

The *Garcia Perez v. USCIS* Settlement Agreement

Presented by Class Counsel:

Northwest Immigrant Rights Project
www.nwirp.org

National Immigration Litigation Alliance
www.immigrationlitigation.org



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***Garcia Perez v. USCIS* – Settlement Highlights**

What we'll cover today:

- New mechanisms to receive notice of Asylum Employment Authorization Document (EAD) Clock calculations
- New mechanisms to challenge clock stoppages and calculations
- Policy-specific changes to ensure that the Asylum EAD Clock does not stop or that it restarts in certain situations

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What is the Asylum EAD Clock?



- USCIS may provide work authorization to asylum applicants after their asylum application has been pending for 180 days. 8 U.S.C. § 1158(d)(2).
- USCIS and EOIR use an “Asylum EAD Clock” to calculate the days on an individual’s clock.
- The clock is suspended for any applicant-caused delay. 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2).
 - Examples of applicant-caused delay: requesting to reschedule a hearing or interview, applicant-caused delay in biometrics processing
- The clock also stops when an individual’s case is denied.

The *Garcia Perez* Case



- *Garcia Perez* addresses several Asylum EAD Clock issues:

(1) USCIS's and EOIR's failure to provide adequate notice of adverse Asylum EAD Clock determinations that stop the clock or do not give clock credit; and

(2) USCIS's and EOIR's failure to provide an opportunity to challenge adverse Asylum EAD Clock determinations.



The *Garcia Perez* Case

Challenged 3 specific policies/practices that stopped the Asylum EAD Clock or prevented it from restarting:

1. Remands from the BIA or federal courts of appeals (clock did not restart)
2. Asylum applications involving unaccompanied children (clock sometimes stopped if child in removal proceedings)
3. Change of venue motions (stopped clock)



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Class Definitions

- Includes an overall class and 3 subclasses.
- Overall Class: All noncitizens in the United States who have filed or will file with USCIS or EOIR a complete Asylum Application and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the noncitizen filed a complete Asylum Application.

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Remand Subclass

Remand Subclass:

Class members whose Asylum EAD Clocks were or will be stopped following a decision by an Immigration Judge and whose Asylum EAD Clocks are not or will not be started or restarted following an appeal in which either the BIA or a federal court of appeals remands their case for further adjudication of their asylum and/or withholding of removal claims.



Unaccompanied Children Subclass



Unaccompanied Children Subclass:

Class members in removal proceedings who are unaccompanied children (UCs) pursuant to 6 U.S.C. § 279(g) and whose Asylum EAD Clocks are not started or will be stopped while waiting for USCIS to adjudicate the filed Asylum Application.



Change of Venue Subclass



Change of Venue Subclass:

Class members in removal proceedings whose removal proceedings have been or will be transferred to a different Immigration Court through a granted change of venue motion, and for whom EOIR has stopped or will stop the Asylum EAD Clock based solely on the change of venue.



Settlement benefits

Notice – EOIR

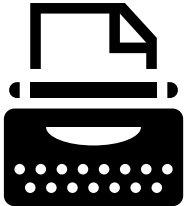
- IJs must clearly state *on the record* the EAD adjournment code;
- EOIR Court & Appeals System (ECAS) includes adjournment code history;
- Pro se individuals can obtain adjournment code history by
 - (1) making an in-person request at immigration court,
 - (2) by phone, or
 - (3) in writing
- EOIR must respond immediately to an in-person request and has 25 business days to respond to other requests



Settlement benefits

Opportunity to Challenge Clock Determinations – EOIR

- At an immigration court hearing: may orally request a correction, which the IJ must address on the record
- Written requests:
 - Address to Court Administrator; do not file motions for clock correction
 - EOIR must address the correction request within 25 days and if denied, must respond in writing
 - EOIR website must list the email and physical addresses for such requests



Settlement benefits

Notice – USCIS

- USCIS will update its Case Status Online Tool (CSOL Tool) to allow applicants to determine (1) if their clock is stopped, and (2) the number of days on the clock at the time of stoppage.
- USCIS will provide an exhaustive list of clock-stopping events on its website



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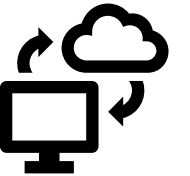


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Settlement benefits

Opportunity to Challenge Clock Determinations – USCIS

- (1) Challenge clock calculations via USCIS's eRequest Self-Service Tool; or
- (2) Call the USCIS Contact Center to challenge Asylum EAD Clock determinations.
- In both cases, USCIS will route the challenge to the asylum office with jurisdiction over the asylum application
- USCIS must respond in writing in 25 business days if denying



Settlement benefits

Remand Subclass Benefits



- USCIS must maintain agreed upon policy language that:
 - (1) guarantees Asylum EAD Clock will restart if an applicant's asylum case is remanded from a court of appeals *or* the BIA, and
 - (2) credits the applicant with the time between the IJ's decision denying the application and the remand decision
- The agreement and policy also provide that an applicant should submit a copy of the remand order to USCIS

TIP: We also recommend submitting a copy of the USCIS policy (the "180-Day Asylum EAD Clock Notice")

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Unaccompanied Children Subclass Benefits

- USCIS will issue guidance to affirm that the Asylum EAD Clock should not stop for unaccompanied children (UCs) with pending asylum applications before USCIS where actions taken before EOIR might have stopped the clock

Exception: where USCIS refers a UC's asylum application to immigration court



Settlement benefits

Change of Venue Subclass Benefits

- Change of venue (COV) motions no longer count as an applicant-caused delay that stops the Asylum EAD Clock.
- As a result, filing COV motions will not stop the Asylum EAD Clock and applicants will continue to accrue time while the motion is pending.



Other Key Points

- Settlement duration: 4 years from date Defendants implement *all* provisions or 6 years from the date the district court granted final approval (09/26/2024)
- Dispute mechanisms:
 - Must use mechanisms in agreement to challenge individual clock calculations
 - If the agency fails to comply with these procedures, inform class counsel
 - If an EAD application is wrongly denied because the agency failed to follow the policies requiring the relief provided to the subclasses (Remand Subclass, UC Subclass, or COV Subclass), inform class counsel



Key Documents

- [Garcia Perez Settlement Agreement](#)
- [Garcia Perez Class Notices](#)
- [Garcia Perez Practice Alert/FAQ](#)
- [USCIS's 180-Day Asylum EAD Clock Notice](#)
- [EOIR's Adjourment Code List](#)
- More documents forthcoming under the Settlement Agreement:
 - IJ guidance re: adjournment codes
 - USCIS and EOIR guidance regarding notice and opportunity to challenge mechanisms
 - USCIS guidance regarding UCs and the Asylum EAD Clock



Questions?

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- Tuesday, October 8, 2024 @ 2-2:45pm Eastern / 1-1:45pm Central / 11am-11:45am Pacific

Venue Considerations and Strategies in APA Cases in District Court

- Wed., October 23, 2024 @ 2:00-3:00pm Eastern / 1:00-2:00pm Central / 11:00am-12:00pm Pacific

Register: <https://immigrationlitigation.org/nila-webinars/>