

Court Decision Ensures Asylum Seekers Notice of the One-Year Filing Deadline and an Adequate Mechanism to Timely File Applications

Frequently Asked Questions¹ April 13, 2018

Introduction

Judge Ricardo S. Martinez of the U.S. District Court for the Western District of Washington recently issued a significant decision regarding the one-year filing deadline for asylum applications. The decision has nationwide implications for thousands of asylum seekers. On March 29, 2018, in *Mendez Rojas v. Johnson*, 2018 WL 1532715 (W.D. Wash. Mar. 29, 2018), the court held that the government's failure to provide adequate notice of the one-year deadline constitutes a violation of the immigration statute, the Administrative Procedure Act (APA), and class members' due process rights under the Fifth Amendment. In addition, the court held that the government's failure to provide a uniform mechanism through which class members can timely file their asylum applications also violates the immigration statute and the APA. Therefore, the court ordered that the government adopt a notice of the one-year filing deadline and provide this notice to all current and future class members. Further, the court ordered the government to adopt, publicize, and implement uniform procedural mechanisms that will allow class members to file their asylum applications in a timely manner.

Who is covered by the decision?

To benefit from this decision, an individual must be a member of one of the two classes certified in the case:

Class A comprises individuals who:

- Have been or will be released from Department of Homeland Security (DHS) custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v); and
- Did not receive a notice from DHS of the one-year filing deadline for asylum applications; and
- Either
 - Have not filed an asylum application; or

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- Filed an asylum application more than one year after their arrival in the United States.

Additionally, Class A is divided into two sub-classes: 1) those who *are not* in removal proceedings; and 2) those who *are* in removal proceedings.

Class B comprises individuals who:

- Have been or will be detained by DHS upon their arrival into the country;
- Express a fear of return to their home country to a DHS official;
- Have been or will be released from DHS custody without a credible fear determination;
- Are issued a Notice to Appear (NTA);
- Did not receive a notice from DHS of the one-year filing deadline for asylum applications; and
- Either
 - Have not filed an asylum application; or
 - Filed an asylum application more than one year after their arrival in the United States.

Additionally, Class B is divided into two sub-classes: 1) those who *are not* in removal proceedings; and 2) those who *are* in removal proceedings.

What did the *Mendez Rojas* court decide?

The court found that the government’s failure to provide adequate notice of the one-year deadline violated class members’ statutory right to apply for asylum under the Immigration and Nationality Act (INA), providing for relief under the APA. *Mendez Rojas*, 2018 WL 1532715 at *3, 5.

Moreover, the court found that the notice the government claimed was provided to class members through a variety of documents and through the statute was insufficient. *Id.* at *7-8. The court concluded that such notice was not “reasonably calculated, under all of the circumstances of this case,” to afford class members adequate notice of the one-year deadline, in violation of their due process rights. *Id.* at *6.

Finally, the court found that the immigration courts’ refusal to accept applications until an NTA is filed with the court, coupled with USCIS’s refusal to accept asylum applications from class members whose cases were not yet pending with an immigration court, operated to deprive class members of the opportunity to timely file their asylum applications. *Id.* at *8-9. These refusals constituted a violation of class members’ statutory right to apply for asylum under the INA, and the court provided for relief under the APA. *Id.* at *9.

What did the *Mendez Rojas* court order?

Pursuant to its decision, the court ordered that:

- The government has until June 27, 2018, to adopt notice of the one-year deadline and thereafter provide notice to all current and future class members;

- The government must accept as timely filed any asylum application from a class member that is filed within one year of the date of adoption of the notice; and
- The government has until July 27, 2018, to adopt, publicize, and immediately implement uniform procedural mechanisms that will ensure class members are able to file their asylum applications in a timely manner.

Is the Court's order effective now?

Yes. The court's decision became effective on the date that it was issued, March 29, 2018. Consequently, the period in which the government must issue a notice to class members began to run on that date, as did the period in which it must implement uniform procedures for filing asylum applications.

What happens if the government appeals?

The government has until May 29, 2018 to appeal the decision. If it appeals, it also may seek a stay of the order until the circuit court decides the appeal. Unless such a stay is granted, the district court's order will remain in effect.

My client qualifies as a class member. What should I do?

For class members with cases pending before EOIR, practitioners should notify the immigration judge of the decision in *Mendez Rojas* and their client's class membership. For class members whose cases are on appeal to the BIA, practitioners should similarly notify the BIA of their client's class membership. Enclosed is a sample Notice of Class Membership.

Class members with final orders of removal whose asylum applications were rejected due to failure to comply with the one-year deadline should consider filing a motion to reopen their order. Generally, an individual must file a motion to reopen within 90 days of entry of the final order. Practitioners whose clients' orders were issued more than 90 days ago can argue that the filing deadline should be equitably tolled based on the court's order and their diligent pursuit of their claim after learning about the order.² Class members in this situation can email class counsel at kmacleod-ball@immcouncil.org.

Per the court's order, the government must accept as timely filed an asylum application that is filed by a class member within one year of the government's adoption of the new notice of the one-year deadline, including those applications filed by class members before the court's order but more than a year after their arrival in the United States.

We will continue to update this FAQ as we learn more about the implementation of the court's order and any decision by the government to pursue an appeal.

² For more information about motions to reopen and equitable tolling, see the American Immigration Council's Practice Advisory, [The Basics of Motions to Reopen EOIR-Issued Removal Orders](#).