Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Concely del Carmen MENDEZ ROJAS, et al., Plaintiffs, v. Chad F. WOLF, Acting Secretary of Homeland Security, in his official capacity; et al., Defendants.	Case No. 2:16-cv-01024-RSM **SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs Concely Del Carmen MENDEZ ROJAS, Elmer Geovanni RODRIGUEZ ESCOBAR, Lidia Margarita LOPEZ ORELLANA, and Maribel SUAREZ GARCIA (the "Named Plaintiffs"), and the Class (defined in section II of this Settlement Agreement and Release ("Agreement")) (collectively, "Plaintiffs"), and Defendants Chad F. WOLF, Acting Secretary of Homeland Security ("DHS"), in his official capacity; William BARR, Attorney General of the United States, in his official capacity; Matthew T. ALBENCE, Deputy Director for U.S. Immigration and Customs Enforcement ("ICE") (Senior Official Performing the Duties of the Director, ICE), in his official capacity; Kenneth T. CUCCINELLI, Principal Deputy Director of U.S. Citizenship and Immigration Services ("USCIS") (Senior Official Performing the Duties of the Director, USCIS), in his official capacity; Mark A. MORGAN, Chief Operating

Officer and Senior Official Performing the Duties of the Commissioner of U.S. Customs and Border Protection ("CBP"), in his official capacity; and James MCHENRY, Director of the Executive Office for Immigration Review ("EOIR"), in his official capacity (collectively, "Defendants") (together with the Plaintiffs, the "Parties"); by and through their attorneys, hereby enter into this Agreement, as of the date it is executed by all Parties hereto and effective upon approval of the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

I. RECITALS

WHEREAS:

1. On June 30, 2016, Plaintiffs filed a class action complaint alleging that the DHS Defendants failed to provide asylum seekers with notice of the statutory deadline requiring filing of an asylum application within one year of arrival in the United States ("one-year deadline") and alleging that DHS and EOIR Defendants failed to create a uniform procedural mechanism that ensures asylum seekers the opportunity to comply with that deadline;

2. On January 10, 2017, the Court granted Plaintiffs' motion for class certification, certifying the following classes:

   Class A ("Credible Fear Class"): All individuals who have been released or will be released from DHS custody after they have been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v) and did not receive notice from DHS of the one-year deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B);

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

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

   Class B ("Other Entrants Class"): All individuals who have been or will be detained upon entry; express a fear of return to their country of origin; are released or will be released from DHS custody without a credible fear determination; are issued a Notice to Appear (NTA); and did not receive notice from DHS of the one-year deadline to file an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B);

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

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

3. On March 29, 2018, the Court granted Plaintiffs' motion for summary judgment. The Court found DHS Defendants' failure to provide all Class members with notice of the one-year deadline violates the Administrative Procedure Act ("APA"), the Immigration and Nationality Act ("INA"), and the Due Process Clause of the Fifth Amendment. The Court also concluded Defendants' failure to provide an adequate mechanism to timely file asylum applications violates the INA and the APA;

4. On May 25, 2018, Defendants noticed their appeal of the Court's decision to the Ninth Circuit Court of Appeals;

5. On August 2, 2018, the Court granted the Parties' joint stipulated motion to stay all proceedings in the matter, pursuant to an interim agreement, so that the Parties could pursue resolution of the remaining issues in the matter through mediation;

6. The Parties, having engaged in mediation, recognize the need to conclude this litigation, which has been pending for more than three and a half years, and desire to resolve this matter by entering into this Agreement, thereby avoiding the time and expense of further litigation;

7. The Parties, in consultation with their counsel, have determined that this Agreement is fair, reasonable, adequate, and in the best interests of both Parties;

8. Individualized notice will not be provided retrospectively to all Class members under this Agreement. Nothing in this Agreement shall preclude a Class member from asserting extraordinary circumstances as provided by existing law under INA § 208(a)(2)(D) and 8 C.F.R. §§ 208.4(a)(5), 1208.4(a)(5) relating to lack of notice of the one-year deadline, subject to the understanding that this Agreement does not confer any right or privilege with respect to a determination of extraordinary circumstances within the meaning of INA § 208(a)(2)(D) and 8 C.F.R. §§ 208.4(a)(5), 1208.4(a)(5).

NOW THEREFORE, in recognition that the Parties and the interests of justice are best served by concluding the litigation, subject to the Court's approval and entry of an order consistent with this Agreement, the undersigned Parties, through counsel, hereby **STIPULATE** and **AGREE** as follows:

II. DEFINITIONS

1. Action. "Action" means the lawsuit of *Mendez Rojas, et al. v. Wolf, et al.*, No. 2:16-cv-01024-RSM (W.D. Wash.).

2. Classes. As the Classes are defined more narrowly under the settlement than in the Court's Class certification order, the Parties agree to seek the following modification of the Class definitions; this modified definition is subject to the Scope of Class Definitions provisions of section III.A of this Agreement:

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

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

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

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

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

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

3. Class counsel. "Class counsel" or "Plaintiffs' counsel" means counsel appointed by the Court to represent the Classes in accordance with Federal Rule of Civil Procedure 23(g), as follows:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104

Vicky Dobrin
Hilary Han
DOBRIN & HAN, PC
705 Second Avenue, Suite 905
Seattle, WA 98104

Trina Realmuto
Kristin Macleod-Ball
AMERICAN IMMIGRATION COUNCIL
1318 Beacon Street, Suite 18
Brookline, MA 02446

Mary Kenney
Karolina Walters
AMERICAN IMMIGRATION COUNCIL
1331 G Street, NW, Suite 200
Washington, D.C. 20005

4. Class member. "Class member" means a member of one of the Classes, including named Plaintiffs.

5. Court. "Court" means the U.S. District Court for the Western District of Washington.

6. Defendants. "Defendants" means Chad F. WOLF, Acting Secretary of Homeland Security, in his official capacity; William BARR, Attorney General of the United States, in his official capacity; Matthew T. ALBENCE, Deputy Director for ICE (Senior Official Performing the Duties of the Director, ICE), in his official capacity; Kenneth T. CUCCINELLI, Senior Official Performing the Duties of the Director, USCIS, in his official capacity; Mark A. MORGAN, Acting Commissioner of CBP, in his official capacity; and James MCHENRY, Director of EOIR, in his official capacity.

7. Effective date. "Effective Date" means the date this Agreement receives final approval by the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure.

8. Named Plaintiffs. "Named Plaintiffs" are Concely Del Carmen Mendez Rojas, Elmer Geovanni Rodriguez Escobar, Lidia Margarita Lopez Orellana, and Maribel Suarez Garcia.

9. One-year deadline. "One-year deadline" means the deadline requiring asylum seekers to file an application within one year of their last arrival in the United States set forth at 8 U.S.C. § 1158(a)(2)(B) ("Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.").

10. Parties. "Party" or "Parties" means the Defendants or the Plaintiffs, including Class members.

III. TERMS OF THE AGREEMENT

A. Scope of Class Definitions

1. Temporal Scope.

   a. Members of Classes A(ii) and B(ii) include only individuals who were issued NTAs and/or were in removal proceedings on or after June 30, 2016, subject to all other limitations set forth in this Agreement.

   b. After both: (1) Defendants implement the Uniform Procedural Mechanism described in section D of this Agreement; and (2) this Agreement becomes effective, individuals who receive individualized notice of the one-year deadline via the revised Form I-862, Notice to Appear (NTA), described in section C.1.a. of this Agreement, will not be considered Class members.

   c. Individuals already removed as of June 30, 2016, are excluded from Class membership. This does not include those who have been ordered removed but have not yet physically been removed. *See infra, re Motions to Reopen.*

2. Individualized Notice.

   a. Only notice provided by an employee of Defendants will be considered "individualized notice" for purpose of the Class definitions. Notice provided by any third party, including "Legal Orientation Program" presentations provided by subcontractors to EOIR, will not be considered "individualized notice" for purposes of the Class definitions.

B. Asylum Applications Filed by Class Members on or Before March 31, 2022

1. Defendants will accept as timely filed any asylum application from a Class member that was filed or is filed on or before March 31, 2022, irrespective of the one-year deadline.

2. All claims for Class membership, including any motions to reopen, *see infra* section B.5 of this Agreement, must be raised to USCIS, the Immigration Court, or the Board of Immigration Appeals ("Board"), as applicable, on or before March 31, 2022.

3. Burden of Proving Class Membership.

   a. Putative Class members bear the burden of proving Class membership. The putative Class member may meet that burden with sworn oral testimony or a sworn affidavit. The government may rebut an assertion of Class membership with evidence that the putative Class member previously received individualized notice of the one-year deadline and/or does not otherwise meet the Class definition.

   b. In instances where the record contains relevant evidence that a putative Class member may have been provided "individualized notice" of the one-year deadline within the Scope of the Class Definitions provided in section III.A of this Agreement, ICE Office of the Principal Legal Advisor (OPLA) attorneys may submit evidence that the putative Class member is not a Class member as rebuttal evidence. The putative Class member may contest the existence or sufficiency of the notice, including the timing of the notice.

   c. After the effective date of this Agreement, all claims to Class membership must be made no later than March 31, 2022, and all such requests must comply with the following:

      i. Requests to EOIR regarding cases pending in Immigration Court:
         1. Putative Class members represented by counsel and who have asylum applications pending must make the request in writing in accordance with the standard filing deadlines before the Immigration Court (unless otherwise directed by the Immigration Judge);
         2. Putative Class members who are pro se may make the request in writing to the Immigration Court with jurisdiction over the proceeding, or orally during a recorded Immigration Court proceeding. *See* sample at https://www.nwirp.org/wp-content/uploads/2020/07/IJsamplemembershipclaim.pdf.

      ii. Requests to EOIR regarding cases pending before the Board:
         1. All putative Class members must make the request in writing to the Board. *See* sample at https://www.nwirp.org/wp-content/uploads/2020/07/BIAsamplemembershipclaim.pdf.

      iii. Requests to USCIS regarding cases before the Asylum Office:
         1. Putative Class members may make the request in writing to the USCIS asylum office with jurisdiction over their pending asylum applications prior to or after the asylum interview, or orally during an asylum interview with a USCIS officer. *See* sample at https://www.nwirp.org/wp-content/uploads/2020/07/USCISsamplembershipclaim.pdf.

2. USCIS may require putative Class members to submit written documentation after the interview to support the assertion of Class membership.

4. Motions to Recalendar Administratively Closed EOIR Proceedings.

a. To assert Class membership, an individual with an administratively closed case must move to recalendar the case on or before March 31, 2022, in accordance with subparagraph (i) or (ii), below. Class members are encouraged to use the sample template found at https://www.nwirp.org/wp-content/uploads/2020/07/Recalendarsample.pdf and notice of Class membership. In addition, Class members seeking to recalendar a case should provide an updated mailing address to Defendants via Form EOIR-33, Change of Address Form. Class members with an administratively closed case who fail to file a notice of Class membership and motion to recalendar on or before March 31, 2022, forfeit their right to pursue benefits under this Agreement.

i. For administratively closed cases where a Form I-589, Application for Asylum and for Withholding of Removal, was never filed with the Immigration Court or the Form I-589 was withdrawn from consideration by the Immigration Court prior to administrative closure, the Class member must affirmatively file a written motion to recalendar their case with the Immigration Court, notify the Immigration Court of their status as a Class member, and concurrently file Form I-589 on or before March 31, 2022. If the case was last before the Board, the motion to recalendar must be filed with the Board.

ii. For administratively closed cases where a Form I-589 was pending at the time the case was administratively closed, the Class member must file a written motion to recalendar and notify the Immigration Court of their status as a Class member on or before March 31, 2022.

b. If ICE OPLA makes the initial motion to recalendar a Class member's case, the Class member will still be subject to the appropriate time period described above in section III.B. of this Agreement for filing their Form I-589 and for asserting Class membership.

5. Motions to Reopen EOIR Proceedings.

a. Except as provided in paragraph c, below, 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 March 31, 2022. No fee is required for filing a motion to reopen filed pursuant to this settlement agreement. Class members with final removal orders who wish to seek a stay of removal must file a stay request in accordance with existing procedures.

b. Class members are encouraged to use the sample template motion to reopen found at https://www.nwirp.org/wp-content/uploads/2020/07/Reopensample.pdf and notice of Class membership. In addition, Class members seeking to reopen a case should provide an updated mailing address to Defendants via Form EOIR-33, Change of Address Form.

c. In Absentia Orders. 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. Rather, they must meet the statutory requirements for reopening under 8 U.S.C. § 1229a(b)(5)(C).

6. Service. Unless otherwise specifically noted, all filings with the Immigration Courts and the Board must comply with governing regulations and EOIR's policies and procedures, as published on the EOIR website at www.justice.gov/eoir. For example, a copy of any motion filed with the Immigration Court or the Board by a putative Class member or their representative must be simultaneously served on ICE OPLA either electronically through the ICE eService portal (register at https://eserviceregistration.ice.gov/) or via mail. Each motion must include a certificate of service documenting service on ICE OPLA. The addresses for ICE OPLA where service must be made are available online at www.ice.gov/contact/legal. Failure to comply with these requirements may result in EOIR rejecting the filing.

C. Notice of the One-Year Deadline

1. Prospective Notice. For purposes of providing notice of the one-year deadline for applying for asylum that is required under 8 U.S.C. § 1158(a)(2)(B):

a. DHS will add the following language to the Notice to Appear:

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.

b. Additionally, although not required to constitute individualized notice, DHS will add similar warning language to Form M-444, Information about Credible Fear Interview in Expedited Removal Cases:

After a Positive Credible Fear Determination by an Asylum Officer or Immigration Judge: If you receive a charging document for proceedings in immigration court and wish to apply for asylum, you must file Form I-589 Application for Asylum and for Withholding of Removal. The Form I-589 and instructions 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 INA § 208(a)(2)(B).

c. Neither ICE nor putative Class members may raise receipt of the revised Form M-444 (or lack thereof) as evidence of notice for the purpose of demonstrating Class membership.

2. Retrospective Notice.

a. USCIS will mail individual notice to potential members of Class A(i) and (ii):

i. Who were found to have a positive credible fear on or after June 30, 2012, and on or before the date the revised NTA is fully implemented by all DHS components; and

ii. Who are or were in removal proceedings on or after June 30, 2016, or were issued NTAs on or after June 30, 2016; and

iii. For whom Defendants have a non-detained U.S. mailing address on file as of the date the revised NTA is fully implemented by all DHS components; and

iv. Who were not removed from the United States between June 30, 2012, and June 30, 2016, but

v. Excluding individuals who Defendants identify as having received a final grant of asylum by USCIS, an immigration judge, or the Board.

b. USCIS will attempt to identify the last known mailing address and the last known attorney of record provided to Defendants for potential members of Class A(i) and (ii), as of the date the revised NTA is fully implemented by all DHS components, and mail the notice to the individual and attorney of record, if any, at those addresses.

c. Receipt of a notice is not a definitive determination that the individual is a Class member.

D. UNIFORM PROCEDURAL MECHANISM

USCIS's website at www.uscis.gov/i-589 and EOIR's website at www.justice.gov/eoir

will contain information regarding how to determine, based on information available on EOIR's Automated Case Information Hotline ("Hotline"), 1-800-898-7180 (nationwide toll-free) or 1-304-625-2050 (local toll-free), and EOIR's Online Automated Case Information at https://portal.eoir.justice.gov/InfoSystem, where to file an asylum application. The process will be as follows:

Any individual wishing to file Form I-589, Application for Asylum and for Withholding of Removal, regardless of Class membership, should call the Hotline or access the Online Automated Case Information immediately prior to filing Form I-589 to determine where it should be filed.

1. File with EOIR. If the Hotline or Online Automated Case Information indicate that an NTA has been filed and docketed with EOIR, the individual should file Form I-589 with EOIR. The Hotline or Online Automated Case Information shall identify an address for the Immigration Court where the individual should file. If an Immigration Court receives Form I-589 and determines that it does not have jurisdiction over the individual's application, the Immigration Court shall promptly notify the individual and return Form I-589 to the individual. If venue is proper in a different Immigration Court, the EOIR notice shall specify the address of the correct Immigration Court for filing Form I-589.

2. File with USCIS. If the Hotline or Online Automated Case Information do not indicate that an NTA has been filed and docketed with EOIR, the individual should file Form I-589 with USCIS. The date on which Form I-589 is received by USCIS shall be considered the filing date for the purpose of making a determination for the one-year deadline in all cases covered by this paragraph, subject to the Grace Period Rule described in paragraph 3 below. USCIS will assess jurisdiction over the adjudication of Form I-589, and, where appropriate, USCIS shall transfer the filing date to EOIR and forward Form I-589 to EOIR for adjudication.

3. Grace Period Rule. If USCIS determines at the time of receiving Form I-589 that an NTA has already been filed and docketed with EOIR:

    a. If the NTA has been filed with EOIR and docketed for 21 calendar days or fewer, USCIS will accept Form I-589. The date on which Form I-589 is received by USCIS shall be considered the filing date for the purpose of making a determination for the one-year deadline. USCIS shall then transfer the filing date to EOIR and forward Form I-589 to EOIR for adjudication.

    b. If the NTA has been filed with EOIR and docketed for 22 calendar days or more, USCIS will reject the filing and return Form I-589 to the applicant.

    c. The USCIS rejection notice shall inform the applicant that Form I-589 must be filed with EOIR and shall provide EOIR's Hotline number and Online Automated Case Information, as well as a link to the EOIR website containing a list of Immigration Courts. The USCIS rejection notice shall also inform the applicant

that failure to file Form I-589 within one year of the applicant's last arrival in the United States may bar the applicant from eligibility to apply for asylum pursuant to 8 U.S.C. § 1158(a)(2)(B).

Defendants will implement the Uniform Procedural Mechanism described in section D within 60 days of the Effective date of this Agreement. If Defendants are unable to fully implement the Uniform Procedural Mechanism in that time, they shall inform Plaintiffs' counsel of the delay as early as practicable and post notice on USCIS and EOIR's website. Additionally, the deadlines in section III.B shall be delayed for an amount of time equal to the delay in implementation.

E. Dispute Resolution Mechanism

1. The Court shall retain jurisdiction to supervise the implementation of this Agreement and to enforce its terms, and the terms of this Agreement shall be incorporated into the Order of the Court approving the Agreement, subject to the limitations described in paragraph F.7 of this Section.

2. The Parties agree that the Court shall not be asked to exercise jurisdiction to supervise the implementation of this Agreement or to enforce its terms until exhaustion of the following dispute resolution process:

   a. Failure to Implement Terms. Should Class counsel believe in good faith that Defendants have failed to implement specific terms of this Agreement, Class counsel will promptly notify Defendants, by counsel and in writing, of the specific grounds upon which noncompliance is alleged. Within thirty (30) calendar days after receipt of the notice from Class counsel, counsel for Defendants shall notify Class counsel of Defendants' position and any action they have taken or intend to take in connection therewith. Counsel for the Parties shall negotiate in good faith in an effort to resolve any remaining disputes. The Parties agree that this negotiation period will be considered exhausted if either party determines that negotiations have reached an impasse. The party that chooses to terminate negotiations shall timely notify the other party that they have done so.

   b. Legislative Change. Should Class counsel or Defendants believe in good faith that a statute materially changes or affects rights and obligations under this Agreement, Class counsel or Defendants will promptly notify the other party in writing. Within thirty (30) calendar days after receipt of the notice, a response shall be provided in writing explaining the other party's position on the matter. Class counsel and Defendants shall negotiate in good faith in an effort to resolve the dispute. The negotiation period shall be considered exhausted if either party determines that negotiations have reached an impasse. The party that chooses to terminate negotiations shall notify the other party that they have done so.

c. Meet and Confer. If any dispute cannot be resolved informally among counsel for the Parties under paragraphs a. or b. of this section of the Agreement, counsel for either Party may request that counsel meet and confer to resolve the dispute. Agreement to participate in the meet and confer process shall not be unreasonably withheld. In the event of such a request, Class counsel and Defendants shall meet on a mutually agreeable date and time, and at a mutually-agreeable location, which may include telephonic meeting. They shall endeavor to resolve the scheduling of a meet and confer within twenty-one (21) calendar days of such request, and shall use the meet and confer to attempt to arrive at an amicable resolution of the dispute. If no mutually agreeable date, time, or location can be established or if a meet and confer is reasonably rejected, the Parties may seek mediation under paragraph d. of this section, or seek court enforcement under paragraph e. of this section of the Agreement.

d. Mediation. As an alternative to a meet and confer, or following an unsuccessful meet and confer as described in this Agreement, and upon mutual agreement of the Parties, they may attempt to mediate the dispute before a mutually agreeable mediator, magistrate, or judge. Such mediation is not a condition precedent to enforce this Agreement or terminate the Agreement through a motion to the Court. If the Parties elect to pursue mediation and the dispute has not been resolved through mediation within forty-five (45) days, counsel may seek to enforce the Agreement or terminate the Agreement through a motion to the Court. The Parties agree that the mediation process shall be conducted confidentially and that no public disclosure shall be made relating to the dispute before or during the mediation process. All documents and information disclosed by either Party during the mediation process shall not be admissible in any judicial proceeding. All statements or conclusions of the mediator shall not be admissible in any subsequent judicial proceeding.

e. District Court Resolution. If the Parties do not reach resolution under the procedures of paragraphs a-d of this section of the Agreement, either Party may then file a motion requesting that the Court resolve the dispute.

3. The Parties agree that any action or proceeding to enforce the terms of this Agreement or terminate the Agreement shall be brought exclusively in the Court. The Court shall have the power to award such relief and issue such judgments as the Court deems proper and appropriate.

4. The Parties agree that the dispute resolution provisions of this Agreement are not intended to provide an alternate procedure by which individual Class member claims to relief under the Agreement shall be resolved. Whether or not an individual putative Class member's claim for relief has been properly adjudicated under this Agreement by the USCIS Asylum Division or by EOIR shall be resolved through established administrative processes and procedures, as provided under the Immigration and Nationality Act and Title 8 of the Code of Federal Regulations, which ultimately

afford putative Class members with review before a U.S. Circuit Court of Appeals by means of a properly filed Petition for Review ((“PFR).”).

F. Conditions and Approval of the Settlement

1. Effective Date of Agreement. After this Agreement has been signed by all Parties, it will become effective upon Final Approval by the Court.

2. Submission of the Settlement Agreement to Court for Preliminary Approval. Within 7 days after execution of this Agreement, the Parties shall apply to the Court for Preliminary Approval of the Agreement. The Parties shall file a Joint Motion for Preliminary Approval and Request for a Fairness Hearing, and they shall attach a copy of this Agreement, the proposed Notice to the Class regarding settlement, in the form of Exhibit A attached hereto, and such other documents that the Parties determine are necessary for the Court’s consideration.

3. Effect of the Court’s Denial of the Agreement. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, Parties agree to meet and confer to work to resolve the concerns articulated by the Court and modify the agreement accordingly.

4. Fairness Hearing. At the Fairness Hearing, as required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2), the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate, and binding on the Class, all Class members, and all Plaintiffs.

5. Objections to Settlement. Within 7 days following the Court’s Preliminary Approval of the Agreement, Defendants will post the Notice to the Class regarding settlement, attached as Exhibit A to this Agreement, on USCIS’s website and on EOIR’s website, post in all Immigration Courts, distribute to the EOIR pro bono list, and distribute to community-based organizations and other interested parties. Specifically, EOIR will post the notice on a bulletin board in the waiting room for each Immigration Court where there is such a bulletin board. In Immigration Courts that lack bulletin boards, EOIR will post the notice in the equivalent location where respondents and counsel may see it. Plaintiffs will distribute the Notice to the Class, attached as Exhibit A to this Agreement, to all American Immigration Lawyers Association (“AILA”) chapters, and post on the websites of AILA, Northwest Immigrant Rights Project, and the American Immigration Council. Within 30 days of issuance of the Notice to the Class, in the above-described manner, any Class member who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Class member, and whether the Class member intends to appear at the Fairness Hearing. The Parties will have 30 days following the objection period in which to submit answers to any objections that are filed. The notice to the

Clerk of the Court shall be sent to: Clerk, U.S. District Court for the Western District of Washington, 700 Stewart Street, Suite 2310, Seattle, WA 98101, and both the envelope and letter shall state: "Attention: *Mendez Rojas v. Wolf*, No. 2:16-cv-01024-RSM (W.D. Wash.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set forth in the Notice to Class, Exhibit A.

6. Final Approval. The Court's Final Approval of the settlement set forth in this Agreement shall consist of its orders granting each of the Parties' requests made in connection with the Fairness Hearing, resolving all claims before the Court, and dismissing the Action with prejudice, with the exception that following Final Approval of this Agreement, the Court shall retain jurisdiction over only the following matters as provided in this subsection and only until the date the agreement terminates as described in section F, subsection 7.

   a. Claims by any Party in accordance with the provisions laid out in section III.D of this Agreement that any other Party has committed a violation of this Agreement; and

   b. The express repudiation of any of the terms of this Agreement by any Party.

   Upon Final Approval, Defendants shall dismiss the appeal pending before the U.S. Circuit Court of Appeals for the Ninth Circuit and styled as *Concely Mendez Rojas, et al. v. Kirsten Nielsen, et al.*, Case No. 18-35443.

7. Termination Date. This Settlement Agreement implementing terms of the permanent injunction issued by the district court shall terminate three (3) years from the Effective Date unless, by mutual agreement, the parties agree to an earlier termination date. Termination of the settlement agreement does not terminate the injunction's requirements that Defendants create and maintain a uniform procedural mechanism for filing asylum applications or that Defendants provide individualized notice of the one-year filing deadline. Subject to the terms of section III.B of this Agreement, all claims from putative Class members that remain pending on the Termination Date will continue to be treated under the terms of this Agreement until those applications receive a complete and final adjudication.

G. Attorney's Fees and Costs

Attorney fees are awarded to Class counsel in the amount of $552,077.91. The hours and rates applicable for these fees, see Exhibit B, have been reviewed by the Court and determined to be appropriate. Defendants' payment of the Attorneys' Fee Settlement Amount shall satisfy any claims by Plaintiffs' counsel and/or Class counsel for attorney fees and costs related to and for this Action.

H. Miscellaneous Provisions

1. Entire Agreement. This Agreement, including the Exhibit(s), constitutes the entire agreement between the Parties with respect to the Action and claims released or

discharged by the Agreement, and supersedes all prior discussions, agreements and understandings, both written and oral, among the Parties in connection therewith.

2. No Modification. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendants and approved by the Court.

3. Full and Final Settlement. The Parties intend that the execution and performance of this Agreement shall, as provided above, be effective as a full and final settlement of and shall fully dispose of all claims and issues that Plaintiffs raise against Defendants in the Action. The Parties acknowledge that this Agreement is fully binding upon them during the life of the Agreement.

4. Severability. If any provision of this Agreement is declared null, void, invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect.

5. No Admission of Wrongdoing. This Agreement, whether or not executed, and any proceedings taken pursuant to it:

   a. Shall not be construed to waive, reduce, or otherwise diminish the authority of the Defendants to enforce the laws of the United States against Class members, consistent with this Agreement, the Constitution and laws of the United States, and applicable regulations;

   b. Shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against any of the Parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

6. Disclaimer. Nothing in this Agreement should be construed as establishing any right or interest in challenging an adverse decision on a Form I-589, or any other DHS or EOIR action, decision, determination, order, form, instruction, training material, delay, or process or procedure, beyond those expressly provided herein or under law.

7. Time for Compliance. The dates described herein refer to calendar days, unless otherwise stated. If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effective as if it had been performed on the day or within the period of time specified by or under this Agreement.

8. Notices. Except as specified elsewhere in this agreement, all notices required or permitted under or pertaining to this Agreement shall be in writing. Any notice shall be deemed to have been completed upon mailing or emailing. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

TO PLAINTIFFS:

Matt Adams
Northwest Immigrant Rights Project
615 Second Ave., Ste. 400
Seattle, WA 98104
matt@nwirp.org

TO DEFENDANTS:

J. Max Weintraub
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

9. Opportunity to Review. The Parties acknowledge and agree that they have reviewed this Agreement with legal counsel and agree to the language of the provisions it contains. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, interpretation of the Agreement shall not be resolved by any rule providing for interpretation against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party hereto participated in the drafting hereof.

10. Execution of Other Documents. Each Party agrees to execute and deliver such other documents and instruments and to take further action as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which may be executed in counterparts and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective Parties.

Consented and agreed to by:

DATED: July 20, 2020 Respectfully submitted,

For the Plaintiffs:

/s/ *Matt Adams*
Matt Adams
Northwest Immigrant Rights Project
615 Second Ave., Suite 400
Seattle, WA 98104

For the Defendants:

/s/ *J. Max Weintraub*
J. Max Weintraub
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044