U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

December 2, 2013

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: Brian M. O'Leary
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 13-03:
Guidelines for Implementation of the ABT Settlement Agreement

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I. Introduction

As part of a settlement of the nationwide class-action lawsuit *B.H., et al. v. U.S. Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.) (referred to as the "ABT Settlement Agreement"), the Executive Office for Immigration Review ("EOIR") and the U.S. Citizenship and Immigration Services ("USCIS") agreed to change certain procedures that will affect the eligibility of some asylum applicants for employment authorization documents ("EAD"). This Operating Policies and Procedures Memorandum ("OPPM") provides guidance on the implementation of the terms of the ABT Settlement Agreement, a copy of which is provided as Attachment A.

II. The ABT Settlement

The ABT Settlement Agreement resulted from a class action complaint challenging the Federal Government's practices with respect to EADs for applicants for asylum. The suit was filed in the U.S. District Court for the Western District of Washington in 2011. The plaintiff class consisted of all noncitizens in the United States who have been placed in removal proceedings, have filed a complete Form I-589, *Application for Asylum and Withholding of Removal*, and have filed or will file a Form I-765, *Application for Employment Authorization*, pursuant to 8 C.F.R. § 274a.12(c)(8).

EOIR is required to implement certain interim provisions of the agreement on December 3, 2013. These interim provisions include:

(1) making the 180-Day Asylum EAD Clock Notice (a copy of which is provided as Attachment B) available at hearings;

(2) providing the 180-Day Asylum EAD Clock Notice to an asylum applicant when the applicant lodges or files an asylum application;

(3) stamping defensive asylum applications as "lodged not filed" at the immigration court filing window and entering the lodged date into CASE, to be transmitted to USCIS; and

(4) making certain amendments to OPPM 11-02: *The Asylum Clock*. These changes have been made and the OPPM has been reissued as OPPM 13-02: *The Asylum Clock*.

III. Lodging Asylum Applications

Pursuant to the ABT Settlement Agreement, EOIR will accept defensive asylum applications at the immigration court filing window as "lodged not filed" and will transmit the "lodged not filed" date to USCIS.

A. Meaning of the Term "Lodged"

If a defensive asylum application is submitted outside of a hearing for the purpose of lodging the application, the asylum application will be stamped "lodged not filed" and returned to the applicant, following the process laid out below. The lodged date is not the filing date and a lodged asylum application is not considered filed. The requirement that an asylum application be filed before an Immigration Judge at a master calendar hearing will not change. *See* OPPM 13-02: *The Asylum Clock*; Revised OPPM 00-01: *Asylum Request Processing*. A respondent who lodges an asylum application at an immigration court filing window must still file the application before an Immigration Judge at a master calendar hearing. However, USCIS will consider the date on which an asylum application is "lodged not filed" for the purpose of calculating the time period for EAD eligibility.

B. "Lodged not Filed" Process

1. Defensive Asylum Applications Only

An asylum application that is first filed before an Immigration Judge at a master calendar hearing is known as a "defensive" application. Only a respondent who plans to file a defensive asylum application, but has not yet done so, may lodge an asylum application. An asylum applicant may only lodge an asylum application once. If an asylum application is lodged, it must be lodged before that application is filed before an Immigration Judge at a master calendar hearing. An applicant who already has an asylum application pending with the court may not lodge an asylum application. Accordingly, if a respondent filed an application with USCIS and USCIS referred that application to the court, the respondent may not lodge an asylum application.

2. Court Staff Responsibilities

a. General Process

If a respondent submits an asylum application at the immigration court filing window for the purpose of lodging the application, court staff should make an initial determination as to whether the application may be lodged. In the following situations, court staff should reject the application:

- the Form I-589 does not have the applicant's name;
- the Form I-589 does not have the A-number;
- the Form I-589 is not signed by the applicant (Part D on page 9 of the Form I-589);
- the Form I-589 has already been lodged with the court;
- the Form I-589 has already been filed with the court;
- the Form I-589 was referred to the court from USCIS;
- the Form I-589 is being submitted for lodging at the incorrect court location;
- the case is pending before the Board of Immigration Appeals ("BIA"); or
- the case is not pending before EOIR.

Such an application should not be stamped with the "lodged not filed" stamp or the court date stamp. Rather, the application should be rejected, and a copy of the 180-Day Asylum EAD Clock Notice need not be provided.

Note that a Proof of Service is not required to lodge an application. Accordingly, staff should not reject an application for lack of a Proof of Service.

After determining that the asylum application may be lodged, court staff should stamp the application with the "lodged not filed" stamp and with the court date stamp. Court staff will then update the field "lodged not filed" date in CASE. Court staff should not place the lodged application or a copy of it in the Record of Proceeding. The original stamped application should be returned to the respondent along with a copy of the attached 180-Day Asylum EAD Clock Notice.

Once a "lodged not filed" date is entered into CASE, it should not be changed except in unusual circumstances, such as to correct a data entry error. The "lodged not filed" date should not be changed when the asylum application is filed or when the Immigration Judge issues a decision on the asylum application.

In addition, court staff should ensure that the 180-Day Asylum EAD Clock Notice is available in all courtrooms during hearings.

b. Applications Lodged by Mail or Courier

A respondent may submit an asylum application by mail or courier for the purpose of lodging the application. Court staff should make an initial determination as to whether the application may be lodged. If the application has any of the defects described in subsection (a), above, it should be rejected using the Rejected Lodging Notice, a copy of which is provided as Attachment C. The Rejected Lodging Notice should be processed in the same manner as any other rejection notice. If the application is rejected, a copy of the 180-Day Asylum EAD Clock Notice need not be included with the rejection notice.

In addition to the defects described in subsection (a) above, court staff should also reject the application in the following situations:

- The application is not accompanied by a self-addressed stamped envelope or comparable return delivery packaging. In this situation the application should be rejected using the Rejected Lodging Notice, a copy of which is provided as Attachment C. The Rejected Lodging Notice should be processed in the same manner as any other rejection notice. If the application is rejected, a copy of the 180-Day Asylum EAD Clock Notice need not be included with the rejection notice.

- The asylum application is not accompanied by a cover page or does not include a prominent annotation on the top of the front page of the form stating that it is being submitted for the purpose of lodging. In this situation the application should be rejected using a regular Rejected Filing Notice, not the Rejected Lodging Notice. If the application is rejected, a copy of the 180-Day Asylum EAD Clock Notice need not be included with the rejection notice.

If an asylum application submitted by mail or courier meets the requirements for lodging, court staff should process the application as described in subsection (a), above.

c. Transmission of "Lodged not Filed" Date to USCIS

Once a date is entered into the "lodged not filed" field in CASE, it will be provided to USCIS electronically. No additional action is necessary by court staff.

3. Filing the Defensive Asylum Application

As noted above, even if a respondent lodges an asylum application at an immigration court filing window or by mail or courier, the respondent still must file the application before an Immigration Judge at a master calendar hearing in order to apply for asylum. *See* section III(A) (Meaning of the Term "Lodged"), above. Whether or not a respondent lodged an asylum application does not affect the respondent's eligibility to file a defensive asylum application at a master calendar hearing.

When a respondent files an asylum application, the judge should make sure the respondent receives a copy of the 180-Day Asylum EAD Clock Notice. *See* section IV (The Immigration Judges' Responsibilities), below. In addition to providing the 180-Day Asylum EAD Clock Notice, the judge and court staff should follow the existing process for reviewing and accepting a complete asylum application as filed. *See* Revised OPPM 00-01: *Asylum Request Processing*; OPPM 13-02: *The Asylum Clock*.

C. Addressing ABT Implementation Issues

Under the terms of the ABT Settlement Agreement, there is a separate Individual ABT Claim Review process for asylum applicants who believe they have not received the relief described in the Agreement. Applicants will have access to the Individual ABT Claim Review process before EOIR for the following claims only:

- The lodging claim – The clerk at the immigration court filing window refused to either 1) stamp a respondent's asylum application "lodged not filed," or 2) after properly stamping a respondent's asylum application "lodged not filed," return the stamped application to the respondent.

- The notice claim – The respondent did not receive the 180-Day Asylum EAD Clock Notice when he or she lodged or filed a defensive asylum application, or the notice was not made available at all hearings before the Immigration Court.

To submit a complaint under the Individual ABT Claim Review process, an asylum applicant must complete an ABT Claim Form and send it to EOIR's Office of General Counsel.

Asylum applicants requesting review of an asylum clock issue outside of the Individual ABT Claim Review process should follow the administrative procedures set forth in section VII (Addressing Asylum Clock Requests) of OPPM 13-02: *The Asylum Clock.* Applicants claiming that USCIS failed to fulfill one of its obligations under the ABT Settlement Agreement should file an ABT Claim Form with USCIS, following the instructions on the form.

IV. The Immigration Judges' Responsibilities

This section describes the responsibilities of the Immigration Judges.

A. Reasons for Adjournments

The judge is responsible for deciding the reason for each adjournment. If at a hearing, the judge must make the reason(s) for the case adjournment clear on the record. *See* OPPM 13-02: *The Asylum Clock*.

B. Offering Future Hearing Dates

Judges should follow the guidelines set forth in OPPM 13-02: *The Asylum Clock* when offering future hearing dates. Generally, when setting a non-detained case from a master calendar hearing to an individual calendar hearing, a minimum of 45 days must be allowed, even if the 180-day adjudications deadline is imminent. Generally, when setting a detained case from a master calendar hearing to an individual calendar hearing, a minimum of 14 days should be allowed. These time periods may be shortened if requested by the applicant.

C. Providing the 180-Day Asylum EAD Clock Notice

When the applicant files a defensive asylum application in court, the judge must make it clear on the record that the applicant received a copy of the 180-Day Asylum EAD Clock Notice. *See* section III(B)(3) (Filing the Defensive Asylum Application), above.

D. Consideration of an Exception to the One-Year Bar

The Immigration Judge adjudicates whether an asylum application was filed within one year after the date of the applicant's arrival in the United States and, if not, whether an exception to this filing deadline applies. *See* INA § 208(a)(2)(B); 8 C.F.R. § 1208.4. Legal determinations regarding the effect of lodging an asylum application are within the province of the presiding Immigration Judge. For example, judges may consider the legal effect of lodging an asylum application when considering whether an exception to the one-year bar applies.

V. Cases on Appeal or Remand

As discussed in OPPM 13-02: *The Asylum Clock*, EOIR's asylum adjudications clock permanently stops when the judge issues a decision granting or denying the asylum application, as the decision constitutes "final administrative adjudication of the asylum application, not including administrative appeal" under section 208(d)(5)(A)(iii) of the Immigration and Nationality Act. Therefore, EOIR's asylum adjudications clock does not run during any appeal of the decision to the BIA, during judicial review before the Federal courts, or if a case has been remanded to the Immigration Court. However, if an applicant is applying for asylum for the first time during a remanded proceeding, then the clock starts and stops as usual.

The ABT Settlement Agreement does not require any change in EOIR's procedures relating to cases during any appeal of a decision to the BIA, during judicial review before the

Federal courts, or if a case has been remanded to the Immigration Court. However, immigration court staff should be aware that USCIS's procedures relating to calculation of work authorization eligibility after a remand have changed. Pursuant to the ABT Settlement Agreement, if a decision is appealed to the BIA and the BIA remands it to a judge for adjudication of an asylum claim, USCIS will include the total number of days between the Immigration Judge's initial decision on the asylum application and the date of the BIA's remand order in determining the applicant's eligibility for work authorization. USCIS will also include the total number of days accrued following the remand order, excluding any delays requested or caused by the applicant, in determining the applicant's eligibility for work authorization.

Accordingly, if an asylum applicant believes that he or she is eligible for work authorization after his or her case is remanded to the Immigration Court, the applicant should contact USCIS.

VI. Conclusion

This OPPM provides guidance on the implementation of ABT Settlement Agreement in proceedings before EOIR. If you have any questions, please contact your Assistant Chief Immigration Judge or Mark Pasierb, Chief Clerk, Office of the Chief Immigration Judge.

ATTACHMENT A

The Honorable Richard A. Jones
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M., G.K., L.K.G., and D.W., Individually and on Behalf of All Others Similarly Situated,[1]	No. CV11-2108-RAJ
Plaintiffs,	REVISED SETTLEMENT AGREEMENT
v.	
U.S. CITIZENSHIP AND IMMIGRATION SERVICES; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Janet NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review,	
Defendants.	

This Settlement Agreement ("Agreement") is entered into by and between Named Plaintiffs B.H., M.A., A.S.D., M.F., H.L., L.M.M.M., B.M., G.K., L.K.G., and D.W., (the "Named Plaintiffs") and the Class (defined in Section II.A. below) (collectively, "Plaintiffs"), and Defendants U.S. CITIZENSHIP AND IMMIGRATION SERVICES ("USCIS"); EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ("EOIR"); Janet

[1] The original caption for this action listed "A.B.T., K.M.-W., G.K., L.K.G., [and] D.W." as the individual plaintiffs. This Notice will refer to this action as "ABT," the Settlement Agreement in this action as "the ABT Settlement Agreement," claimants under the Agreement as "ABT claimants," and the individual claim review process under the Agreement as the "Individual ABT Claim Review process."

NAPOLITANO, Secretary, Department of Homeland Security; Alejandro MAYORKAS, Director, U.S. Citizenship and Immigration Services; Eric H. HOLDER, Jr., Attorney General of the United States; Juan OSUNA, Director, Executive Office for Immigration Review ("Defendants") (together with the Plaintiffs, the "Parties"), with reference to the facts recited herein.

I. RECITALS

WHEREAS:

A. The Litigation.

1. On December 15, 2011, Plaintiffs filed a putative class action complaint, challenging the Federal Government's practices with respect to Employment Authorization Documents ("EAD") for applicants for asylum;

2. Plaintiffs are "all noncitizens in the United States who have been placed in removal proceedings, have filed a complete Form I-589, *Application for Asylum and Withholding of Removal* ("asylum application"), [and] have filed or will file a Form I-765, *Application for Employment Authorization*, pursuant to 8 C.F.R. § 274a.12(c)(8)";

3. On June 5, 2012, Plaintiffs amended their complaint. Defendants timely answered the amended complaint on June 19, 2012;

4. The Action remains pending before the U.S. District Court for the Western District of Washington.

B. Benefits of Settlement.

1. The Parties recognize the need to draw to a close litigation of this Action, which has been pending for roughly a year, and desire to resolve the Action – after engaging in two productive mediation sessions – by entering into this Agreement, thereby avoiding the time and expense of further litigation;

2. Plaintiffs, in consultation with their counsel, have determined that this Agreement is fair, reasonable, adequate and in the best interests of Plaintiffs; and

3. Defendants deny that they have committed any act or omission giving rise to any liability, deny any wrongdoing, and state that they are entering into this Agreement solely to eliminate the uncertainties, burden, and expense of further protracted litigation. By entering into this Agreement, Defendants do not admit any factual allegations against them; do not concede any defense or objection to the Action; do not admit having violated any law, whether constitutional or statutory, federal or state; and do not admit having violated any regulation or administrative or judicial case law.

II. DEFINITIONS, CONDITIONS, AND MISCELLANEOUS PROVISIONS

NOW THEREFORE in recognition that the Parties and the interests of justice are best served by concluding the litigation, subject to the Court's approval and entry of an order consistent with this Agreement, the undersigned Parties, through counsel, hereby stipulate and agree as follows:

A. Definitions.

1. Action. "Action" means the lawsuit of *B.H., et al. v. United States Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.).

2. Application for Employment Authorization. "Application for employment authorization" means the Form I-765, *Application for Employment Authorization*.

3. Asylum application. "Asylum application" means the Form I-589, *Application for Asylum and Withholding of Removal*.

4. Class. The definition of the "Class," as jointly proposed by the Parties and approved by the Court, is as follows:

a. Notice and Review Class: All noncitizens in the United States who meet all of the following criteria: (1) have filed or will file or lodge with Defendants a complete asylum application; (2) whose asylum applications have neither been approved nor subjected to a denial for which no rights of review or appeal remain; (3) whose applications for employment authorization have been or will be denied; (4) whose eligibility for employment authorization based on a pending asylum application will be determined in a manner that is alleged to provide insufficient notice and/or opportunity for review; and (5) who fall in one or more of the following Subclasses:

i. Hearing Subclass: Individuals who meet all of the following criteria: (1) who have been or will be issued a Form I-862, *Notice to Appear* in removal proceedings, or Form I-863, *Notice of Referral* to an immigration judge; (2) who have filed or lodged, or sought to lodge, or who will lodge or seek to lodge a complete defensive asylum application with the immigration court prior to a hearing before an immigration judge; and (3) whose eligibility for employment authorization has been or will be calculated from the date the asylum application was or will be filed at a hearing before an immigration judge.

ii. Prolonged Tolling Subclass: Asylum applicants who meet all of the following criteria: (1) non-detained asylum applicants whose time creditable toward employment authorization is or will be stopped due to delay attributed to them by Defendants; (2) who have allegedly resolved the issue causing the delay or will allegedly resolve the issue causing the delay prior to the next scheduled hearing before an

immigration judge; (3) but whose time creditable toward employment authorization remains or will remain stopped until the next hearing date.

iii. Missed Asylum Interview Subclass: Asylum applicants who meet both of the following criteria: (1) who have failed or will fail to appear for an asylum interview with USCIS; and (2) who have not or will not accrue time creditable toward eligibility for employment authorization following the date of the missed asylum interview on account of missing that asylum interview.

iv. Remand Subclass: Asylum applicants who meet both of the following criteria: (1) whose asylum applications were or will be denied by the immigration court before they have been pending at least 180 days exclusive of applicant caused delays; and (2) who subsequent to an appeal in which either the Board of Immigration Appeals (BIA) or a federal court of appeals remands their case for further adjudication of their asylum claim by an immigration judge, have not or will not accrue additional time creditable toward eligibility for employment authorization.

5. Class counsel. "Class counsel" means counsel appointed to represent the Class in accordance with Federal Rule of Civil Procedure 23(g), as follows:

Matt Adams
Christopher Strawn
NORTHWEST IMMIGRANT RIGHTS PROJECT (NWIRP)
615 2nd Avenue, Suite 400
Seattle, WA 98104

Melissa Crow
Mary Kenney
Emily Creighton
AMERICAN IMMIGRATION COUNCIL (AIC)
1331 G Street NW, Suite 200
Washington, DC 20005

Robert H. Gibbs
Robert Pauw
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104

Iris Gomez
MASSACHUSETTS LAW REFORM INSTITUTE (MLRI)
99 Chauncy Street, Suite 500
Boston, MA 02111

6. Class member. "Class member" means a member of the Class.

7. Court. "Court" means the U.S. District Court for the Western District of Washington.

8. EAD. "EAD" means Employment Authorization Document.

9. Fairness Hearing. "Fairness Hearing" means the hearing required for Final Approval of the settlement pursuant to Federal Rule of Civil Procedure 23(e)(2) and described at Section II.B.5. of this Agreement.

10. Individual ABT Claim Review. "Individual ABT Claim Review" refers to the exclusive process used by individual ABT claimants who allege to be Class or Subclass members and allege that USCIS and/or EOIR has failed to comply with terms of this Agreement, as described in Section II.C.11.b.

11. Parties. "Party" or "parties" means the Defendants and the Plaintiffs, including all Class members.

12. Preliminary Approval. "Preliminary Approval" means that the Court has granted the Parties' Joint Motion for Preliminary Approval of Settlement as described in Section II.B.2. of this Agreement and ordered a Fairness Hearing.

B. Conditions and Approval of Settlement.

1. Effective Date of Agreement. After this Agreement has been executed by all Parties, it will become effective upon Preliminary Approval of the settlement by the Court.

2. Submission of the Settlement Agreement to Court for Preliminary Approval. Within fifteen (15) days after execution of this Agreement, the Parties shall apply to the Court for Preliminary Approval of the settlement. The Parties shall file a Joint Motion for Preliminary Approval and Request for a Fairness Hearing, and they shall attach a copy of this Agreement, the proposed Notice to the Class, in the form of Exhibit A attached hereto, and such other documents that the Parties determine are necessary for the Court's consideration. The Parties further agree to file by that same time a joint motion to stay proceedings pending the Court's consideration of the matter.

3. Effect of the Court's Denial of the Agreement. If the Court rejects this Agreement, in whole or in part, or otherwise finds that the Agreement is not fair, reasonable, and adequate, this Agreement shall become null and void.

4. Attorney's Fees and Costs. The Parties have resolved the matter of fees arising from this litigation as follows: Within ninety (90) days of the Court's Final Approval of the Agreement, as described in Section II.B.7., Defendants will deliver to Plaintiffs' Counsel the sum of $425,000, in settlement of all claims for attorneys' fees

and costs that could have been or will be claimed in this litigation to date. Plaintiffs and Class members do not waive any claims to attorney's fees and costs should future litigation pursuant to the Dispute Resolution Mechanism in Section II.C.11. be necessary.

5. Fairness Hearing. At the Fairness Hearing, the Parties will jointly request that the Court approve the settlement as final, fair, reasonable, adequate and binding on the Class, all Class Members, and all Plaintiffs.

6. Objections to Settlement. Within seven days following the Court's Preliminary Approval of the Agreement, Defendants will post the Notice to the Class, attached as Exhibit A to this Agreement, on USCIS' website and on EOIR's website, post in all immigration courts, distribute to the EOIR pro bono list, and distribute to community-based organizations and other interested parties. Specifically, EOIR will post the notice on a bulletin board in the waiting room for each immigration court where there is such a bulletin board. This is where all notices to the public are typically posted, and aliens and their counsel should know to look for important notices there. In immigration courts that lack bulletin boards, EOIR will post the notice in the equivalent location where respondents and their counsel should know to look for notices. Additionally, to accommodate detained class members, EOIR will post the notice in a visible place in EOIR's space within each facility that is accessible to aliens and where aliens should know to look for important notices, where such a space is available. Each immigration court has a Court Administrator that can ensure that the notices will be available within the seven-day deadline. Plaintiffs will distribute the Notice to the Class, attached as Exhibit A to this Agreement, to all American Immigration Lawyers Association (AILA) chapters, and post on AILA InfoNet and on Northwest Immigrant Rights Project (NWIRP), American Immigration Council (AIC) and Massachusetts Law Reform Institute (MLRI) websites. Within thirty (30) days of issuance of the Notice to the Class, in the above-described manner, any Plaintiff who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the settlement contemplated herein must file with the Clerk of Court and serve on the Parties a statement of objection setting forth the specific reason(s), if any, for the objection, including any legal support or evidence in support of the objection, grounds to support his or her status as a Plaintiff, and whether the Plaintiff intends to appear at the Fairness Hearing. The Parties will have thirty (30) days following the objection period in which to submit answers to any objections that are filed. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District Court for the Western District of Washington, 700 Stewart Street Seattle, WA 98101, and both the envelope and letter shall state "Attention: *A.B.T., et al. v. United States Citizenship and Immigration Services*, No. CV11-2108-RAJ (W.D. Wash.)." Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set forth in the Notice to Class, Exhibit A.

7. Final Approval.

a. The Court's Final Approval of the settlement set forth in this Agreement shall consist of its orders granting each of the Parties' requests made in connection with the Fairness Hearing, as described in Section II.B.5. of this Agreement,

resolving all claims before the Court, and dismissing the Action with prejudice, with the exception that following Final Approval of this Agreement, the Court shall retain jurisdiction over only the following matters:

i. claims by any party in accordance with the provisions laid out in Section II.C.11. hereto that any other party has committed a violation of this Agreement;

ii. the express repudiation of any of the terms of this Agreement by any party; and

iii. any applications for attorney fees and costs relating to Court enforcement of this Agreement under the dispute resolution provisions in Section II.C.11.a.iv. and II.C.11.b.vi. of this Agreement.

C. Miscellaneous Provisions.

1. Entire Agreement. This Agreement, including the Exhibit(s) and the notices, interim notices and other information described under the Terms of Agreement at Section III.A., constitutes the entire agreement between the Parties with respect to the Action and claims released or discharged by the Agreement, and supersedes all prior discussions, agreements and understandings, both written and oral, among the Parties in connection therewith.

2. No modification. No change or modification of this Agreement shall be valid unless it is contained in writing and signed by or on behalf of Plaintiffs and Defendants and approved by the Court.

3. Full and Final Settlement. The Parties intend that the execution and performance of this Agreement shall, as provided above, be effective as a full and final settlement of and shall fully dispose of all claims and issues that Plaintiffs raise against Defendants in the Action. The Parties acknowledge that this Agreement is fully binding upon them during the life of the Agreement.

4. Severability. If any provision of this Agreement is declared null, void, invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in full force and effect.

5. Notices. All notices required or permitted under or pertaining to this Agreement shall be in writing and delivered by any method providing proof of delivery. Any notice shall be deemed to have been completed upon mailing. Notices shall be delivered to the Parties at the following addresses until a different address has been designated by notice to the other Party:

TO PLAINTIFFS:

Matt Adams
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 2nd Avenue, Suite 400
Seattle, WA 98104

TO DEFENDANTS:

J. Max Weintraub
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation – District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044

6. Opportunity to Review. The Parties acknowledge and agree that they have reviewed this Agreement with legal counsel and agree to the particular language of the provisions it contains. In the event of an ambiguity in or dispute regarding the interpretation of the Agreement, interpretation of the Agreement shall not be resolved by any rule providing for interpretation against the drafter. The Parties expressly agree that in the event of an ambiguity or dispute regarding the interpretation of this Agreement, the Agreement will be interpreted as if each Party hereto participated in the drafting hereof.

7. Construction of Agreement. This Agreement involves compromises of the Parties' previously stated legal positions in connection with the Action. Accordingly, this Agreement does not reflect upon the Parties' views as to rights and obligations with respect to matters or persons outside of the scope of this Agreement.

8. Execution of Other Documents. Each party agrees to execute and deliver such other documents and instruments and to take further action as may be reasonably necessary to fully carry out the intent and purposes of this Agreement.

9. No Precedential Value. This Agreement, whether or not executed, and any proceedings taken pursuant to it:

a. Shall not be offered or received against any party as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by any of the Parties of the truth in any fact of the validity of any claim that had been or could have been asserted in the action, or any liability, negligence, fault, or wrongdoing of the Defendants; or any admission by the Defendants of any violations of, or failure to comply with, the Constitution, laws or regulations; and

b. Shall not be offered or received against the Defendants as evidence of a presumption, concession, or admission of any liability, negligence, fault, wrongdoing, or in any other way referred to for any other reason as against the Parties to

this Agreement, in any other civil, criminal, or administrative action or proceedings, other than in proceedings to enforce this Agreement; provided, however, that if this Agreement is approved by the Court, Defendants may refer to it and rely upon it to effectuate the liability protection granted them hereunder.

10. Headings. The Parties agree the captions or underlined paragraph headings in this Agreement are included in the Agreement solely for the convenience of the Parties, are not part of the terms and conditions of the Agreement, and do not limit, alter, or otherwise affect the provisions of, and the Parties' rights and obligations under, this Agreement.

11. Dispute Resolution Mechanism. With regard to claims raised in the Action and resolved by this Agreement, the dispute resolution provisions described below shall provide the sole means to challenge performance of obligations arising under this Agreement. Claims alleging that a Party has failed to comply with the terms of this Agreement with respect to the entire Class or an entire Subclass, or multiple members of the Class or a Subclass must be brought pursuant to subparagraph (a) and as further provided by subparagraphs (c) – (f) below. Claims alleging that Defendants have failed to comply with the terms of this Agreement with respect to individual asylum applicants alleging to be Class members (individual ABT claimants) must be brought pursuant to the "Individual ABT Claim Review" process, described in subparagraph (b) and as further provided by subparagraphs (c) - (f) below. This Agreement shall not affect or in any way limit the ability of parties, individuals, groups, or classes to challenge or obtain review of claims not resolved by or arising under this Agreement (including those claims listed in subparagraph (b)(ii) below) through any existing right or authority under law, regulations, or applicable procedures.

a. Dispute Resolution Terms for multiple Class or Subclass members.

i. For allegations that a party has failed to comply with the terms of this Agreement with respect to the entire Class or an entire Subclass, or multiple members of the Class or a Subclass, the complaining party ("complaining party") shall notify the other party ("responding party") in writing of the specific ground(s) upon which they base their claim of non-compliance with this Agreement, substantiated with specific, detailed, and timely information about the alleged non-compliance sufficient to enable the responding party to investigate and respond.

ii. Within forty-five (45) days after the responding party receives notice of the allegation of non-compliance with this Agreement from the complaining party in accordance with subparagraph (a)(i) above, the responding party shall notify the complaining party in writing of the results of the responding party's investigation of facts and any action that it has taken or intends to take in connection with allegation of non-compliance.

iii. Should any dispute remain after a party has undertaken the dispute resolution mechanism set forth in subparagraphs (a)(i) – (ii) above, the parties

shall negotiate in good faith to resolve any such remaining disputes within thirty (30) days from the date the responding party sends notification of the results of its investigation under subparagraph (a)(ii) above.

iv. Should the parties be unable to resolve any dispute, and following implementation of the provisions of subparagraphs (a)(i) – (iii) above, the complaining party may apply to the Court for enforcement of this Agreement. The complaining party shall notify the responding party of its intent to do so before applying to the Court for enforcement of the Agreement. Any actions brought to the Court under subparagraph (a) must be brought by either Defendants USCIS or EOIR or by Class counsel appointed to represent Plaintiffs in accordance with Section II.A.5. of this Agreement.

b. Individual ABT Claim Review.

i. The Individual ABT Claim Review process shall be the exclusive process used by individual ABT claimants who allege that they are Class or Subclass members and that USCIS and/or EOIR has failed to comply with the terms of this Agreement. Nothing in this subparagraph limits an individual ABT claimant's ability to join a multi-member Class or Subclass challenge under subparagraph (a) above. An individual ABT claimant may only utilize the Individual ABT Claim Review process to challenge compliance with this Agreement. Specifically, individual ABT claimants may only raise the following claims under this review process:

(I) An individual ABT claimant was not provided with the notice referenced in Section I.A.1. of this Agreement ("notice") when he/she lodged or filed his/her asylum application with the immigration court, or when USCIS referred his/her case to the immigration court.

(II) EOIR did not make the notice available at subsequent hearings before the immigration court.

(III) EOIR did not stamp the individual ABT claimant's complete defensive asylum application at the immigration court clerk's window, mark as "lodged not filed," and return it to the claimant, or prevented or otherwise deterred the ABT claimant from lodging a complete asylum application.

(IV) In adjudicating an application for employment authorization, USCIS did not use the date on which an individual ABT claimant "lodged" his or her asylum application at an immigration court clerk's

window as the filing date for the purposes of EAD eligibility.

(V) USCIS did not mail a Failure to Appear Warning Letter to the individual ABT claimant after the claimant failed to appear for an asylum interview with a USCIS Asylum Office.

(VI) Where an individual ABT claimant failed to appear at a scheduled asylum interview with a USCIS Asylum Office, and the claimant did not attempt to reschedule his or her asylum interview with a USCIS Asylum Office, USCIS did not wait forty-five (45) days prior to issuance of a decision referring the asylum application to an immigration judge.

(VII) USCIS did not include a Referral Notice for Failure to Appear when referring an individual ABT claimant's asylum application to an immigration judge after the claimant missed an asylum interview and did not reschedule that interview within forty-five (45) days.

(VIII) After an ABT claimant requested a determination on exceptional circumstances referenced in Section I.A.4. of this Agreement, USCIS did not provide the individual ABT claimant and/or his or her representative of record with a determination letter, with notification of the determination to U.S. Immigration and Customs Enforcement's Office of the Principal Legal Advisor ("ICE OPLA").

(IX) After the Asylum Office reopened jurisdiction over an individual ABT claimant's asylum case, where the claimant had missed an asylum interview but later established exceptional circumstances with a USCIS Asylum Office and where an immigration judge dismissed proceedings, USCIS did not restart the time period for asylum adjudication and EAD eligibility on the date that the ABT claimant appeared for a rescheduled interview.

(X) In adjudicating an application for employment authorization, USCIS did not credit the applicant with the number of days that elapsed between the

immigration judge's initial denial of the individual ABT claimant's asylum claim and the date of the BIA's remand order for the purposes of EAD eligibility.

ii. The following non-exhaustive list of claims cannot be challenged through the Individual ABT Claim Review process; however, this Agreement shall not affect or in any way limit the ability of parties, individuals, groups, or classes to challenge or obtain review of claims not resolved by this Agreement through any existing right or authority under law, regulations, or applicable procedures.

(I) A challenge to whether an immigration judge made the reason(s) for the case adjournment clear on the record.

(II) A challenge to whether the immigration judge offered a non-detained individual ABT claimant an expedited hearing date that was a minimum of forty-five (45) days from the last master calendar hearing.

iii. Individual asylum applicants alleging to be Class or Subclass members who believe that USCIS and/or EOIR have failed to comply with the terms of this Agreement as required under Section III.A. (*i.e.*, individual ABT claimants) must complete and submit to USCIS and/or EOIR, as appropriate, an ABT Claim Form (attached to this Agreement as Exhibit B), detailing the basis for the alleged violation of the Agreement, together with copies of any documents, applications, receipts, notices, and/or letters in their possession that are requested in the ABT Claim Form or that the individual ABT claimants believe support their claim(s). Included in the ABT Claim Form, the individual ABT claimant must designate which ground he/she is claiming the Defendant(s) is/are noncompliant with in this Agreement (as enumerated in subparagraph (b)(i) above).

iv. Within forty-five (45) days after USCIS and/or EOIR's receipt of an ABT Claim Form in accordance with subparagraph (b)(iii) above, USCIS and/or EOIR will mail the claimant and/or his or her representative or record, if any, either a written Final Notice or a Notice of Preliminary Findings, as described in clause (I) and/or (II) below:

(I) The Final Notice will include the results of USCIS's and/or EOIR's investigation of the facts as follows: (1) a determination of whether or not the claimant is a Class or Subclass member; (2) if the individual claimant is found to be a Class or Subclass member, a determination of whether a violation of the Agreement occurred with respect to the individual ABT claimant; (3) a description of any

corrective action that it has taken or intends to take to remedy the violation (if any); and (4) in the event USCIS and/or EOIR determines that the individual ABT claimant is not a member of a Class or Subclass, or has not stated a claim cognizable under the Agreement, instructions regarding seeking review of that determination or any corrective action, as further described in subparagraph (vi) below.

(II) The Notice of Preliminary Findings will explain the basis for USCIS and/or EOIR's belief that the claimant is not a Class or Subclass member, or that there was no violation of the Agreement, and request additional information and/or evidence from the individual ABT claimant. If USCIS and/or EOIR send a Notice of Preliminary Findings, the applicant will have thirty (30) days (the "supplementation period") to submit additional written evidence or information to remedy the perceived deficiency. After the supplementation period has elapsed with no response from the individual ABT claimant, or within thirty days following timely receipt of any supplemental documents or information from the claimant, USCIS and/or EOIR will send a Final Notice, as described in clause (I) above, to the claimant and/or his or her counsel of record.

v. Should any dispute remain after an individual ABT claimant has undertaken the dispute resolution mechanism in subparagraph (b) above, the parties may negotiate in good faith to resolve any such remaining disputes within thirty (30) days from when USCIS and/or EOIR mailed the Final Notice under subparagraph (b)(iv) above. By way of example and not limitation, if a claim is granted, but the complaining party believes that the corrective action described in the Final Notice granting the claim is insufficient to correct error, he or she may attempt to negotiate a resolution of that dispute.

vi. Should the parties be unable to resolve a dispute, and following implementation of the provisions of subparagraphs (b)(i) – (v) above, individual ABT claimants may apply to the Court for enforcement of this Agreement. The parties agree that individual ABT claimants shall not apply to the Court for enforcement of the Agreement until applicable procedures detailed in subparagraph (b) above have been exhausted, and subject to the further terms and limitation provided in this Section II.C.11. The individual ABT claimants shall notify the Defendants of their intent to do so before applying to the Court for the enforcement of the Agreement.

c. All claims arising under this Agreement, pursuant to subparagraph (a) above must be raised by Class counsel as soon as possible, but no later than 180 days

after discovery of the claim; or in the case of individual ABT claimants seeking to implement the Individual ABT Claim Review process pursuant to subparagraph (b) above, as soon as possible, but by no later than 180 days following the denial of an application for employment authorization, based on an alleged violation of the terms provided under this Agreement.

d. The Parties agree that the provisions in Section II.C.11. will not be used to resolve any disputes regarding timeliness of the reports listed in Section II.C.13. of the Agreement. The Parties agree that failure to comply with the time periods or deadlines described in Section II.C.11. shall not constitute separate violations of this Agreement; however, if a responding party fails to respond to a claim presented in Section II.C.11. within the prescribed time period or by the required deadline, the complaining party may proceed to seek further review of the claim from the Court, or as otherwise provided in this Agreement.

e. Defendants agree to use reasonable and good faith efforts to implement the procedures described in this Agreement in a manner that avoids unnecessary interruption of asylum seekers' employment authorization where eligible, and that facilitates eligible asylum applicants' ability to provide documentation in accordance with the requirements of 8 U.S.C. § 1324a(b) and 8 C.F.R. § 274a.2.

f. The Parties agree that these dispute resolution terms in Section II.C.11. of this Agreement will terminate 180 days after the Termination Date of the Agreement under Section II.C.14. of this Agreement and, subject to the limitations described in subparagraph (c) above, all pending claims have been resolved under this paragraph.

12. Applicable Law. This Agreement and its terms shall be construed in accordance with the law of the United States of America and the United States Court of Appeals for the Ninth Circuit.

13. Periodic Reporting of Defendants. Because full implementation of each of the terms of this Agreement will take time (with settlement terms referenced in Sections III.A.1. and III.A.2., below, taking up to twenty-four (24) months from the Effective Date of this Agreement), Defendants agree to submit reports every six (6) months to Plaintiffs and file them with the Court detailing the progress made towards implementation of the settlement terms. When Defendants determine that a settlement term is fully implemented, they shall submit a report explaining the reasons for this conclusion to Plaintiffs and file it with the Court.

14. Termination Date. This Agreement and all of its terms, and all rights acquired hereunder, shall end either four (4) years following the full implementation of all the terms of Agreement, as documented by Defendants' reports to Plaintiffs and the Court with respect to each settlement term (described in Section II.C.13., above) of this Agreement, or upon the following date: the Effective Date of this Agreement plus six (6) years, whichever shall first occur.

15. Nothing in this Agreement shall prevent Defendants EOIR and/or USCIS from amending their regulations, manuals, policies, procedures, and/or practices as necessary or for purposes of complying with applicable statutory changes and/or precedential decisions, provided that Defendants continue to comply with all of their obligations under the terms of this Agreement. Should either Defendant determine that a change in law, whether statutory or by precedent decision, necessitates a change in their regulations, manuals, policies, procedures, and/or practices that would conflict with one or more of its obligations under the Agreement, the Parties shall attempt to reach an agreement with respect to the Defendant's continuing obligations under the Agreement and/or any amendments to this Agreement, pursuant to procedures outlined in Section II.11.a. of this Agreement. Should the Parties fail to agree, the question of how the Defendant's continuing obligations under the Agreement are affected by the change in the law will be submitted to the Court pursuant to Section II.11.a.iv. of this Agreement.

III. TERMS OF THE AGREEMENT

A. By this Agreement, Defendants have agreed to modify certain of their processes, policies, procedures, and practices. The terms of this Agreement shall apply to members of the Class commencing from the date upon which each of the changes, including interim changes, described herein are implemented, as further described below.

1. Notice & Review Claim.

a. Defendant EOIR will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, to state that an immigration judge must make the reason(s) for the case adjournment clear on the record. Furthermore, Defendants will provide general information, jointly produced by Defendants EOIR and USCIS, who shall work in good faith with Plaintiffs' counsel, regarding employment authorization for individuals with pending asylum applications, including where to obtain case-specific information, the impact of hearing adjournment codes on EAD eligibility, and where to direct inquiries relating to requests to correct hearing adjournment codes and inquiries relating to EAD eligibility. Defendant EOIR will provide the notice to an asylum applicant when an asylum application is lodged or filed with an immigration court. In addition, EOIR will make a copy of the notice available at each hearing. USCIS will make the information publicly available, including providing the notice to an asylum applicant upon referral. While the content of the EAD denial letter cannot be determined at this time, USCIS agrees to consider in good faith input from Plaintiffs' counsel as to the language and content of the EAD denial letter.

b. Defendants will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, within six (6) months of the Effective Date of this Agreement. With regard to the remaining resolutions described in subparagraph (a) above, Defendants will

implement these resolutions as soon as possible, but no later than twenty-four (24) months from the Effective Date of this Agreement.

c. In the interim, Defendants will implement the following procedures to provide relief to affected Class members: Defendants will work with Plaintiffs' counsel to create an interim notice regarding employment authorization for individuals with pending asylum applications within six (6) months of the Effective Date of this Agreement. Defendants will also provide contact information for inquiries regarding requests to correct the calculation of the asylum adjudications period before the Asylum Office, hearing adjournment codes before the immigration court, and asylum-related EAD denials.

d. Class members who have appeared or who will appear before EOIR or USCIS prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Notice and Review Claim.

e. The interim and final relief described in this Agreement in Section III.A.1. shall apply prospectively to Notice and Review Class members at the time that these settlement terms are implemented.

2. Hearing Claim.

a. Defendant EOIR will accept complete defensive asylum applications at the immigration court clerk's window as "lodged not filed." EOIR will transmit the "lodged not filed" date to USCIS. The applicant will submit a Form I-765, *Application for Employment Authorization*, to USCIS, along with a copy of the asylum application that the EOIR immigration court clerk stamped "lodged not filed." An asylum applicant may only lodge a complete asylum application once. If an asylum application is lodged, it must be lodged before that application is filed with an immigration judge. The requirement that an asylum application be filed before an immigration judge will not change. Defendant EOIR considers the asylum application "filed" on the date an immigration judge accepts the application at a hearing. Defendant USCIS will consider the date on which the asylum application was "lodged not filed" at the EOIR clerk's window as an application filing date for the purpose of calculating the time period for EAD eligibility. Defendants will implement these resolutions as soon as possible but no later than twenty-four (24) months from the Effective Date of this Agreement.

b. In the interim, Defendants will implement the following procedures to provide relief to affected Class members: If an asylum application is submitted to an immigration court outside of a hearing before an immigration judge, the asylum application will be stamped "lodged not filed" by a clerk at the EOIR court at which the application is lodged. When filing a Form I-765, *Application for Employment Authorization*, with USCIS, the applicant will submit a copy of the asylum application that an EOIR immigration clerk stamped "lodged not filed." In adjudicating the

application for employment authorization, USCIS will consider the date on which the application was stamped "lodged not filed" as the application filing date for the purpose of calculating the time period for EAD eligibility. Defendants will implement these resolutions within six (6) months of the Effective Date of this Agreement.

c. Hearing Subclass members who are or will be in immigration proceedings before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Hearing Claim.

d. The interim and final relief described in this Agreement at Section III.A.2. shall apply prospectively to Hearing Subclass members whose asylum applications have not previously been deemed filed by an immigration judge at a hearing at the time that these settlement terms are implemented.

3. Prolonged Tolling Claim.

a. Defendant EOIR will amend the November 15, 2011, Operating Policies and Procedures Memorandum 11-02: The Asylum Clock from Chief Immigration Judge Brian O'Leary, to change section VI.E.2.c. ("Proceedings Before the Immigration Court: Offering Future Hearing Dates: Expedited Cases: Offering an 'Expedited Asylum Hearing Date'") from "minimum of 14 days should be allowed" to "minimum of 45 days must be allowed." Defendant EOIR will add an exception for detained cases, in which the "minimum of 14 days" time period will remain. Defendants will implement these resolutions within six (6) months of the Effective Date of this Agreement.

b. Prolonged Tolling Subclass members who have appeared or who will appear before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Prolonged Tolling Claim.

c. The interim and final relief described in this Agreement in Section III.A.3. shall apply to prolonged tolling Subclass members in immigration proceedings who have not had their merits hearing calendared for the first time before EOIR at the time these settlement terms are implemented, and shall apply prospectively.

4. Missed Asylum Interview Claim.

a. Defendant USCIS will mail a "Failure to Appear" Warning Letter as soon as possible after an asylum applicant misses an interview. The letter will describe the effect of the failure to appear on EAD eligibility and list procedural steps the applicant must take to establish "good cause" for failing to appear for the interview. It

will also describe the effect of failing to respond to the warning letter within a forty-five (45) day period.

b. Defendant USCIS will extend the period prior to issuance of a decision (including a referral letter) from fifteen (15) to forty-five (45) calendar days, during which time submission of an excuse for missing an interview will be treated as a request to reschedule under the Asylum Division's Affirmative Asylum Procedures Manual and the "good cause" standard will apply.

c. Defendant USCIS will include a new "Referral Notice for Failure to Appear" with charging documents mailed to the applicant. This notice will describe the effect of the failure to appear on EAD eligibility and list procedural steps the applicant must take to establish "exceptional circumstances" with an Asylum Office.

d. Defendants will provide Plaintiffs' counsel with drafts of the "Failure to Appear" Warning Letter and the "Referral Notice for Failure to Appear" and will consider their input in good faith before finalizing these documents.

e. Defendant USCIS will revise the process of establishing exceptional circumstances with an Asylum Office as follows. Upon determining whether exceptional circumstances exist, the Asylum Office will issue a determination letter to the applicant and/or his or her representative of record, and notify ICE OPLA of the determination. If the Asylum Office determines that exceptional circumstances exist, the applicant may then request that ICE OPLA file a joint motion for dismissal of immigration proceedings. If the proceedings are dismissed, and the asylum application is returned to the Asylum Office, the Asylum Office will reopen the asylum application and take jurisdiction over the applicant's case.

f. Defendant USCIS will restart the 180-day time period for determining asylum adjudication and EAD eligibility following the resolution of the missed interview based on exceptional circumstances. If the applicant establishes exceptional circumstances, and the application is returned to the Asylum Division, the time period for determining asylum adjudication and EAD eligibility, which stopped on the date of the failure to appear, would restart on the date the applicant appears for the rescheduled interview at an Asylum Office.

g. Defendants will implement these resolutions in subparagraph (a) – (f) within six (6) months of the Effective Date of this Agreement.

h. Missed Asylum Interview Subclass members who have appeared or who will appear before USCIS prior to the Defendants' implementation of the settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Missed Asylum Interview Claim.

i. The relief described in this Agreement in Section III.A.4., shall apply to Missed Asylum Interview Subclass members who have filed or will file an asylum application with USCIS and who have not yet had that application referred to an immigration judge at the time that the Defendants implement these settlement terms, and shall apply prospectively. This paragraph does not preclude any Class member from seeking relief under the provisions of the Affirmative Asylum Procedures Manual dated November 2007 (revised July 2010) pre-dating this Agreement in Section I (1), page. 91-92, regarding post-referral review of exceptional circumstances.

5. Remand Claim.

a. Following a BIA remand of a case for the adjudication of an asylum claim, whether on appeal from an immigration judge decision or following a remand from a U.S. Court of Appeals, for purposes of EAD eligibility, the applicant will be credited with the number of days that elapsed between the initial immigration judge denial and the date of the BIA remand order. In addition, the applicant will accrue time creditable toward employment authorization from the date of the BIA remand order going forward, exclusive of applicant caused delays. An asylum applicant seeking employment authorization must attach a copy of the complete BIA order remanding the case for the adjudication of an asylum claim to the immigration court to his or her application for employment authorization.

b. Remand Subclass members who have appeared or who will appear before EOIR prior to the Defendants' implementation of these settlement terms shall not have a cause of action against the Defendants arising from the fact that they were not previously afforded the relief described herein as pertains to the Remand Claim.

c. The relief described in this Agreement in Section III.A.5. shall apply to all Remand Subclass members whose asylum cases have been remanded and whose asylum cases are pending before EOIR at the time the Defendants implement these settlement terms, and shall apply prospectively. Defendants will implement these resolutions within six (6) months of the Effective Date of this Agreement.

B. EADs for Named Plaintiffs. The named plaintiffs and relatives of named plaintiffs who received limited 240-day EADs pursuant to the Parties' earlier agreement will remain eligible for one-year renewals of their EADs for so long as their asylum applications remain pending.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which may be executed in counterparts and the undersigned represent that they are authorized to execute and deliver this Agreement on behalf of the respective Parties.

Consented and agreed to by:

DATED: September 18, 2013

Respectfully submitted,

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Acting Assistant Attorney General
Civil Division

DAVID J. KLINE
Director

COLIN A. KISOR
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ATTACHMENT B

Executive Office for Immigration Review

U.S. Citizenship and Immigration Services

THE 180-DAY ASYLUM EAD CLOCK NOTICE

What is the 180-day Asylum EAD Clock?

The "180-day Asylum EAD Clock" measures the time period during which an asylum application has been pending with the U.S. Citizenship and Immigration Services (USCIS) asylum office and/or the Executive Office for Immigration Review (EOIR). USCIS service centers adjudicate the Form I-765, *Application for Employment Authorization*, and use the 180-day Asylum EAD Clock to determine eligibility for employment authorization. Asylum applicants who applied for asylum on or after January 4, 1995, must wait 150 days before they can file a Form I-765. USCIS cannot grant employment authorization for an additional 30 days, for a total 180-day waiting period. This 180-day Asylum EAD Clock does not include any delays applicants request or cause while their applications are pending with an asylum office or immigration court.

What Starts the 180-day Asylum EAD Clock?

For asylum applications first filed with an asylum office, USCIS calculates the 180-day Asylum EAD Clock starting on the date that a complete asylum application is received by USCIS, in the manner described by the Instructions to the Form I-589, *Application for Asylum and for Withholding of Removal*. If an asylum application is referred from the asylum office to EOIR, the applicant may continue to accumulate time toward employment authorization eligibility while the asylum application is pending before an immigration judge.

For asylum applications first filed with EOIR, USCIS calculates the 180-day Asylum EAD Clock in one of two ways:

1) If a complete asylum application is "lodged" at the immigration court window, the application will be stamped "lodged not filed" and the applicant will start to accumulate time toward eligibility for employment authorization on the date of lodging, or
2) If the asylum application is not "lodged," the applicant generally will start to accumulate time toward eligibility for employment authorization on the date that a complete asylum application is filed at a hearing before an immigration judge.

Applicants who lodge an application at an immigration court window must still file the application with an immigration judge at a later hearing.

What stops the 180-day Asylum EAD Clock?

The 180-day Asylum EAD Clock does not include any delays requested or caused by an applicant while his or her asylum application is pending with USCIS and/or EOIR.

For cases pending with an asylum office:

Delays requested or caused by an applicant may include:

- A request to transfer a case to a new asylum office or interview location, including when the transfer is based on a new address;
- A request to reschedule an interview for a later date;
- Failure to appear at an interview or fingerprint appointment;
- Failure to provide a competent interpreter at an interview;
- A request to provide additional evidence after an interview; and
- Failure to receive and acknowledge an asylum decision in person (if required).

If an applicant is required to receive and acknowledge his or her asylum decision at an asylum office, but fails to appear, his or her 180-day Asylum EAD Clock will stop until the first master calendar hearing with an immigration judge after the case is referred to EOIR.

If an applicant fails to appear for an asylum interview, the 180-day Asylum EAD Clock will stop on the date of the missed interview, and the applicant may be ineligible for employment authorization unless he or she makes a written request to the asylum office to reschedule the interview within 45 days and demonstrates "good cause" for missing the interview. A request to reschedule an interview with the asylum office that is made after 45 days from the missed interview must demonstrate "exceptional circumstances," which is a higher standard than good cause. If the applicant has established exceptional circumstances for missing the asylum interview, and is currently in removal

proceedings before an immigration judge, the asylum office cannot reopen the asylum application or reschedule the applicant for an interview unless the immigration judge dismisses the removal proceedings. If the asylum office determines that an applicant's failure to appear for an interview was due to lack of notice of the interview appointment, the asylum office will not attribute a delay to the applicant and the asylum office will reschedule the interview.

For more information about reschedule requests and missed asylum interviews, see "Preparing for Your Asylum Interview" on the Asylum Division's website at www.uscis.gov/Asylum.

For cases pending with EOIR:

Asylum cases pending with EOIR are adjudicated at hearings before an immigration judge. At the conclusion (or "adjournment") of each hearing, the immigration judge will determine the reason for the adjournment. If the adjournment is requested or caused by the applicant, the applicant will stop accumulating time toward the 180-day Asylum EAD Clock until the next hearing. If the adjournment is attributed to the immigration court or the Department of Homeland Security, the applicant will continue accumulating time.

Common reasons why an asylum applicant may stop accumulating time toward the 180-day Asylum EAD Clock include:

- An applicant asks for the case to be continued so he or she can get an attorney;
- An applicant, or his or her attorney, asks for additional time to prepare the case; and
- An applicant, or his or her attorney, declines an expedited asylum hearing date.

Additionally, if an asylum applicant files a motion between hearings that delays the case, such as a motion to continue or a motion to change venue, and that motion is granted, the applicant may stop accumulating time toward the 180-day Asylum EAD Clock. The last page of this notice contains a chart listing reasons for case adjournments and whether these reasons are applicant-caused delays. Additional information regarding codes used by the immigration courts that affect the 180-day Asylum EAD Clock can be found at the Operating Policy and Procedures Memorandum (OPPM) 13-02, *The Asylum Clock*, available at www.justice.gov/eoir.

Further, the accumulation of time toward the 180-day Asylum EAD Clock stops on the date an immigration judge issues a decision on the asylum application. An applicant whose asylum application is denied before 180 days have elapsed on the 180-day Asylum EAD Clock will not be eligible for employment authorization. However, if the decision is appealed to the Board of Immigration Appeals (Board) and the Board remands it (sends it back) to an immigration judge for adjudication of an asylum claim (including Board remands to an immigration judge following an appeal to a U.S. Court of Appeals), the applicant's 180-day Asylum EAD Clock will be credited with the total number of days between the immigration judge's decision and the date of the Board's remand order.

The applicant will continue to accumulate time on the 180-day Asylum EAD Clock while the asylum claim is pending after the remand order, excluding any delays requested or caused by the applicant.

How do I find more information about the 180-day Asylum EAD Clock?

Asylum applicants in removal proceedings before EOIR may call the EOIR hotline at 1-800-898-7180 to obtain certain information about their 180-day Asylum EAD Clock. The EOIR hotline generally reports a calculation of the number of days between the date an asylum application was filed with an asylum office or at a hearing before an immigration judge, and the date the immigration judge first issued a decision on the application, not including delays requested or caused by the applicant.

However, in some cases, an applicant may have accumulated more time on the 180-day Asylum EAD Clock than the number of days reported on the EOIR hotline. The number of days reported on the hotline does not include:

- The time an applicant accumulates toward the 180-day Asylum EAD Clock when the applicant has lodged an asylum application at an immigration court window prior to filing the application at a hearing before an immigration judge; or
- The time that USCIS may credit to an applicant's 180-day Asylum EAD Clock if the asylum application was remanded to an immigration judge by the Board for further adjudication of an asylum claim.

To determine the number of days on an applicant's 180-Day Asylum EAD Clock, an applicant may rely on the number of days reported by the EOIR hotline if the applicant has not lodged his or her application at an immigration

court window or if the asylum application was not remanded from the Board for further adjudication of an asylum claim.

Applicants who lodged an application at an immigration court window should add the number of days between the date of lodging of the application and when the application was filed at a hearing before an immigration judge (or the current date if the applicant has not yet had a hearing at which the application could be filed).

Applicants whose cases were remanded from the Board for further adjudication of the asylum claim should add the number of days from the immigration judge's initial decision on the asylum application to the date of the Board's order remanding the case. These applicants continue to accumulate time toward the 180-day Asylum EAD Clock after the case is remanded, excluding delays requested or caused by the applicant. For more information on whether a delay is requested or caused by the applicant, please see the previous section.

What if I think there is an error in the calculation of time on my 180-Day Asylum EAD Clock?

For questions regarding time accumulated on the 180-day Asylum EAD Clock when an applicant's asylum application is pending with an asylum office, please contact the 180-day Asylum EAD Clock point of contact at the asylum office with jurisdiction over the case. The points of contact can be found on the Asylum Division Web page at www.uscis.gov/Asylum under "Asylum Employment Authorization and Clock Contacts."

For cases before EOIR, asylum applicants should address questions to the immigration judge during the hearing, or to the court administrator, in writing, after the hearing. Applicants **should not** file motions related to the 180-day Asylum EAD Clock. If an applicant believes the issue has not been correctly addressed at the immigration court level, the applicant may then contact the Assistant Chief Immigration Judge for the appropriate immigration court in writing. For cases on appeal, applicants may contact EOIR's Office of General Counsel in writing. Please refer to OPPM 13-02 for more details.

What if I think there is an error in the adjudication of my Form I-765, Application for Employment Authorization?

USCIS service centers adjudicate the Form I-765. Applicants may contact a USCIS service center through the National Customer Service Center hotline at 1-800-375-5283. Inquiries that cannot be resolved by a customer service representative will be routed to the service center where the Form I-765 was filed. Applicants should receive a response from the service center within 30 days. If more than 30 days pass without a response, applicants may email the appropriate USCIS service center at one of the following addresses:

California Service Center:	csc-ncsc-followup@uscis.dhs.gov
Vermont Service Center:	vsc.ncscfollowup@uscis.dhs.gov
Nebraska Service Center:	nscfollowup.ncsc@uscis.dhs.gov
Texas Service Center:	tsc.ncscfollowup@uscis.dhs.gov

If applicants do not receive an email response from the service center address above within 21 days, applicants may email the USCIS Headquarters Office of Service Center Operations at SCOPSSCATA@uscis.dhs.gov.

What is the ABT Settlement Agreement?

On April 12, 2013, USCIS and EOIR entered into a settlement agreement in the class action litigation *B.H., et al. v. USCIS, et al.,* also referred to as the ABT Settlement Agreement. Under the terms of the ABT Settlement Agreement, USCIS and EOIR agreed to change certain practices related to asylum cases and the calculation of time for employment authorization eligibility.

The ABT Settlement Agreement has a separate review process for asylum applicants who believe they have not received relief described in the ABT Settlement Agreement. Applicants who believe they have been denied relief under the Agreement should consult the ABT Settlement Agreement and associated documents, and follow the Individual ABT Claim Review process described in the Agreement to resolve their claims. For more information about the ABT Settlement Agreement, visit www.uscis.gov or www.justice.gov/eoir.

How do I apply for work authorization?

For instructions on how to apply for employment authorization, visit the USCIS website at www.uscis.gov/i-765 and see the Instructions to Form I-765, *Application for Employment Authorization.*

ADJOURNMENT CODES

December 2, 2013

ALIEN – RELATED ADJOURNMENTS

Description	Code	Clock
Alien to Seek Representation	01	S
Preparation – Alien/Attorney/Representative	02	S
Alien to File for Asylum	05	S
Alien to File Other Application	06	S
DHS Application Process – Alien Initiated	7A	S
DHS Adjudication of I-130	7C	S
DHS Adjudication of I-140	7D	S
DHS Adjudication of I-730	7E	S
DHS Adjudication of I-751	7F	S
1966 Cuban Adjustment	7G	S
Pending Naturalization of Petitioning Relative	7H	S
No-show by Alien/Alien's Attorney/Representative	11	S
Alien/Alien's Attorney/Representative Request	12	S
Supplement Asylum Application	21	S
Alien or Representative Rejected Earliest Possible Asylum Hearing	22	S
Asylum Application Withdrawn/Reset for Other Issues	23	X
Alien Request for an In-Person Hearing	26	S
Consolidation with Family Member	30	S
Preparation of Records/Biometrics Check/ Overseas Investigation by Alien	36	S
Illness of Alien	38	S
Illness of Atty/Representative	39	S
Illness of Witness	40	S
Alien Requested Forensic Analysis	42	S
Joint Request of Both Parties	45	S
Contested Charges	51	S
Jurisdiction Rests with the BIA	52	S
Alien Claim to U.S. Citizenship	54	S
DHS Vertical Prosecution Date Not Accommodated	57	S

DHS – RELATED ADJOURNMENTS

Description	Code	Clock
Preparation – DHS	03	R
DHS or DHS Administrative File Unavailable for Hearing	04	R
DHS Application Process – DHS Initiated	7B	R
Alien in DHS/Corrections Custody not Presented for Hearing	09	R
Alien Released From DHS/Corrections Custody	16	R
DHS to Provide Biometrics Check	24	R
DHS Request for an In-Person Hearing	27	R
DHS Investigation	37	R
DHS Forensic Analysis	43	R
Cooperating Witness/Law Enforcement	44	R
New Charge Filed by DHS	47	R
Juvenile Home Study	49	R
Quarantine – Detained Cases	50	R
DHS Request for Certification of Mental Competency	53	R
Vertical Prosecution – DHS Cause Delay	56	R
DHS Vertical Prosecution Date Not Accommodated	58	R

IJ – RELATED ADJOURNMENTS

Insufficient Time to Complete Hearing	13	R
MC to IC – Merits Hearing	17	R
IJ Request for an In-Person Hearing	28	R
RC to SC Merits Hearing	31	R
Unplanned IJ Leave – Sick/Annual	34	R
Unplanned IJ Leave – Detail/Other Assignment	35	R
Interpreter Appeared But IJ Rejected	48	R
Reserved Decision	RR	R

OPERATIONAL ADJOURNMENTS

IJ Completion (Prior to Hearing)	8A	S	TeleVideo Malfunction	46	R
State Department Response not in File	08	R	Hearing Deliberately Advanced	55	N
Notice Sent/Served Incorrectly	10	R	October 2013 Government Shutdown	59	R
Other Operational/Security Factors	14	R	Court-Ordered Mental Competency Evaluation	60	R
Allow for Scheduling of Priority Case	25	R	Court-Appointed Attorney	61	R
Concurrent Application	29	R	Case Severed from Lead – Hearing Adjourned	96	R
No Interpreter – Not Ordered	32	R	Case Joined to Lead – Hearing Adjourned	97	R
No Interpreter – Ordered but FTA	33	R	Data Entry Error	99	N

CLOCK CODES

S = Stops

R = Runs

X = Eliminates

N = Neutral

ATTACHMENT C

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

Name:

A **Date of Notice:**

REJECTED LODGING NOTICE

On _____, the Immigration Court received the attached Form I-589, Application for Asylum and Withholding of Removal, from you. It appears that you intended to lodge the application with the Immigration Court pursuant to the ABT Settlement Agreement. The Immigration Court is returning the application for asylum to you because it was not correctly submitted for lodging purposes. If the defect can be corrected, you can correct the mistake and return the application to the Immigration Court.

The Immigration Court is returning your documents because:

☐ **No Name –** Your document is missing your name.

☐ **No A-Number –** Your document is missing your A-Number.

☐ **Missing or Improper Signature –** Your asylum application is missing a required signature.

☐ **Asylum Application Already Lodged or Filed –** Our records indicate that you have already lodged or filed an asylum application. You cannot lodge an asylum application with the Immigration Court after you have already lodged or filed an asylum application.

☐ **Incorrect Lodging Location –** This Immigration Court is not, at this time, the correct location to lodge your asylum application. Our records indicate that the _____ Immigration Court is the correct location to lodge your asylum application. The address is:

_____
_____
_____
_____

☐ **Case at BIA –** Our records indicate that your case is pending before the Board of Immigration Appeals. Therefore, you cannot lodge an asylum application with the Immigration Court.

☐ **Case not Pending –** The Immigration Court does not have a record of your case.

Please make sure that you have put your correct name and A-number on your documents.

If you did not put your correct name and A-number on your documents, you should correct the mistake and return the documents to the Immigration Court.

If you did put your correct name and A-number on your documents, the Department of Homeland Security has not started your case with the Immigration Court. To start your case, the Department of Homeland Security must file a Notice to Appear with the Immigration Court. You cannot lodge an asylum application with the Immigration Court until the Department of Homeland Security files a Notice to Appear with the Immigration Court.

☐ **No Return Delivery Packaging –** You did not include a self-addressed stamped envelope or comparable pre-paid return delivery packaging. *See Immigration Court Practice Manual Chapter 4.15(l)(i)*.

☐ **Other – _____**

If you have any questions about how to lodge an asylum application with the Immigration Court, you can find information in the "180-Day Asylum EAD Clock Notice" and the Immigration Court Practice Manual, both of which are available at www.justice.gov/eoir.

If you have any questions about how to apply for employment authorization, you can find information on the USCIS website at www.uscis.gov.