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:

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Also available as part of the eCourse
2020 eConference on Immigration and Nationality Law

First appeared as part of the conference materials for the
44th Annual Conference on Immigration and Nationality Law session
"The Ever-Evolving World of U.S. Asylum Law: Updates and Practice Pointers on Presenting Affirmative and Defensive Asylum Claims"