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

Conceley Del Carmen MENDEZ ROJAS, Elmer Geovanni RODRIGUEZ ESCOBAR, Lidia Margarita LOPEZ ORELLANA, and Maribel SUAREZ GARCIA, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

Jeh JOHNSON, Secretary of the Department of Homeland Security, in his official capacity; Loretta E. LYNCH, Attorney General of the United States, in her official capacity; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary for United States Immigration and Customs Enforcement, in his official capacity; Leon RODRIGUEZ, Director of United States Customs and Immigration Services, in his official capacity; R. GIL KERLIKOWSKE, Commissioner of U.S. Customs and Border Protection, in his official capacity; and JUAN P. OSUNA, Director of the Executive Office for Immigration Review, in his official capacity,

Defendants.

No.:

**COMPLAINT—CLASS ACTION FOR
INJUNCTIVE AND DECLARATORY
RELIEF AND MANDAMUS**

INTRODUCTION

1
2 1. Plaintiffs are individuals who fled persecution in their countries of origin and who seek to
3 apply for asylum. The U.S. government, aware of their fear of return, has authorized them to remain
4 in the United States to pursue their claims.
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6 2. Under the Immigration and Nationality Act (INA) and its implementing regulations—as well
7 as under the Due Process Clause—Plaintiffs have an indisputable right to seek asylum and to a fair
8 opportunity to present their claims. But Plaintiffs’ ability to seek asylum has been thwarted by a
9 government process that is anything but fair; indeed, it conflicts with fundamental notions of due
10 process: notice and the opportunity to be heard.
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12 3. Plaintiffs challenge Defendants’ policies and practices of unlawfully depriving them of
13 notice that there is a one-year statutory deadline from their date of arrival in the United States in
14 which to file an application for asylum, *see* 8 U.S.C. § 1158(a)(2)(B), and of unlawfully failing to
15 implement a mechanism that ensures them an opportunity to comply with that deadline.
16

17 4. As a result of Defendants’ unlawful actions, Plaintiffs, and the class members they seek to
18 represent, are not informed of either the steps they must take in order to timely apply for asylum or
19 the drastic immigration consequence that ensues if they fail to timely apply—disqualification from
20 seeking asylum. Defendants’ unlawful deprivation of Plaintiffs’ and putative class members’ right
21 to seek asylum not only violates our nation’s commitment to the rule of law and principles of
22 fairness, but also causes severe and irreparable suffering by depriving individuals of rights and
23 benefits afforded through the asylum process, including protection from removal to the countries in
24 which they fear persecution, as well as the right to become lawful permanent residents, to travel, and
25 to reunite with family members.
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1 5. Defendants’ policies and practices prevent many of those Plaintiffs and putative class
2 members, even if they are fortunate enough to learn of the statutory deadline, from complying with
3 it. This is because there is no standard procedure in place by which an asylum seeker can submit her
4 application and ensure that it is treated as timely filed by the adjudicating agency. The process an
5 asylum seeker must pursue to apply for asylum depends upon whether removal proceedings have
6 been initiated. 8 C.F.R. § 1208.4(b).¹ If an applicant is not in removal proceedings, U.S. Citizenship
7 and Immigration Services (USCIS) has jurisdiction over the application and, thus, the applicant must
8 file with USCIS (known as an “affirmative” filing). 8 C.F.R. §§ 1208.4(b)(1), (2), and (5). If an
9 applicant is or was in removal proceedings, the Executive Office for Immigration Review (EOIR),
10 which consists of the immigration courts and the Board of Immigration Appeals (BIA or Board), has
11 jurisdiction and, thus, the applicant must file with EOIR (known as a “defensive” filing). 8 C.F.R.
12 §§ 1208.4(b)(3), (4).

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16 6. Defendants’ policies and practices prevent asylum seekers from complying with the one-year
17 deadline in two ways. First, DHS agents often issue a charging document (known as a Notice to
18 Appear or NTA) and serve it on the individual, but delay filing it with the immigration court—
19 sometimes for months or even a year or longer. In addition, even when DHS submits the NTA to the
20 immigration court, some immigration courts are so backlogged that they do not actually file the NTA
21 in the EOIR system until months, or even more than a year, later. When either of these situations
22 occurs, the individual is left in a “Catch-22.” If she tries to file her application with USCIS, that
23 agency generally refuses to accept the individual’s asylum application, claiming the person already
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27 ¹ Removal proceedings are initiated when the Department of Homeland Security (DHS) “files” the
28 charging document, known as the Notice to Appear (NTA), with the immigration court. 8 C.F.R. §
1003.14(a). Filing requires DHS to deliver the NTA to EOIR and EOIR to process the NTA by entering it

1 is in removal proceedings because an NTA was issued. At the same time, the immigration court will
2 not accept the asylum application because the charging document has not yet been filed. The
3 individual is left in limbo—without a mechanism to file the application until the charging document
4 is filed with the immigration court, an event over which the applicant has no control. As a result,
5 individuals often miss the one-year deadline for reasons beyond their control.
6

7 7. For individuals in removal proceedings, Defendants’ regulations state that an asylum
8 application is “filed” for purposes of meeting the one-year deadline if it is “received by” an
9 immigration court or the BIA. 8 C.F.R. §§ 208.4(a)(2)(B)(ii); 1208.4(a)(2). However, EOIR’s sub-
10 regulatory policy, found in the Immigration Court Practice Manual and in a policy memorandum, is
11 that an asylum application is properly filed only if submitted in immigration court at a master
12 calendar hearing before an immigration judge. Immigration Court Practice Manual § 3.1(b)(iii)(A)
13 (“Defensive asylum applications are filed in open court at a master calendar hearing.”), *available at*
14 <https://www.justice.gov/eoir/office-chief-immigration-judge-0>. Yet, immigration court dockets are
15 so backlogged that when the charging documents are filed and entered into EOIR’s case docketing
16 system, these individuals’ first immigration hearings routinely are scheduled well beyond a year,
17 after the one-year deadline has passed. Upon information and belief, while a handful of immigration
18 courts have adopted their own informal policies in an effort to remedy this problem, such policies
19 are not the norm and are subject to change at any point. The vast majority of putative class members
20 whose hearings are scheduled beyond their one-year deadlines have no guaranteed mechanism for
21 complying with the deadline.
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27 into its system. Individuals may call EOIR’s 1-800 number hotline and enter their immigration number (A-
28 number) to determine whether they have been placed in removal proceedings.

1 8. At no point in this process does DHS inform asylum seekers that they must file their
2 applications within a year of their arrival in the United States. Instead, even though DHS releases
3 persons into the United States for the express purpose of applying for asylum, the agency never
4 advises them that they must file a specific application within one year of arrival. It is often only
5 when individuals arrive with their applications in immigration court, frequently after the one-year
6 deadline has elapsed, that they first learn of the statutory time period. This lack of notice of the
7 asylum deadline, combined with the failure to establish and implement a mechanism that ensures
8 applicants have an opportunity to comply with the deadline, violates the INA and its implementing
9 regulations, as well as the Due Process Clause of the Fifth Amendment.
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12 9. Providing vulnerable asylum seekers with fair notice and an opportunity to apply for asylum
13 is central to our laws, and is a basic tenet of international law and the domestic laws of countless
14 nations throughout the world.
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16 10. Plaintiffs seek declaratory and injunctive relief to remedy Defendants' unlawful failure to
17 provide notice of the one-year deadline as well as a meaningful opportunity to comply with that
18 deadline. Plaintiffs seek this Court's intervention to compel Defendants Johnson, Winkowski,
19 Rodriguez, and Kerlikowske and the agencies they direct (collectively, the DHS Defendants) to
20 provide notice of the one-year deadline set forth in 8 U.S.C. § 1158(a)(2)(B), and to compel the DHS
21 Defendants and Defendants Loretta E. Lynch and Juan P. Osuna of the Department of Justice (DOJ)
22 (collectively, the DOJ Defendants) to establish and implement a mechanism that ensures that
23 putative class members are able to comply with that deadline.
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JURISDICTION AND VENUE

11. This case arises under the United States Constitution; the INA, 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA’s asylum process; and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*

12. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, as a civil action arising under the laws of the United States, and the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendants are officers or employees of the United States or agencies thereof acting in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred in this district, and Plaintiffs Elmer Geovanni Rodriguez Escobar, Concely del Carmen Mendez Rojas, and Maribel Suarez Garcia reside in this district, as do many putative class members. In addition, no real property is involved in this action.

PARTIES

14. Plaintiff Elmer Geovanni Rodriguez Escobar is a 37-year-old asylum seeker from Honduras. He resides in Burien, Washington. Mr. Rodriguez entered the United States in July 2014 and established a credible fear of persecution in an interview with DHS. Subsequently, he was released from DHS custody with an NTA, but at no point did DHS advise him of the one-year deadline. Mr. Rodriguez is not currently in removal proceedings, and has been unable to file his application for asylum, as both USCIS and EOIR have rejected his attempts to file his application with them.

15. Plaintiff Concely del Carmen Mendez Rojas is a 30-year-old asylum seeker from the Dominican Republic. She resides in Burien, Washington. Ms. Mendez entered the United States in

1 September 2013 and established a credible fear of persecution in an interview with DHS.
2 Subsequently, she was released from DHS custody with an NTA, but at no point did DHS advise her
3 of the one-year deadline. Ms. Mendez attempted to file an asylum application with USCIS before
4 being placed in removal proceedings, but USCIS rejected her application. She is unable to file an
5 asylum application until she appears in open court at a master calendar hearing scheduled by the
6 immigration court. Instead, she has only been able to “lodge” her asylum application with the
7 immigration court. An application is “lodged” when presented at the court clerk’s window for
8 purposes of initiating a “clock” to record the waiting period for eligibility for applying for
9 employment authorization. Operating Policy and Procedures Memorandum No. 13-03, “Guidelines
10 for Implementation of the ABT Settlement Agreement,” (Dec. 2, 2013) at 2 *available at*
11 <https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/03/13-03.pdf>. However, the Court
12 does not file the application in EOIR’s system, but instead returns the application form after
13 stamping the document as “lodged but not filed” for purposes of employment authorization
14 applications. *Id.* Ms. Mendez was only able to “lodge” the application after the NTA was
15 eventually filed with the immigration court, which occurred *after* the one-year deadline. Her first
16 immigration court hearing will be in August 2016.

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20 16. Plaintiff Lidia Margarita Lopez Orellana is a 37-year-old asylum seeker from Guatemala.
21 She resides in Austin, Texas, with her three children. She and her two youngest children arrived in
22 the United States at the Eagle Pass, Texas, port of entry on February 28, 2014. There, Ms. Lopez
23 informed DHS officials that she was afraid of returning to Guatemala. Shortly afterwards, DHS
24 issued NTAs to Ms. Lopez and her children and then released them into the United States to await a
25 removal hearing. At no point did any DHS official inform Ms. Lopez that she was required to file an
26 application for asylum within one year of her most recent entry into the United States. She first
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1 learned of this requirement more than a year later, after she was able to retain counsel. She then
2 lodged her asylum application with the San Antonio Immigration Court, in January 2016. On the
3 same day, her removal proceedings were terminated. Subsequently, she filed an affirmative asylum
4 application one month later on February 15, 2016.
5

6 17. Plaintiff Maribel Suarez Garcia is a 29-year-old asylum seeker from Mexico. She resides in
7 Yelm, Washington, with her five young children. She and her children arrived at the Otay Mesa,
8 California, port of entry in November 2013. Upon her arrival, Ms. Suarez informed DHS officials
9 that she was afraid of returning to Mexico and that she was seeking asylum in the United States. She
10 provided a sworn statement to DHS officials regarding her fear of returning to Mexico. Shortly
11 afterwards, DHS issued NTAs to her and her children, and paroled them into the United States to
12 await a removal hearing. At no point did DHS inform Ms. Suarez of her obligation to file an
13 application for asylum within one year of her arrival. She first learned of this requirement more than
14 a year later, after she was able to retain counsel. She then promptly lodged her application with the
15 San Francisco Immigration Court. Ms. Suarez is scheduled for an individual hearing in May 2017.
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18 18. Defendant Jeh Johnson is sued in his official capacity as the Secretary of DHS. In this
19 capacity, he directs each of the component agencies within DHS, including United States
20 Immigration and Customs Enforcement (ICE), USCIS, and CBP. As a result, in his official capacity,
21 Defendant Johnson is responsible for the administration of the immigration laws pursuant to 8
22 U.S.C. § 1103, and is empowered to grant asylum or other relief.
23

24 19. Defendant Loretta E. Lynch is sued in her official capacity as the Attorney General of the
25 United States and the head of the Department of Justice. In this capacity, she is responsible for the
26 administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees EOIR, and is
27 empowered to grant asylum or other relief.
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1 20. Defendant Thomas S. Winkowski is sued in his official capacity as the Principal Deputy
2 Assistant Secretary for ICE, which is the sub-agency of DHS that operates and oversees the
3 prosecution of individuals apprehended near the border and either detained or released into the
4 United States.
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6 21. Defendant Leon Rodriguez is sued in his official capacity as the Director of USCIS, which is
7 the sub-agency of DHS that, through its asylum officers, both conducts interviews of individuals
8 placed in expedited removal to determine whether they have a credible fear of persecution and
9 should be permitted to apply for asylum, and also adjudicates affirmative asylum applications.
10

11 22. Defendant R. Gil Kerlikowske is sued in his official capacity as the Commissioner of CBP,
12 which is the sub-agency of DHS that is responsible for the initial processing and detention of
13 noncitizens who are apprehended near the border and either detained or paroled into the United
14 States.
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16 23. Defendant Juan P. Osuna is sued in his official capacity as Director of the EOIR, which is an
17 agency of the Department of Justice. In this capacity, he is responsible for overseeing the Board's
18 principal mission "to adjudicate immigration cases by fairly, expeditiously, and uniformly
19 interpreting and administering the Nation's immigration laws," *available at*:
20 <http://www.justice.gov/eoir/>. In addition, he has responsibility for the supervision of all personnel
21 employed by the Executive Office for Immigration Review in carrying out their regulatory duties.
22 *See* <http://www.justice.gov/eoir/odinfo.htm>.
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BACKGROUND

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2 24. This case involves asylum seekers whom DHS apprehends at or near the border and who
3 express a fear of return to their countries of origin. Upon apprehension, a DHS officer must either
4 refer the individual to an asylum officer to make an initial assessment of the claim (known as a
5 credible fear interview) or issue an NTA and release her from custody pending removal removal
6 proceedings.
7

A. Credible Fear Entrants

8
9 25. Congress created an expedited removal system and “credible fear” process in 1996. 8 U.S.C.
10 § 1225 *et seq.* (setting forth the expedited removal system). As enacted by Congress, the expedited
11 removal system involves a more streamlined removal process than regular removal proceedings
12 under 8 U.S.C. § 1229a and is reserved for people apprehended at or near the border. *See* 8 U.S.C. §
13 1225(b)(1)(A)(i) (permitting certain persons who are seeking admission at the border of the United
14 States to be expeditiously removed without a full immigration judge hearing); 8 U.S.C. §
15 1225(b)(1)(A)(iii) (authorizing the Attorney General to apply expedited removal to certain
16 inadmissible noncitizens located within the United States); 69 Fed. Reg. 48,877 (Aug. 11, 2004)
17 (providing that the Attorney General will apply expedited removal to persons within the United
18 States who are allegedly apprehended within 100 miles of the border and who are unable to
19 demonstrate that they have been continuously physically present in the United States for the
20 preceding 14-day period).
21

22 26. Critically, however, Congress included safeguards in the statute to ensure that refugees are
23 not returned to their countries of origin to face persecution. Congress recognized the high stakes
24 involved in short-circuiting the formal removal process and the constitutional constraints under
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1 which it operates, and created specific procedures with particularly detailed requirements for
2 handling asylum claims.

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4 27. The expedited removal statute provides that the process begins with an inspection by an
5 immigration officer, who makes a determination about the individual's admissibility to the United
6 States. Of particular relevance here, if the individual indicates either an intention to apply for
7 asylum or *any* fear of return to his or her home country, the immigration officer *must* refer the
8 individual for an interview with an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R.
9 § 235.3(b)(4).
10

11 28. Under the applicable regulations, after a noncitizen is referred for an interview, the asylum
12 officer then conducts a "credible fear interview," which is designed "to elicit all relevant and useful
13 information bearing on whether the applicant has a credible fear of persecution or torture." 8 C.F.R.
14 § 208.30(d). At the conclusion of the interview, the asylum officer must create a written summary of
15 the "material facts" provided during the interview, review that summary with the individual, and
16 provide him or her with the opportunity to correct any errors. 8 C.F.R. § 208.30(d)(6).
17

18 29. If an asylum officer determines that an applicant satisfies the credible fear standard, the
19 applicant is taken out of the expedited removal system altogether, and charging documents are
20 issued and served upon the individual, placing the applicant into regular (8 U.S.C. § 1229a) removal
21 proceedings where she has the opportunity to develop a full record before an IJ, apply for asylum
22 and any other relief that may be available, and appeal an adverse decision to the BIA and court of
23 appeals. 8 C.F.R. §§ 208.30(f), 1003.43(f) and 1208.30; *see also* 8 U.S.C. § 1225(b)(1)(B)(ii).²
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28 ² If the asylum officer makes a negative credible fear determination, the officer must provide a written
record of the determination and, upon request, the individual must be provided with prompt review of the

1 30. Following a determination that an individual has a credible fear, and thus credible fear
2 proceedings are no longer pending, and while the person is in custody, DHS has an affirmative duty
3 to provide her “the appropriate application forms,” and to provide her with information regarding the
4 consequences of knowingly filing a frivolous asylum application and information about
5 representation by counsel. 8 C.F.R. § 208.5(a). Additionally, once an individual has passed a
6 credible fear determination, DHS makes a determination of whether to continue detaining the
7 individual, or to release the applicant on parole, bond, or on their own recognizance. 8 U.S.C. §
8 1226(a).
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11 31. None of the documentation provided by DHS to these applicants upon release contains: (1)
12 notice of the one-year deadline for filing an asylum application in 8 U.S.C. § 1158(a)(2)(B); or (2)
13 instructions on how to timely file the application, even though they expressed a fear of returning to
14 their country of origin and/or a desire to apply for asylum, and were permitted to remain in the
15 country for the specific purpose of pursuing their asylum claims. Moreover, at no point in the
16 credible fear process, not even after the individuals are found to have a credible fear and thus are
17 taken out of the expedited removal process, are asylum officers required to provide notice of the
18 one-year deadline.
19

20 **B. Other Entrants**

21 32. Upon apprehension of persons seeking asylum, a DHS officer may elect not to initiate
22 expedited removal proceedings and the credible fear process. Instead, DHS may parole into the
23 United States or release from custody an individual who expresses a desire to apply for asylum or a
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28 determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(II)-(III); *see also* 8 C.F.R. §§
208.30(g)(1), 1003.42, 1208.30. DHS may deport individuals who do not establish a credible fear.

1 fear to return to her country of origin into the United States. *See* 8 U.S.C. § 1182(d) (authorizing
2 parole).

3 33. Thus, a DHS agent may decide to place an individual who appears to be inadmissible in
4 regular removal proceedings under 8 U.S.C. § 1229a rather than expedited removal proceedings
5 under 8 U.S.C. § 1225(b); in such case, the individual may be detained; however, DHS may consider
6 releasing the person on parole under 8 U.S.C. § 1182(d)(5) or on bond or on her own recognizance.
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8 8 C.F.R. § 235.3(c).

9 34. DHS may grant parole on a case-by-case basis for “urgent humanitarian reasons” or where it
10 would serve a “significant public benefit,” provided the individual does not present a security risk or
11 a risk of absconding. 8 C.F.R. § 212.5(a). Individuals who may be paroled include those with
12 medical conditions, pregnant women, juveniles, and those “whose continued detention” DHS
13 determines is not in the public interest. 8 C.F.R. § 212.5(b). DHS also may release a person from
14 custody on bond or on her own recognizance. 8 U.S.C. § 1226.
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17 35. While the person is in custody, DHS has an affirmative duty to provide her “the appropriate
18 application forms,” and to provide her with information regarding the consequences of knowingly
19 filing a frivolous asylum application and information about representation by counsel. 8 C.F.R. §
20 208.5(a).
21

22 36. DHS may require reasonable assurance that the individual will appear at a hearing and/or
23 depart the United States if required. 8 C.F.R. § 212.5(d). DHS may also require that the individual
24 post a bond, demonstrate close community ties such as a relative with a known address, or agree to
25 other reasonable conditions for parole. *Id.*
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1 37. Where parole or release from custody is granted, DHS generally issues an NTA and, in
2 parole cases, must issue a Form I-94 (Entry/Exit form) endorsed with a parole stamp. 8 C.F.R. §
3 235.1(h)(2).
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5 38. None of the documentation provided by DHS to these individuals upon release contains: (1)
6 notice of the one-year deadline for filing an asylum application in 8 U.S.C. § 1158(a)(2)(B); or (2)
7 instructions on how to timely file the application, even though they expressed a fear of returning to
8 their country of origin and/or a desire to apply for asylum, and were paroled into the country for the
9 express purpose of pursuing their asylum claims. Moreover, at no point in the parole or release
10 process, not even after the individuals have expressed their intention to seek asylum, are asylum
11 officers required to provide notice of the one-year deadline.
12

13 **C. Asylum and the One-Year Deadline**

14 39. To prevail on an asylum claim, an applicant must demonstrate that she cannot return to her
15 country of origin “because of persecution or a well-founded fear of persecution on account of race,
16 religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. §
17 1101(a)(42)(A); *see also* 8 U.S.C. § 1158(b)(1)(A).
18

19 40. Those who are granted asylum in the United States may not be removed to the country in
20 which they face persecution. 8 U.S.C. § 1158(c)(1)(A). In addition, asylees may file a petition to
21 accord their spouse and/or children derivative asylum status. 8 C.F.R. § 208.21(a). Asylees may
22 also apply for permission to travel in and out of the United States. 8 C.F.R. § 223.1(b). Finally,
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1 after they have held that status for at least one year, asylees may adjust their status to that of a lawful
2 permanent resident. 8 U.S.C. § 1159(b).³

3
4 41. In 1996, for the first time, Congress enacted a deadline requiring asylum seekers to file an
5 application within one year of their last arrival in the United States. 8 U.S.C. § 1158(a)(2)(B)
6 provides:

7 Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the
8 alien demonstrates by clear and convincing evidence that the application has been
9 filed within 1 year after the date of the alien’s arrival in the United States.

10 In enacting this provision, Congress sought to bar from asylum those noncitizens who, as an
11 example, were arrested by the immigration authorities after having been in the United States
12 for “2, 3 years, and . . . say, ‘I am seeking asylum’ because they know that these procedures
13 are interminable.” 142 CONG. REC. S4468 (daily ed. May 1, 1996) (statement of Sen.
14 Simpson). Congress affirmed, however, that it remained “committed to ensuring that those
15 with legitimate claims of asylum are not returned to persecution . . .” 142 CONG. REC. S11,
16 840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).

17
18 42. The deadline contains two exceptions: (1) an exception for asylum seekers who prove the
19 existence of “changed circumstances . . . materially affect[ing] the[ir] . . . eligibility for asylum”; and
20 (2) an exception for asylum seekers who prove the existence of “extraordinary circumstances
21 relating to the[ir] delay in filing an application” by the deadline. 8 U.S.C. § 1158(a)(2)(D).
22

23 _____
24 ³ Other forms of protection that may be available to someone fleeing persecution provide less security
25 and fewer benefits than is provided by a grant of asylum. An applicant who is not eligible for asylum may
26 still qualify for protection under 8 U.S.C. § 1231(b)(3)(B) (withholding of removal) or under the Convention
27 Against Torture (CAT). 8 C.F.R. §§ 1003.42(d); 1208.30(g)(2)(iv)(C). However, to qualify for either form
28 of protection, an applicant must establish a much higher likelihood of future harm—i.e., that persecution or
torture is more likely than not. For CAT protection, the applicant must meet other requirements that are not
applicable to an asylum claim. Moreover, unlike asylum, neither provides an avenue to lawful permanent
residence and eventual citizenship.

1 43. Congress enacted these exceptions to provide “adequate protections to legitimate asylum
2 claimants.” 142 CONG. REC. S11, 491 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch).
3 Congress emphasized that it did not want to see legitimate asylum seekers “returned to persecution”
4 due to mere “technical deficiencies” in their asylum applications, like the expiration of the one-year
5 deadline. *Id.* (statement of Sen. Hatch).
6

7 44. Following the enactment of the deadline, Defendants promulgated regulations to implement
8 it. In relevant part, the regulations provide:

9 *One-year filing deadline.* (i) For purposes of [8 U.S.C. § 1158(a)(2)(B)], an applicant
10 has the burden of proving:

11 (A) By clear and convincing evidence that the application has been filed within 1 year
12 of the date of the alien’s arrival in the United States, or

13 (B) To the satisfaction of the asylum officer, the immigration judge or the Board that
14 he or she qualifies for an exception to the 1-year deadline.

15 The 1-year period shall be calculated from the date of the alien’s last arrival in
16 the United States or April 1, 1997, whichever is later. . . . For the purpose of making
17 determinations under [8 U.S.C. § 1158(a)(2)(B)] *only*, an application is considered to
18 have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of
19 this chapter. In a case in which the application has not been received by
20 the Service within 1 year from the applicant’s date of entry into the United States, but
21 the applicant provides clear and convincing documentary evidence of mailing
22 the application within the 1-year period, the mailing date shall be considered the
23 filing date. For cases before the Immigration Court in accordance with § 3.13 of this
24 chapter, the application is considered to have been filed on the date *it is received by*
25 the Immigration Court. For cases before the Board of Immigration Appeals, the
26 application is considered to have been filed on the date *it is received by* the Board. In
27 the case of an application that appears to have been filed more than a year after the
28 applicant arrived in the United States, the asylum officer, the immigration judge, or
the Board will determine whether the applicant qualifies for an exception to the
deadline. . . .

8 C.F.R. § 208.4(a)(2) (DHS), 8 C.F.R. § 1208.4(a)(2) (emphasis added).

1 45. Accordingly, an individual may apply for asylum affirmatively by sending an application on
2 Form I-589 to USCIS (if she is not in removal proceedings) or defensively in immigration court
3 (also using Form I-589 if removal proceedings have been initiated).
4

5 46. An applicant who applies affirmatively must attend an interview with a USCIS asylum
6 officer, who may grant, deny, refer, or dismiss the application. 8 C.F.R. §§ 208.9(b), 208.14(c),
7 1208.9(b), and 1208.14(c). If the asylum officer refers the application, it is sent to an immigration
8 judge for adjudication in removal proceedings. 8 C.F.R. §§ 208.14(c), 1208.14(c). The asylum
9 application is then considered a “defensive” asylum application. An immigration judge reviews *de*
10 *novo* the previously filed asylum application, which may be amended or supplemented, without the
11 applicant having to file a new asylum application. 8 C.F.R. § 1208.4(c).
12

13 47. Asylum applicants who already are in removal proceedings must file their asylum
14 applications directly with EOIR. In these cases, the regulations require that the asylum application
15 be filed with the “immigration court.” 8 C.F.R. § 1208.4(b)(3). The application is “filed” for
16 purposes of meeting the deadline if it is “received by” an immigration court or the Board. 8 C.F.R.
17 §§ 208.4(a)(2)(B)(ii); 1208.4(a)(2)(B)(ii).
18

19 48. Unlike other applications and pleadings which may be filed with the immigration court at any
20 time, EOIR’s sub-regulatory policy and practice requires asylum applications to be filed only at a
21 hearing before an immigration judge. *See* Immigration Court Manual, 3.1(b)(iii)(A), *supra*; Revised
22 Operating Policy and Procedures Memorandum No. 00-01, “Asylum Request Processing (Aug. 4,
23 2000) (OPPM 00-01) at 15, *available at*:
24 <https://www.justice.gov/sites/default/files/eoir/legacy/2002/02/15/OPPM00-01Revised.pdf> (“Local
25 Court rules notwithstanding, including any such rules related to the filing of Motions for a Change of
26
27
28

1 Venue, defensive asylum applications can only be filed with the Immigration Court at a Master
2 Calendar or a Master Calendar Reset Hearing.”) (emphasis in original).

3 **D. Existing Agency Barriers to One-Year Deadline Compliance**

4
5 49. The asylum application process adversely affects Plaintiffs in two ways. First, DHS fails to
6 notify asylum seekers—including both those who are subject to a credible fear interview and those
7 released from custody without such an interview—of the one-year deadline. As a result, most
8 entrants are unaware of the deadline unless and until either an immigration lawyer or an immigration
9 judge informs them. Often these asylum seekers do not learn of the deadline until a significant time
10 has passed—in many cases after one year has elapsed. Upon information and belief, many
11 individuals who undergo the credible fear process erroneously believe that they already have applied
12 for asylum.
13

14 50. Second, even if applicants are on notice, DHS and EOIR have failed to implement a system
15 that ensures asylum seekers an opportunity in which they can comply with the deadline.
16

17 51. Often, DHS does not immediately send the Notice to Appear to the immigration court. For
18 these individuals, the one-year clock is ticking, but they have no formal venue in which to file their
19 asylum applications. Because the immigration court has not received the NTA, it has no jurisdiction
20 over that applicant’s case. Although USCIS does have jurisdiction, upon information and belief, it
21 refuses to accept applications because an NTA was issued, even though the NTA has not been
22 submitted to the immigration court. Plaintiffs Rodriguez and Mendez were unable to file their
23 asylum applications with USCIS for precisely this reason.
24

25 52. Similarly, in other cases, DHS may send the Notice to Appear to the immigration court, but
26 the court delays docketing the case. For these individuals also, the one-year clock is ticking but,
27 likewise, they have no formal venue in which to file their applications. In such cases, neither USCIS
28

1 nor EOIR admits to having jurisdiction to accept the asylum application, and thus the individual
2 cannot file with either agency.

3 53. In accordance with EOIR national policy, individuals still are not able to file their asylum
4 applications with the immigration court even *after* the immigration court docket the NTA, until the
5 first hearing before an immigration judge—despite the language of 8 C.F.R. §§ 208.4(a)(2) and
6 1208.4(a)(2), which do not impose that requirement, and instead specify only that an application is
7 filed when “received” by the immigration court. *See* Immigration Court Manual, Chapter
8 3.1(b)(iii)(A); OPPM 00-01 at 15.
9
10

11 54. Notwithstanding this national policy, on information and belief, an isolated handful of
12 immigration courts have adopted work-arounds to remedy this problem, resulting in a patchwork of
13 haphazard policies for accepting defensive asylum applications. For example, upon information and
14 belief, the immigration judges in Omaha, NE; Philadelphia, PA; Charlotte, NC; Cleveland, OH; San
15 Francisco, CA; and Seattle, WA allow individuals to meet the one-year deadline if they “lodge” the
16 application by submitting it to the clerk’s office within that time period. On information and belief,
17 these work-arounds are rare, given that there are more than 50 immigration courts. *See* EOIR
18 Immigration Court Listing, *available at* <https://www.justice.gov/eoir/eoir-immigration-court-listing>.
19 They also are non-binding on individual immigration judges, and, at any time, an individual judge
20 may decide to no longer agree that “lodging” constitutes “filing.”
21
22

23 55. Upon information and belief, in other immigration courts, including Los Angeles, CA,
24 judges reject this notion; in other words, they do not consider “lodging” as “filing” for purposes of
25 the one-year deadline.

26 56. Upon information and belief, in Houston, TX; Baltimore, MD; Chicago, IL; San Diego, CA;
27 New Orleans, LA; Denver, CO; and Portland, OR, each immigration judge has discretion to
28

1 determine whether lodging constitutes filing and often makes this determination on a case-by-case
2 basis.

3 57. The well-documented backlog in immigration courts routinely prevents the scheduling of a
4 master calendar hearing within the one-year deadline.⁴ As such, an individual's first opportunity to
5 apply for asylum at a master calendar hearing may take place only after the one-year deadline has
6 passed.

7
8 58. Other individuals may appear at their first master calendar hearing without an attorney, and
9 the immigration judge may continue the proceedings for a second hearing well beyond the one-year
10 deadline. Even if such individuals subsequently secure legal representation, EOIR policy mandates
11 that they wait until the next hearing to file their asylum application. *See* Immigration Court Manual,
12 Chapter 3.1(b)(iii)(A); OPPM 00-01 at 15.

13 14 **FACTUAL ALLEGATIONS**

15
16 59. Plaintiffs are suffering and will continue to suffer serious and irreparable harm due to
17 Defendants' failure to provide notice of the one-year deadline and a guaranteed opportunity to
18 comply with it, in violation of 8 U.S.C. § 1158(a)(2)(B), 8 C.F.R. §§ 208.4(a)(2), 1208.4(a)(2), and
19 the Due Process Clause.

20
21
22
23 ⁴ *See, e.g.,* Human Rights First, *In the Balance: Backlogs Delay Protection in the U.S. Asylum and*
24 *Immigration Court Systems* (April 2016) (reporting that, as of February 2016, there were 480,815 removal
25 cases pending before immigration courts and about 20 percent of incoming cases involve applications for
26 asylum and also estimating that the case backlog would reach over 500,000 by the end of Fiscal Year 2016
27 and 1 million by 2022); Transactional Records Access Clearinghouse (TRAC), *Average Time Pending Cases*
28 *Have Been Waiting in Immigration Courts as of April 2016* (April 2016), available at
http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php (reporting average wait
time in 2016 for all cases in immigration courts to be 668 days); TRAC, *Ballooning Wait Times for Hearing*
Dates in Overworked Immigration Courts (Sept. 21, 2015); available at
<http://trac.syr.edu/immigration/reports/405/>.

1 **Plaintiff Elmer Rodriguez**

2 60. Plaintiff Elmer Geovanni Rodriguez Escobar is a 37-year-old citizen of Honduras who
3 resides in Burien, Washington.

4
5 61. He fled Honduras after he and his family were threatened by violent gang members who had
6 murdered his nephew. Mr. Rodriguez was robbed and threatened by these gang members, who
7 targeted him personally, shot at his home, and attempted to kidnap his daughter from her school
8 shortly before he fled the country.

9
10 62. He entered the United States without inspection on July 9, 2014, and DHS apprehended him
11 shortly thereafter. DHS placed him in expedited removal proceedings, but because he expressed a
12 fear of persecution if returned to Honduras, DHS scheduled him for a credible fear interview. After
13 DHS determined that he had demonstrated a credible fear of persecution, DHS issued and served
14 him with an NTA, and then released him from custody on bond. The NTA listed the relevant
15 location for his future immigration hearing as the San Antonio, Texas, Immigration Court, but did
16 not provide a hearing date and time, noting that these would be determined at a later date.

17
18 63. At no point in time did DHS inform Mr. Rodriguez that he would need to file an asylum
19 application within one year of his arrival into the country. Mr. Rodriguez only became aware of the
20 deadline when he sought legal counsel for his immigration case. Through counsel, he attempted to
21 file his asylum application with USCIS on May 7, 2015, within one year of his arrival in the United
22 States. He did so because EOIR records indicated that his NTA had not yet been filed with the
23 immigration court: his “A number” did not appear in EOIR’s telephonic case information system,⁵
24
25
26

27 ⁵ EOIR established an electronic phone system to provide EOIR’s customers with ready access to
28 immigration court information in English and Spanish. Users can dial 240-314-1500 or 1-800-898-7180 (toll-

1 and he had not yet received a hearing notice. Although he received a “filing receipt” from USCIS,
2 dated May 8, 2015, the notice indicated that USCIS was treating the application as a “Defensive
3 Asylum Application,” based on its assumption that Mr. Rodriguez was in removal proceedings.
4 Because USCIS did not accept the application as an affirmative application, it did not forward his
5 application to the asylum office for the scheduling of an asylum interview.
6

7 64. In the meantime, in June 2015, Mr. Rodriguez also tried to “lodge” his I-589 with the San
8 Antonio Immigration Court, in an attempt to comply with the one-year filing deadline. However, the
9 San Antonio Immigration Court rejected the submission, stating that his case had not been filed with
10 EOIR.
11

12 65. Mr. Rodriguez subsequently filed an application for employment authorization in October
13 2015, as more than 150 days had elapsed since he filed his application with USCIS. Under the
14 regulations, after an application for asylum has been pending for more than 150 days, an asylum
15 seeker is eligible to apply for employment authorization. 8 C.F.R. § 208.7(a)(1). On January 19,
16 2016, USCIS denied his application for work authorization, concluding that he was not eligible for
17 employment authorization because he had not filed an asylum application with USCIS.
18

19 66. Mr. Rodriguez now has been in the United States for almost two years, yet he has been
20 unable to file his application for asylum.
21

22 **Plaintiff Concely Mendez**

23 67. Plaintiff Concely del Carmen Mendez-Rojas is a 30-year-old citizen of the Dominican
24 Republic who resides in Burien, Washington.
25
26

27 free) to obtain case status information 24 hours a day, 7 days a week. [https://www.justice.gov/eoir/customer-](https://www.justice.gov/eoir/customer-service-initiatives)
28 [service-initiatives](https://www.justice.gov/eoir/customer-service-initiatives).

1 68. Ms. Mendez was the victim of repeated acts of egregious domestic violence at the hands of
2 her former partner and father of her son in the Dominican Republic. Because the Dominican
3 authorities refused to protect her from her abuser, Ms. Mendez ultimately fled her country and
4 sought refuge in the United States.
5

6 69. She entered the United States without inspection on September 23, 2013, and DHS
7 apprehended her shortly thereafter. She was placed in expedited removal proceedings, but because
8 she expressed a fear of persecution if returned to the Dominican Republic, she was scheduled for a
9 credible fear interview. After DHS determined she had demonstrated a credible fear of persecution,
10 DHS released her from custody on her own recognizance and issued her an NTA dated October 16,
11 2013. The NTA listed the relevant location for her future immigration hearing as the San Antonio
12 Immigration Court, but did not provide a hearing date and time, noting that it would be determined
13 at a later date.
14

15 70. At no point in time did DHS inform Ms. Mendez of the one-year deadline to file her
16 application for asylum. In fact, Ms. Mendez believed that, by virtue of the process she had
17 undergone while in DHS custody, she already had applied for asylum, and did not understand that
18 she would need to file a particular application to pursue her case.
19

20 71. Ms. Mendez only became aware of the filing deadline when she sought legal counsel for her
21 immigration case, in October 2014, more than a year after her arrival in the United States. Upon
22 information and belief, at that point in time, the NTA issued to Ms. Mendez had not been filed with
23 the immigration court. Through counsel, she promptly attempted to file her application for asylum
24 with USCIS on November 3, 2014. She did so because she had still not been placed in removal
25 proceedings: her immigration number did not appear in EOIR's telephonic case information system,
26
27
28

1 and she had yet to be issued a hearing notice. Her application was initially accepted by USCIS,
2 which issued a receipt notice on November 7, 2014.

3 72. In the meantime, through counsel, Ms. Mendez frequently contacted EOIR's telephonic case
4 information system to find out if her case had been initiated in immigration court, but the system
5 reported that it had not.

6 73. On March 18, 2015, the San Francisco Asylum Office sent Ms. Mendez's counsel a letter,
7 stating that it lacked jurisdiction over Ms. Mendez' asylum application because she previously had
8 been placed in removal proceedings. On April 23, 2015, well after the one-year deadline had passed,
9 the San Francisco Asylum Office issued a second NTA, stating that Ms. Mendez would be scheduled
10 for a removal hearing in Seattle at a date and time to be determined at later date. Shortly after that,
11 however, Ms. Mendez learned through the EOIR telephonic case system that the San Antonio
12 Immigration Court had also scheduled an initial master calendar hearing for her on November 29,
13 2019. Almost immediately thereafter, Ms. Mendez "lodged" her asylum application with the San
14 Antonio Immigration Court, on May 8, 2015.

15 74. Her counsel subsequently filed a motion for a change of venue, and her case was transferred
16 to the Seattle Immigration Court. Her first master calendar hearing is scheduled for August 16,
17 2016.

18
19
20
21 **Plaintiff Lidia Lopez**

22 75. Plaintiff Lidia Margarita Lopez is a 37-year-old native and citizen of Guatemala who resides
23 in Austin, Texas, with her three children.

24 76. Ms. Lopez and her two younger children arrived at the Eagle Pass, Texas, port of entry on
25 February 28, 2014. After their arrival, Ms. Lopez stated to a DHS official that she was afraid to
26 return to Guatemala. DHS released Ms. Lopez and her children into the United States pending
27
28

1 removal proceedings, and served them with NTAs, setting them for a hearing before an immigration
2 judge at a to-be-determined date before the San Antonio Immigration Court.

3 77. Ms. Lopez was released by CBP on the condition that she regularly report with ICE in San
4 Antonio, Texas. She complied, reporting to ICE on four occasions between March 2014 and
5 September 2015. At no point did any ICE officer at her check-ins inform her about the one-year
6 filing deadline or provide her with information about how to file an asylum application. Ms. Lopez
7 believed that she would learn more about how to seek asylum once she had a hearing at an
8 immigration court.
9
10

11 78. Ms. Lopez was issued a second, superseding NTA on February 23, 2015, providing that she
12 would have a hearing before an immigration judge at the San Antonio Immigration Court at a to-be-
13 determined date. In September 2015, Ms. Lopez was issued a third superseding NTA, providing that
14 she would have a hearing before an immigration judge at the San Antonio Immigration Court at a to-
15 be-determined date. In October 2015, more than a year and a half after she arrived in the United
16 States, Ms. Lopez was issued a Notice of Hearing, setting her first master calendar hearing for
17 November 2, 2015.
18

19 79. At no point did any DHS official ever inform Ms. Lopez that she was required to file an
20 asylum application within one year of her most recent arrival.
21

22 80. In December 2015, after Ms. Lopez retained an immigration attorney to represent her and her
23 children in removal proceedings, she learned for the first time from her attorney that she was
24 required to file her asylum application within a year of arriving in the United States. But by this
25 point, the one year deadline had already passed. Prior to her next Master Calendar hearing, Ms.
26 Lopez lodged her asylum application with the immigration court in San Antonio, Texas in January
27 2016.
28

1 81. On January 11, 2016, upon a joint motion by the parties, an immigration judge terminated the
2 removal proceedings of Ms. Lopez and her children as improvidently issued. Ms. Lopez then filed
3 her asylum application affirmatively with USCIS on February 15, 2016. Ms. Lopez appeared for
4 fingerprinting and biometrics collection on March 14, 2016. She is currently awaiting an asylum
5 interview.
6

7 **Plaintiff Maribel Suarez**

8 82. Plaintiff Maribel Suarez Garcia is a 29-year-old native and citizen of Mexico who resides in
9 Yelm, Washington, with her five minor children.
10

11 83. Ms. Suarez was the victim of repeated acts of egregious domestic violence in Mexico at the
12 hands of her former partner and the father of her youngest children. That ex-partner is involved with
13 a violent drug cartel in Mexico, heightening the danger Ms. Suarez and her children already face. In
14 fact, the father of her three older children was murdered by a cartel in Mexico. For these reasons,
15 she and her children fled Mexico and sought refuge in the United States.
16

17 84. Ms. Suarez and her children arrived at the Otay Mesa port of entry on November 7, 2013.
18 Upon their arrival, Ms. Suarez informed DHS that she and her children were afraid to return to
19 Mexico and wanted to apply for asylum in the United States. After she provided a sworn statement
20 to DHS officials at the port-of-entry, DHS paroled her and her five children into the United States
21 pending removal proceedings. DHS also served them with NTAs, which indicated that they would
22 be scheduled for a removal proceeding before an immigration judge at a date, time, and location to
23 be determined later.
24

25 85. At no point did DHS ever inform Ms. Suarez that she was required to file an application for
26 asylum within one year of her arrival.
27
28

1 86. The San Francisco Immigration Court eventually scheduled Ms. Suarez and four of her
2 children for an initial master calendar hearing on December 22, 2015. It scheduled the remaining
3 child for an initial master calendar hearing on February 2, 2016. These initial master calendar
4 hearings occurred more than a year after Ms. Suarez and her children arrived in the United States.
5

6 87. After Ms. Suarez retained an immigration attorney to represent her and her children in their
7 removal proceedings, she learned for the first time from her attorney that she was required to apply
8 for asylum within one year of her arrival into the country. By that point, the one-year deadline had
9 passed. Ms. Suarez and her children subsequently lodged their application for asylum with the San
10 Francisco Immigration Court on May 19, 2015. Shortly thereafter, Ms. Suarez and her children also
11 moved the San Francisco Immigration Court to change venue in their case to Seattle. They are
12 scheduled for an individual calendar hearing in Seattle on May 12, 2017.
13

14 88. There are no administrative remedies for Plaintiffs to exhaust. No other remedy exists for
15 Plaintiffs to compel Defendants to cease violating their statutory, regulatory, and constitutional
16 rights.
17

18 **CLASS ALLEGATIONS**

19 89. Plaintiffs bring this action on behalf of themselves and all others who are similarly situated
20 pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because
21 this action involves questions of law and fact common to the classes, the classes are so numerous
22 that joinder of all members is impractical, Plaintiffs' claims are typical of the claims of the classes,
23 Plaintiffs will fairly and adequately protect the interests of the respective classes, and Defendants
24 have acted on grounds that apply generally to the class, so that final injunctive relief or
25 corresponding declaratory relief is appropriate with respect to the class as a whole.
26

27 90. Plaintiffs seek to represent the following nationwide classes:
28

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

6 **A.I.** All individuals in Class A who *are not* in removal proceedings and who
7 either (a) have not applied for asylum at all or (b) applied for asylum after one
8 year of their last arrival.

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

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

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

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

23 **Class A - The Credible Fear Class**

24 91. Plaintiffs Rodriguez and Mendez seek to represent Class A. Class A is so numerous that
25 joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential
26 class members because Defendants are in the best position to identify such persons. Upon
27 information and belief, there are thousands of persons who have been released from DHS custody
28 after having passed credible fear interviews whom Defendant DHS has not given notice of the one-
year deadline, and for whom Defendants have failed to provide a meaningful mechanism for
compliance with the deadline.

1 92. Questions of law and fact common to the proposed class that predominate over any questions
2 affecting only the individually named Plaintiffs include whether the DHS Defendants violate the
3 U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-
4 year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the
5 regulations, and/or the APA by failing to provide a uniform system for compliance with the
6 deadline.
7

8 93. Plaintiffs' claims are typical of the claims of the proposed class. The DHS Defendants have
9 failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that
10 ensures Plaintiffs and proposed class members have an opportunity to comply.
11

12 94. Plaintiffs will fairly and adequately protect the interests of the proposed class members
13 because they seek relief on behalf of the class as a whole and have no interest antagonistic to other
14 class members.
15

16 95. Plaintiffs also are represented by competent counsel with extensive experience in complex
17 class actions and immigration law.
18

19 96. Defendants have acted on grounds generally applicable to the proposed class, thereby making
20 appropriate final declaratory and injunctive relief.
21

22 **Subclass A.I. – Passed Credible Fear and Not in Removal Proceedings**

23 97. Plaintiff Rodriguez seeks to represent Subclass A.I. Subclass A.I. is so numerous that joinder
24 of all members is impracticable. Plaintiffs are not aware of the precise number of potential class
25 members because Defendants are in the best position to identify such persons. Upon information and
26 belief, there are hundreds of persons who have been released from DHS custody after having passed
27 credible fear interviews whom Defendant DHS has not given notice of the one-year deadline, who
28 are not in removal proceedings, and who have not applied for asylum within one year of their last

1 arrival because Defendants have failed to provide a meaningful mechanism to do so.

2 98. Questions of law and fact common to the proposed subclass that predominate over any
3 questions affecting only the individually named Plaintiffs include whether the DHS Defendants
4 violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice
5 of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution,
6 the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with
7 the deadline.

8
9 99. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS Defendants
10 have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system
11 that guarantees Plaintiffs and proposed subclass members an opportunity to comply.

12
13 100. Plaintiffs will fairly and adequately protect the interests of the proposed subclass
14 members because they seek relief on behalf of the class as a whole and have no interest antagonistic
15 to other class members.

16
17 101. Plaintiffs also are represented by competent counsel with extensive experience in
18 complex class actions and immigration law.

19
20 102. Defendants have acted on grounds generally applicable to the proposed subclass,
21 thereby making appropriate final declaratory and injunctive relief.

22 **Subclass A.II. – Passed Credible Fear and in Removal Proceedings**

23 103. Plaintiff Mendez seek to represent Subclass A.II. Subclass A.II. is so numerous that
24 joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential
25 class members because Defendants are in the best position to identify such persons. Upon
26 information and belief, there are thousands of persons who have been released from DHS custody
27 after having passed credible fear interviews whom Defendant DHS has not given notice of the one-
28

1 year deadline, who are in removal proceedings, and who have not applied for asylum within one year
2 of their last arrival because Defendants have failed to provide a meaningful mechanism to do so.

3 104. Questions of law and fact common to the proposed subclass that predominate over
4 any questions affecting only the individually named Plaintiffs include whether the DHS Defendants
5 violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice
6 of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution,
7 the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with
8 the deadline.
9

10 105. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS
11 Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement
12 a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.
13

14 106. Plaintiffs will fairly and adequately protect the interests of the proposed subclass
15 members because they seek relief on behalf of the class as a whole and have no interest antagonistic
16 to other class members.
17

18 107. Plaintiffs also are represented by competent counsel with extensive experience in
19 complex class actions and immigration law.
20

21 108. Defendants have acted on grounds generally applicable to the proposed subclass,
22 thereby making appropriate final declaratory and injunctive relief.

23 **Class B – Other Entrants Class**

24 109. Plaintiffs Lopez and Suarez seek to represent Class B (Other Entrants Class). Class B
25 is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise
26 number of potential class members because Defendants are in the best position to identify such
27 persons. Upon information and belief, there are hundreds of persons Defendant DHS has paroled
28

1 into the country or released from custody after having expressed a fear of return whom Defendant
2 DHS has not given notice of the one-year asylum deadline, and for whom Defendants have failed to
3 provide a meaningful mechanism for compliance with the deadline.
4

5 110. Questions of law and fact common to the proposed class that predominate over any
6 questions affecting only the individually named Plaintiffs include whether the DHS Defendants
7 violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice
8 of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution,
9 the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with
10 the deadline.
11

12 111. Plaintiffs' claims are typical of the claims of the proposed class. The DHS Defendants
13 have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system
14 that guarantees Plaintiffs and proposed class members an opportunity to comply.
15

16 112. Plaintiffs will fairly and adequately protect the interests of the proposed class
17 members because they seek relief on behalf of the class as a whole and have no interest antagonistic
18 to other class members.

19 113. Plaintiffs also are represented by competent counsel with extensive experience in
20 complex class actions and immigration law.
21

22 114. Defendants have acted on grounds generally applicable to the proposed class, thereby
23 making appropriate final declaratory and injunctive relief.

24 **Subclass B.I. – Released from Custody, Given an NTA, But Not in Removal Proceedings**

25 115. Plaintiff Lopez seeks to represent Subclass B.I. Subclass B.I. is so numerous that
26 joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential
27 class members because Defendants are in the best position to identify such persons. Upon
28

1 information and belief, there are hundreds of persons Defendant DHS has paroled into the country or
2 otherwise released from custody after having expressed a fear of return, to whom Defendant DHS
3 has not given notice of the one-year deadline, who are not in removal proceedings (although they
4 have been given an NTA), and who have not applied for asylum within one year of their last arrival
5 because Defendants have failed to provide a meaningful mechanism to do so.
6

7 116. Questions of law and fact common to the proposed subclass that predominate over
8 any questions affecting only the individually named Plaintiffs include whether the DHS Defendants
9 violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice
10 of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution,
11 the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with
12 the deadline.
13

14 117. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS
15 Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement
16 a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.
17

18 118. Plaintiffs will fairly and adequately protect the interests of the proposed subclass
19 members because they seek relief on behalf of the class as a whole and have no interest antagonistic
20 to other class members.
21

22 119. Plaintiffs also are represented by competent counsel with extensive experience in
23 complex class actions and immigration law.
24

25 120. Defendants have acted on grounds generally applicable to the proposed subclass,
26 thereby making appropriate final declaratory and injunctive relief.
27
28

1 **Subclass B.II. – Released from Custody, Given an NTA, and in Removal Proceedings**

2 121. Plaintiff Suarez seek to represent Subclass B.II. Subclass B.II. is so numerous that
3 joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential
4 class members because Defendants are in the best position to identify such persons. Upon
5 information and belief, there are hundreds of persons Defendant DHS has paroled into the country or
6 otherwise released from custody after having expressed a fear of return, to whom Defendant DHS
7 has not given notice of the one-year asylum deadline, who are in removal proceedings, and who have
8 not applied for asylum within one year of their last arrival because Defendants have failed to provide
9 a meaningful mechanism to do so.
10

11 122. Questions of law and fact common to the proposed subclass that predominate over
12 any questions affecting only the individually named Plaintiffs include whether the DHS Defendants
13 violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice
14 of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution,
15 the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with
16 the deadline.
17

18 123. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS
19 Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement
20 a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.
21

22 124. Plaintiffs will fairly and adequately protect the interests of the proposed subclass
23 members because they seek relief on behalf of the class as a whole and have no interest antagonistic
24 to other class members.
25

26 125. Plaintiffs also are represented by competent counsel with extensive experience in
27 complex class actions and immigration law.
28

1 126. Defendants have acted on grounds generally applicable to the proposed subclass,
2 thereby making appropriate final declaratory and injunctive relief.

3 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

4 127. An actual and substantial controversy exists between the proposed classes and
5 Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants' actions
6 violate Plaintiffs' rights and the rights of the proposed classes.
7

8 128. The DHS Defendants' policy and practice of failing to give notice of the one-year
9 deadline and the DHS and DOJ Defendants' failure to provide a uniform and reliable system within
10 which to comply with that deadline has caused and will continue to cause irreparable injury to
11 Plaintiffs and proposed class members. Plaintiffs and proposed class members have lost, or are at
12 risk of losing, their right to seek asylum in the United States and all the associated rights and benefits
13 afforded through the asylum process, including protection from removal to countries where they face
14 a well-founded fear of persecution, as well as the rights to become lawful permanent residents, to
15 travel, and to reunite with family members.
16
17

18 129. Plaintiffs have no adequate remedy at law. They do not seek a determination as to the
19 merits of their individual asylum claims; nor do they seek judicial review of an order of removal
20 entered against them. What they challenge are two unlawful procedural deficiencies in the way that
21 Defendants are implementing the asylum process/system—deficiencies that are unrelated to
22 Plaintiffs' substantive eligibility for asylum, and that deprive many Plaintiffs and proposed class
23 members of the opportunity to present their claims for asylum to the relevant adjudicators. The
24 immigration court and subsequent appeals process is not empowered to remedy such systemic
25 deficiencies. Accordingly, Plaintiffs have exhausted their administrative remedies.
26
27
28

1 130. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and proposed class members have suffered
2 a “legal wrong” and have been “adversely affected or aggrieved” by agency action for which there is
3 no adequate remedy in a court of law.
4

5 131. Based on the foregoing, the Court should grant declaratory and injunctive relief under
6 28 U.S.C. §§ 2201, 2202, 5 U.S.C. § 702, and the Mandamus and Venue Act of 1962, 28 U.S.C. §
7 1361.
8

9 CAUSES OF ACTION

10 COUNT ONE

11 **(Violation of the Immigration and Nationality Act, Implementing Regulations, and the** 12 **Administrative Procedure Act Based on Lack of Notice)**

13 **(Against the DHS Defendants)**

14 132. All of the foregoing allegations are repeated and realleged as though fully set forth
15 herein.

16 133. The Immigration and Nationality Act and implementing regulations, including 8
17 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. §
18 1158 (asylum), entitle Plaintiffs to a meaningful opportunity to apply for asylum, including notice of
19 the filing deadline. Defendants, through their directives, have violated these statutory and regulatory
20 rights, both singularly and collectively, by failing to provide notice of the one-year deadline set forth
21 in 8 U.S.C. § 1154(a)(2)(B).
22

23 134. Plaintiffs have been harmed by the lack of notice in that they are then either deprived
24 of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the
25 adjudicator that they qualify for a statutory exception to the one-year deadline.
26
27
28

COUNT TWO

(Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Based on Lack of Notice)

(Against the DHS Defendants)

135. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

136. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of law.”

137. Plaintiffs have protected interests in applying for asylum and in not being removed to countries where they face serious danger and potential loss of life.

138. Plaintiffs are entitled under the Due Process Clause to a fair hearing of their asylum claims, including notice of the deadline for filing an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B).

139. DHS Defendants have violated Plaintiffs’ right to due process, both singularly and collectively, by failing to provide notice of the one-year deadline.

140. Plaintiffs have been harmed by the lack of notice in that they are then either deprived of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that they qualify for a statutory exception to the one-year deadline.

COUNT THREE

(Violation of the Immigration and Nationality Act, Implementing Regulations, and the Administrative Procedure Act Based on Lack of a Uniform Procedural Mechanism)

(Against All Defendants)

1 141. All of the foregoing allegations are repeated and realleged as though fully set forth
2 herein.

3 142. The Immigration and Nationality Act and implementing regulations, including 8
4 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. §
5 1158 (asylum), entitle Plaintiffs to a meaningful opportunity to apply for asylum, including uniform
6 procedural mechanisms for both affirmative and defensive applications whereby they can comply
7 with the one-year filing deadline set forth in 8 U.S.C. § 1158(a)(2)(B).
8

9 143. Defendants have violated Plaintiffs' statutory and regulatory rights, both singularly
10 and collectively, by failing to implement uniform procedural mechanisms that ensure that Plaintiffs
11 can comply with the filing deadline.
12

13 144. Plaintiffs have been harmed by the lack of a procedural mechanism that ensures them
14 the opportunity to comply with the one-year deadline in that they are then either deprived of the right
15 to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that
16 they qualify for a statutory exception to the one-year deadline.
17

18 **COUNT FOUR**

19 **(Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Based on**
20 **Lack of a Uniform Procedural Mechanism)**

21 **(Against All Defendants)**

22 145. All of the foregoing allegations are repeated and realleged as though fully set forth
23 herein.

24 146. The Due Process Clause of the Fifth Amendment to the United States Constitution
25 provides that “[n]o person shall ... be deprived of life, liberty, or property, without due process of
26 law.”
27
28

1 147. Plaintiffs have protected interests in applying for asylum and in not being removed to
2 countries where they face serious danger and potential loss of life.

3 148. Plaintiffs are entitled under the Due Process Clause to a fair hearing of their claims,
4 including at a minimum uniform procedural mechanisms for both affirmative and defensive
5 applications whereby they can comply with the one-year deadline set forth in 8 U.S.C. §
6 1158(a)(2)(B).
7

8 149. Defendants have violated Plaintiffs' right to due process, both singularly and
9 collectively, by failing to implement uniform procedural mechanisms that ensure that Plaintiffs can
10 comply with the filing deadline.
11

12 150. Plaintiffs have been harmed by the lack of a procedural mechanism that ensures them
13 the opportunity to comply with the one-year deadline in that they are then either deprived of the right
14 to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that
15 they qualify for a statutory exception to the one-year deadline.
16

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiffs respectfully pray for this Court to:

- 19 a. Assume jurisdiction over this matter;
20 b. Certify the case as class action as proposed herein;
21 c. Appoint Plaintiffs as representatives of the classes;
22 d. Declare that DHS Defendants' policy and practice of failing to give notice of the one-year
23 deadline is contrary to the statute and the Constitution;
24 e. Declare that DHS and DOJ Defendants' failure to provide uniform meaningful and reliable
25 mechanisms within which to comply is contrary to the statute and the Constitution;
26
27
28

1 f. Enter an order directing Defendants to submit a plan for corrective action for approval by the
2 Court;

3 g. Issue an order directing Defendants to provide Plaintiffs and class members notice of the
4 one-year deadline;

5 h. Issue an order directing Defendants to authorize Plaintiffs and class members to file an
6 asylum application within one year of the date such notice is provided;

7 i. Require that Defendants return to the United States any deported Plaintiff or class member
8 whose asylum application was denied for having failed to meet the one-year deadline so that he or
9 she may submit a new asylum adjudication that complies with the law;

10 j. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act,
11 and any other applicable statute or regulation; and

12 k. Grant such further relief as the Court deems just, equitable, and appropriate.

13 Respectfully submitted this 30th day of June, 2016,

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17 Vicky Dobrin, WSBA No. 28554

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