojas* Settlement Agreement).

The applicant is a member of *Mendez Rojas* Subclass B.I, because:

1. [Either] The applicant was encountered by the Department of Homeland Security (DHS) upon arrival **Or** The applicant was encountered by the Department of Homeland Security (DHS) within fourteen days of unlawful entry.]
2. The applicant expressed a fear of return to his/her country of origin.
3. The applicant was released upon issuance of a Notice to Appear in Removal Proceedings.
4. The applicant did not receive individualized notice of the one-year filing deadline.
5. The applicant applied for asylum more than one year after my/his/her last arrival.

See Exhibit B (Applicant's Declaration). Pursuant to the *Mendez Rojas* Settlement Agreement, USCIS must deem his/her asylum application to have been timely filed because it was filed on or before April 22, 2022.

Sincerely,

[Applicant's or, if represented, Attorney's Name]

Enclosed: Exhibit A (*Mendez Rojas* Settlement Agreement)
Exhibit B (Applicant's Declaration)

² The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. See 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

EXHIBIT B

DECLARATION OF [APPLICANT'S NAME]

1. My name is [APPLICANT'S NAME].
2. [Either: I was encountered by the Department of Homeland Security (DHS) upon arrival.
Or I was encountered by the Department of Homeland Security (DHS) within fourteen days of having entered the United States without inspection.]
3. I was released upon issuance of a Notice to Appear in Removal Proceedings.
4. I did not receive individualized notice of the one-year filing deadline.
5. I applied for asylum more than one year after I last arrived in the country.

I declare that the following is true and correct. Executed at [CITY, STATE].

[APPLICANT'S NAME]
Declarant

Date

ATTACHMENT D

TEMPLATE MOTIONS TO RECALENDAR UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT TO THE BOARD OF IMMIGRATION APPEALS OR THE IMMIGRATION COURT

These template motions are not a substitute for independent legal advice supplied by a lawyer familiar your case.

You can use one of the templates below for a motion to place your administratively closed removal proceedings back on the active docket (recalendar your case) if you are a member of one the classes in *Mendez Rojas v. Wolf*, described in the settlement agreement (Exhibit A).

You only need to submit one motion.

Template motion #1: Use this template motion and file your motion, exhibits, and proof of service with the Board of Immigration Appeals (BIA) if the BIA issued the order administratively closing your removal proceedings. You should file template motion #1 with the BIA at the address listed below.

Template motion #2: Use this template motion and file your motion, exhibits, proof of service, and proposed order with the immigration court (immigration judge) if an immigration judge issued the order administratively closing your removal proceedings. You should file template motion #2 with the immigration court that issued the order. See below for a link to the addresses of all immigration courts.

Generally, you should not use either template motion if you were ordered removed. Instead, you should review the **template motions to reopen** under the *Mendez Rojas* settlement agreement. However, if you were ordered removed by an immigration judge, appealed to the BIA, *and* then the BIA administratively closed your case, you should use template motion #1.

You should include the following documents with your motion to recalendar:

- A copy of the *Mendez Rojas* Settlement Agreement;
- A notice of class membership;
- A copy of the order administratively closing your removal proceedings, if available;
- A Form I-589, Application for Asylum (you only need to include this if you did not previously file an asylum application or if your asylum application was previously withdrawn); and
- A Form EOIR-33, Change of Address, providing your updated address.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

Deadline for Filing

In order to pursue your benefits under the *Mendez Rojas* Settlement Agreement, you must file a motion to recalendar by **April 22, 2022**.

This means that the immigration court or BIA must **receive** the motion on or before **April 22,**

2022.

It is strongly recommended that you mail the motion by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

If the Board of Immigration Appeals issued the order administratively closing your proceedings, you must send your motion and all supporting documents to the BIA at:

Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

If an immigration judge issued the order administratively closing your proceedings, you should send your motion and all supporting documents to the immigration court that entered the order. The addresses for immigration courts are available online at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

You must send **a copy** of the motion and all supporting documents to the U.S. Immigration and Customs Enforcement Office of Chief Counsel (also known as the Office of the Principal Legal Advisor). The addresses for these offices are available online at www.ice.gov/contact/legal. You must send the documents to the Office of Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently heard.

TEMPLATE MOTION #1: BOARD OF IMMIGRATION APPEALS

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:)
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

File No.: A[]

**RESPONDENT'S MOTION TO RECALENDAR
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT**

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf* (Exhibit A),¹ Respondent, [NAME], hereby moves to recalendar his/her removal proceedings, which were administratively closed by the Board on [DATE]. Respondent is a member of *Mendez Rojas* Class [A / B] (Exhibit B) and wishes to pursue his/her benefits under the *Mendez Rojas* Settlement Agreement.

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was encountered by the U.S. Department of Homeland Security (DHS) [Either: upon arrival or within fourteen days of unlawful entry.] [Either: DHS found Respondent to have a credible fear of persecution or torture and then released Respondent from DHS custody or Respondent expressed fear of returning to his/her country of origin and then was released from DHS custody with a Notice to Appear.] Respondent 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) from DHS or the Executive Office for Immigration Review. *See* Exhibit B.

Respondent filed his/her asylum application with the [LOCATION] Immigration Court on [DATE]. On [DATE], [Either: Respondent or DHS] appealed to the Board. On [DATE], the Board issued an order administratively closing Respondent's removal proceedings. *See* Exhibit C. [Insert if true: Respondent withdrew his/her asylum application on [DATE]].

III. STANDARD FOR RECALENDARING

Administrative closure is an administrative convenience “used to temporarily remove a case from an Immigration Judge’s active calendar or from the Board’s active docket,” but “does not result in a final order.” *Matter of Avetisyan*, 25 I&N Dec. 688, 692, 695 (BIA 2012). At any

¹ The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

time when either party wishes to place a matter back on the active docket, that party may file a motion to recalendar. *See Avetsiyan*, 25 I&N Dec. at 695; *Matter of Wang*, 23 I&N Dec. 924, 925 (BIA 2006); *Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

Pursuant to the *Mendez Rojas* Settlement Agreement, a class member whose removal proceedings have been administratively closed must move to recalendar on or before **April 22, 2022**, if he or she wishes to pursue benefits under the Agreement. *See* Exhibit A.

IV. THE BOARD SHOULD RECALENDAR THIS CASE AND REMAND TO THE IMMIGRATION COURT TO PERMIT RESPONDENT TO PURSUE BENEFITS UNDER THE MENDEZ ROJAS SETTLEMENT AGREEMENT.

Respondent now moves the Board to recalendar these removal proceedings and remand to the immigration court to permit **him/her** to **apply/re-apply** for asylum in accordance with the *Mendez Rojas* Settlement Agreement. **[If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert:** Respondent's application for asylum, on Form I-589, is attached to this motion as Exhibit D.]

V. CONCLUSION

For the foregoing reasons, the Board should recalendar these proceedings and remand Respondent's case to the immigration court for further proceedings.

Respectfully submitted,

[Respondent's or, if represented, Attorney's Name]

Dated: **[DATE]**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**Exhibit List in Support of Respondent's Motion to Recalendar Pursuant to
Mendez Rojas v. Wolf Settlement Agreement**

- Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement
- Exhibit B Respondent's Notice of *Mendez Rojas* Class Membership and Exhibits
- Exhibit C Copy of BIA order, dated [DATE], administratively closing Respondent's removal proceedings
- Exhibit D [IF NECESSARY:] Form I-589, Application for Asylum and for Withholding of Removal
- Exhibit E [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Recalendar by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[Name]

Date

TEMPLATE MOTION #2: IMMIGRATION COURT

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**RESPONDENT'S MOTION TO RECALENDAR
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT**

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf* (Exhibit A),² Respondent, [NAME], moves to recalendar his/her removal proceedings, which were administratively closed by the Court on [DATE]. Respondent is a member of *Mendez Rojas* Class [A / B] (Exhibit B) and wishes to pursue his/her benefits under the *Mendez Rojas* Settlement Agreement.

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was encountered by the U.S. Department of Homeland Security (DHS) [either upon arrival or within fourteen days of unlawful entry.] [Either DHS found Respondent to have a credible fear of persecution or torture and then released Respondent from DHS custody or Respondent expressed fear of returning to his/her country of origin and then was released from DHS custody with a Notice to Appear.] Respondent 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) from DHS or the Executive Office for Immigration Review. *See* Exhibit B.

[If true, insert: Respondent filed his/her asylum application with the [LOCATION] Immigration Court on [DATE]. On [DATE], the Court issued an order administratively closing Respondent's removal proceedings. *See* Exhibit C. [If true: Respondent withdrew his/her asylum application on [DATE]]. [If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert: Respondent's application for asylum, on Form I-589, is attached to this motion as Exhibit D.]

III. STANDARD FOR RECALENDARING

Administrative closure is an administrative convenience “used to temporarily remove a

² The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

case from an Immigration Judge’s active calendar or from the Board’s docket,” but “does not result in a final order.” *Matter of Avetsiyan*, 25 I&N Dec. 688, 692, 695 (BIA 2012). At any time when either party wishes to place a matter back on the active docket, that party may file a motion to recalendar. *See Avetsiyan*, 25 I&N Dec. at 695; *Matter of Wang*, 23 I&N Dec. 924, 925 (BIA 2006); *Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

Pursuant to the *Mendez Rojas* Settlement Agreement, a class member whose removal proceedings have been administratively closed must move to recalendar the case on or before April 22, 2022, if he or she wishes to pursue benefits under the Agreement. *See* Exhibit A.

IV. THE COURT SHOULD RECALENDAR THIS CASE TO PERMIT RESPONDENT TO PURSUE BENEFITS UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT.

Respondent now moves the Court to recalendar these removal proceedings to permit him/her to apply/re-apply for asylum in accordance with the *Mendez Rojas* Settlement Agreement. **[If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert:** Respondent’s application for asylum, on Form I-589, is attached to this motion as Exhibit D.]

V. CONCLUSION

For the foregoing reasons, the Court should recalendar Respondent’s removal proceedings and schedule a master calendar hearing.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Dated: [DATE]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**Exhibit List in Support of Respondent's Motion to Calendar Pursuant to
Mendez Rojas v. Wolf Settlement Agreement**

- Exhibit A *Mendez Rojas v. Wolf Settlement Agreement*
- Exhibit B Respondent's Notice of *Mendez Rojas* Class Membership and Declaration in Support
- Exhibit C Copy of Immigration Judge's order dated [DATE], administratively closing Respondent's removal proceedings
- Exhibit D [IF NECESSARY:] Form I-589, Application for Asylum and for Withholding of Removal
- Exhibit E [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Recalendar by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

A[]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of: [RESPONDENT'S NAME]

File No.: A[]

[PROPOSED] ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Recalendar, it is HEREBY ORDERED that the motion be GRANTED DENIED because:

- DHS does not oppose the motion.
- Respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per _____.
- Other:_____.

Deadlines:

- The application(s) for relief must be filed by _____.
- The respondent must comply with DHS biometrics instructions by _____.

[NAME]
Immigration Judge

Date

Certificate of Service

This document was served by: Mail Personal Service
To: Noncitizen Noncitizen c/o Custodial Officer Noncitizen's Attorney DHS
Date: _____ By: Court Staff _____

ATTACHMENT E

**TEMPLATE MOTIONS TO REOPEN UNDER THE *MENDEZ ROJAS*
SETTLEMENT AGREEMENT TO THE BOARD OF IMMIGRATION APPEALS OR
THE IMMIGRATION COURT**

These template motions are not a substitute for independent legal advice supplied by a lawyer familiar your case.

You can use one of the templates below for a motion to reopen if you qualify for reopening under the *Mendez Rojas v. Wolf* settlement agreement because you:

- Are a member of one the classes in *Mendez Rojas v. Wolf*, described in the settlement agreement (Exhibit A);
- Were issued a final removal order on or after June 30, 2016; and
- An immigration court, the Board of Immigration Appeals (BIA), or a federal court found you ineligible for asylum *or* denied your asylum application wholly or in part because you did not file your asylum application within one year of arriving in the United States.

You only need to submit one motion.

Template motion #1: Use this template motion and file your motion, including exhibits and proof of service, with the BIA if you appealed your removal order to the BIA in the past. If you did not file an appeal, you should use the template motion to the immigration court, instead. You should file template motion #1 with the BIA at the address listed below.

Template motion #2: Use this template motion and file your motion, including exhibits, proof of service, and proposed order with the immigration court (immigration judge) that entered the removal order against you if you did not appeal your removal order to the BIA in the past. If you did file an appeal, you should use the template motion to the BIA, instead. See below for a link to the addresses of all immigration courts.

Do not use this template if an immigration court issued a removal order against you at a hearing where you were not present.

You also may be able to seek reopening for another reason not related to the *Mendez Rojas* settlement agreement. Information about other types of motions to reopen is available [here](#).

You should include the following documents with your motion to reopen:

- A copy of the *Mendez Rojas* Settlement Agreement;
- A notice of class membership;
- A copy of your earlier removal order;
- A Form I-589, Application for Asylum; and
- A Form EOIR-33, Change of Address, providing your updated address.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

Deadline for Filing

You must file any motion to reopen under the *Mendez Rojas* Settlement Agreement by **April 22, 2022**.

This means that the immigration court or BIA must **receive** the motion on or before **April 22, 2022**.

It is strongly recommended that you mail the motion by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

If you appealed your case to the Board of Immigration Appeals in the past, you must send your motion and all supporting documents to the BIA at:

Board of Immigration Appeals
5107 Leesburg Pike
Falls Church, VA 22041

In all other cases, you must send your motion and all supporting documents to the immigration court that entered the removal order against you. The addresses for immigration courts are available online at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

You must send **a copy** of the motion and all supporting documents to the U.S. Immigration and Customs Enforcement Office of Chief Counsel (also known as the Office of the Principal Legal Advisor). The addresses for these offices are available online at www.ice.gov/contact/legal. You must send the documents to the Office Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently heard.

TEMPLATE MOTION #1: BOARD OF IMMIGRATION APPEALS

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:)
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

File No.: A[]

**RESPONDENT'S MOTION TO REOPEN
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT**

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,¹ Respondent, [NAME], moves to reopen removal proceedings. Respondent files this motion to reopen because [he/she] is a member of *Mendez Rojas* Class [A / B] (Exhibit B), was issued a final order of removal on [DATE], and was found ineligible for asylum or had an asylum application denied based wholly or in part on the one-year deadline for filing an asylum application. *See* 8 U.S.C. § 1158(a)(2)(B).

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was encountered by the U.S. Department of Homeland Security (DHS) [Either: upon arrival or within fourteen days of unlawful entry.] [Either: DHS found Respondent to have a credible fear of persecution or torture and then released Respondent from DHS custody or Respondent expressed fear of returning to his/her country of origin and then was released from DHS custody with a Notice to Appear.] Respondent 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) from DHS or the Executive Office for Immigration Review. *See* Exhibit B.

Respondent was ordered removed on [DATE] by the [LOCATION] Immigration Court. *See* Exhibit C. The BIA affirmed the removal order on [DATE]. *See* Exhibit C. Respondent was found ineligible for or denied asylum based wholly or in part on the one-year deadline. *See id.*

The validity of Respondent's prior removal order [has/has not been] the subject of any judicial proceeding. [IF YES: That judicial proceeding took place [DATE]]. The outcome was

¹ The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

[DESCRIBE]. See [Either: Exhibit C OR citation to court of appeals case name and number.]

See 8 C.F.R. § 1003.2(e).

Respondent [is/is not] the subject of any pending criminal proceeding under the Immigration and Nationality Act and [is/is not] the subject of any pending criminal prosecution.

[IF YES: The current status of these proceedings is [DESCRIBE]]. See 8 C.F.R. § 1003.2(e).

III. STANDARD FOR REOPENING

A motion to reopen asks the IJ or BIA to reopen proceedings so that a respondent may present new evidence and a new decision can be entered following an evidentiary hearing. *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reopen “shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material.” 8 U.S.C. § 1229a(c)(7)(B). It must be accompanied by the application for relief and all supporting documents. 8 C.F.R. § 1003.2(c)(1).

Pursuant to the *Mendez-Rojas* Settlement Agreement:

Class members who were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part on the one-year deadline, may file one motion to reopen their removal proceedings, exempt from statutory and regulatory time and number requirements but otherwise in compliance with existing procedures relating to such motions, on or before December 31, 2021. . . . Individuals with in absentia orders of deportation or removal cannot use Class membership as an independent basis to move to reopen deportation or removal proceedings pursuant to this Agreement.

See Exhibit A.

IV. REOPENING PURSUANT TO THE MENDEZ ROJAS SETTLEMENT AGREEMENT IS WARRANTED.

Pursuant to the *Mendez Rojas* Settlement Agreement, members of the *Mendez Rojas* classes who “were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part” on the deadline for filing asylum

applications at 8 U.S.C. § 1158(a)(2)(B) may file a motion to reopen. *See* Exhibit A (Settlement Agreement). Respondent meets those requirements. *See* Exhibit B (Notice of Class Membership); Exhibit C (Prior Order). Furthermore, Respondent is eligible for asylum, withholding of removal and/or protection under the Convention Against Torture. *See* Exhibit D.

Because this motion is filed on or before **April 22, 2022**, this case warrants reopening under the *Mendez Rojas* Settlement Agreement regardless of any statutory or regulatory time and number requirements for motions to reopen that would otherwise apply. *See* Exhibit A. Additionally, Respondent qualifies for reopening regardless of **[his/her]** present location because **[he/she]** was not “already removed as of June 30, 2016.” *See id.* **Pursuant to the *Mendez Rojas* Settlement Agreement, this motion is not subject to a filing fee. *See id.***

VI. CONCLUSION

For the foregoing reasons, the Board should grant this motion to reopen.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Dated: **[DATE]**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**Exhibit List in Support of Respondent's Motion to Reopen Pursuant to
Mendez Rojas v. Wolf Settlement Agreement**

- Exhibit A *Mendez Rojas v. Wolf* Settlement Agreement
- Exhibit B Respondent's Notice of *Mendez Rojas* Class Membership and Exhibits
- Exhibit C Copy of Immigration Judge's prior removal order against Respondent, dated [DATE]; Board of Immigration Appeals decision affirming Immigration Judge order, dated [DATE]; [IF RELEVANT]: Decision of the U.S. Court of Appeals for the [SPECIFY] Circuit, dated [DATE]
- Exhibit D Form I-589, Application for Asylum and for Withholding of Removal
- Exhibit E [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Reopen by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

TEMPLATE MOTION #2: IMMIGRATION COURT

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**RESPONDENT'S MOTION TO REOPEN
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT**

A[]

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,² Respondent, [NAME], moves to reopen removal proceedings. Respondent files this motion to reopen because [he/she] is a member of *Mendez Rojas* Class [A / B] (Exhibit B), was issued a final order of removal on [DATE], and was found ineligible for asylum or had an asylum application denied based wholly or in part on the one-year deadline for filing an asylum application. *See* 8 U.S.C. § 1158(a)(2)(B).

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was encountered by the U.S. Department of Homeland Security (DHS) [Either: upon arrival or within fourteen days of unlawful entry.] [Either: DHS found Respondent to have a credible fear of persecution or torture and then released Respondent from DHS custody or Respondent expressed fear of returning to his/her country of origin and then was released from DHS custody with a Notice to Appear.] Respondent 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) from DHS or the Executive Office for Immigration Review. *See* Exhibit B.

Respondent was ordered removed on [DATE] by the [LOCATION] Immigration Court. *See* Exhibit C. Respondent was found ineligible for or denied asylum based wholly or in part on the one-year deadline. *See id.*

The validity of Respondent's prior removal order [has/has not been] the subject of any judicial proceeding. [IF YES: That judicial proceeding took place [DATE]. The outcome was

² The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

[DESCRIBE]. See [Either: Exhibit C OR citation to court of appeals case name and number.]

See 8 C.F.R. § 1003.23(b)(1)(i).

Respondent [is/is not] the subject of any pending criminal proceeding under the Immigration and Nationality Act. [IF YES: The current status of these proceedings is

[DESCRIBE]]. See 8 C.F.R. § 1003.23(b)(1)(i).

III. STANDARD FOR REOPENING

A motion to reopen asks the IJ or BIA to reopen proceedings so that a respondent may present new evidence and a new decision can be entered following an evidentiary hearing. *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reopen “shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material.” 8 U.S.C. § 1229a(c)(7)(B). It must be accompanied by the application for relief and all supporting documents. 8 C.F.R. § 1003.23(b)(3).

Pursuant to the *Mendez-Rojas* Settlement Agreement:

Class members who were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part on the one-year deadline, may file one motion to reopen their removal proceedings, exempt from statutory and regulatory time and number requirements but otherwise in compliance with existing procedures relating to such motions, on or before December 31, 2021. . . . Individuals with in absentia orders of deportation or removal cannot use Class membership as an independent basis to move to reopen deportation or removal proceedings pursuant to this Agreement.

See Exhibit A.

IV. REOPENING PURSUANT TO THE MENDEZ ROJAS SETTLEMENT AGREEMENT IS WARRANTED.

Pursuant to the *Mendez Rojas* Settlement Agreement, members of the *Mendez Rojas* classes who “were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part” on the deadline for filing asylum

applications at 8 U.S.C. § 1158(a)(2)(B) may file a motion to reopen. *See* Exhibit A (Settlement Agreement). Respondent meets those requirements. *See* Exhibit B (Notice of Class Membership); Exhibit C (Prior Order). Furthermore, Respondent is eligible for asylum, withholding of removal and/or protection under the Convention Against Torture. *See* Exhibit D.

Because this motion is filed on or before **April 22, 2022**, this case warrants reopening under the *Mendez Rojas* Settlement Agreement regardless of any statutory or regulatory time and number requirements for motions to reopen that would otherwise apply. *See* Exhibit A. Additionally, Respondent qualifies for reopening regardless of **[his/her]** present location because **[he/she]** was not “already removed as of June 30, 2016.” *See id.* **Pursuant to the *Mendez Rojas* Settlement Agreement, this motion is not subject to a filing fee. *See id.***

VI. CONCLUSION

For the foregoing reasons, the Court should grant this motion to reopen.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Dated: **[DATE]**

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:) File No.: A[]
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

**Exhibit List in Support of Respondent's Motion to Reopen Pursuant to
Mendez Rojas v. Wolf Settlement Agreement**

- Exhibit A *Mendez Rojas v. Wolf Settlement Agreement*
- Exhibit B Respondent's Notice of *Mendez Rojas* Class Membership and Exhibits
- Exhibit C Copy of Immigration Judge's prior removal order against Respondent, dated [DATE]
- Exhibit D Form I-589, Application for Asylum and for Withholding of Removal
- Exhibit E [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

File No.: A[]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Reopen by **first class mail** to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

[NAME]

Date

A[]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of: [RESPONDENT'S NAME]

File No.: A[]

[PROPOSED] ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Reopen Pursuant to *Mendez Rojas v. Wolf* Settlement Agreement, it is HEREBY ORDERED that the motion be [] GRANTED [] DENIED because:

- DHS does not oppose the motion.
- The respondent does not oppose the motion.
- A response to the motion has not been filed with the court.
- Good cause has been established for the motion.
- The court agrees with the reasons stated in the opposition to the motion.
- The motion is untimely per _____.
- Other: _____.

Deadlines:

- The application(s) for relief must be filed by _____.
- The respondent must comply with DHS biometrics instructions by _____.

[NAME]
Immigration Judge

Date

Certificate of Service

This document was served by: [] Mail [] Personal Service
To: [] Noncitizen [] Noncitizen c/o Custodial Officer [] Noncitizen's Attorney [] DHS
Date: _____ By: Court Staff _____