UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Concely Del Carmen MENDEZ ROJAS, Elmer Geovanni RODRIGUEZ ESCOBAR, Lidia Margarita LOPEZ ORELLANA, and Maribel SUAREZ GARCIA, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

Jeh JOHNSON, Secretary of the Department of Homeland Security, in his official capacity; Loretta E. LYNCH, Attorney General of the United States, in her official capacity; Thomas S. WINKOWSKI, Principal Deputy Assistant Secretary for United States Immigration and Customs Enforcement, in his official capacity; Leon RODRIGUEZ, Director of United States Customs and Immigration Services, in his official capacity; R. GIL KERLIKOWSKE, Commissioner of U.S. Customs and Border Protection, in his official capacity; and JUAN P. OSUNA, Director of the Executive Office for Immigration Review, in his official capacity,

Defendants.

No.:

COMPLAINT—CLASS ACTION FOR INJUNCTIVE AND DECLARATORY RELIEF AND MANDAMUS

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INTRODUCTION

1. Plaintiffs are individuals who fled persecution in their countries of origin and who seek to apply for asylum. The U.S. government, aware of their fear of return, has authorized them to remain in the United States to pursue their claims.

2. Under the Immigration and Nationality Act (INA) and its implementing regulations—as well as under the Due Process Clause—Plaintiffs have an indisputable right to seek asylum and to a fair opportunity to present their claims. But Plaintiffs' ability to seek asylum has been thwarted by a government process that is anything but fair; indeed, it conflicts with fundamental notions of due process: notice and the opportunity to be heard.

3. Plaintiffs challenge Defendants' policies and practices of unlawfully depriving them of notice that there is a one-year statutory deadline from their date of arrival in the United States in which to file an application for asylum, *see* 8 U.S.C. § 1158(a)(2)(B), and of unlawfully failing to implement a mechanism that ensures them an opportunity to comply with that deadline.

4. As a result of Defendants' unlawful actions, Plaintiffs, and the class members they seek to represent, are not informed of either the steps they must take in order to timely apply for asylum or the drastic immigration consequence that ensues if they fail to timely apply—disqualification from seeking asylum. Defendants' unlawful deprivation of Plaintiffs' and putative class members' right to seek asylum not only violates our nation's commitment to the rule of law and principles of fairness, but also causes severe and irreparable suffering by depriving individuals of rights and benefits afforded through the asylum process, including protection from removal to the countries in which they fear persecution, as well as the right to become lawful permanent residents, to travel, and to reunite with family members.

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5. Defendants' policies and practices prevent many of those Plaintiffs and putative class members, even if they are fortunate enough to learn of the statutory deadline, from complying with it. This is because there is no standard procedure in place by which an asylum seeker can submit her application and ensure that it is treated as timely filed by the adjudicating agency. The process an asylum seeker must pursue to apply for asylum depends upon whether removal proceedings have been initiated. 8 C.F.R. § 1208.4(b).[1] If an applicant is not in removal proceedings, U.S. Citizenship and Immigration Services (USCIS) has jurisdiction over the application and, thus, the applicant must file with USCIS (known as an "affirmative" filing). 8 C.F.R. §§ 1208.4(b)(1), (2), and (5). If an applicant is or was in removal proceedings, the Executive Office for Immigration Review (EOIR), which consists of the immigration courts and the Board of Immigration Appeals (BIA or Board), has jurisdiction and, thus, the applicant must file with EOIR (known as a "defensive" filing). 8 C.F.R. §§ 1208.4(b)(3), (4).

6. Defendants' policies and practices prevent asylum seekers from complying with the one-year deadline in two ways. First, DHS agents often issue a charging document (known as a Notice to Appear or NTA) and serve it on the individual, but delay filing it with the immigration court—sometimes for months or even a year or longer. In addition, even when DHS submits the NTA to the immigration court, some immigration courts are so backlogged that they do not actually file the NTA in the EOIR system until months, or even more than a year, later. When either of these situations occurs, the individual is left in a "Catch-22." If she tries to file her application with USCIS, that agency generally refuses to accept the individual's asylum application, claiming the person already

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[1] Removal proceedings are initiated when the Department of Homeland Security (DHS) "files" the charging document, known as the Notice to Appear (NTA), with the immigration court. 8 C.F.R. § 1003.14(a). Filing requires DHS to deliver the NTA to EOIR and EOIR to process the NTA by entering it

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is in removal proceedings because an NTA was issued. At the same time, the immigration court will not accept the asylum application because the charging document has not yet been filed. The individual is left in limbo—without a mechanism to file the application until the charging document is filed with the immigration court, an event over which the applicant has no control. As a result, individuals often miss the one-year deadline for reasons beyond their control.

7. For individuals in removal proceedings, Defendants' regulations state that an asylum application is "filed" for purposes of meeting the one-year deadline if it is "received by" an immigration court or the BIA. 8 C.F.R. §§ 208.4(a)(2)(B)(ii); 1208.4(a)(2). However, EOIR's sub-regulatory policy, found in the Immigration Court Practice Manual and in a policy memorandum, is that an asylum application is properly filed only if submitted in immigration court at a master calendar hearing before an immigration judge. Immigration Court Practice Manual § 3.1(b)(iii)(A) ("Defensive asylum applications are filed in open court at a master calendar hearing."), *available at* https://www.justice.gov/eoir/office-chief-immigration-judge-0. Yet, immigration court dockets are so backlogged that when the charging documents are filed and entered into EOIR's case docketing system, these individuals' first immigration hearings routinely are scheduled well beyond a year, after the one-year deadline has passed. Upon information and belief, while a handful of immigration courts have adopted their own informal policies in an effort to remedy this problem, such policies are not the norm and are subject to change at any point. The vast majority of putative class members whose hearings are scheduled beyond their one-year deadlines have no guaranteed mechanism for complying with the deadline.

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into its system. Individuals may call EOIR's 1-800 number hotline and enter their immigration number (A-number) to determine whether they have been placed in removal proceedings.

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8. At no point in this process does DHS inform asylum seekers that they must file their applications within a year of their arrival in the United States. Instead, even though DHS releases persons into the United States for the express purpose of applying for asylum, the agency never advises them that they must file a specific application within one year of arrival. It is often only when individuals arrive with their applications in immigration court, frequently after the one-year deadline has elapsed, that they first learn of the statutory time period. This lack of notice of the asylum deadline, combined with the failure to establish and implement a mechanism that ensures applicants have an opportunity to comply with the deadline, violates the INA and its implementing regulations, as well as the Due Process Clause of the Fifth Amendment.

9. Providing vulnerable asylum seekers with fair notice and an opportunity to apply for asylum is central to our laws, and is a basic tenet of international law and the domestic laws of countless nations throughout the world.

10. Plaintiffs seek declaratory and injunctive relief to remedy Defendants' unlawful failure to provide notice of the one-year deadline as well as a meaningful opportunity to comply with that deadline. Plaintiffs seek this Court's intervention to compel Defendants Johnson, Winkowski, Rodriguez, and Kerlikowske and the agencies they direct (collectively, the DHS Defendants) to provide notice of the one-year deadline set forth in 8 U.S.C. § 1158(a)(2)(B), and to compel the DHS Defendants and Defendants Loretta E. Lynch and Juan P. Osuna of the Department of Justice (DOJ) (collectively, the DOJ Defendants) to establish and implement a mechanism that ensures that putative class members are able to comply with that deadline.

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JURISDICTION AND VENUE

11. This case arises under the United States Constitution; the INA, 8 U.S.C. § 1101 *et seq.*; the regulations implementing the INA's asylum process; and the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*

12. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, as a civil action arising under the laws of the United States, and the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

13. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendants are officers or employees of the United States or agencies thereof acting in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred in this district, and Plaintiffs Elmer Geovanni Rodriguez Escobar, Concely del Carmen Mendez Rojas, and Maribel Suarez Garcia reside in this district, as do many putative class members. In addition, no real property is involved in this action.

PARTIES

14. Plaintiff Elmer Geovanni Rodriguez Escobar is a 37-year-old asylum seeker from Honduras. He resides in Burien, Washington. Mr. Rodriguez entered the United States in July 2014 and established a credible fear of persecution in an interview with DHS. Subsequently, he was released from DHS custody with an NTA, but at no point did DHS advise him of the one-year deadline. Mr. Rodriguez is not currently in removal proceedings, and has been unable to file his application for asylum, as both USCIS and EOIR have rejected his attempts to file his application with them.

15. Plaintiff Concely del Carmen Mendez Rojas is a 30-year-old asylum seeker from the Dominican Republic. She resides in Burien, Washington. Ms. Mendez entered the United States in

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September 2013 and established a credible fear of persecution in an interview with DHS. Subsequently, she was released from DHS custody with an NTA, but at no point did DHS advise her of the one-year deadline. Ms. Mendez attempted to file an asylum application with USCIS before being placed in removal proceedings, but USCIS rejected her application. She is unable to file an asylum application until she appears in open court at a master calendar hearing scheduled by the immigration court. Instead, she has only been able to "lodge" her asylum application with the immigration court. An application is "lodged" when presented at the court clerk's window for purposes of initiating a "clock" to record the waiting period for eligibility for applying for employment authorization. Operating Policy and Procedures Memorandum No. 13-03, "Guidelines for Implementation of the ABT Settlement Agreement," (Dec. 2, 2013) at 2 *available at* https://www.justice.gov/sites/default/files/eoir/legacy/2013/12/03/13-03.pdf. However, the Court does not file the application in EOIR's system, but instead returns the application form after stamping the document as "lodged but not filed" for purposes of employment authorization applications. *Id.* Ms. Mendez was only able to "lodge" the application after the NTA was eventually filed with the immigration court, which occurred *after* the one-year deadline. Her first immigration court hearing will be in August 2016.

16. Plaintiff Lidia Margarita Lopez Orellana is a 37-year-old asylum seeker from Guatemala. She resides in Austin, Texas, with her three children. She and her two youngest children arrived in the United States at the Eagle Pass, Texas, port of entry on February 28, 2014. There, Ms. Lopez informed DHS officials that she was afraid of returning to Guatemala. Shortly afterwards, DHS issued NTAs to Ms. Lopez and her children and then released them into the United States to await a removal hearing. At no point did any DHS official inform Ms. Lopez that she was required to file an application for asylum within one year of her most recent entry into the United States. She first

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learned of this requirement more than a year later, after she was able to retain counsel. She then lodged her asylum application with the San Antonio Immigration Court, in January 2016. On the same day, her removal proceedings were terminated. Subsequently, she filed an affirmative asylum application one month later on February 15, 2016.

17. Plaintiff Maribel Suarez Garcia is a 29-year-old asylum seeker from Mexico. She resides in Yelm, Washington, with her five young children. She and her children arrived at the Otay Mesa, California, port of entry in November 2013. Upon her arrival, Ms. Suarez informed DHS officials that she was afraid of returning to Mexico and that she was seeking asylum in the United States. She provided a sworn statement to DHS officials regarding her fear of returning to Mexico. Shortly afterwards, DHS issued NTAs to her and her children, and paroled them into the United States to await a removal hearing. At no point did DHS inform Ms. Suarez of her obligation to file an application for asylum within one year of her arrival. She first learned of this requirement more than a year later, after she was able to retain counsel. She then promptly lodged her application with the San Francisco Immigration Court. Ms. Suarez is scheduled for an individual hearing in May 2017.

18. Defendant Jeh Johnson is sued in his official capacity as the Secretary of DHS. In this capacity, he directs each of the component agencies within DHS, including United States Immigration and Customs Enforcement (ICE), USCIS, and CBP. As a result, in his official capacity, Defendant Johnson is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, and is empowered to grant asylum or other relief.

19. Defendant Loretta E. Lynch is sued in her official capacity as the Attorney General of the United States and the head of the Department of Justice. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103, oversees EOIR, and is empowered to grant asylum or other relief.

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20. Defendant Thomas S. Winkowski is sued in his official capacity as the Principal Deputy Assistant Secretary for ICE, which is the sub-agency of DHS that operates and oversees the prosecution of individuals apprehended near the border and either detained or released into the United States.

21. Defendant Leon Rodriguez is sued in his official capacity as the Director of USCIS, which is the sub-agency of DHS that, through its asylum officers, both conducts interviews of individuals placed in expedited removal to determine whether they have a credible fear of persecution and should be permitted to apply for asylum, and also adjudicates affirmative asylum applications.

22. Defendant R. Gil Kerlikowske is sued in his official capacity as the Commissioner of CBP, which is the sub-agency of DHS that is responsible for the initial processing and detention of noncitizens who are apprehended near the border and either detained or paroled into the United States.

23. Defendant Juan P. Osuna is sued in his official capacity as Director of the EOIR, which is an agency of the Department of Justice. In this capacity, he is responsible for overseeing the Board's principal mission "to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws," *available at*: http://www.justice.gov/eoir/. In addition, he has responsibility for the supervision of all personnel employed by the Executive Office for Immigration Review in carrying out their regulatory duties. *See* http://www.justice.gov/eoir/odinfo.htm.

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BACKGROUND

24. This case involves asylum seekers whom DHS apprehends at or near the border and who express a fear of return to their countries of origin. Upon apprehension, a DHS officer must either refer the individual to an asylum officer to make an initial assessment of the claim (known as a credible fear interview) or issue an NTA and release her from custody pending removal removal proceedings.

A. Credible Fear Entrants

25. Congress created an expedited removal system and "credible fear" process in 1996. 8 U.S.C. § 1225 *et seq*. (setting forth the expedited removal system). As enacted by Congress, the expedited removal system involves a more streamlined removal process than regular removal proceedings under 8 U.S.C. § 1229a and is reserved for people apprehended at or near the border. *See* 8 U.S.C. § 1225(b)(1)(A)(i) (permitting certain persons who are seeking admission at the border of the United States to be expeditiously removed without a full immigration judge hearing); 8 U.S.C. § 1225(b)(1)(A)(iii) (authorizing the Attorney General to apply expedited removal to certain inadmissible noncitizens located within the United States); 69 Fed. Reg. 48,877 (Aug. 11, 2004) (providing that the Attorney General will apply expedited removal to persons within the United States who are allegedly apprehended within 100 miles of the border and who are unable to demonstrate that they have been continuously physically present in the United States for the preceding 14-day period).

26. Critically, however, Congress included safeguards in the statute to ensure that refugees are not returned to their countries of origin to face persecution. Congress recognized the high stakes involved in short-circuiting the formal removal process and the constitutional constraints under

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which it operates, and created specific procedures with particularly detailed requirements for handling asylum claims.

27. The expedited removal statute provides that the process begins with an inspection by an immigration officer, who makes a determination about the individual's admissibility to the United States. Of particular relevance here, if the individual indicates either an intention to apply for asylum or *any* fear of return to his or her home country, the immigration officer *must* refer the individual for an interview with an asylum officer. 8 U.S.C. § 1225(b)(1)(A)(ii), (B); 8 C.F.R. § 235.3(b)(4).

28. Under the applicable regulations, after a noncitizen is referred for an interview, the asylum officer then conducts a "credible fear interview," which is designed "to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture." 8 C.F.R. § 208.30(d). At the conclusion of the interview, the asylum officer must create a written summary of the "material facts" provided during the interview, review that summary with the individual, and provide him or her with the opportunity to correct any errors. 8 C.F.R. § 208.30(d)(6).

29. If an asylum officer determines that an applicant satisfies the credible fear standard, the applicant is taken out of the expedited removal system altogether, and charging documents are issued and served upon the individual, placing the applicant into regular (8 U.S.C. § 1229a) removal proceedings where she has the opportunity to develop a full record before an IJ, apply for asylum and any other relief that may be available, and appeal an adverse decision to the BIA and court of appeals. 8 C.F.R. §§ 208.30(f), 1003.43(f) and 1208.30; *see also* 8 U.S.C. § 1225(b)(1)(B)(ii).[2]

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[2] If the asylum officer makes a negative credible fear determination, the officer must provide a written record of the determination and, upon request, the individual must be provided with prompt review of the

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30. Following a determination that an individual has a credible fear, and thus credible fear proceedings are no longer pending, and while the person is in custody, DHS has an affirmative duty to provide her "the appropriate application forms," and to provide her with information regarding the consequences of knowingly filing a frivolous asylum application and information about representation by counsel. 8 C.F.R. § 208.5(a). Additionally, once an individual has passed a credible fear determination, DHS makes a determination of whether to continue detaining the individual, or to release the applicant on parole, bond, or on their own recognizance. 8 U.S.C. § 1226(a).

31. None of the documentation provided by DHS to these applicants upon release contains: (1) notice of the one-year deadline for filing an asylum application in 8 U.S.C. § 1158(a)(2)(B); or (2) instructions on how to timely file the application, even though they expressed a fear of returning to their country of origin and/or a desire to apply for asylum, and were permitted to remain in the country for the specific purpose of pursuing their asylum claims. Moreover, at no point in the credible fear process, not even after the individuals are found to have a credible fear and thus are taken out of the expedited removal process, are asylum officers required to provide notice of the one-year deadline.

B. Other Entrants

32. Upon apprehension of persons seeking asylum, a DHS officer may elect not to initiate expedited removal proceedings and the credible fear process. Instead, DHS may parole into the United States or release from custody an individual who expresses a desire to apply for asylum or a

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determination by an immigration judge. 8 U.S.C. § 1225(b)(1)(B)(iii)(II)-(III); *see also* 8 C.F.R. §§ 208.30(g)(1), 1003.42, 1208.30. DHS may deport individuals who do not establish a credible fear.

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fear to return to her country of origin into the United States. *See* 8 U.S.C. §1182(d) (authorizing parole).

33. Thus, a DHS agent may decide to place an individual who appears to be inadmissible in regular removal proceedings under 8 U.S.C. § 1229a rather than expedited removal proceedings under 8 U.S.C. § 1225(b); in such case, the individual may be detained; however, DHS may consider releasing the person on parole under 8 U.S.C. § 1182(d)(5) or on bond or on her own recognizance. 8 C.F.R. § 235.3(c).

34. DHS may grant parole on a case-by-case basis for "urgent humanitarian reasons" or where it would serve a "significant public benefit," provided the individual does not present a security risk or a risk of absconding. 8 C.F.R. § 212.5(a). Individuals who may be paroled include those with medical conditions, pregnant women, juveniles, and those "whose continued detention" DHS determines is not in the public interest. 8 C.F.R § 212.5(b). DHS also may release a person from custody on bond or on her own recognizance. 8 U.S.C. § 1226.

35. While the person is in custody, DHS has an affirmative duty to provide her "the appropriate application forms," and to provide her with information regarding the consequences of knowingly filing a frivolous asylum application and information about representation by counsel. 8 C.F.R. § 208.5(a).

36. DHS may require reasonable assurance that the individual will appear at a hearing and/or depart the United States if required. 8 C.F.R. § 212.5(d). DHS may also require that the individual post a bond, demonstrate close community ties such as a relative with a known address, or agree to other reasonable conditions for parole. *Id.*

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37. Where parole or release from custody is granted, DHS generally issues an NTA and, in parole cases, must issue a Form I-94 (Entry/Exit form) endorsed with a parole stamp. 8 C.F.R. § 235.1(h)(2).

38. None of the documentation provided by DHS to these individuals upon release contains: (1) notice of the one-year deadline for filing an asylum application in 8 U.S.C. § 1158(a)(2)(B); or (2) instructions on how to timely file the application, even though they expressed a fear of returning to their country of origin and/or a desire to apply for asylum, and were paroled into the country for the express purpose of pursuing their asylum claims. Moreover, at no point in the parole or release process, not even after the individuals have expressed their intention to seek asylum, are asylum officers required to provide notice of the one-year deadline.

C. Asylum and the One-Year Deadline

39. To prevail on an asylum claim, an applicant must demonstrate that she cannot return to her country of origin "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A); *see also* 8 U.S.C. § 1158(b)(1)(A).

40. Those who are granted asylum in the United States may not be removed to the country in which they face persecution. 8 U.S.C. § 1158(c)(1)(A). In addition, asylees may file a petition to accord their spouse and/or children derivative asylum status. 8 C.F.R. § 208.21(a). Asylees may also apply for permission to travel in and out of the United States. 8 C.F.R. § 223.1(b). Finally,

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after they have held that status for at least one year, asylees may adjust their status to that of a lawful permanent resident. 8 U.S.C. § 1159(b).[3]

41. In 1996, for the first time, Congress enacted a deadline requiring asylum seekers to file an application within one year of their last arrival in the United States. 8 U.S.C. § 1158(a)(2)(B) provides:

> Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has been filed within 1 year after the date of the alien's arrival in the United States.

In enacting this provision, Congress sought to bar from asylum those noncitizens who, as an example, were arrested by the immigration authorities after having been in the United States for "2, 3 years, and . . . say, 'I am seeking asylum' because they know that these procedures are interminable." 142 CONG. REC. S4468 (daily ed. May 1, 1996) (statement of Sen. Simpson). Congress affirmed, however, that it remained "committed to ensuring that those with legitimate claims of asylum are not returned to persecution . . ." 142 CONG. REC. S11, 840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).

42. The deadline contains two exceptions: (1) an exception for asylum seekers who prove the existence of "changed circumstances … materially affect[ing] the[ir] … eligibility for asylum"; and (2) an exception for asylum seekers who prove the existence of "extraordinary circumstances relating to the[ir] delay in filing an application" by the deadline. 8 U.S.C. § 1158(a)(2)(D).

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[3] Other forms of protection that may be available to someone fleeing persecution provide less security and fewer benefits than is provided by a grant of asylum. An applicant who is not eligible for asylum may still qualify for protection under 8 U.S.C. § 1231(b)(3)(B) (withholding of removal) or under the Convention Against Torture (CAT). 8 C.F.R. §§ 1003.42(d); 1208.30(g)(2)(iv)(C). However, to qualify for either form of protection, an applicant must establish a much higher likelihood of future harm—i.e., that persecution or torture is more likely than not. For CAT protection, the applicant must meet other requirements that are not applicable to an asylum claim. Moreover, unlike asylum, neither provides an avenue to lawful permanent residence and eventual citizenship.

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43. Congress enacted these exceptions to provide "adequate protections to legitimate asylum claimants." 142 CONG. REC. S11, 491 (daily ed. Sept. 27, 1996) (statement of Sen. Hatch). Congress emphasized that it did not want to see legitimate asylum seekers "returned to persecution" due to mere "technical deficiencies" in their asylum applications, like the expiration of the one-year deadline. *Id.* (statement of Sen. Hatch).

44. Following the enactment of the deadline, Defendants promulgated regulations to implement it. In relevant part, the regulations provide:

> *One-year filing deadline.* (i) For purposes of [8 U.S.C. § 1158(a)(2)(B)], an applicant has the burden of proving:
>
> (A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or
>
> (B) To the satisfaction of the asylum officer, the immigration judge or the Board that he or she qualifies for an exception to the 1-year deadline.
>
> The 1-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. . . . For the purpose of making determinations under [8 U.S.C. § 1158(a)(2)(B)] *only*, an application is considered to have been filed on the date it is received by the Service, pursuant to § 103.2(a)(7) of this chapter. In a case in which the application has not been received by the Service within 1 year from the applicant's date of entry into the United States, but the applicant provides clear and convincing documentary evidence of mailing the application within the 1-year period, the mailing date shall be considered the filing date. For cases before the Immigration Court in accordance with § 3.13 of this chapter, the application is considered to have been filed on the date *it is received by* the Immigration Court. For cases before the Board of Immigration Appeals, the application is considered to have been filed on the date *it is received by* the Board. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, the asylum officer, the immigration judge, or the Board will determine whether the applicant qualifies for an exception to the deadline. . . .

8 C.F.R. § 208.4(a)(2) (DHS), 8 C.F.R. § 1208.4(a)(2) (emphasis added).

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45. Accordingly, an individual may apply for asylum affirmatively by sending an application on Form I-589 to USCIS (if she is not in removal proceedings) or defensively in immigration court (also using Form I-589 if removal proceedings have been initiated).

46. An applicant who applies affirmatively must attend an interview with a USCIS asylum officer, who may grant, deny, refer, or dismiss the application. 8 C.F.R. §§ 208.9(b), 208.14(c), 1208.9(b), and 1208.14(c). If the asylum officer refers the application, it is sent to an immigration judge for adjudication in removal proceedings. 8 C.F.R. §§ 208.14(c), 1208.14(c). The asylum application is then considered a "defensive" asylum application. An immigration judge reviews *de novo* the previously filed asylum application, which may be amended or supplemented, without the applicant having to file a new asylum application. 8 C.F.R. § 1208.4(c).

47. Asylum applicants who already are in removal proceedings must file their asylum applications directly with EOIR. In these cases, the regulations require that the asylum application be filed with the "immigration court." 8 C.F.R. § 1208.4(b)(3). The application is "filed" for purposes of meeting the deadline if it is "received by" an immigration court or the Board. 8 C.F.R. §§ 208.4(a)(2)(B)(ii); 1208.4(a)(2)(B)(ii).

48. Unlike other applications and pleadings which may be filed with the immigration court at any time, EOIR's sub-regulatory policy and practice requires asylum applications to be filed only at a hearing before an immigration judge. *See* Immigration Court Manual, 3.1(b)(iii)(A), *supra*; Revised Operating Policy and Procedures Memorandum No. 00-01, "Asylum Request Processing (Aug. 4, 2000) (OPPM 00-01) at 15, *available at:* https://www.justice.gov/sites/default/files/eoir/legacy/2002/02/15/OPPM00-01Revised.pdf ("Local Court rules notwithstanding, including any such rules related to the filing of Motions for a Change of

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Venue, defensive asylum applications can only be filed with the Immigration Court at a Master Calendar or a Master Calendar Reset Hearing.") (emphasis in original).

D. Existing Agency Barriers to One-Year Deadline Compliance

49. The asylum application process adversely affects Plaintiffs in two ways. First, DHS fails to notify asylum seekers—including both those who are subject to a credible fear interview and those released from custody without such an interview—of the one-year deadline. As a result, most entrants are unaware of the deadline unless and until either an immigration lawyer or an immigration judge informs them. Often these asylum seekers do not learn of the deadline until a significant time has passed—in many cases after one year has elapsed. Upon information and belief, many individuals who undergo the credible fear process erroneously believe that they already have applied for asylum.

50. Second, even if applicants are on notice, DHS and EOIR have failed to implement a system that ensures asylum seekers an opportunity in which they can comply with the deadline.

51. Often, DHS does not immediately send the Notice to Appear to the immigration court. For these individuals, the one-year clock is ticking, but they have no formal venue in which to file their asylum applications. Because the immigration court has not received the NTA, it has no jurisdiction over that applicant's case. Although USCIS does have jurisdiction, upon information and belief, it refuses to accept applications because an NTA was issued, even though the NTA has not been submitted to the immigration court. Plaintiffs Rodriguez and Mendez were unable to file their asylum applications with USCIS for precisely this reason.

52. Similarly, in other cases, DHS may send the Notice to Appear to the immigration court, but the court delays docketing the case. For these individuals also, the one-year clock is ticking but, likewise, they have no formal venue in which to file their applications. In such cases, neither USCIS

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nor EOIR admits to having jurisdiction to accept the asylum application, and thus the individual cannot file with either agency.

53. In accordance with EOIR national policy, individuals still are not able to file their asylum applications with the immigration court even *after* the immigration court dockets the NTA, until the first hearing before an immigration judge—despite the language of 8 C.F.R. §§ 208.4(a)(2) and 1208.4(a)(2), which do not impose that requirement, and instead specify only that an application is filed when "received" by the immigration court. *See* Immigration Court Manual, Chapter 3.1(b)(iii)(A); OPPM 00-01 at 15.

54. Notwithstanding this national policy, on information and belief, an isolated handful of immigration courts have adopted work-arounds to remedy this problem, resulting in a patchwork of haphazard policies for accepting defensive asylum applications. For example, upon information and belief, the immigration judges in Omaha, NE; Philadelphia, PA; Charlotte, NC; Cleveland, OH; San Francisco, CA; and Seattle, WA allow individuals to meet the one-year deadline if they "lodge" the application by submitting it to the clerk's office within that time period. On information and belief, these work-arounds are rare, given that there are more than 50 immigration courts. *See* EOIR Immigration Court Listing, *available at* https://www.justice.gov/eoir/eoir-immigration-court-listing. They also are non-binding on individual immigration judges, and, at any time, an individual judge may decide to no longer agree that "lodging" constitutes "filing."

55. Upon information and belief, in other immigration courts, including Los Angeles, CA, judges reject this notion; in other words, they do not consider "lodging" as "filing" for purposes of the one-year deadline.

56. Upon information and belief, in Houston, TX; Baltimore, MD; Chicago, IL; San Diego, CA; New Orleans, LA; Denver, CO; and Portland, OR, each immigration judge has discretion to

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determine whether lodging constitutes filing and often makes this determination on a case-by-case basis.

57. The well-documented backlog in immigration courts routinely prevents the scheduling of a master calendar hearing within the one-year deadline.[4] As such, an individual's first opportunity to apply for asylum at a master calendar hearing may take place only after the one-year deadline has passed.

58. Other individuals may appear at their first master calendar hearing without an attorney, and the immigration judge may continue the proceedings for a second hearing well beyond the one-year deadline. Even if such individuals subsequently secure legal representation, EOIR policy mandates that they wait until the next hearing to file their asylum application. *See* Immigration Court Manual, Chapter 3.1(b)(iii)(A); OPPM 00-01 at 15.

FACTUAL ALLEGATIONS

59. Plaintiffs are suffering and will continue to suffer serious and irreparable harm due to Defendants' failure to provide notice of the one-year deadline and a guaranteed opportunity to comply with it, in violation of 8 U.S.C. § 1158(a)(2)(B), 8 C.F.R. §§ 208.4(a)(2), 1208.4(a)(2), and the Due Process Clause.

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[4] *See, e.g.*, Human Rights First, *In the Balance: Backlogs Delay Protection in the U.S. Asylum and Immigration Court Systems* (April 2016) (reporting that, as of February 2016, there were 480,815 removal cases pending before immigration courts and about 20 percent of incoming cases involve applications for asylum and also estimating that the case backlog would reach over 500,000 by the end of Fiscal Year 2016 and 1 million by 2022); Transactional Records Access Clearinghouse (TRAC), *Average Time Pending Cases Have Been Waiting in Immigration Courts as of April 2016* (April 2016), *available at* http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog_avgdays.php (reporting average wait time in 2016 for all cases in immigration courts to be 668 days); TRAC, *Ballooning Wait Times for Hearing Dates in Overworked Immigration Courts* (Sept. 21, 2015); *available at* http://trac.syr.edu/immigration/reports/405/.

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Plaintiff Elmer Rodriguez

60. Plaintiff Elmer Geovanni Rodriguez Escobar is a 37-year-old citizen of Honduras who resides in Burien, Washington.

61. He fled Honduras after he and his family were threatened by violent gang members who had murdered his nephew. Mr. Rodriguez was robbed and threatened by these gang members, who targeted him personally, shot at his home, and attempted to kidnap his daughter from her school shortly before he fled the country.

62. He entered the United States without inspection on July 9, 2014, and DHS apprehended him shortly thereafter. DHS placed him in expedited removal proceedings, but because he expressed a fear of persecution if returned to Honduras, DHS scheduled him for a credible fear interview. After DHS determined that he had demonstrated a credible fear of persecution, DHS issued and served him with an NTA, and then released him from custody on bond. The NTA listed the relevant location for his future immigration hearing as the San Antonio, Texas, Immigration Court, but did not provide a hearing date and time, noting that these would be determined at a later date.

63. At no point in time did DHS inform Mr. Rodriguez that he would need to file an asylum application within one year of his arrival into the country. Mr. Rodriguez only became aware of the deadline when he sought legal counsel for his immigration case. Through counsel, he attempted to file his asylum application with USCIS on May 7, 2015, within one year of his arrival in the United States. He did so because EOIR records indicated that his NTA had not yet been filed with the immigration court: his "A number" did not appear in EOIR's telephonic case information system,[5]

[5] EOIR established an electronic phone system to provide EOIR's customers with ready access to immigration court information in English and Spanish. Users can dial 240-314-1500 or 1-800-898-7180 (toll-

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and he had not yet received a hearing notice. Although he received a "filing receipt" from USCIS, dated May 8, 2015, the notice indicated that USCIS was treating the application as a "Defensive Asylum Application," based on its assumption that Mr. Rodriguez was in removal proceedings. Because USCIS did not accept the application as an affirmative application, it did not forward his application to the asylum office for the scheduling of an asylum interview.

64. In the meantime, in June 2015, Mr. Rodriguez also tried to "lodge" his I-589 with the San Antonio Immigration Court, in an attempt to comply with the one-year filing deadline. However, the San Antonio Immigration Court rejected the submission, stating that his case had not been filed with EOIR.

65. Mr. Rodriguez subsequently filed an application for employment authorization in October 2015, as more than 150 days had elapsed since he filed his application with USCIS. Under the regulations, after an application for asylum has been pending for more than 150 days, an asylum seeker is eligible to apply for employment authorization. 8 C.F.R. § 208.7(a)(1). On January 19, 2016, USCIS denied his application for work authorization, concluding that he was not eligible for employment authorization because he had not filed an asylum application with USCIS.

66. Mr. Rodriguez now has been in the United States for almost two years, yet he has been unable to file his application for asylum.

Plaintiff Concely Mendez

67. Plaintiff Concely del Carmen Mendez-Rojas is a 30-year-old citizen of the Dominican Republic who resides in Burien, Washington.

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free) to obtain case status information 24 hours a day, 7 days a week. https://www.justice.gov/eoir/customer-service-initiatives.

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68. Ms. Mendez was the victim of repeated acts of egregious domestic violence at the hands of her former partner and father of her son in the Dominican Republic. Because the Dominican authorities refused to protect her from her abuser, Ms. Mendez ultimately fled her country and sought refuge in the United States.

69. She entered the United States without inspection on September 23, 2013, and DHS apprehended her shortly thereafter. She was placed in expedited removal proceedings, but because she expressed a fear of persecution if returned to the Dominican Republic, she was scheduled for a credible fear interview. After DHS determined she had demonstrated a credible fear of persecution, DHS released her from custody on her own recognizance and issued her an NTA dated October 16, 2013. The NTA listed the relevant location for her future immigration hearing as the San Antonio Immigration Court, but did not provide a hearing date and time, noting that it would be determined at a later date.

70. At no point in time did DHS inform Ms. Mendez of the one-year deadline to file her application for asylum. In fact, Ms. Mendez believed that, by virtue of the process she had undergone while in DHS custody, she already had applied for asylum, and did not understand that she would need to file a particular application to pursue her case.

71. Ms. Mendez only became aware of the filing deadline when she sought legal counsel for her immigration case, in October 2014, more than a year after her arrival in the United States. Upon information and belief, at that point in time, the NTA issued to Ms. Mendez had not been filed with the immigration court. Through counsel, she promptly attempted to file her application for asylum with USCIS on November 3, 2014. She did so because she had still not been placed in removal proceedings: her immigration number did not appear in EOIR's telephonic case information system,

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and she had yet to be issued a hearing notice. Her application was initially accepted by USCIS, which issued a receipt notice on November 7, 2014.

72. In the meantime, through counsel, Ms. Mendez frequently contacted EOIR's telephonic case information system to find out if her case had been initiated in immigration court, but the system reported that it had not.

73. On March 18, 2015, the San Francisco Asylum Office sent Ms. Mendez's counsel a letter, stating that it lacked jurisdiction over Ms. Mendez' asylum application because she previously had been placed in removal proceedings. On April 23, 2015, well after the one-year deadline had passed, the San Francisco Asylum Office issued a second NTA, stating that Ms. Mendez would be scheduled for a removal hearing in Seattle at a date and time to be determined at later date. Shortly after that, however, Ms. Mendez learned through the EOIR telephonic case system that the San Antonio Immigration Court had also scheduled an initial master calendar hearing for her on November 29, 2019. Almost immediately thereafter, Ms. Mendez "lodged" her asylum application with the San Antonio Immigration Court, on May 8, 2015.

74. Her counsel subsequently filed a motion for a change of venue, and her case was transferred to the Seattle Immigration Court. Her first master calendar hearing is scheduled for August 16, 2016.

Plaintiff Lidia Lopez

75. Plaintiff Lidia Margarita Lopez is a 37-year-old native and citizen of Guatemala who resides in Austin, Texas, with her three children.

76. Ms. Lopez and her two younger children arrived at the Eagle Pass, Texas, port of entry on February 28, 2014. After their arrival, Ms. Lopez stated to a DHS official that she was afraid to return to Guatemala. DHS released Ms. Lopez and her children into the United States pending

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removal proceedings, and served them with NTAs, setting them for a hearing before an immigration judge at a to-be-determined date before the San Antonio Immigration Court.

77. Ms. Lopez was released by CBP on the condition that she regularly report with ICE in San Antonio, Texas. She complied, reporting to ICE on four occasions between March 2014 and September 2015. At no point did any ICE officer at her check-ins inform her about the one-year filing deadline or provide her with information about how to file an asylum application. Ms. Lopez believed that she would learn more about how to seek asylum once she had a hearing at an immigration court.

78. Ms. Lopez was issued a second, superseding NTA on February 23, 2015, providing that she would have a hearing before an immigration judge at the San Antonio Immigration Court at a to-be-determined date. In September 2015, Ms. Lopez was issued a third superseding NTA, providing that she would have a hearing before an immigration judge at the San Antonio Immigration Court at a to-be-determined date. In October 2015, more than a year and a half after she arrived in the United States, Ms. Lopez was issued a Notice of Hearing, setting her first master calendar hearing for November 2, 2015.

79. At no point did any DHS official ever inform Ms. Lopez that she was required to file an asylum application within one year of her most recent arrival.

80. In December 2015, after Ms. Lopez retained an immigration attorney to represent her and her children in removal proceedings, she learned for the first time from her attorney that she was required to file her asylum application within a year of arriving in the United States. But by this point, the one year deadline had already passed. Prior to her next Master Calendar hearing, Ms. Lopez lodged her asylum application with the immigration court in San Antonio, Texas in January 2016.

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81. On January 11, 2016, upon a joint motion by the parties, an immigration judge terminated the removal proceedings of Ms. Lopez and her children as improvidently issued. Ms. Lopez then filed her asylum application affirmatively with USCIS on February 15, 2016. Ms. Lopez appeared for fingerprinting and biometrics collection on March 14, 2016. She is currently awaiting an asylum interview.

Plaintiff Maribel Suarez

82. Plaintiff Maribel Suarez Garcia is a 29-year-old native and citizen of Mexico who resides in Yelm, Washington, with her five minor children.

83. Ms. Suarez was the victim of repeated acts of egregious domestic violence in Mexico at the hands of her former partner and the father of her youngest children. That ex-partner is involved with a violent drug cartel in Mexico, heightening the danger Ms. Suarez and her children already face. In fact, the father of her three older children was murdered by a cartel in Mexico. For these reasons, she and her children fled Mexico and sought refuge in the United States.

84. Ms. Suarez and her children arrived at the Otay Mesa port of entry on November 7, 2013. Upon their arrival, Ms. Suarez informed DHS that she and her children were afraid to return to Mexico and wanted to apply for asylum in the United States. After she provided a sworn statement to DHS officials at the port-of-entry, DHS paroled her and her five children into the United States pending removal proceedings. DHS also served them with NTAs, which indicated that they would be scheduled for a removal proceeding before an immigration judge at a date, time, and location to be determined later.

85. At no point did DHS ever inform Ms. Suarez that she was required to file an application for asylum within one year of her arrival.

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86. The San Francisco Immigration Court eventually scheduled Ms. Suarez and four of her children for an initial master calendar hearing on December 22, 2015. It scheduled the remaining child for an initial master calendar hearing on February 2, 2016. These initial master calendar hearings occurred more than a year after Ms. Suarez and her children arrived in the United States.

87. After Ms. Suarez retained an immigration attorney to represent her and her children in their removal proceedings, she learned for the first time from her attorney that she was required to apply for asylum within one year of her arrival into the country. By that point, the one-year deadline had passed. Ms. Suarez and her children subsequently lodged their application for asylum with the San Francisco Immigration Court on May 19, 2015. Shortly thereafter, Ms. Suarez and her children also moved the San Francisco Immigration Court to change venue in their case to Seattle. They are scheduled for an individual calendar hearing in Seattle on May 12, 2017.

88. There are no administrative remedies for Plaintiffs to exhaust. No other remedy exists for Plaintiffs to compel Defendants to cease violating their statutory, regulatory, and constitutional rights.

CLASS ALLEGATIONS

89. Plaintiffs bring this action on behalf of themselves and all others who are similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the classes, the classes are so numerous that joinder of all members is impractical, Plaintiffs' claims are typical of the claims of the classes, Plaintiffs will fairly and adequately protect the interests of the respective classes, and Defendants have acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

90. Plaintiffs seek to represent the following nationwide classes:

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CLASS A ("Credible Fear Class"): All individuals who are released or will be released from DHS custody after they have 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 notice from DHS of the one-year deadline to file an asylum application as set forth in 8 U.S.C. § 1158(a)(2)(B).

A.I. All individuals in Class A who *are not* in removal proceedings and who either (a) have not applied for asylum at all or (b) applied for asylum after one year of their last arrival.

A.II. All individuals in Class A who *are* in removal proceedings and who either (a) have not yet applied for asylum or (b) applied for asylum after one year of their last arrival.

CLASS B ("Other Entrants Class"): All individuals who are detained upon entry; express a fear of return to their country of origin; are released or will be released from DHS custody without a credible fear determination; are issued a Notice to Appear; and did not receive notice from DHS of the one-year deadline to file an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B).

B.I. All individuals in Class B who *are not* in removal proceedings and who either (a) have not applied for asylum at all or (b) applied for asylum after one year of their last arrival.

B.II. All individuals in Class B who *are* in removal proceedings and who either (a) have not applied for asylum at all or (b) applied for asylum after one year of their last arrival.

Class A - The Credible Fear Class

91. Plaintiffs Rodriguez and Mendez seek to represent Class A. Class A is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon information and belief, there are thousands of persons who have been released from DHS custody after having passed credible fear interviews whom Defendant DHS has not given notice of the one-year deadline, and for whom Defendants have failed to provide a meaningful mechanism for compliance with the deadline.

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92. Questions of law and fact common to the proposed class that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

93. Plaintiffs' claims are typical of the claims of the proposed class. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that ensures Plaintiffs and proposed class members have an opportunity to comply.

94. Plaintiffs will fairly and adequately protect the interests of the proposed class members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

95. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

96. Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final declaratory and injunctive relief.

Subclass A.I. – Passed Credible Fear and Not in Removal Proceedings

97. Plaintiff Rodriguez seeks to represent Subclass A.I. Subclass A.I. is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon information and belief, there are hundreds of persons who have been released from DHS custody after having passed credible fear interviews whom Defendant DHS has not given notice of the one-year deadline, who are not in removal proceedings, and who have not applied for asylum within one year of their last

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arrival because Defendants have failed to provide a meaningful mechanism to do so.

98. Questions of law and fact common to the proposed subclass that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

99. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.

100. Plaintiffs will fairly and adequately protect the interests of the proposed subclass members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

101. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

102. Defendants have acted on grounds generally applicable to the proposed subclass, thereby making appropriate final declaratory and injunctive relief.

Subclass A.II. – Passed Credible Fear and in Removal Proceedings

103. Plaintiff Mendez seek to represent Subclass A.II. Subclass A.II. is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon information and belief, there are thousands of persons who have been released from DHS custody after having passed credible fear interviews whom Defendant DHS has not given notice of the one-

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year deadline, who are in removal proceedings, and who have not applied for asylum within one year of their last arrival because Defendants have failed to provide a meaningful mechanism to do so.

104. Questions of law and fact common to the proposed subclass that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

105. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.

106. Plaintiffs will fairly and adequately protect the interests of the proposed subclass members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

107. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

108. Defendants have acted on grounds generally applicable to the proposed subclass, thereby making appropriate final declaratory and injunctive relief.

Class B – Other Entrants Class

109. Plaintiffs Lopez and Suarez seek to represent Class B (Other Entrants Class). Class B is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon information and belief, there are hundreds of persons Defendant DHS has paroled

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into the country or released from custody after having expressed a fear of return whom Defendant DHS has not given notice of the one-year asylum deadline, and for whom Defendants have failed to provide a meaningful mechanism for compliance with the deadline.

110. Questions of law and fact common to the proposed class that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

111. Plaintiffs' claims are typical of the claims of the proposed class. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that guarantees Plaintiffs and proposed class members an opportunity to comply.

112. Plaintiffs will fairly and adequately protect the interests of the proposed class members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

113. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

114. Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final declaratory and injunctive relief.

Subclass B.I. – Released from Custody, Given an NTA, But Not in Removal Proceedings

115. Plaintiff Lopez seeks to represent Subclass B.I. Subclass B.I. is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon

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information and belief, there are hundreds of persons Defendant DHS has paroled into the country or otherwise released from custody after having expressed a fear of return, to whom Defendant DHS has not given notice of the one-year deadline, who are not in removal proceedings (although they have been given an NTA), and who have not applied for asylum within one year of their last arrival because Defendants have failed to provide a meaningful mechanism to do so.

116. Questions of law and fact common to the proposed subclass that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

117. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.

118. Plaintiffs will fairly and adequately protect the interests of the proposed subclass members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

119. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

120. Defendants have acted on grounds generally applicable to the proposed subclass, thereby making appropriate final declaratory and injunctive relief.

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Subclass B.II. – Released from Custody, Given an NTA, and in Removal Proceedings

121. Plaintiff Suarez seek to represent Subclass B.II. Subclass B.II. is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of potential class members because Defendants are in the best position to identify such persons. Upon information and belief, there are hundreds of persons Defendant DHS has paroled into the country or otherwise released from custody after having expressed a fear of return, to whom Defendant DHS has not given notice of the one-year asylum deadline, who are in removal proceedings, and who have not applied for asylum within one year of their last arrival because Defendants have failed to provide a meaningful mechanism to do so.

122. Questions of law and fact common to the proposed subclass that predominate over any questions affecting only the individually named Plaintiffs include whether the DHS Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide notice of the one-year deadline and whether the DHS and DOJ Defendants violate the U.S. Constitution, the INA, the regulations, and/or the APA by failing to provide a uniform system for compliance with the deadline.

123. Plaintiffs' claims are typical of the claims of the proposed subclass. The DHS Defendants have failed to provide notice and the DHS and DOJ Defendants have failed to implement a system that guarantees Plaintiffs and proposed subclass members an opportunity to comply.

124. Plaintiffs will fairly and adequately protect the interests of the proposed subclass members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

125. Plaintiffs also are represented by competent counsel with extensive experience in complex class actions and immigration law.

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126. Defendants have acted on grounds generally applicable to the proposed subclass, thereby making appropriate final declaratory and injunctive relief.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

127. An actual and substantial controversy exists between the proposed classes and Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate Plaintiffs' rights and the rights of the proposed classes.

128. The DHS Defendants' policy and practice of failing to give notice of the one-year deadline and the DHS and DOJ Defendants' failure to provide a uniform and reliable system within which to comply with that deadline has caused and will continue to cause irreparable injury to Plaintiffs and proposed class members. Plaintiffs and proposed class members have lost, or are at risk of losing, their right to seek asylum in the United States and all the associated rights and benefits afforded through the asylum process, including protection from removal to countries where they face a well-founded fear of persecution, as well as the rights to become lawful permanent residents, to travel, and to reunite with family members.

129. Plaintiffs have no adequate remedy at law. They do not seek a determination as to the merits of their individual asylum claims; nor do they seek judicial review of an order of removal entered against them. What they challenge are two unlawful procedural deficiencies in the way that Defendants are implementing the asylum process/system—deficiencies that are unrelated to Plaintiffs' substantive eligibility for asylum, and that deprive many Plaintiffs and proposed class members of the opportunity to present their claims for asylum to the relevant adjudicators. The immigration court and subsequent appeals process is not empowered to remedy such systemic deficiencies. Accordingly, Plaintiffs have exhausted their administrative remedies.

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130. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and proposed class members have suffered a "legal wrong" and have been "adversely affected or aggrieved" by agency action for which there is no adequate remedy in a court of law.

131. Based on the foregoing, the Court should grant declaratory and injunctive relief under 28 U.S.C. §§ 2201, 2202, 5 U.S.C. § 702, and the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361.

CAUSES OF ACTION

COUNT ONE

(Violation of the Immigration and Nationality Act, Implementing Regulations, and the Administrative Procedure Act Based on Lack of Notice)

(Against the DHS Defendants)

132. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

133. The Immigration and Nationality Act and implementing regulations, including 8 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. § 1158 (asylum), entitle Plaintiffs to a meaningful opportunity to apply for asylum, including notice of the filing deadline. Defendants, through their directives, have violated these statutory and regulatory rights, both singularly and collectively, by failing to provide notice of the one-year deadline set forth in 8 U.S.C. § 1154(a)(2)(B).

134. Plaintiffs have been harmed by the lack of notice in that they are then either deprived of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that they qualify for a statutory exception to the one-year deadline.

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COUNT TWO

(Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Based on Lack of Notice)

(Against the DHS Defendants)

135. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

136. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall … be deprived of life, liberty, or property, without due process of law."

137. Plaintiffs have protected interests in applying for asylum and in not being removed to countries where they face serious danger and potential loss of life.

138. Plaintiffs are entitled under the Due Process Clause to a fair hearing of their asylum claims, including notice of the deadline for filing an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B).

139. DHS Defendants have violated Plaintiffs' right to due process, both singularly and collectively, by failing to provide notice of the one-year deadline.

140. Plaintiffs have been harmed by the lack of notice in that they are then either deprived of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that they qualify for a statutory exception to the one-year deadline.

COUNT THREE

(Violation of the Immigration and Nationality Act, Implementing Regulations, and the Administrative Procedure Act Based on Lack of a Uniform Procedural Mechanism)

(Against All Defendants)

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141. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

142. The Immigration and Nationality Act and implementing regulations, including 8 U.S.C. § 1225(b)(1) (expedited removal), 8 C.F.R. §§ 235.3(b)(4), 208.30, and 1003.42; 8 U.S.C. § 1158 (asylum), entitle Plaintiffs to a meaningful opportunity to apply for asylum, including uniform procedural mechanisms for both affirmative and defensive applications whereby they can comply with the one-year filing deadline set forth in 8 U.S.C. § 1158(a)(2)(B).

143. Defendants have violated Plaintiffs' statutory and regulatory rights, both singularly and collectively, by failing to implement uniform procedural mechanisms that ensure that Plaintiffs can comply with the filing deadline.

144. Plaintiffs have been harmed by the lack of a procedural mechanism that ensures them the opportunity to comply with the one-year deadline in that they are then either deprived of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that they qualify for a statutory exception to the one-year deadline.

COUNT FOUR

(Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution Based on Lack of a Uniform Procedural Mechanism)

(Against All Defendants)

145. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

146. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that "[n]o person shall … be deprived of life, liberty, or property, without due process of law."

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147. Plaintiffs have protected interests in applying for asylum and in not being removed to countries where they face serious danger and potential loss of life.

148. Plaintiffs are entitled under the Due Process Clause to a fair hearing of their claims, including at a minimum uniform procedural mechanisms for both affirmative and defensive applications whereby they can comply with the one-year deadline set forth in 8 U.S.C. § 1158(a)(2)(B).

149. Defendants have violated Plaintiffs' right to due process, both singularly and collectively, by failing to implement uniform procedural mechanisms that ensure that Plaintiffs can comply with the filing deadline.

150. Plaintiffs have been harmed by the lack of a procedural mechanism that ensures them the opportunity to comply with the one-year deadline in that they are then either deprived of the right to apply for asylum, or at a minimum, face an additional hurdle of convincing the adjudicator that they qualify for a statutory exception to the one-year deadline.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for this Court to:

a. Assume jurisdiction over this matter;

b. Certify the case as class action as proposed herein;

c. Appoint Plaintiffs as representatives of the classes;

d. Declare that DHS Defendants' policy and practice of failing to give notice of the one-year deadline is contrary to the statute and the Constitution;

e. Declare that DHS and DOJ Defendants' failure to provide uniform meaningful and reliable mechanisms within which to comply is contrary to the statute and the Constitution;

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f. Enter an order directing Defendants to submit a plan for corrective action for approval by the Court;

g. Issue an order directing Defendants to provide Plaintiffs and class members notice of the one-year deadline;

h. Issue an order directing Defendants to authorize Plaintiffs and class members to file an asylum application within one year of the date such notice is provided;

i. Require that Defendants return to the United States any deported Plaintiff or class member whose asylum application was denied for having failed to meet the one-year deadline so that he or she may submit a new asylum adjudication that complies with the law;

j. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

k. Grant such further relief as the Court deems just, equitable, and appropriate.

Respectfully submitted this 30th day of June, 2016,

s/*Matt Adams*
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s/*Glenda Aldana*
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