



DOBRIN & HAN, PC
Attorneys at Law

Northwest
**IMMIGRANT
RIGHTS**
Project

Guide for Pro Se Asylum Seekers Regarding the *Mendez Rojas* Settlement and Notices Issued Pursuant to It

Frequently Asked Questions¹ July 1, 2021

Overview

Under U.S. law, a person must apply for asylum within one year of their last arrival to the United States. 8 U.S.C. § 1158(a)(2)(B). In a case called *Mendez Rojas v. Wolf*, a group of asylum applicants challenged the government's failure to provide adequate notice of this one-year filing deadline to certain asylum seekers who were detained by the U.S. Department of Homeland Security (DHS) upon or shortly after their arrival. The lawsuit also challenged the government's failure to provide a way for asylum seekers to file their asylum applications in a timely manner. Below we provide a summary of the lawsuit and some answers to common questions about it. However, because whether you can benefit from this agreement or need to do something in response to it is a complicated matter, **we strongly recommend that you contact an attorney to receive advice specific to your case.** This document is not legal advice.

On March 29, 2018, the district court in the *Mendez Rojas* case issued a decision requiring Defendants to 1) provide appropriate notice of the one-year filing deadline, 2) recalculate the one-year deadline from the date of the appropriate notice, and 3) implement a mechanism that ensures asylum seekers have an appropriate opportunity to timely submit their applications for asylum. After the court made its decision, the lawyers for the asylum seekers and the government reached an agreement about how to make sure the government implemented the court's order. On November 4, 2020, the court adopted the [final settlement agreement](#) reached between the two sides in the case.

Under the terms of that agreement, the government: (1) agreed to provide adequate notice of the one-year filing deadline to asylum seekers going forward; (2) agreed to create a mechanism that would allow asylum seekers to timely file their asylum applications in the future; and (3) agreed to provide relief for certain asylum seekers who were harmed because of the government's failure to provide adequate notice of the one-year filing deadline in the past. By the "government," we mean the Department of Homeland Security (which processes some asylum applications) and the Executive Office of Immigration Review (which runs the immigration courts).

¹ Copyright (c) 2018 American Immigration Council, Dobrin & Han, PC, and the Northwest Immigrant Rights Project. [Click here](#) for information on reprinting this document. The information contained in this FAQ is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. We are grateful for the assistance of Patrick Taurel, of Clark Hill, PLC, for drafting a Notice of Class Membership which is adapted and attached to this FAQ.

As a result of the agreement, certain asylum seekers who applied for asylum more than one year after they entered the United States, and certain asylum seekers who have already been in the United States over one year and have not yet applied for asylum, may benefit from the settlement agreement. Even asylum seekers who were denied asylum already may benefit from the settlement agreement. To benefit from the agreement, an individual must establish he or she is a member of one of the classes of asylum seekers protected by the lawsuit.

A class member must come forward to establish her class membership and request relief under the settlement. **All claims for relief under the *Mendez Rojas* settlement agreement must be submitted on or before April 22, 2022.** This is a very important date—anyone who wants to benefit from the settlement agreement must take action before it! More information about how to do so is included below.

1. I have received a notice that says I might be someone who could benefit from the *Mendez Rojas* settlement. What should I do?

As discussed above, the settlement in the *Mendez Rojas* case can help people who were in the custody of the Department of Homeland Security, did not receive notice that they could apply for asylum, and thereafter did not apply for asylum within one year, as U.S. law requires.

However, receiving a notice does not necessarily mean that you did not file your application on time. In order to help ensure that everyone who needs to learn about this case receives a notice, the government has sent notices to many people who have already filed their applications in a timely way.

As a result, if you received a notice, you should contact an attorney. The attorney can help identify whether you need to take any action in response to the notice. If you are unable to contact an attorney, we have provided further guidance below. However, because whether you need to take action is usually a complicated question, we strongly encourage you to seek out a lawyer who can provide advice that is specific to your case.

2. Who are the people that can benefit from the settlement agreement?

To benefit from the final settlement agreement, a person must be a member of one of the two groups that the court approved in the case.

The first group, known as **Group A**, includes people who:

- Encountered immigration officials upon arrival in the United States or within fourteen days of entering the United States illegally;
- Were released by DHS after having been found to have a credible fear of persecution or torture;
- Did not receive individualized notice 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 last arrival in the United States.

As noted above, to be in Group A, you must have been found to “have a credible fear of persecution or torture.” This will mean that after you entered the United States and encountered immigration officials, you were interviewed by an immigration officer who asked you about the reasons that you left your country. You also must not have received notice of the requirement that you need to file your asylum application within one year.

Group A is also divided further into two sub-groups: i) people who *are not* in removal proceedings; and ii) people who *are* in removal proceedings.

Group B comprises individuals who:

- Encountered immigration officials upon arrival or within fourteen days of unlawful entry;
- Expressed a fear of return to their country of origin;
- Were released from DHS custody upon issuance of a Notice to Appear;
- Did not receive individualized notice 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.

Unlike Group A, the people in Group B did not receive a credible fear interview with an asylum officer. Instead, to be in Group B, you need to have told an immigration official that you feared returning to your country of origin. After you did so, you must have been released from immigration custody and received paperwork requiring you to show up to an immigration court. You also must not have received notice of the requirement that you need to file your asylum application within one year.

Like Group A, Group B is also further divided into two sub-classes: i) those who *are not* in removal proceedings; and ii) those who *are* in removal proceedings.

3. What is “individualized notice”?

Only a notice from the government Defendants in this case counts as a notice. The Defendants in this case include the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR), which runs the immigration courts. Notice provided by someone other than a DHS immigration official or an employee of EOIR does not count as an individualized notice. For example, if you were informed about the one-year deadline through a presentation from a non-governmental organization that assists immigrants while you were in detention, this would not count as notice.

4. How do I know if I “expressed a fear of return to their country of origin”?

As described above, the main difference between Group A and Group B is that people in Group A received a credible fear interview after they entered immigration custody. By contrast, people in

Group B “expressed a fear of return to their country of origin” and were released before they ever received an interview. Telling an immigration official that you were afraid of returning to your country informs the immigration official that you were someone who likely needs information about applying for protection from deportation.

To demonstrate to the government that you are a member of Group B, it is sufficient to sign a declaration under penalty of perjury or to provide credible testimony under penalty of perjury that you told an immigration official that you feared return to the country you came from. You do not need to have used specific or certain words to have shared this information with the immigration official. There is more information below about how to tell the correct immigration official, agency, or judge that you believe you are a member of Group B.

It is important to know that if you claim to be a member of Group B, the government may contest this claim in your immigration case. For example, immigration officials processing people who recently entered the country sometimes ask and record a series of questions that includes whether you fear returning to your country. If you answered “no” to these questions and the government has a record of it, they may show this record to the immigration judge or to another immigration official to claim that you are not a member of Group B and cannot file your asylum application more than one year after you entered the United States.

5. Are there limits to whether I can benefit from the *Mendez Rojas* settlement agreement?

Yes. First, as explained above in Question 2, you have to meet the requirements of being a member of Group A or Group B.

In addition, there are some time limits for whether you can benefit from the agreement. The first time limit is for people in Group A or Group B who are **in removal proceedings**. Specifically, you must either be in removal proceedings before the immigration court or Board of Immigration Appeals on June 30, 2016, or have been put into removal proceedings after that same date, June 30, 2016.

A second time limit applies for people who received a notice placing them into removal proceedings on or after January 26, 2021. This is because on January 26, 2021, the government met its obligations under the agreement; it had begun to use a new notice informing people about the need to file an asylum application within one year of entering the United States and began using a new mechanism that allows asylum seekers to timely file their asylum applications. The new notice also explains how to file the asylum application. As a result, because people who receive this form have received sufficient information to know how to apply for asylum within one year and the new mechanism allows them to file the applications in a timely manner, they cannot benefit from the agreement in this case.

However, if for some reason you are unable to file an asylum application despite the new filing process, please contact the attorneys representing the asylum applicants in this case at mendezrojas@nwirp.org.

6. I think I might be someone who benefits from the *Mendez Rojas* settlement. How might it help me?

Your application can be considered as timely filed. One of the most important benefits of the agreement is that government **will accept an asylum application from a member of Group A or Group B that was filed or is filed on or before April 22, 2022, even if the filing is already past the one-year filing deadline.** There is more detail below about how to tell the government that you believe you are a member of Group A or Group B.

A new way to file. The agreement between the asylum seekers and the government provides protections that make it easier for asylum applicants to file their application. In addition, it also helps to ensure that if an applicant files their application in the wrong place, the person receives a notice telling them where they should file the notice.

In order to know where to file and what steps to take, you should look at U.S. Citizenship and Immigration Services' (USCIS) website at www.uscis.gov/i-589. Once there, select the "Where to File" tab, which provides instructions. You can also find instructions on EOIR's website at the following link: <https://www.justice.gov/eoir/page/file/1334796/download>. Be sure to follow the instructions on the website to learn how and where to file your application.

7. I already filed my asylum application a long time ago? Do I need to take any action?

As explained above, knowing whether you need to take any action in response to this settlement agreement can be complicated. It is very important you contact an attorney and ask whether there are any steps you need to take, if possible.

However, some people who have received notices about this case will not need to take any action. As noted above, the government sent notices to more people than necessary, and many of those people had filed their asylum applications as required by the law.

The most important thing is to determine whether you correctly filed your application within one year of arriving in the United States. If you filed it within one year and filed the application in the right place, you should not need to take any action.

8. How can I ensure that my asylum application is considered as timely filed and claim the benefits of being a *Mendez Rojas* class member?

It is very important that you take action to ensure that your application is considered as having been timely filed. If you believe you are a member of Group A or Group B, you have to tell the correct government agency or official that you believe you are a member of one of these groups. **It is your responsibility to tell the government you are a Group A or B member, and you have to produce evidence to support your claim that you are part of one of these groups.**

To tell the government you are a class member, you must first determine what agency is currently considering your asylum application (if you have already filed it). There are three options: (1) USCIS, (2) an immigration judge, or (3) the Board of Immigration Appeals (BIA). USCIS usually considers applications from people who are not required to appear before an immigration judge

for deportation proceedings. An immigration judge considers asylum applications from people who have been placed in deportation proceedings. The BIA hears appeals from decisions by immigration judges.

As noted above you need to send the notice to the USCIS asylum office, the immigration judge, or the BIA, depending on where your case is currently pending, **on or before April 22, 2022**. We have included with this document sample Notices of Class Membership for cases pending before the [Immigration Court](#), the [Board of Immigration Appeals](#) (BIA), and [USCIS](#). Attachment A is for the Immigration Court, Attachment B is for the BIA, and Attachment C is for USCIS.

Along with these attachments you need to include evidence that you are a member of Group A or Group B. For example, to show you are a member of Group A, you could include a copy of the transcript from your credible fear interview. Showing membership in Group B can be harder, but as noted above, sometimes the government has documents that can show whether you told a government official that you feared returning to your country. If you don't have these documents, you can also include a declaration under penalty of perjury that explains why you are a member of Group A or Group B. If you need to submit a declaration, you should be sure to explain why you meet each of the requirements for the Group that are in Question 2 above. Again, because doing this can be difficult, we strongly recommend that you seek help from an attorney.

Where to send your notice that you are a member of Group A or Group B:

Immigration Court or the BIA: If you have a case pending in Immigration Court or before the BIA, **you should try to submit notice of class membership in writing** (and be sure to follow the Immigration Judge's filing deadlines if your case is before an immigration judge). If you do not have an attorney in your deportation case, you may also tell the judge at a hearing that you believe you are a Group A or Group B member and explain why you are a member. Please remember, however, that you need to make your claim before April 22, 2022, so if you do not have a hearing before that day, you have to submit something in writing to the immigration judge. However, we strongly recommend that you try to tell the immigration judge that you are a class member by submitting documents, as we note above. You can file your claim that you are a Group A or Group B member at the same address where you send other filings in your case.

USCIS: If your case is pending before a USCIS Asylum Office, you need to notify the Asylum Office in charge of your case that you are a member of Group A or Group B. To know which asylum office is handling your case, you can go to this website and enter the state you live in: <https://egov.uscis.gov/office-locator/#/asy>. Like with the immigration judge, you can notify USCIS that you believe you are a member of Group A or Group B in writing or orally at your asylum interview. Once again, remember that you need to make your claim before April 22, 2022, so if you do not have an interview before then, you must submit something in writing.

9. I never turned in an asylum application after I entered the United States and I am not in deportation proceedings. What should I do?

Even if you have not already submitted an asylum application, you can still benefit from this agreement if you are a member of Group A or Group B. If you now wish to apply for asylum, you can send in an application to USCIS along with the evidence discussed above for how to show you are a member of Group A or Group B. You can use information in Question 6 regarding the new way to file applications to know where to send your application. However, you should know that if USCIS denies your application, the government will likely put you in removal proceedings before an immigration judge.

10. Do I need to have an attorney to receive the benefits of the agreement and to have my application be considered as timely filed?

No, but we very strongly recommend that you seek the help of an attorney to review your case and to determine what action, if any, is needed to obtain the benefits of the agreement.

However, if you cannot find an attorney to assist you, you do not need to be represented by one to receive the benefit of the final settlement agreement. However, you still must take action. The same burdens and standards apply to both people with attorneys and without attorney. There is one exception for people without attorneys who currently have a case pending before an immigration judge, as explained below:

For cases pending before an immigration judge, an individual without an attorney can submit a claim to be a member of Group A or Group B **orally during a recorded Immigration Court proceeding**. People who are represented by an attorney in their immigration case before the immigration judge cannot do so orally. As noted, we recommend that you submit your claim to be a member of Group A or Group B **in writing** to the immigration judge hearing your case if possible.

11. My case was administratively closed. Can I still benefit from this agreement?

Yes. In some cases, the immigration courts have closed the cases of people without ever reaching a final decision on the case. If you are one of these people, there are extra steps that you need to follow to receive the benefits of the agreement in this case.

As with everyone, you still must take action **on or before April 22, 2022** to claim that you are a member of Group A or Group B. To do so you must ask the immigration court to recalendar your case. Included with this document is Attachment D, which is a [sample template motion to recalendar](#).

Alternatively, in some instances, the government might move to recalendar your case, If that happens, you must submit notice of class membership and, if you have not already done so, the asylum application **on or before April 22, 2022**. Instructions and more information on this are above in question 8.

What you need to submit will depend on the status of your case before it was closed. If you never submitted an asylum application before the case was closed, you must submit the following:

- A written [motion to recalendar](#) (Attachment D)
- Notice of class membership (Attachments A or B)
- An asylum application (Form I-589)

If you had already submitted an asylum application at the time your case was closed, then you need to only submit the following documents:

- A written [motion to recalendar](#) (Attachment D)
- Notice of class membership (Attachments A or B)

Where to submit these documents will depend on the status of your case when it was closed. If your case was still being heard by an immigration judge, you submit the documents to that immigration court. However, if your case was being considered by the BIA, then you must submit the documents to the BIA. Don't forget that if you have changed addresses since you last submitted something, you must also file Form EOIR-33, Change of Address Form. It is also important to remember the other filing requirements, such as providing a copy to the attorney who represents the government.

12. I have a final order of removal. Is there anything I can do to benefit from the agreement in this case?

Possibly. If you received a final administrative order of removal on or after June 30, 2016, based *wholly or in part* on the one-year deadline, you can file one motion to reopen (MTR) your removal proceedings **by or on April 22, 2022**.

Normally, a person who is in deportation proceedings may only file one MTR. However, if you are a member of Group A or Group B and have a final order of removal, you may file a single MTR filed pursuant to the *Mendez Rojas* settlement agreement even if you filed an MTR for a different reason before. This means that if you have already filed a motion to reopen based on a separate argument on a previous occasion, you may still file a *Mendez Rojas* motion to reopen.

No fee is required for filing an MTR pursuant to the *Mendez Rojas* settlement agreement.

We have included as Attachment E a [sample template motion to reopen](#). An MTR filed pursuant to the *Mendez Rojas* settlement agreement also should include notice of membership (*see* Attachments A or B) and you should provide an updated mailing address via Form EOIR-33, Change of Address Form.

Be sure to comply with any other filing requirements, such as serving a copy of the motion on the attorney for the government.

This option does not apply if the reason you received your removal order is that the government says you did not show up for court. In that case, being a member of Group A or Group B will not assist you. However, if you have already filed a motion to reopen in a case where you received a removal order for not appearing in court, you can still assert that you are a member of the *Mendez Rojas* Group A or Group B if your case is reopened. To do so, you must make the claim on or before April 22, 2022.

13. I already have filed a notice telling the immigration court, the BIA or USCIS that I am a Group A or Group B member. What do I need to do now?

In some instances, asylum applicants or their attorneys may have already informed a court that they are a member of the *Mendez Rojas* Group A or Group B. While this should be enough to ensure that you benefit from the agreement, you can still submit an additional notice now that you are a member of Group A or B if you choose to do so.

14. An immigration judge or other immigration official already said that I am someone who is a *Mendez Rojas* class member. Do I need to do anything else?

If you were already determined to be a valid member of Group A or Group B, that determination should remain valid in your case. Again, we recommend asking an attorney if you have more questions about whether you need to take action in your case.

15. I was told I am not a member of Group A or Group B, but I am sure I am a member. Is there anything I can do?

If you believe you were a member of Group A or Group B and that you were incorrectly told you are not a class member, you may contact class counsel at mendezrojas@nwirp.org.