

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CONCELY del CARMEN MENDEZ)	
ROJAS, <i>et al.</i> ,)	CASE NO. C16-1024 RSM
)	
Plaintiffs,)	
)	ORDER GRANTING MOTION FOR
v.)	SUMMARY JUDGMENT
)	
JEH JOHNSON, Secretary of the)	
Department of Homeland Security, in his)	
official capacity, <i>et al.</i> ,)	
)	
Defendants.)	

I. INTRODUCTION

This matter comes before the Court on Plaintiffs’ Motion for Summary Judgment. Dkt. #57. Plaintiffs assert that Defendants’ failure to provide all class members with notice of the one-year asylum application deadline and failure to create and implement procedural mechanisms that guarantee class members the opportunity to timely submit their asylum applications violate the Immigration and Nationality Act (“INA”), Administrative Procedure Act (“APA”), governing regulations and due process. *Id.* Plaintiffs assert that based on the record before this Court summary judgment in their favor is appropriate. *Id.* Defendants oppose the motion, arguing that Plaintiffs seek to impute notice requirements that neither Congress nor the U.S. Constitution mandates, and the Court lacks jurisdiction over Plaintiffs’ claim for new procedural mechanisms. Dkt. #61. For the reasons set forth below, the Court disagrees with Defendants and now GRANTS Plaintiffs’ motion.

II. BACKGROUND

1
2 The Plaintiff class members are asylum seekers who challenge Defendants' alleged
3 failure to provide them with notice of the statutory requirement that an asylum seeker must apply
4 for asylum within one year of arrival in the United States, 8 U.S.C. § 1158(a)(2)(B), as well as
5 Defendants' alleged failure to provide a mechanism that ensures that an asylum seeker is able to
6 comply with that deadline. Dkt. #1. The Court has certified the following classes and subclasses
7 in this matter:
8

9 **CLASS A ("Credible Fear Class"):** All individuals who have been released
10 or will be released from DHS custody after they have been found to have a
11 credible fear of persecution within the meaning of 8 U.S.C. §
12 1225(b)(1)(B)(v) and did not receive notice from DHS of the one-year
13 deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B).

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

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

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

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

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

Dkt. #37.

1 For context, Plaintiffs have provided a brief background of the class representatives,
2 which is undisputed by Defendants:

3 Plaintiff Rodriguez is a 37-year-old asylum seeker from Honduras. Mr.
4 Rodriguez entered the United States in July 2014 and established a credible
5 fear of persecution in an interview with USCIS. Subsequently, DHS released
6 him from custody with an NTA, the charging document in removal
7 proceedings, but did not inform him of the one-year deadline. DHS has not
8 placed Mr. Rodriguez in removal proceedings yet. He only learned of the
9 deadline when he sought counsel for his immigration case. His attempts to
10 comply with the one-year deadline have been unsuccessful, however, as both
11 USCIS and EOIR have rejected his asylum application – USCIS rejected it
12 on the assumption that Mr. Rodriguez was in removal proceedings, so the
13 application had to be filed with EOIR; EOIR rejected the application Mr.
14 Rodriguez attempted to lodge because he is not actually in removal
15 proceedings. As a result, he has been unable to file, or even lodge, his asylum
16 application. *See* Dkt. 1 ¶¶ 60-66.

17 Plaintiff Mendez is a 30-year-old asylum seeker from the Dominican
18 Republic. Ms. Mendez entered the United States in September 2013 and
19 established a credible fear of persecution in an interview with USCIS.
20 Subsequently, DHS released her from custody with an NTA, but did not
21 inform her of the one-year deadline. She only learned of the deadline when
22 she sought counsel for her immigration case – *after* one year had already
23 passed. As she had not yet been placed in removal proceedings, Ms. Mendez
24 attempted to file an asylum application with USCIS, but USCIS rejected it on
25 the assumption that she already was in removal proceedings. Only after this
26 rejection – and more than one year after she entered the country – did DHS
27 file the NTA with the immigration court, allowing Ms. Mendez to finally
28 lodge her asylum application with the San Antonio Immigration Court. Her
first immigration court hearing will be in August 2016. *See* Dkt. 1 ¶¶ 67-74.

21 Plaintiff Lopez is a 37-year-old asylum seeker from Guatemala. In February
22 2014, she arrived at a Texas port of entry with two of her children and told
23 the inspecting officers that she was afraid to return to Guatemala. DHS
24 served Ms. Lopez and her children with NTAs and released them from
25 custody with the requirement that they check in with DHS on a regular basis.
26 DHS did not inform her of the one-year deadline. Ms. Lopez checked in with
27 DHS on four occasions between March 2014 and September 2015, yet at no
28 point did DHS inform her of the one-year deadline. In October 2015, she was
issued a notice of hearing for November 2015 in the San Antonio
Immigration Court. Ms. Lopez did not learn of the one-year deadline until
she consulted an immigration attorney in December 2015. She lodged her
asylum application with the court in January 2016, nearly two years after she
arrived in the United States. The immigration judge subsequently terminated

Also available as part of the eCourse

[2020 A Practical Guide to Immigration Removal Proceedings eConference](#)

First appeared as part of the conference materials for the
2020 A Practical Guide to Immigration Removal Proceedings session
"Changes to Asylum Policy (approx. 1 hr)"