

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

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Bianey GARCIA PEREZ, Maria MARTINEZ
CASTRO, Alexander MARTINEZ HERNANDEZ,
J.M.Z., on behalf of themselves as individuals and
on behalf of others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION
SERVICES; Ur JADDOU, Director, U.S.
Citizenship and Immigration Services;
EXECUTIVE OFFICE FOR IMMIGRATION
REVIEW; Mary CHENG, Acting Director,
Executive Office for Immigration Review,

Defendants.

Case No. 2:22-cv-00806-JHC

SETTLEMENT AGREEMENT

1 **SETTLEMENT AGREEMENT**

2 This Settlement Agreement (“Agreement”) is entered into by and between Bianey Garcia
3 Perez, Maria Martinez Castro, J.M.Z., Alexander Martinez Hernandez (collectively, “Named
4 Plaintiffs”), and the Class (defined below) (collectively, “Plaintiffs”), and U.S. Citizenship and
5 Immigration Services (“USCIS”), USCIS Director Ur Jaddou, Executive Office for Immigration
6 Review (“EOIR”), and EOIR Acting Director Mary Cheng (collectively, “Defendants”).
7 Plaintiffs and Defendants are referred to collectively herein as the “Parties.” The Parties hereby
8 STIPULATE and AGREE as follows:

9 **I. RECITALS**

10 WHEREAS:

11 **A. This Action**

- 12 1. On June 9, 2022, Plaintiffs filed this Action, Dkt. # 1, challenging the policies and
13 practices of USCIS, a component of the United States Department of Homeland Security
14 (“DHS”), and EOIR, a component of the United States Department of Justice,
15 implemented with respect to pending applicants for asylum and withholding of removal
16 and the 180-day Asylum EAD Clock;
- 17 2. Named Plaintiffs are four noncitizens who each applied for asylum or withholding of
18 removal and had their Asylum Application pending for more than 180 days but were
19 unable to obtain Employment Authorization Documents (“EADs”) upon reaching the
20 180-day period for eligibility to apply for work authorization. Named Plaintiffs brought
21 this Action on behalf of a putative class and three subclasses of similarly-situated
22 individuals;
- 23 3. Plaintiffs challenged Defendants’ policies and practices relating to notice and an
opportunity to challenge decisions that impact whether the 180-day Asylum EAD Clock
runs, stops, or restarts;
4. Plaintiffs challenged Defendants’ policies and practices related to the impact of federal
court of appeals or Board of Immigration Appeals (“BIA”) remands on the 180-day
Asylum EAD Clock;
5. Plaintiffs challenged Defendants’ policies and practices related to the 180-day Asylum
EAD Clock for unaccompanied children;
6. Plaintiffs challenged Defendants’ policies and practices related to the impact of a change
of venue on the 180-day Asylum EAD Clock;
7. On June 9, 2022, Plaintiffs filed their Motion for Class Certification, Dkt. # 2, and
Motion for Preliminary Injunction, Dkt. # 3;

- 1 8. On June 27, 2022, after this Action was filed, the Parties agreed to discuss settlement
2 and, while such discussions were ongoing, to stay Defendants' briefing deadlines for the
pending Motions for Class Certification and Preliminary Injunction;
- 3 9. The Court has granted the Parties' joint stipulations to stay Defendants' briefing
4 deadlines pending settlement discussions that have transpired since the onset of this
Action; and
- 5 10. The Parties have now agreed to resolve all claims through this Agreement and agree that
6 the Court may certify the Class and Subclasses for purposes of settlement pursuant to
Federal Rules of Civil Procedure 23.

7 **B. Benefits of Settlement**

- 8 1. The Parties desire to resolve this Action by entering into this Agreement, thereby avoiding
the time and expense of litigation;
- 9 2. The Parties, in consultation with their respective counsel, have determined that this
10 Agreement is fair, reasonable, adequate, and in the best interests of all Parties; and
- 11 3. Defendants deny that they have committed any act or omission giving rise to any liability,
12 deny any wrongdoing, and state that they are entering into this Agreement solely to
eliminate the uncertainties, burden, and expense of further protracted litigation. By entering
13 into this Agreement, Defendants: do not admit any factual allegations against them; do not
concede any defense or objection to the Action; do not admit having violated any law,
14 whether constitutional or statutory, federal, or state; and do not admit having violated any
regulation or administrative or judicial case law.

15 **II. DEFINITIONS, CONDITIONS, AND MISCELLANEOUS PROVISIONS**

16 NOW THEREFORE, in recognition that the Parties and the interests of justice are best served by
17 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
18 follows:

19 **A. Definitions**

20 For purposes of this Settlement Agreement, the following terms shall be defined as:

- 21 1. **Action:** "Action" means the lawsuit *Garcia Perez v. USCIS*, No. 2:22-cv-00806-
JHC (W.D. Wash.).
- 22 2. **Adjournment Code:** "Adjournment Code" means the letter and/or number code
23 reflecting the reason a removal hearing concluded or was continued to another date
and time. EOIR primarily uses Adjournment Codes for tracking case information in
the Case Access System for EOIR ("CASE"). Adjournment Codes impact the
Asylum EAD Clock by either stopping or starting the Clock. The Immigration

1 Judge is responsible for making the reason(s) for any adjournment clear on the
2 record. Immigration Court administrators and court staff are responsible for
3 accurately entering each applicable Adjournment Code into CASE. The Assistant
4 Chief Immigration Judge for each Immigration Court is responsible for ensuring
5 that appropriate Adjournment Codes are used and entered accurately into CASE.

- 6
- 7 3. **Affirmative Asylum Clock Information:** “Affirmative Asylum Clock
8 Information” means information maintained by USCIS related to when and why an
9 Asylum EAD Clock for an affirmative Asylum Application (i.e., an application
10 pending before USCIS for adjudication) may have stopped and the number of days
11 accrued on the Clock.
- 12 4. **Agreement:** “Agreement” means this Settlement Agreement.
- 13 5. **Applicant:** “Applicant” means a noncitizen who becomes or may become eligible
14 to file, or who files, an Application for Employment Authorization based upon a
15 pending Asylum Application, pursuant to 8 C.F.R. §§ 208.7 and 274a.12(c)(8),
16 with: (1) USCIS if the noncitizen is in affirmative proceedings; or (2) EOIR if the
17 noncitizen is in defensive immigration court proceedings.
- 18 6. **Application for Employment Authorization:** “Application for Employment
19 Authorization” means the Form I-765, *Application for Employment Authorization*.
- 20 7. **Asylum Application:** “Asylum Application” means the Form I-589, *Application
21 for Asylum and for Withholding of Removal*.
- 22 8. **Asylum EAD Clock:** The “Asylum EAD Clock” measures the time period during
23 which an applicant’s Asylum Application has been pending with a USCIS asylum
office or an Immigration Court. USCIS adjudicates the Application for Employment
Authorization and uses the 180-day Asylum EAD Clock to determine eligibility for
employment authorization. An applicant may file an Application for Employment
Authorization based on their pending Asylum Application in the 8 C.F.R. §
274a.12(c)(8) category 150 days after filing their Asylum Application. An applicant
is not eligible to receive an EAD until their Asylum Application has been pending
for at least another thirty (30) days, for a total of 180 days. 8 CFR 208.7(a)(1). The
150-day waiting period and the 180-day eligibility period, commonly referred to as
the 180-day Asylum EAD Clock, do not include delays that the applicant requests
or causes while their Asylum Application is pending with an asylum office or with
the Immigration Court. 8 CFR 208.7(a)(2) and 1208.7(a)(2).
9. **Asylum EAD Clock Correction Request:** “Asylum EAD Clock Correction
Request” means the oral request to an Immigration Judge, or the written
correspondence received by an Immigration Court or the EOIR Office of the
General Counsel, from an applicant or their representative of record contesting
whether the Asylum EAD Clock is set to run or stop and/or requesting correction of

1 the Adjournment Code(s) that control the Asylum EAD Clock in their particular
2 case.

3 10. **Case Access System for EOIR:** “Case Access System for EOIR (CASE)” means
4 the current management system EOIR uses to track case information, which
5 includes adjournment code history. This includes any successor case management
6 system for EOIR.

7 11. **Class:** The definition of the “Class” is as follows:

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

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

20 ii. Unaccompanied Children Subclass: Class members in
21 removal proceedings who are unaccompanied children
22 (“UCs”) pursuant to 6 U.S.C. § 279(g) and whose Asylum
23 EAD Clocks are not started or will be stopped while waiting
for USCIS to adjudicate the filed Asylum Application.

iii. 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.

12. **Class Counsel:** “Class counsel” means counsel appointed to represent the Class in
accordance with Federal Rule of Civil Procedure 23(a)(4), as follows:

Matt Adams
Leila Kang
Aaron Korthuis
Northwest Immigrant Rights Project
615 2nd Ave Ste 400
Seattle, WA 98104

1 Trina Realmuto
2 Mary Kenney
3 Kristin Macleod-Ball
4 National Immigration Litigation Alliance
5 10 Griggs Terrace
6 Brookline, MA 02446

- 7 13. **Court:** “Court” means the U.S. District Court for the Western District of
8 Washington.
- 9 14. **EAD:** “EAD” means “Employment Authorization Document,” or a USCIS Form I-
10 766, *Employment Authorization Document* evidencing that the holder is authorized
11 to be employed in the United States.
- 12 15. **Effective Date:** “Effective Date” means the date this Agreement receives final
13 approval by the Court.
- 14 16. **Employment Authorization:** “Employment Authorization” means approval to be
15 employed in the United States.
- 16 17. **Fairness Hearing:** “Fairness Hearing” means the hearing required for Final
17 Approval of the Agreement pursuant to Federal Rule of Civil Procedure 23(e)(2).
- 18 18. **Preliminary Approval:** “Preliminary Approval” means that the Court has granted
19 the Parties’ Joint Motion for Preliminary Approval of Settlement and Request for
20 Fairness Hearing and ordered a Fairness Hearing.

21 B. Conditions of Settlement

- 22 1. Submission of the Settlement Agreement to Court for Preliminary Approval.

23 Within fifteen (15) days after execution, the Parties shall file a Joint Motion for Preliminary Approval of Settlement and Request for Fairness Hearing and ask the court to: issue an Order for Preliminary Approval, substantially in the form of Exhibit A; approve the Class Notice, substantially in the form of as Exhibit B; and set a Fairness Hearing to consider the Order for Final Approval, substantially in the form of Exhibit C, and any objections thereto.

The Parties’ counsel agree to cooperate fully in seeking the Court’s Preliminary Approval of this Agreement and to promptly agree upon and execute all such other documentation as reasonably may be required to obtain Preliminary Approval by the Court of the Agreement.

2. Notice to the Class.

The Parties shall notify Plaintiffs about this Agreement as follows:

- i. Within seven (7) days of Preliminary Approval, Defendants shall post the Class Notice (including a Spanish version) and Agreement on their websites.
- ii. EOIR shall post at least one paper copy of the Class Notice (including a Spanish version) on the bulletin board, or other similar location, in the waiting room of each Immigration Court.
- iii. Class Counsel will post the Class Notice (including a Spanish version) and Agreement on their organizational websites and will share the Class Notice with national immigration listservs.

3. Objection to Settlement

Within thirty (30) days of issuance of the Class Notice, any Plaintiff 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) for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Plaintiff, and whether the Plaintiff intends to appear at the Fairness Hearing. The Parties will have thirty (30) days following the objection period in which to submit answers to any objections that are filed. The statement of objection 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 14134, Seattle, WA 98101, and both the envelope and the statement of objection shall state “Attention: *Garcia Perez v. USCIS*, No. 2:22-cv-00806-JHC (W.D. Wash.)” Copies shall also be served on Class Counsel and counsel for Defendants.

4. 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, this Agreement shall become null and void.

5. Termination Date.

This Agreement and all of its terms, and all rights acquired hereunder, shall end either four (4) years following the full implementation of all of the terms of the Agreement, or upon the Effective Date of this Agreement plus six (6) years, whichever shall first occur.

C. Miscellaneous Provisions

1. Entire Agreement.

1 This Agreement and its exhibits constitute the entire agreement among the Parties
2 hereto concerning the settlement of the Action, and no representations, warranties,
3 or inducements have been made by any Party hereto other than those contained
4 and memorialized in such documents. No representation or understanding,
5 whether written or oral, that is not expressly set forth herein shall be enforced or
6 otherwise given any force or effect in connection herewith.

7
8
9 2. Full and Final Settlement.

10 The Parties intend that the execution and performance of this Agreement shall, as
11 provided below, be effective as a full and final settlement of, and shall fully
12 dispose of, all claims and issues that Plaintiffs raised against Defendants in the
13 Action. The Parties acknowledge that this Agreement is fully binding upon them
14 during the life of the Agreement. This Agreement shall be binding upon, and
15 inure to the benefit of, the successors and assigns of the Parties hereto.

16
17 3. Agreement Execution.

18 This Agreement may be executed in one or more counterparts. All executed
19 counterparts and each of them shall be deemed to be one and the same instrument
20 provided that counsel for the Parties to this Agreement shall exchange among
21 themselves original signed counterparts.

22 4. Modification.

23 This Agreement may not be modified or amended, nor any of its provisions be
waived, except by a writing signed by the Parties hereto or their successors-in-
interest or authorized representatives (i.e., Class Counsel). Within 120 days of the
Effective Date, counsel for the Parties will notify each other if they wish to meet
to discuss how implementation of the terms set forth in this Agreement are
functioning and progressing.

5. Settlement Authority.

All counsel and any other person executing this Agreement and any of the
exhibits hereto, or any related settlement documents, warrant and represent that
they have the full authority to do so, and that they have the authority to take
appropriate action required or permitted to be taken under the Agreement to
effectuate its terms.

6. Jurisdiction of the Court.

Subject to the dispute resolution procedures in Section II.E, the Court retains
jurisdiction to resolve any disputes over enforcement of the Agreement that arise
and are presented to the Court at any time between its Effective and Termination
Dates.

1
2 7. Impact of Statutory, Regulatory, or Precedential Changes, and/or Operational Needs.

3 Nothing in this Agreement shall prevent Defendants EOIR and/or USCIS from
4 amending their regulations, manuals, policies, procedures, and/or practices, as
5 necessary for purposes of complying with applicable statutory changes, regulatory
6 changes, and/or precedential decisions. Nothing in this Agreement shall prevent
7 Defendants EOIR and/or USCIS from changing their technological infrastructure
8 to address mission or operational needs, while continuing to comply with their
9 obligations under this Agreement.

10 8. Severability.

11 If any provision of this Agreement is declared null, void, invalid, illegal, or
12 unenforceable in any respect, the remaining provisions shall remain in full force
13 and effect, except as specified in Section II.B.4.

14 9. No Precedential Value.

15 This Agreement, whether or not executed, and any proceedings taken pursuant to
16 it, shall not be deemed an admission by the Parties of the merit or lack of
17 merit of the opposing party's claims or defenses or as an admission of any
18 contested fact alleged by Plaintiffs. The Parties may not use the Agreement as
19 evidence or otherwise in any civil or administrative action or proceeding
20 against Defendants or the United States or any of their present or former officials,
21 employees or agents, either in their official or individual capacities, except for
22 proceedings necessary to implement or enforce the terms hereof.

23 10. Headings.

Headings in this Agreement are included solely for the convenience of the Parties,
are not part of the terms and conditions of the Agreement, and do not limit, alter,
or otherwise affect the provisions of, and the Parties' rights and obligations under,
this Agreement.

11. Applicable Law.

This Agreement and its terms shall be construed in accordance with the law of the
United States of America and the United States Court of Appeals for the Ninth
Circuit.

12. Interpretation.

The Parties acknowledge that the preparation of the Agreement was
collaborative in nature, and so agree that any presumption or rule that an agreement
is construed against its drafter shall not apply to the interpretation of any
provision of the Agreement.

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

13. Disclaimer.

Nothing in this Agreement should be construed as establishing any right or interest in challenging an adverse decision on an Asylum Application, 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.

D. Attorneys' Fees

1. The Parties agree to settle all claims by Plaintiffs and Class Counsel for fees, costs, and expenses, including but not limited to attorney fees incurred in this Action. Defendants agree to pay \$163,508.50. EOIR and USCIS shall each pay half of the amount. Defendants' payment of the Attorneys' Fee settlement amount shall satisfy any claims by Plaintiffs or Class Counsel for attorney fees and costs related to and for this Action.
2. Subject to Section II.D.1, Defendants shall make payment by electronic funds transfer in accordance with instructions provided to Defendants' counsel by one of Class Counsel. Within five (5) business days of the Effective Date, Class Counsel shall provide to Defendants all information necessary to accomplish the direct wire transfer into that account.
3. In exchange for, and effective upon receipt of, Defendants' payment of the amount agreed upon in Paragraph 1, Plaintiffs and Class Counsel shall fully and forever release and discharge Defendants, the United States of America, and their present and former officials, employees, and agents, in their official and individual capacities, from liability for any and all claims for attorneys' fees for work that has been performed or payment or reimbursement of expenses or costs that have been incurred in connection with this Action, including but not limited to fees and non-taxable expenses pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 ("EAJA"), and taxable costs pursuant to EAJA and Local Civil Rule 54.

E. Dispute Resolution Mechanism.

With regard to claims raised in this Action and resolved by this Agreement, the dispute resolution provisions described below shall provide the sole means for a Party to challenge another Party's performance of obligations arising under this Agreement. Any claims alleging that a Party has failed to comply with the terms of this Agreement must be brought pursuant to this subsection. This Agreement shall not affect or in any way limit the ability of the Parties to challenge or obtain review of claims not resolved by or arising under this Agreement through any existing right or authority under law, regulations, or applicable procedures.

1. Dispute Resolution Terms.

- 1 i. The dispute resolution provisions of this Agreement only apply to the
2 Parties and are not intended to provide an alternate procedure by which
3 Plaintiffs may inquire about or contest Adjourment Codes or their
4 Asylum EAD Clock statuses. Any applicant seeking to inquire about or
5 contest an Adjourment Code or the status of their Asylum EAD Clock
 must do so through the existing administrative processes and procedures,
 as provided under: the Immigration and Nationality Act, 8 U.S.C. §§ 1101,
 et seq.; Title 8 of the Code of Federal Regulations; and the administrative
 processes and procedures established within this Agreement.
- 6 ii. For allegations that a Party has failed to comply with the terms of this
7 Agreement, counsel for the Party making the allegation (“complaining
8 party”) shall notify the counsel for the other Party (“responding party”) in
9 writing of the specific ground(s) upon which the complaining party bases
10 its claim of non-compliance with this Agreement, substantiated with
11 specific, detailed, and timely information about the alleged non-
12 compliance sufficient to enable the responding party to investigate and
13 respond to the allegation of non-compliance.
- 14 iii. Within forty-five (45) days after the responding party receives notice of
15 the allegation of non-compliance from the complaining party in
16 accordance with subparagraph (1)(ii) above, the responding party shall
17 notify the complaining party in writing of the results of the responding
18 party’s investigation of facts and any action that it has taken or intends to
19 take in connection with the allegation of non-compliance.
- 20 iv. Should any dispute regarding an allegation of non-compliance remain
21 after the Parties have undertaken the dispute resolution mechanism set
22 forth in subparagraphs (1)(ii) – (iii) above, the Parties shall negotiate in
23 good faith to resolve any such remaining disputes within thirty (30) days
 from the date the responding party sends notification of the results of its
 investigation under subparagraph (1)(iii) above.
- v. Should the Parties be unable to resolve any dispute of an allegation of
 non-compliance following implementation of the provisions of
 subparagraphs (1)(ii) – (iv) above, the complaining party may apply to the
 Court for enforcement of this Agreement. Before applying to the Court for
 enforcement of the Agreement, the complaining party shall notify the
 responding party of its intent to do so. Any actions brought to the Court
 under this subsection must be brought by either Defendants or by Class
 Counsel.
2. Deadline: All claims regarding non-compliance arising under this Agreement
 must be raised pursuant to the process outlined in Section II.E.1 as soon as
 possible, but no later than 180 days after discovery of the claim. If a complaining
 party raises a claim of non-compliance more than 180 days after the complaining

1 party reasonably should have discovered the claim, then the claim is waived. All
2 claims of non-compliance must be brought within 180 days after the Termination
Date of the Agreement, or the claim is waived.

3 **III. TERMS OF THE AGREEMENT**

4 By this Agreement, Defendants have agreed to modify certain of their processes, policies,
procedures, and practices that impact individuals filing Asylum Applications.

5 **A. Notice and Opportunity to Challenge Policy and Practice**

6 The Parties have agreed to the following terms:

7 1. EOIR Notice:

- 8 i. EOIR will provide written guidance to Immigration Judges that they: (1) must
9 clearly articulate the reason for the case adjournment on the record at the end of
10 each hearing; and (2) may inform the parties of whether the Asylum EAD Clock
is running or stopped. EOIR will provide Immigration Judges and Class Counsel
with the guidance ninety (90) days after the Effective Date of this Agreement.
- 11 ii. EOIR will upgrade its EOIR Courts & Appeals System (“ECAS”) CASE Portal,
12 accessible to attorneys and accredited representatives who have entered
appearances for individuals in immigration proceedings, to include case-specific
13 Adjournment Code history relating to the 180-day Asylum EAD Clock as part of
the information available to applicants’ representatives of record. EOIR’s Office
14 of Information Technology completed work on this initiative. The ECAS CASE
Portal is fully functional as of July 2023. ECAS technical support issues must be
15 reported using the established ECAS CASE Portal technical support notification
processes as provided by the ECAS Online Filing (justice.gov/eoir/ECAS)
16 access portal.

17 EOIR updated CASE to enable EOIR personnel to provide applicants who are
appearing in Immigration Court *pro se* with a printout of their case-specific
18 Adjournment Code history relating to the 180-day Asylum EAD Clock.
Requests for these printouts may be made by *pro se* applicants orally or in
19 writing. EOIR court personnel will provide a requested printout to a *pro se*
applicant at the time of an in-person, oral request or will respond within twenty-
20 five (25) business days of receipt of a written request, absent exceptional
circumstances. In the case of oral requests from *pro se* applicants that are not
21 made in-person, EOIR personnel will mail a printout to the applicant’s address
of record on file with EOIR within twenty-five (25) business days of receipt of
22 the request, absent exceptional circumstances.

23 2. Opportunity to Challenge/Correct Asylum EAD Clock Stoppage before EOIR:

- 1 i. EOIR will publish guidance on its website to clarify the requirements,
2 expectations, and procedures for an Asylum EAD Clock Correction Request
3 from applicants in proceedings before EOIR and/or their representatives of
4 record. EOIR will publish guidance within ninety (90) days of the Effective Date
5 of this Agreement.
- 6 ii. An applicant may raise an Asylum EAD Clock Correction Request in writing or
7 orally at an Immigration Court proceeding. If the applicant makes an oral
8 Asylum EAD Clock Correction Request at a proceeding, the Immigration Judge
9 should address the request on the record.
- 10 iii. Written Asylum EAD Clock Correction Requests shall be addressed to the Court
11 Administrator of the relevant Immigration Court and shall be submitted via
12 email to a designated Asylum EAD Clock Correction Request email box or
13 mailed to the Immigration Court. For cases on appeal, applicants shall submit a
14 written Asylum EAD Clock Correction Request to EOIR's Office of the General
15 Counsel.
- 16 iv. EOIR will maintain on its website, separate from the guidance referenced in
17 subparagraph (2)(i), the email addresses and physical addresses for each
18 Immigration Court and the contact information for the Office of the General
19 Counsel where Asylum EAD Clock Correction Requests may be sent.
- 20 v. For written Asylum EAD Clock Correction Requests, Immigration Courts and
21 the Office of the General Counsel must respond in writing within twenty-five
22 (25) business days of receipt of the request, absent exceptional circumstances.
- 23 vi. In response to a written Asylum EAD Clock Correction Request, Immigration
24 Courts and the Office of the General Counsel will provide the reasoning for
25 written Asylum EAD Clock Correction Requests that are rejected or denied.

3. USCIS Notice:

- 17 i. USCIS will modify the automated Case Status Online Tool (CSOL Tool) that is
18 currently available on USCIS's website to allow anyone who submitted an
19 Asylum Application to determine, in addition to their current case status,
20 whether their Affirmative Asylum EAD Clock is stopped as a result of an
21 applicant-caused delay. USCIS will display, in addition to the case status
22 information, Affirmative Asylum Clock Information confirming that there is a
23 clock stoppage as well as the total number of days accrued at the time of the
24 stoppage. USCIS will implement these additions to the CSOL Tool within 180
25 days of the Effective Date of the Agreement. Class Counsel will be apprised of
any delay, foreseen or unexpected, of this date.
- ii. USCIS will revise the 180-Day Asylum EAD Clock Notice to provide an
exhaustive list of clock-impacting events in the affirmative asylum process to

1 increase applicants' notice of consequences to their Asylum EAD Clock based
2 on actions they take or fail to take. USCIS will make the 180-Day Asylum EAD
Clock Notice available on its website.

3 4. Opportunity to Challenge/Correct Asylum EAD Clock Stoppage before USCIS:

4 i. USCIS will provide two (2) mechanisms to correct Asylum EAD Clock
5 information, as obtained via the CSOL Tool, that applicants believe is erroneous
or inaccurate:

6 a. First, USCIS will provide a mechanism for applicants to request a
7 correction through the eRequest Self-Service tool. USCIS will update
8 the eRequest Self-Service tool to provide an option whereby applicants
9 can inquire about stoppages related to their Affirmative Asylum Clock
10 Information. The eRequest Self-Service Tool website will provide clear
11 instructions for applicants that submit an inquiry using the receipt
12 number of their affirmative Asylum Application. Once an inquiry is
13 placed through the eRequest Self-Service Tool, the inquiry will be
routed to the appropriate asylum office having jurisdiction over the
applicant's Asylum Application for resolution (or that inquiry will be
referred to EOIR if the application is within EOIR's jurisdiction). Upon
receiving the inquiry, the asylum office will review the applicant's
inquiry for resolution. USCIS will implement this mechanism by 180
days from the Effective Date of the Agreement. Class Counsel will be
apprised of any delay, foreseen or unexpected, of this date.

14 b. Second, USCIS will provide a mechanism for applicants to call the
15 USCIS Contact Center. An applicant who, after using the CSOL Tool,
16 believes that their Asylum EAD Clock information is erroneous or
17 inaccurate, may call the USCIS Contact Center. After speaking with
the applicant, a live customer service agent will route the applicant's
inquiry to the appropriate asylum office having jurisdiction over the
applicant's Asylum Application (or direct the applicant to the Court
Administrator of the relevant Immigration Court if the application is
within EOIR's jurisdiction). Upon receiving the inquiry, the asylum
office will review the applicant's inquiry for resolution. USCIS will
implement this mechanism within 180 days from the Effective Date of
the Agreement. Class Counsel will be apprised of any delay, foreseen
or unexpected, of this date.

18 ii. USCIS will respond to any Asylum EAD Clock Correction Request, absent
19 exceptional circumstances, within twenty-five (25) business days of receipt of an
20 Asylum EAD Clock Correction Request submitted via the Contact Center or
21 eRequest Self-Service Tool. USCIS will provide the reason(s) for any denial or
22 rejection in its written response.
23

- 1 iii. USCIS will update its public guidance to further clarify the requirements,
2 expectations, and procedures for contesting Asylum EAD Clock information in
3 accordance with this Agreement.

3 **B. Remand Policy and Practice**

4 The Parties have agreed to the following terms:

- 5 i. USCIS updated the language and the 180-day Asylum EAD Clock Notice on
6 September 23, 2022, to replace the prior version. The updated version explains:

7 “If the decision is appealed to the BIA or a U.S. Court of Appeals and the
8 BIA or U.S. Court of Appeals remands it (sends it back) to an immigration
9 judge or BIA for continued adjudication of your asylum claim, your 180-
10 day asylum EAD clock will be credited with the total number of days on
11 appeal (e.g. the time between the immigration judge’s decision and the
12 date of the BIA’s remand order or between the BIA’s decision and the
13 date of the U.S. Court of Appeals remand order). You will continue to
14 accumulate time on the 180-day Asylum EAD Clock while your asylum
15 claim is pending after the remand order, excluding any additional delays
16 you request or cause.”

- 12 ii. This updated language will remain in effect for the remainder of this Agreement.
- 13 iii. USCIS will also update its website and public messaging to include instructions
14 that an applicant should submit a copy of either (1) the BIA order remanding the
15 case back to the Immigration Judge or (2) the U.S. Court of Appeals’ remand
16 order to the BIA, with the Application for Employment Authorization, to
17 demonstrate that the applicant has accrued sufficient time on the 180-day
18 Asylum EAD Clock.

17 **C. Unaccompanied Children Policy and Practice**

18 The Parties have agreed to the following terms:

- 19 i. USCIS will issue guidance on its website and public messaging affirming that
20 for UCs with pending Asylum Applications before USCIS, any EOIR
21 Adjournment Code associated with the transfer of jurisdiction from EOIR to
22 USCIS should not stop the 180-day Asylum EAD Clock. This guidance will
23 clarify that in the case of UCs seeking an EAD based on pending Asylum
 Applications, adjudicators must not look to the EOIR Adjournment Codes
 associated with the transfer of a UC’s Asylum Application from EOIR to
 USCIS, which transfer will not cause the applicant’s Asylum EAD Clock to
 stop. However, if a UC’s case is referred by USCIS to EOIR, applicant-caused
 actions stopping the clock thereafter while the Asylum Application is pending
 before EOIR will be charged against the applicant. The guidance will confirm

1 that USCIS controls the 180-day Asylum EAD Clock in cases involving UCs
2 with Asylum Applications pending before USCIS. USCIS will provide Class
3 Counsel with a copy of the corresponding guidance. EOIR will include a
4 reminder in its guidance that USCIS guidelines and policies control the Asylum
5 EAD Clock for UCs.

4 **D. Change of Venue Practice**

5 The Parties have agreed to the following terms:

- 6 i. Defendants will change all applicable policy to reflect that a change of venue does
7 not stop the 180-day Asylum EAD Clock in cases pending before EOIR.

7 Defendants will update the CASE decision coding for EOIR and USCIS to reflect that a granted
8 change of venue does not stop the 180-day Asylum EAD Clock in cases pending before EOIR.
9 Defendants will provide Class Counsel with a copy of the EOIR Office of Information
10 Technology Release Notes for CASE that describe and confirm this update.

1 **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
2 Agreement on behalf of the respective Parties.

3 Consented and agreed to by:

4
5 DATED: July 29, 2024

6 For the Plaintiffs:

7 /s/ Matt Adams

8 Matt Adams

Leila Kang

Aaron Korthuis

9 Northwest Immigrant Rights Project

615 Second Avenue, Suite 400

10 Seattle, WA 98104

(206) 957-8611

11 matt@nwirp.org

aaron@nwirp.org

12
13 /s/ Mary Kenney

Mary Kenney

14 Trina Realmuto

Kristin Macleod-Ball

15 National Immigration Litigation Alliance

16 10 Griggs Terrace

Brookline, MA 02446

17 (617) 819-4447

mary@immigrationlitigation.org

18 trina@immigrationlitigation.org

kristin@immigrationlitigation.org

Respectfully submitted,

For the Defendants:

BRIAN M. BOYNTON

Principal Deputy Assistant Attorney General

U.S. Department of Justice, Civil Division

WILLIAM C. PEACHEY

Director

WILLIAM C. SILVIS

Assistant Director

CHRISTINA PARASCANDOLA

Senior Litigation Counsel

RUTH CHECKETTS

Special Attorney

MARIE FEYCHE

Trial Attorney

/s/ Aneesa Ahmed

ANEESA AHMED

Trial Attorney

Office of Immigration Litigation

District Court Section

Department of Justice, Civil Division

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

(202) 451-7744

Aneesa.Ahmed@usdoj.gov