TEMPLATE MOTIONS TO RECALENDAR UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT TO THE BOARD OF IMMIGRATION APPEALS OR THE IMMIGRATION COURT

These template motions are <u>not</u> a substitute for independent legal advice supplied by a lawyer familiar your case.

You can use one of the templates below for a motion to place your administratively closed removal proceedings back on the active docket (recalendar your case) if you are a member of one the classes in *Mendez Rojas v. Wolf*, described in the settlement agreement (Exhibit A).

You only need to submit one motion.

Template motion #1: Use this template motion and file your motion, exhibits, and proof of service with the Board of Immigration Appeals (BIA) if the BIA issued the order administratively closing your removal proceedings. You should file template motion #1 with the BIA at the address listed below.

Template motion #2: Use this template motion and file your motion, exhibits, proof of service, and proposed order with the immigration court (immigration judge) if an immigration judge issued the order administratively closing your removal proceedings. You should file template motion #2 with the immigration court that issued the order. See below for a link to the addresses of all immigration courts.

Generally, you should not use either template motion if you were ordered removed. Instead, you should review the **template motions to reopen** under the *Mendez Rojas* settlement agreement. However, if you were ordered removed by an immigration judge, appealed to the BIA, *and* then the BIA administratively closed your case, you should use template motion #1.

You should include the following documents with your motion to recalendar:
- A copy of the *Mendez Rojas* Settlement Agreement;
- A notice of class membership;
- A copy of the order administratively closing your removal proceedings, if available;
- A Form I-589, Application for Asylum (you only need to include this if you did not previously file an asylum application or if your asylum application was previously withdrawn); and
- A Form EOIR-33, Change of Address, providing your updated address.

Be sure to complete the sections in <mark>yellow</mark> highlight with information specific to your case.

Deadline for Filing

In order to pursue your benefits under the *Mendez Rojas* Settlement Agreement, you must file a motion to recalendar by <mark>**April 22, 2022**</mark>.

This means that the immigration court or BIA must **receive** the motion on or before <mark>April 22,</mark>

2022.

It is strongly recommended that you mail the motion by overnight, certified, or priority mail so you have proof of delivery on or before the deadline.

Where to File

If the Board of Immigration Appeals issued the order administratively closing your proceedings, you must send your motion and all supporting documents to the BIA at:

Board of Immigration Appeals
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

If an immigration judge issued the order administratively closing your proceedings, you should send your motion and all supporting documents to the immigration court that entered the order. The addresses for immigration courts are available online at https://www.justice.gov/eoir/eoir-immigration-court-listing.

You must send **a copy** of the motion and all supporting documents to the U.S. Immigration and Customs Enforcement Office of Chief Counsel (also known as the Office of the Principal Legal Advisor). The addresses for these offices are available online at www.ice.gov/contact/legal. You must send the documents to the Office of Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently heard.

[Attorney & EOIR ID #]   [DETAINED/NON-DETAINED]
[Address, Phone, Email]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

_____
In the Matter of:)   File No.: A[   ]
)
[RESPONDENT'S NAME],   )
)
          Respondent,   )
)
In Removal Proceedings.   )
_____)

RESPONDENT'S MOTION TO RECALENDAR
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT

I.   INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf* (Exhibit A),[1] Respondent,

[NAME], hereby moves to recalendar his/her removal proceedings, which were administratively

closed by the Board on [DATE]. Respondent is a member of *Mendez Rojas* Class [A / B]

(Exhibit B) and wishes to pursue his/her benefits under the *Mendez Rojas* Settlement Agreement.

II.   STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was

encountered by the U.S. Department of Homeland Security (DHS) [**Either:** upon arrival **or**

within fourteen days of unlawful entry.] [**Either:** DHS found Respondent to have a credible fear

of persecution or torture and then released Respondent from DHS custody **or** Respondent

expressed fear of returning to his/her country of origin and then was released from DHS custody

with a Notice to Appear.] Respondent did not receive individualized notice of the one-year

deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B) from DHS or the

Executive Office for Immigration Review. *See* Exhibit B.

Respondent filed his/her asylum application with the [LOCATION] Immigration Court

on [DATE]. On [DATE], [**Either:** Respondent **or** DHS] appealed to the Board. On [DATE], the

Board issued an order administratively closing Respondent's removal proceedings. *See* Exhibit

C. [**Insert if true**: Respondent withdrew his/her asylum application on [DATE]].

III.   STANDARD FOR RECALENDARING

Administrative closure is an administrative convenience "used to temporarily remove a

case from an Immigration Judge's active calendar or from the Board's active docket," but "does

not result in a final order." *Matter of Avetisyan*, 25 I&N Dec. 688, 692, 695 (BIA 2012). At any

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[1]   The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

A[   ]

time when either party wishes to place a matter back on the active docket, that party may file a motion to recalendar. *See Avetsiyan*, 25 I&N Dec. at 695; *Matter of Wang*, 23 I&N Dec. 924, 925 (BIA 2006); *Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

Pursuant to the *Mendez Rojas* Settlement Agreement, a class member whose removal proceedings have been administratively closed must move to recalendar on or before April 22, 2022, if he or she wishes to pursue benefits under the Agreement. *See* Exhibit A.

IV.   THE BOARD SHOULD RECALENDAR THIS CASE AND REMAND TO THE IMMIGRATION COURT TO PERMIT RESPONDENT TO PURSUE BENEFITS UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT.

Respondent now moves the Board to recalendar these removal proceedings and remand to the immigration court to permit him/her to apply/re-apply for asylum in accordance with the *Mendez Rojas* Settlement Agreement. **[If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert**: Respondent's application for asylum, on Form I-589, is attached to this motion as Exhibit D.**]**

V.   CONCLUSION

For the foregoing reasons, the Board should recalendar these proceedings and remand Respondent's case to the immigration court for further proceedings.

Respectfully submitted,

_____
[Respondent's or, if represented, Attorney's Name]

Dated: [DATE]

A[   ]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

_____

In the Matter of:)   File No.: A[   ]
)
[RESPONDENT'S NAME],   )
)
   Respondent,   )
)
In Removal Proceedings.   )
_____)

Exhibit List in Support of Respondent's Motion to Recalendar Pursuant to
***Mendez Rojas v. Wolf* Settlement Agreement**

Exhibit A   *Mendez Rojas v. Wolf* Settlement Agreement

Exhibit B   Respondent's Notice of *Mendez Rojas* Class Membership and Exhibits

Exhibit C   Copy of BIA order, dated [DATE], administratively closing Respondent's removal proceedings

Exhibit D   [IF NECESSARY:] Form I-589, Application for Asylum and for Withholding of Removal

Exhibit E   [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

File No.: A[   ]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Recalendar by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

_____   _____
[Name]   Date

[Attorney & EOIR ID #]   [DETAINED/NON-DETAINED]
[Address, Phone, Email]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:)   File No.: A[   ]
)
[RESPONDENT'S NAME],   )
)
          Respondent,   )
)
In Removal Proceedings.   )
_____)

RESPONDENT'S MOTION TO RECALENDAR
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf* (Exhibit A),[2] Respondent, [NAME], moves to recalendar his/her removal proceedings, which were administratively closed by the Court on [DATE]. Respondent is a member of *Mendez Rojas* Class [A / B] (Exhibit B) and wishes to pursue his/her benefits under the *Mendez Rojas* Settlement Agreement.

II. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Respondent entered the United States on or around [DATE]. Respondent was encountered by the U.S. Department of Homeland Security (DHS) [either upon arrival or within fourteen days of unlawful entry.] [Either DHS found Respondent to have a credible fear of persecution or torture and then released Respondent from DHS custody or Respondent expressed fear of returning to his/her country of origin and then was released from DHS custody with a Notice to Appear.] Respondent did not receive individualized notice of the one-year deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B) from DHS or the Executive Office for Immigration Review. *See* Exhibit B.

[If true, insert: Respondent filed his/her asylum application with the [LOCATION] Immigration Court on [DATE]. On [DATE], the Court issued an order administratively closing Respondent's removal proceedings. *See* Exhibit C. [If true: Respondent withdrew his/her asylum application on [DATE]]. [If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert: Respondent's application for asylum, on Form I-589, is attached to this motion as Exhibit D.]

III. STANDARD FOR RECALENDARING

Administrative closure is an administrative convenience "used to temporarily remove a

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[2]   The case was filed and decided by the district court under the name *Mendez Rojas v. Johnson*. *See* 305 F. Supp. 3d 1176 (W.D. Wash. 2018).

A[   ]

case from an Immigration Judge's active calendar or from the Board's docket," but "does not result in a final order." *Matter of Avetisyan*, 25 I&N Dec. 688, 692, 695 (BIA 2012). At any time when either party wishes to place a matter back on the active docket, that party may file a motion to recalendar. *See Avetsiyan*, 25 I&N Dec. at 695; *Matter of Wang*, 23 I&N Dec. 924, 925 (BIA 2006); *Matter of Cervantes-Torres*, 21 I&N Dec. 351, 352 (BIA 1996).

Pursuant to the *Mendez Rojas* Settlement Agreement, a class member whose removal proceedings have been administratively closed must move to recalendar the case on or before April 22, 2022, if he or she wishes to pursue benefits under the Agreement. *See* Exhibit A.

IV.   THE COURT SHOULD RECALENDAR THIS CASE TO PERMIT RESPONDENT TO PURSUE BENEFITS UNDER THE *MENDEZ ROJAS* SETTLEMENT AGREEMENT.

Respondent now moves the Court to recalendar these removal proceedings to permit him/her to apply/re-apply for asylum in accordance with the *Mendez Rojas* Settlement Agreement. **[If the asylum application was not filed with EOIR or if was withdrawn before the case was administratively closed, insert**: Respondent's application for asylum, on Form I-589, is attached to this motion as Exhibit D.**]**

V.   CONCLUSION

For the foregoing reasons, the Court should recalendar Respondent's removal proceedings and schedule a master calendar hearing.

Respectfully submitted,

_____
[Respondent's or, if represented, Attorney's Name]

Dated: [DATE]

A[   ]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of:	)	File No.: A[ ]
	)	
[RESPONDENT'S NAME],	)	
	)	
Respondent,	)	
	)	
In Removal Proceedings.	)	
	)	

Exhibit List in Support of Respondent's Motion to Calendar Pursuant to
***Mendez Rojas v. Wolf* Settlement Agreement**

Exhibit A   *Mendez Rojas v. Wolf* Settlement Agreement

Exhibit B   Respondent's Notice of *Mendez Rojas* Class Membership and Declaration in Support

Exhibit C   Copy of Immigration Judge's order dated [DATE], administratively closing Respondent's removal proceedings

Exhibit D   [IF NECESSARY:] Form I-589, Application for Asylum and for Withholding of Removal

Exhibit E   [IF ADDRESS HAS CHANGED:] Form EOIR-33, Change of Address

A[   ]

File No.: A[   ]
[RESPONDENT'S NAME]

PROOF OF SERVICE

On [DATE], I, [NAME], served a copy of Respondent's Motion to Recalendar by first class mail to the U.S. Immigration and Customs Enforcement Office of Chief Counsel, at the following address:

[ICE OCC Address]

_____   _____
[NAME]   Date

A[   ]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE OF IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]

In the Matter of: [RESPONDENT'S NAME]   File No.: A[   ]

[PROPOSED] ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Recalendar, it is HEREBY ORDERED that the motion be [ ] GRANTED [ ] DENIED because:

[ ] DHS does not oppose the motion.
[ ] Respondent does not oppose the motion.
[ ] A response to the motion has not been filed with the court.
[ ] Good cause has been established for the motion.
[ ] The court agrees with the reasons stated in the opposition to the motion.
[ ] The motion is untimely per _____.
[ ] Other:_____.

Deadlines:

[ ] The application(s) for relief must be filed by _____.
[ ] The respondent must comply with DHS biometrics instructions by _____.

_____   _____
[NAME]   Date
Immigration Judge

_____

Certificate of Service

This document was served by: [ ] Mail   [ ] Personal Service
To: [ ] Noncitizen [ ] Noncitizen c/o Custodial Officer [ ] Noncitizen's Attorney [ ] DHS
Date:_____   By: Court Staff_____