

NOTICE OF PROPOSED PARTIAL CLASS ACTION SETTLEMENT FOR INDIVIDUALS WHO HAVE SERIOUS MENTAL DISORDERS AND HAVE BEEN ORDERED REMOVED FROM THE UNITED STATES

Please read this notice carefully.

This notice is being given by order of the Court to individuals who:

- are members of a class of current and former individuals in immigration detention in Arizona, California, and Washington;
- who have certain serious mental disorders; and
- who have not had legal representation in their immigration cases

This notice is to inform you of a partial settlement of a class action lawsuit called *Franco-Gonzalez v. Holder*, No. CV 10-02211 DMG (DTBx) (C.D. Cal.). The *Franco* lawsuit alleged that individuals in immigration detention who are incompetent to represent themselves because of a serious mental disorder are entitled to legal representation in their immigration cases. The court in *Franco* has ruled that such individuals **are** entitled to legal representation in their immigration cases.

The U.S. government has agreed to procedures to allow certain *Franco* Class members to move to reopen their immigration cases (“*Franco* Reopening Agreement”). The Court must now consider whether to approve the *Franco* Reopening Agreement, and has scheduled a hearing on September 25, 2015, at 10 AM in Courtroom 7 at the United States District Court, 312 N. Spring Street, Los Angeles, California 90012. This hearing is called the “settlement hearing” or “fairness hearing.”

Pursuant to the *Franco* Reopening Agreement, Plaintiffs’ counsel has drafted this notice and the attached instructions. The purpose of this notice is to inform you of:

- the nature of the lawsuit, and who is a member of the class;
- your right to object to the proposed *Franco* Reopening Agreement;
- a description of the terms of the *Franco* Reopening Agreement; and
- how to find out more information about the *Franco* Reopening Agreement.

Attached to this notice is a set of instructions on how to move to reopen your immigration case, if you may qualify for that benefit under the *Franco* Reopening Agreement. Please read the attached instructions if you are interested in reopening your case.

What is This Lawsuit About?

This lawsuit began on March 26, 2010, when Plaintiff Jose Antonio Franco-Gonzalez filed a petition in the United States District Court for the Central District of California alleging that Defendants unlawfully required him to represent himself in his immigration proceedings when he was incompetent to do so because of his mental disabilities. Mr. Franco also alleged that he was being unlawfully detained in immigration detention for a prolonged period of time. On November 2, 2010, Plaintiffs filed an amended class action complaint, bringing similar claims seeking legal representation and bond hearings on behalf of an entire class of individuals in immigration detention in Arizona, California, and Washington. This lawsuit alleged violations of both the U.S. Constitution and various statutes.

On November 21, 2011, the Court certified a Main Class and two Sub-Classes in this case, as follows:

All individuals who are or will be in [Department of Homeland Security (“DHS”)] custody for [immigration] proceedings in California, Arizona, and Washington who have been identified by or to medical personnel, DHS, or an Immigration Judge, as having a serious mental disorder or defect that may render them incompetent to represent themselves in [immigration] proceedings, and who presently lack counsel in their [immigration] proceedings.

Sub–Class 1: Individuals in the above-named Plaintiff Class who have a serious mental disorder or defect that renders them incompetent to represent themselves in [immigration] proceedings.

Sub–Class 2: Individuals in the above-named Plaintiff Class who have been detained for more than six months.

The Court also appointed lawyers from the ACLU of Southern California, Sullivan & Cromwell, the ACLU Immigrants’ Rights Project, Mental Health Advocacy Services, Northwest Immigrant Rights Project, and Public Counsel to serve as counsel to the *Franco* class.

On April 23, 2013, the Court granted in part Plaintiffs’ motion for partial summary judgment, and held that, among other things, “Section 504 of the Rehabilitation Act requires Defendants to provide Qualified Representatives to represent Sub–Class One members in all aspects of their removal and detention proceedings.” This means that unrepresented individuals in immigration detention in Arizona, California, and Washington, who have serious mental disorders that make them incompetent to represent themselves in their immigration proceedings will be provided legal representation.

The U.S. government has agreed to procedures to allow certain *Franco* Class Members to move to reopen their immigration cases. If you are a *Franco* Class Member who has been ordered removed and your case is reopened, you may have the chance to return to the immigration courts so that they can determine whether you are competent to represent yourself in your immigration case. If you were physically removed from the United

States, you may have a chance to return to the United States if your case is reopened. If you are found to be not competent to represent yourself, you may be provided legal representation by the government in your immigration case.

Who is a Franco Class Member Who May Have Their Case Reopened?

For a Class Member to reopen their case under the *Franco* Reopening Agreement, the Class Member must be an individual who:

- was detained by U.S. Immigration and Customs Enforcement (“ICE”) in Arizona, California, or Washington on or after November 21, 2011;
- remained detained and did not have legal representation at the time they were ordered removed by an immigration judge, *or* was released from detention following an immigration judge’s determination that they were not competent to represent themselves and remained unrepresented at the time they were ordered removed by an immigration judge;
- has a “serious mental disorder,” as defined below; and
- did not receive certain procedures to determine whether they were competent to represent themselves in immigration proceedings.

What Is a “Serious Mental Disorder”?

To reopen their case under the *Franco* Reopening Agreement, the Class Member must have a “serious mental disorder,” meaning that they meet the criteria in either subsection (1) or (2) below:

- (1) a “qualified mental health provider”¹ determines that the detainee meets one or both of the following criteria:
 - a. has a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (e.g., communicating, reasoning, conducting activities of daily living, social skills); or a severe medical condition(s) (e.g., traumatic brain injury or dementia) that is significantly impairing mental function; **OR,**
 - b. is exhibiting one or more of the following active psychiatric symptoms and/or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity.

OR,

- (2) a “qualified mental health provider,” as defined in footnote 1, otherwise diagnoses the detainee as demonstrating significant symptoms of one of the following:
 - a. Psychosis or Psychotic Disorder;
 - b. Bipolar Disorder;
 - c. Schizophrenia or Schizoaffective Disorder;
 - d. Major Depressive Disorder with Psychotic Features;
 - e. Dementia and/or a Neurocognitive Disorder; or
 - f. Intellectual Development Disorder (moderate, severe or profound).

What Are the Terms of the Franco Reopening Agreement?

Individuals who meet the criteria described above will have the opportunity to request reopening of their cases under the *Franco* Reopening Agreement. The procedures for reopening cases differ depending on the date that the Class Member was ordered removed.

If the Class Member was ordered removed on or after April 23, 2013, the following procedures will apply:

ICE will review the cases of *Franco* Class Members removed after April 23, 2013, to determine which of these individuals were identified as having certain serious mental illnesses. ICE will then send a notice, drafted by Plaintiffs’ counsel, to the last known addresses (if any) of all such individuals. This notice will explain how to request reopening of the individuals’ immigration cases. These individuals may send a letter/motion to ICE requesting reopening under the *Franco* Reopening Agreement. The request must be sent to ICE before March 27, 2017.

Within thirty (30) days of the Court granting final approval of the agreement or within thirty (30) days of receiving your request, whichever is later, ICE will confirm that they qualify for reopening under the *Franco* Reopening Agreement. If ICE agrees that the individual qualifies, ICE will join and file the request to reopen proceedings (unless the case presents national security or foreign policy issues). The immigration courts will then decide whether or not the Class Member’s case should be reopened.

If ICE decides not to join in a Class Member’s motion to reopen because their case presents certain national security or foreign policy-related issues or because ICE determines that the individual does not qualify, ICE must notify the Class Member within thirty (30) days of the Court granting final approval of the agreement or within thirty (30) days of receiving your request, whichever is later. This notification will explain why ICE has

¹ A “qualified mental health provider” is defined as a currently and appropriately licensed psychiatrists, physicians, physician assistants, psychologists, clinical social workers, licensed nurse practitioners, and registered nurses with appropriate training in mental health assessments.

declined the request for a joint motion to reopen. Such individuals will still be able to file their own motion to reopen, by following the process for all other *Franco* Class Members explained below.

All other Franco Class Members who were ordered removed on or after November 21, 2011, may seek to reopen their cases as follows:

All other *Franco* Class Members who were ordered removed on or after November 21, 2011, can choose to file their own motion to reopen with the court that completed the Class Member's case (either the Immigration Judge or the Board of Immigration Appeals ("BIA")). The motion must be filed before March 27, 2017. This motion will be governed by certain rules that are different from the ordinary rules for reopening immigration cases. Because the *Franco* Reopening Agreement will not take effect until the Court grants final approval, please note that the government may reject or decline to take action on these unilateral motions or requests submitted prior to the Court's final approval. If a Class Member's motion is filed too early, and it is rejected, he or she may file another motion after the Court's approval hearing.

The motion must include the following information. **First**, the motion must demonstrate that the person meets the definition of a *Franco* Class Member, described above, including that they have a "serious mental disorder." **Second**, the motion must show that if the person's proceedings were reopened, they would have a defense to removal or plausible grounds for relief. This means that if the immigration courts were to reopen the Class Member's case, they would be able to show that they should not have been ordered removed in the first place, **or** that they can apply for relief from removal, such as asylum, withholding, or cancellation of removal.

The first motion under the *Franco* Reopening Agreement, if filed before March 27, 2017, does not have to meet the filing deadline and number limitation usually applicable to motions to reopen. However, ICE has the ability to oppose a motion to reopen for any other reason, including that the Class Member has not shown that they would have a defense or plausible grounds for relief (i.e., the Class Member is ineligible for relief). If the Immigration Court or the BIA denies the Class Member's motion to reopen, the Class Member has the right to appeal this denial to the BIA and/or the Court of Appeals.

Certain *Franco* Class Members who were ordered removed after November 21, 2011, but before April 23, 2013, may nevertheless be eligible for the joint motion to reopen procedures described above. **First**, any Class Member who can demonstrate that he or she was found to be incompetent by a court in the United States (e.g., criminal court) within three years prior to their final order of removal may be eligible for the joint motion to reopen procedures described above. Such individuals should submit such evidence of a prior incompetency finding to Plaintiffs' Counsel at ACLU of Southern California, 1313 W. 8th St., Los Angeles, CA 90017 and to ICE at the appropriate Office of the Chief Counsel address. A list of addresses is attached to this notice. **Second**, any Class Member who was determined to be incompetent by an immigration judge may be eligible for the joint motion to reopen procedures. Note that these Class Members remain entitled to the joint motion to reopen procedures even if they were released from detention prior to being ordered removed by an immigration judge, so long as they remained unrepresented at the time that they were ordered removed. **Third**, the parties have agreed on a short list of already-known cases of Class Members who were ordered removed prior to April 23, 2013, who will be eligible for the joint motion to reopen procedures described above.

All Franco Class Members whose cases are reopened, and who are currently outside the United States, may have the ability to return to the United States. The U.S. government may pay reasonable travel expenses for certain Class Members to return.

If the Class Member succeeds in reopening his or her case under the *Franco* Reopening Agreement, and is currently outside the United States, the Class Member will be entitled to return to the United States. ICE will review and process any paperwork necessary for the Class Member's return, working with the U.S. Embassy or Consulate to obtain a transportation/boarding letter on the Class Member's behalf, and with U.S. Customs and Border Protection to help the Class Member return.

Under the *Franco* Reopening Agreement, the U.S. government will pay reasonable travel expenses for certain Class Members who were ordered removed on or after April 23, 2013, and for Class Members in the short list of already-known cases, who live more than 100 miles away from a port of entry in the United States, and who have their cases reopened under the *Franco* Reopening Agreement. The U.S. government will also pay reasonable travel expenses for up to another 100 individuals (as the parties believe there are likely to be less than 100 additional individuals) who have their cases reopened under the *Franco* Reopening Agreement, and who live more than 100 miles away from a port of entry in the United States.

Upon return to the United States, ICE has the right to detain the Class Member while their immigration case proceeds. The Class Member will have the right to request a bond hearing if detained upon return to the United States.

How Will the Lawyers for the Franco Class Be Paid? Since March 2010, Plaintiffs' Counsel has been working on this lawsuit without compensation. You will not be charged any money for the lawyers' fees. Plaintiffs' Counsel will ask the Court to award them attorneys' fees and costs from the Defendants of up to a total amount of \$15 MILLION, and the Court will decide how much to award. Defendants may appeal that decision, but whatever the outcome of any appeal, Defendants will pay the award and you will be charged nothing. The Court will evaluate the partial settlement independently of whether or not and how much to award fees. If you wish, you will have an opportunity to support or oppose the fees and costs requested by Plaintiffs' Counsel at the settlement hearing.

What Will Happen to the Case? Because Plaintiffs believe that the District Court has granted all of the relief requested by the Plaintiff Class, Plaintiffs' Counsel and Defendants' Counsel will jointly ask the Court to dismiss the remaining claims and end the case. Plaintiffs' voluntary dismissal of the remaining claims is not dependent on any agreement between Plaintiffs and Defendants. If you wish, you will also have an opportunity to object to the voluntary dismissal of the remaining claims in this case at the settlement hearing.

What Are My Rights as a Class Member? If you are satisfied with the proposed Agreement, you do not have to do anything. But if you are interested in reopening your immigration case, and you think you may qualify for the reopening remedy, you should review the instructions and follow them. If you are not satisfied with the proposed Agreement, you may object to the settlement, Plaintiffs' Counsel's request for fees, or Plaintiffs' voluntary dismissal of the remaining claims by submitting your objection in writing, via regular or electronic mail to Plaintiffs' Counsel.

What Are My Rights as a Class Member in Franco?

If you are satisfied with the proposed *Franco* Reopening Agreement, you do not have to do anything. But if you are interested in reopening your immigration case, and you think you may qualify for the reopening remedy, you should review the instructions attached to this notice and follow them.

If you are not satisfied with the proposed *Franco* Reopening Agreement, you do not have a right to opt out of the settlement. However, you may object to the settlement or Plaintiffs' Counsel's request for fees by submitting your objection in writing, via regular or electronic mail, to Plaintiffs' Counsel.

If you choose to object to the settlement, you must direct your objection to:

Ahilan Arulanantham
ACLU of Southern California
1313 W. 8th St.
Los Angeles, CA 90017
classcounselfranco @aclu-sc.me

To be timely, your objection must be received no later than September 4, 2015. If you do not make your objection by that date, you will lose the right to object. If you do object, you have the right to appear personally or through an attorney at the settlement hearing to present your objection to the Court. Except with special permission of the Court, you will not be permitted to object at the hearing if your objection is not received on or before September 4, 2015. If you object to the settlement but do not appear at the settlement hearing, nobody will be at the hearing to present your objection to the Court.

If, after the hearing, the Court rejects the settlement, the parties will continue to litigate this dispute in front of the Court. If that happens, there is no guarantee that: (1) the Court will rule in favor of the removed *Franco* Class Members; (2) a favorable Court decision, if any, would be as favorable to the removed *Franco* Class Members as this settlement; or (3) any favorable Court decision would be upheld if Defendants filed an appeal.

Finally, please note that procedures under the *Franco* Reopening Agreement are separate and apart from the regular motion to reopen procedures already available under the immigration statutes and regulations. The *Franco* Reopening Agreement is not intended to limit or replace your right to seek any other form of relief available to you, including but not limited to a regular motion to reopen filed pursuant to the immigration statutes and regulations, or requesting ICE to join a motion to reopen your proceedings.

How Can I Get More Information About the Franco Reopening Agreement?

You can read the full text of the *Franco* Reopening Agreement at the following websites: www.justice.gov/eoir and www.ice.gov/legal-notices. If you have questions about the proposed settlement agreement, or would like to obtain a paper copy of it, you may contact the lawyers who represent the class, at the address below. Please note, however, that Plaintiffs' Counsel in *Franco* is not able to represent you in your immigration case.

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