

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

These template motions are not 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 reopen if you qualify for reopening under the *Mendez Rojas v. Wolf* settlement agreement because you:

- Are a member of one the classes in *Mendez Rojas v. Wolf*, described in the settlement agreement (Exhibit A);
- Were issued a final removal order on or after June 30, 2016; and
- An immigration court, the Board of Immigration Appeals (BIA), or a federal court found you ineligible for asylum *or* denied your asylum application wholly or in part because you did not file your asylum application within one year of arriving in the United States.

You only need to submit one motion.

Template motion #1: Use this template motion and file your motion, including exhibits and proof of service, with the BIA if you appealed your removal order to the BIA in the past. If you did not file an appeal, you should use the template motion to the immigration court, instead. 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, including exhibits, proof of service, and proposed order with the immigration court (immigration judge) that entered the removal order against you if you did not appeal your removal order to the BIA in the past. If you did file an appeal, you should use the template motion to the BIA, instead. See below for a link to the addresses of all immigration courts.

Do not use this template if an immigration court issued a removal order against you at a hearing where you were not present.

You also may be able to seek reopening for another reason not related to the *Mendez Rojas* settlement agreement. Information about other types of motions to reopen is available [here](#).

You should include the following documents with your motion to reopen:

- A copy of the *Mendez Rojas* Settlement Agreement;
- A notice of class membership;
- A copy of your earlier removal order;
- A Form I-589, Application for Asylum; and
- A Form EOIR-33, Change of Address, providing your updated address.

Be sure to complete the sections in **yellow** highlight with information specific to your case.

Deadline for Filing

You must file any motion to reopen under the *Mendez Rojas* Settlement Agreement by **March 31, 2022**.

This means that the immigration court or BIA must **receive** the motion on or before **March 31, 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 you appealed your case to the Board of Immigration Appeals in the past, you must send your motion and all supporting documents to the BIA at:

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

In all other cases, you must send your motion and all supporting documents to the immigration court that entered the removal order against you. 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 Chief Counsel whose area of responsibility includes the immigration court in which your case was most recently heard.

TEMPLATE MOTION #1: BOARD OF IMMIGRATION APPEALS

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

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

In the Matter of:)
)
[RESPONDENT'S NAME],)
)
Respondent,)
)
In Removal Proceedings.)
_____)

File No.: A[]

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

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,¹ Respondent, [NAME], moves to reopen removal proceedings. Respondent files this motion to reopen because [he/she] is a member of *Mendez Rojas* Class [A / B] (Exhibit B), was issued a final order of removal on [DATE], and was found ineligible for asylum or had an asylum application denied based wholly or in part on the one-year deadline for filing an asylum application. *See* 8 U.S.C. § 1158(a)(2)(B).

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 was ordered removed on [DATE] by the [LOCATION] Immigration Court. *See* Exhibit C. The BIA affirmed the removal order on [DATE]. *See* Exhibit C. Respondent was found ineligible for or denied asylum based wholly or in part on the one-year deadline. *See id.*

The validity of Respondent's prior removal order [has/has not been] the subject of any judicial proceeding. [IF YES: That judicial proceeding took place [DATE]]. The outcome was

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).

[DESCRIBE]. See [Either: Exhibit C OR citation to court of appeals case name and number.]

See 8 C.F.R. § 1003.2(e).

Respondent [is/is not] the subject of any pending criminal proceeding under the Immigration and Nationality Act and [is/is not] the subject of any pending criminal prosecution.

[IF YES: The current status of these proceedings is [DESCRIBE]]. See 8 C.F.R. § 1003.2(e).

III. STANDARD FOR REOPENING

A motion to reopen asks the IJ or BIA to reopen proceedings so that a respondent may present new evidence and a new decision can be entered following an evidentiary hearing. *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reopen “shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material.” 8 U.S.C. § 1229a(c)(7)(B). It must be accompanied by the application for relief and all supporting documents. 8 C.F.R. § 1003.2(c)(1).

Pursuant to the *Mendez-Rojas* Settlement Agreement:

Class members who were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part on the one-year deadline, may file one motion to reopen their removal proceedings, exempt from statutory and regulatory time and number requirements but otherwise in compliance with existing procedures relating to such motions, on or before December 31, 2021. . . . Individuals with in absentia orders of deportation or removal cannot use Class membership as an independent basis to move to reopen deportation or removal proceedings pursuant to this Agreement.

See Exhibit A.

IV. REOPENING PURSUANT TO THE MENDEZ ROJAS SETTLEMENT AGREEMENT IS WARRANTED.

Pursuant to the *Mendez Rojas* Settlement Agreement, members of the *Mendez Rojas* classes who “were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part” on the deadline for filing asylum

applications at 8 U.S.C. § 1158(a)(2)(B) may file a motion to reopen. *See* Exhibit A (Settlement Agreement). Respondent meets those requirements. *See* Exhibit B (Notice of Class Membership); Exhibit C (Prior Order). Furthermore, Respondent is eligible for asylum, withholding of removal and/or protection under the Convention Against Torture. *See* Exhibit D.

Because this motion is filed on or before **March 31, 2022**, this case warrants reopening under the *Mendez Rojas* Settlement Agreement regardless of any statutory or regulatory time and number requirements for motions to reopen that would otherwise apply. *See* Exhibit A. Additionally, Respondent qualifies for reopening regardless of **[his/her]** present location because **[he/she]** was not “already removed as of June 30, 2016.” *See id.* **Pursuant to the *Mendez Rojas* Settlement Agreement, this motion is not subject to a filing fee. *See id.***

VI. CONCLUSION

For the foregoing reasons, the Board should grant this motion to reopen.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Dated: **[DATE]**

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 Reopen 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 Immigration Judge's prior removal order against Respondent, dated [DATE]; Board of Immigration Appeals decision affirming Immigration Judge order, dated [DATE]; [IF RELEVANT: Decision of the U.S. Court of Appeals for the [SPECIFY] Circuit, dated [DATE]]
- Exhibit D 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 Reopen 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

TEMPLATE MOTION #2: IMMIGRATION COURT

[Attorney & EOIR ID #]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

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 REOPEN
PURSUANT TO *MENDEZ ROJAS V. WOLF* SETTLEMENT AGREEMENT**

A[]

I. INTRODUCTION

Pursuant to the Settlement Agreement in *Mendez Rojas v. Wolf*,² Respondent, [NAME], moves to reopen removal proceedings. Respondent files this motion to reopen because [he/she] is a member of *Mendez Rojas* Class [A / B] (Exhibit B), was issued a final order of removal on [DATE], and was found ineligible for asylum or had an asylum application denied based wholly or in part on the one-year deadline for filing an asylum application. *See* 8 U.S.C. § 1158(a)(2)(B).

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 was ordered removed on [DATE] by the [LOCATION] Immigration Court. *See* Exhibit C. Respondent was found ineligible for or denied asylum based wholly or in part on the one-year deadline. *See id.*

The validity of Respondent's prior removal order [has/has not been] the subject of any judicial proceeding. [IF YES: That judicial proceeding took place [DATE]. The outcome was

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).

[DESCRIBE]. See [Either: Exhibit C OR citation to court of appeals case name and number.]

See 8 C.F.R. § 1003.23(b)(1)(i).

Respondent [is/is not] the subject of any pending criminal proceeding under the Immigration and Nationality Act. [IF YES: The current status of these proceedings is

[DESCRIBE]]. See 8 C.F.R. § 1003.23(b)(1)(i).

III. STANDARD FOR REOPENING

A motion to reopen asks the IJ or BIA to reopen proceedings so that a respondent may present new evidence and a new decision can be entered following an evidentiary hearing. *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991). A motion to reopen “shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material.” 8 U.S.C. § 1229a(c)(7)(B). It must be accompanied by the application for relief and all supporting documents. 8 C.F.R. § 1003.23(b)(3).

Pursuant to the *Mendez-Rojas* Settlement Agreement:

Class members who were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part on the one-year deadline, may file one motion to reopen their removal proceedings, exempt from statutory and regulatory time and number requirements but otherwise in compliance with existing procedures relating to such motions, on or before December 31, 2021. . . . Individuals with in absentia orders of deportation or removal cannot use Class membership as an independent basis to move to reopen deportation or removal proceedings pursuant to this Agreement.

See Exhibit A.

IV. REOPENING PURSUANT TO THE MENDEZ ROJAS SETTLEMENT AGREEMENT IS WARRANTED.

Pursuant to the *Mendez Rojas* Settlement Agreement, members of the *Mendez Rojas* classes who “were issued a final order of removal on or after June 30, 2016, after being found ineligible for or denied asylum based wholly or in part” on the deadline for filing asylum

applications at 8 U.S.C. § 1158(a)(2)(B) may file a motion to reopen. *See* Exhibit A (Settlement Agreement). Respondent meets those requirements. *See* Exhibit B (Notice of Class Membership); Exhibit C (Prior Order). Furthermore, Respondent is eligible for asylum, withholding of removal and/or protection under the Convention Against Torture. *See* Exhibit D.

Because this motion is filed on or before **March 31, 2022**, this case warrants reopening under the *Mendez Rojas* Settlement Agreement regardless of any statutory or regulatory time and number requirements for motions to reopen that would otherwise apply. *See* Exhibit A. Additionally, Respondent qualifies for reopening regardless of **[his/her]** present location because **[he/she]** was not “already removed as of June 30, 2016.” *See id.* **Pursuant to the *Mendez Rojas* Settlement Agreement, this motion is not subject to a filing fee. *See id.***

VI. CONCLUSION

For the foregoing reasons, the Court should grant this motion to reopen.

Respectfully submitted,

[Respondent’s or, if represented, Attorney’s Name]

Dated: **[DATE]**

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 Reopen 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 Immigration Judge's prior removal order against Respondent, dated [DATE]
- Exhibit D 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 Reopen 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 Reopen Pursuant to *Mendez Rojas v. Wolf* Settlement Agreement, it is HEREBY ORDERED that the motion be [] GRANTED [] DENIED because:

- DHS does not oppose the motion.
- The 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]
Immigration Judge

Date

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 _____