



Mendez Rojas and the One Year Asylum Bar:

How the Settlement Agreement May Help Your Clients



DOBRIN & HAN, PC
Attorneys at Law

Northwest
IMMIGRANT RIGHTS
Project

Panelists

- Matt Adams, Northwest Immigrant Rights Project
- Vicky Dobrin, Dobrin & Han
- Hilary Han, Dobrin & Han
- Caroline Walters, American Immigration Council



Background/Overview

- On March 29, 2018, the U.S. District Court for the Western District of Washington granted summary judgment on behalf of plaintiffs and the national classes in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. 2018).
- Failure to provide adequate notice of the one-year filing deadline constitutes a violation of the INA, APA, and class members' due process rights under the Fifth Am.
- Failure to provide a uniform mechanism through which class members can timely file their asylum applications also violates the INA and the APA.



Mendez Rojas - Class A

- Were encountered by DHS upon arrival or within 14 days of unlawful entry;
- Were released by DHS after having been found to have a credible fear of persecution or torture;
- 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.



Mendez Rojas – Class B

- Were encountered by DHS upon arrival or within 14 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



Relief

- **The government 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-year deadline.**
- Prospective Notice: rolled out on June 5, 2020
- Uniform Procedural Mechanism
 - A detailed, step-by-step description of the new UPM is available on USICS’s website at www.uscis.gov/i-589



Relief: Pending Cases

- In most cases the potential class member must submit a **written notice claiming class membership** to the relevant adjudicator
 - Immigration Court: <https://www.nwirp.org/wp-content/uploads/2020/07/IJsamplemembershipclaim.pdf>
 - Board of Immigration Appeals: <https://www.nwirp.org/wp-content/uploads/2020/07/BIAsamplemembershipclaim.pdf>
 - USCIS: <https://www.nwirp.org/wp-content/uploads/2020/07/BIAsamplemembershipclaim.pdf>
- Cases not yet in proceedings → notify USCIS of class membership



Relief: Administratively Closed Cases

- Potential class members with administratively closed cases must move to recalendar their cases **on or before April 22, 2022** to benefit from *Mendez Rojas*
- If the government moves to recalendar the case, potential class members must submit notice of class membership and, if applicable, their asylum application **on or before April 22, 2022**
- Sample motion to recalendar: <https://www.nwirp.org/wp-content/uploads/2020/07/Recalendarsample.pdf>
- When to file an asylum application



Relief: Cases with Final Orders

- 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**.
 - Exempt from statutory and regulatory time and number requirements
 - No fee required for filing a *Mendez Rojas* MTR
 - Sample template motion to reopen: <https://www.nwirp.org/uploads/2020/07/Reopensample.pdf>



Cases with *In Absentia* Orders

- *Mendez Rojas* class membership **may not** be used as an independent basis to move to reopen a case with an *in absentia* removal order.
 - If the case is otherwise reopened, potential class members may still assert their class membership **on or before April 22, 2022**.



Interim v. Final Agreements

- A prior adjudication under the interim stay agreement acknowledging a class membership determination should remain valid.
- But if the class membership claim was not adjudicated prior to November 4, 2020, then the terms of the final settlement agreement are controlling.
 - NOTE: the class definitions were modified in the final settlement agreement



Class Notice

- The government sent class notice only to a subset of potential Class A members.
- Receipt of class notice is not determinative of class membership.
- An asylum seeker still must adhere to the other requirements of the final settlement agreement and assert class membership **by or on April 22, 2022** to benefit from the *Mendez Rojas* settlement.
- Receipt of notices for someone you do not represent/have never represented



Additional Resources

- Frequently Asked Questions:
<https://www.nwirp.org/uploads/2021/03/ThirdUpdatedMendezRojasFAQ.3.25.21.pdf>
- Class Notice (translated into Spanish):
<https://www.nwirp.org/uploads/2021/03/NoticeofOneYearFilingDeadlineforAsylumApplicantsSPA.pdf>
- *Mendez Rojas* Lawsuit Links:
<https://www.nwirp.org/mendez-rojas/>



Questions

Questions?

(Use the chat box on the right of your screen to ask questions.)



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