

**NOTICE FOR ASYLUM SEEKERS
ABOUT THE FILING DEADLINE FOR ASYLUM APPLICATIONS¹**

If you are an asylum seeker who has filed, or will be filing, an asylum application more than one year after you arrived in the United States, you may benefit from a recent court decision. Under U.S. law, an asylum seeker generally must file an asylum application within one year of arriving in the United States or the application may be denied. Following a recent court decision in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), the parties have entered into a joint stay agreement. Under this agreement, the government has agreed, on an interim basis, to treat pending or newly filed asylum applications by certain asylum applicants as though they were filed within the one-year deadline, if the application is adjudicated while the agreement is in effect. This means that while the agreement is in effect, Asylum Officers, Immigration Judges, and the Board of Immigration Appeals will not refer or deny certain asylum applications because the applicant did not file the application within one year of arriving in the United States. The agreement does not apply to asylum seekers whose asylum application has already received a final denial decision. This agreement will last until further notice.²

TO BENEFIT FROM THIS AGREEMENT, YOU MUST:

- 1. Depending on where your application is pending, notify the USCIS asylum office, EOIR immigration judge, or the Board of Immigration Appeals (if your case is before the Board on appeal) that you are a *Mendez Rojas* class member.** For example, you can do this by filing a motion or notice of class membership. Information and samples provided by class counsel are available at: https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf.
- 2. Be a member of one of the following classes of individuals:**

<p style="text-align: center;">Class A.I</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v); 2) did not receive notice from DHS of the one-year filing deadline for asylum applications; 3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 4) are not in removal proceedings. 	<p style="text-align: center;">Class B.I</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be detained by DHS upon their arrival into the country; 2) express a fear of return to their home country to a DHS official; 3) have been or will be released from DHS custody without a credible fear determination; 4) are issued a Notice to Appear; 5) did not receive notice from DHS of the one-year filing deadline for asylum applications; 6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 7) are not in removal proceedings.
<p style="text-align: center;">Class A.II</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v); 2) did not receive notice from DHS of the one-year filing deadline for asylum applications; 3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 4) are in removal proceedings. 	<p style="text-align: center;">Class B.II</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be detained by DHS upon their arrival into the country; 2) express a fear of return to their home country to a DHS official; 3) have been or will be released from DHS custody without a credible fear determination; 4) are issued a Notice to Appear; 5) did not receive notice from DHS of the one-year filing deadline for asylum applications; 6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 7) are in removal proceedings.

¹ The information contained in this notice is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case.

² Further questions regarding this notice can be addressed to class counsel from the Northwest Immigrant Rights Project at mendezrojas@nwirp.org.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CONCELY del CARMEN MENDEZ)	
ROJAS, <i>et al.</i> ,)	CASE NO. C16-1024RSM
)	
Plaintiffs,)	
)	ORDER GRANTING MOTION FOR
v.)	CLASS CERTIFICATION
)	
JEH JOHNSON, Secretary of the)	
Department of Homeland Security, in his)	
official capacity, <i>et al.</i> ,)	
)	
Defendants.)	
)	

I. INTRODUCTION

This matter comes before the Court on Plaintiffs’ Motion for Class Certification. Dkt. #7. Plaintiffs seek certification of two classes, each with two subclasses. *Id.* Defendants oppose the motion, arguing that the Plaintiffs lack standing, and fail to meet any of the class certification requirements. Dkt. #29. For the reasons set forth below, the Court disagrees with Defendants and now GRANTS Plaintiffs’ motion.

II. BACKGROUND

Plaintiffs are asylum seekers who challenge Defendants’ alleged failure to provide them, and the classes they move to represent, with notice of the statutory requirement that an asylum seeker must apply for asylum within one year of arrival in the United States, 8 U.S.C. § 1158(a)(2)(B), as well as Defendants’ alleged failure to provide a mechanism that ensures that

1 an asylum seeker is able to comply with that deadline. Dkt. #1. Plaintiffs allege that
2 Defendants' policies and practices infringe on their and the proposed putative class members'
3 statutory and regulatory rights to apply for asylum, often depriving them of those rights
4 altogether, and also violate their right to due process under the Fifth Amendment to the United
5 States Constitution. *Id.* Plaintiffs assert that the questions presented in this case – whether the
6 DHS Defendants are obligated to provide Plaintiffs with notice of the one-year deadline when
7 released from DHS custody, and whether the DHS and DOJ Defendants must provide a
8 mechanism that ensures that Plaintiffs are able to apply for asylum in a timely manner – can
9 and should be resolved on a class-wide basis. Dkt. #7 at 2.
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11 For context, Plaintiffs have provided a brief background of the proposed class
12 representatives:
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14 Plaintiff Rodriguez is a 37-year-old asylum seeker from Honduras. Mr.
15 Rodriguez entered the United States in July 2014 and established a credible
16 fear of persecution in an interview with USCIS. Subsequently, DHS
17 released him from custody with an NTA, the charging document in removal
18 proceedings, but did not inform him of the one-year deadline. DHS has not
19 placed Mr. Rodriguez in removal proceedings yet. He only learned of the
20 deadline when he sought counsel for his immigration case. His attempts to
21 comply with the one-year deadline have been unsuccessful, however, as
22 both USCIS and EOIR have rejected his asylum application – USCIS
23 rejected it on the assumption that Mr. Rodriguez was in removal
24 proceedings, so the application had to be filed with EOIR; EOIR rejected
25 the application Mr. Rodriguez attempted to lodge because he is not actually
26 in removal proceedings. As a result, he has been unable to file, or even
27 lodge, his asylum application. *See* Dkt. 1 ¶¶ 60-66.
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23 Plaintiff Mendez is a 30-year-old asylum seeker from the Dominican
24 Republic. Ms. Mendez entered the United States in September 2013 and
25 established a credible fear of persecution in an interview with USCIS.
26 Subsequently, DHS released her from custody with an NTA, but did not
27 inform her of the one-year deadline. She only learned of the deadline when
28 she sought counsel for her immigration case – *after* one year had already
passed. As she had not yet been placed in removal proceedings, Ms.
Mendez attempted to file an asylum application with USCIS, but USCIS
rejected it on the assumption that she already was in removal proceedings.

1 Only after this rejection – and more than one year after she entered the
2 country – did DHS file the NTA with the immigration court, allowing Ms.
3 Mendez to finally lodge her asylum application with the San Antonio
4 Immigration Court. Her first immigration court hearing will be in August
5 2016. *See* Dkt. 1 ¶¶ 67-74.

6 Plaintiff Lopez is a 37-year-old asylum seeker from Guatemala. In
7 February 2014, she arrived at a Texas port of entry with two of her children
8 and told the inspecting officers that she was afraid to return to Guatemala.
9 DHS served Ms. Lopez and her children with NTAs and released them from
10 custody with the requirement that they check in with DHS on a regular
11 basis. DHS did not inform her of the one-year deadline. Ms. Lopez
12 checked in with DHS on four occasions between March 2014 and
13 September 2015, yet at no point did DHS inform her of the one-year
14 deadline. In October 2015, she was issued a notice of hearing for
15 November 2015 in the San Antonio Immigration Court. Ms. Lopez did not
16 learn of the one-year deadline until she consulted an immigration attorney
17 in December 2015. She lodged her asylum application with the court in
18 January 2016, nearly two years after she arrived in the United States. The
19 immigration judge subsequently terminated her removal proceedings, and
20 she filed an asylum application affirmatively with USCIS in February 2016.
21 USCIS has not yet scheduled an interview regarding her asylum application.
22 *See* Dkt. 1 ¶¶ 75-81.

23 Plaintiff Suarez is a 29-year-old asylum seeker from Mexico. She and her
24 five young children arrived at a California port of entry in November 2013.
25 Upon her arrival, Ms. Suarez informed DHS that she was afraid to return to
26 Mexico and that she was seeking asylum in the United States. She provided
27 DHS with a sworn statement regarding her fear of returning to Mexico.
28 Shortly afterwards, DHS released her and her children from custody with
NTAs, and paroled them into the country to await a removal hearing. At no
point did DHS inform Ms. Suarez of the one-year deadline. She first
learned of this requirement more than a year later, when she sought counsel.
She then promptly lodged her application with the San Francisco
Immigration Court. Ms. Suarez is scheduled for an individual hearing in
May 2017. *See* Dkt. 1 ¶¶ 82-87.

Dkt. #7 at 8-10. In response to the instant motion, Defendants have not disputed these
background facts as to each of the named Plaintiffs. *See* Dkt. #29.

Plaintiffs now request that the Court certify the following classes and subclasses:

CLASS A (“Credible Fear Class”): All individuals who have been
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. §

1 1225(b)(1)(B)(v) and did not receive notice from DHS of the one-year
2 deadline to file an asylum application as set forth in 8 U.S.C. §
1158(a)(2)(B).

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

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

8 Dkt. #7 at 2.

9 **CLASS B (“Other Entrants Class”):** All individuals who have been or
10 will be detained upon entry; express a fear of return to their country of
11 origin; are released or will be released from DHS custody without a credible
12 fear determination; are issued a Notice to Appear (NTA); 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).

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

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

18 Dkt. #7 at 3.

19 Plaintiffs propose that Plaintiffs Elmer Geovanni Rodriguez Escobar and Concely del
20 Carmen Mendez Rojas be appointed as representatives of Class A. Plaintiff Rodriguez moves
21 to be appointed as representative of Subclass A.I., and Plaintiff Mendez Rojas moves to be
22 appointed as representative of Subclass A.II. Dkt. #7 at 2. Plaintiffs further propose that
23 Plaintiffs Maribel Suarez Garcia and Lidia Margarita Lopez Orellana be appointed as
24 representatives of Class B. Plaintiff Lopez Orellana moves to be appointed as representative of
25 Subclass B.I., and Plaintiff Suarez moves to be appointed as representative of Subclass B.II.
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28 Dkt. #7 at 3.

1 Plaintiffs also ask that the Court adopt the following definitions of certain terms for
2 purposes of all four subclasses:

3 an individual has “applied” for asylum when her application on Form I-589
4 is accepted, and not subsequently rejected, by either Defendant U.S.
5 Citizenship and Immigration Services (USCIS) or Defendant EOIR. An
6 application is rejected by USCIS where USCIS refuses to accept it or
7 subsequently issues a rejection notice. An application is rejected by EOIR
8 where EOIR refuses to accept it. Pursuant to current EOIR policy, an
9 application is not “filed” if it is accepted for “lodging” purposes only. *See*
10 *Imm. Ct. Practice Manual 3.1(b)(iii)(A)*.

11 Dkt. #7 at 2 fn. 1.

12 III. DISCUSSION

13 A. Legal Standard

14 “Class certification is governed by Federal Rule of Civil Procedure 23.” *Wal-Mart*
15 *Stores, Inc. v. Dukes*, 564 U.S. 338, 345, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011). Under
16 Federal Rule of Civil Procedure Rule 23(a), the party seeking certification must first
17 demonstrate that “(1) the class is so numerous that joinder of all members is impracticable; (2)
18 there are questions of law or fact common to the class; (3) the claims or defenses of the
19 representative parties are typical of the claims or defenses of the class; and (4) the
20 representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ.
21 P. 23(a). “Second, the proposed class must satisfy at least one of the three requirements listed
22 in Rule 23(b).” *Dukes*, 564 U.S. at 345; *see also Leyva v. Medline Indus. Inc.*, 716 F.3d 510,
23 512 (9th Cir. 2013). In this case, Plaintiffs seek to certify a class under Rule 23(b)(2), which
24 requires that “the party opposing the class has acted or refused to act on grounds that apply
25 generally to the class, so that final injunctive relief or corresponding declaratory relief is
26 appropriate respecting the class as a whole.” Dkt. #7 at 23-24; Fed. R. Civ. P. 23(b)(2). “Rule
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1 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to
2 each member of the class.” *Dukes*, 564 U.S. at 360.

3 Rule 23 “does not set forth a mere pleading standard.” *Id.* at 350. Rather, “certification
4 is proper only if the trial court is satisfied, after a rigorous analysis, that the prerequisites of
5 Rule 23(a) have been satisfied.” *Id.* at 350-51 (internal quotation omitted). “[I]t may be
6 necessary for the court to probe behind the pleadings before coming to rest on the certification
7 question.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160, 102 S. Ct. 2364, 72 L. Ed. 2d
8 740 (1982). This is because “the class determination generally involves considerations that are
9 enmeshed in the factual and legal issues comprising the plaintiff’s cause of action.” *Id.*
10 (internal quotation omitted). Nonetheless, the ultimate decision regarding class certification
11 “involve[s] a significant element of discretion.” *Yokoyama v. Midland Nat’l Life Ins. Co.*, 594
12 F.3d 1087, 1090 (9th Cir. 2010).

15 **B. Certification**

16 Plaintiffs assert that their proposed classes and subclasses satisfy all Rule 23(a) and
17 Rule 23(b)(2) requirements. Accordingly, the Court addresses those arguments, in turn, below.

19 *1. Numerosity and Standing*

20 “The prerequisite of numerosity is discharged if ‘the class is so large that joinder of all
21 members is impracticable.’” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)
22 (quoting Fed. R. Civ. P. 23(a)(1)). Plaintiffs assert that the proposed classes are numerous.
23 Dkt. #7 at 14-16. Plaintiffs provide statistics for Fiscal Year 2016 from the Asylum Division of
24 Defendant USCIS to assert that thousands of noncitizens express a fear of persecution to the
25 DHS Defendants upon their arrival into the United States each month. *See* Asylum Division,
26 USCIS, “Credible Fear Workload Report Summary: FY 2016 Total Caseload,” at 1 *available at*
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1 <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engage>
2 [ments/CredibleFearReasonableFearStatisticsNationalityReports.pdf](https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engage) (last visited Jan. 9, 2017).
3 Further, during that same year, the Asylum Division determined that 36,324 individuals who
4 were originally detained and placed in expedited removal proceedings had a “credible fear” of
5 persecution if returned to their home countries. *Id.* Accordingly, Plaintiffs believe that the
6 majority, if not all, of these 36,324 individuals are putative Class A members.
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8 In addition, Plaintiffs have presented Declarations from immigration attorneys around
9 the country supporting the assertion that both Class A and Class B membership is too numerous
10 for joinder. *See* Dkts. #13 at ¶¶ 3-6 and #19 at ¶¶ 5, 8 and 12-15. Finally, Plaintiffs note that
11 “Defendants are in possession of the precise number of proposed class members, but Plaintiffs
12 have demonstrated that the number of current and future class members, and the numerous
13 reasons why it would be impractical to join them . . .”.

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15 Based on this evidence, “general knowledge,” and “common sense,” the Court can infer
16 that both putative classes and their subclasses are sufficiently large. *Perez-Funez v. Dist. Dir.*,
17 *I.N.S.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984). Further, each putative subclass includes
18 “unnamed and unknown future” asylum applicants, and joinder of such “individuals is
19 inherently impracticable.” *Jordan v. L.A. Cty.*, 669 F.2d 1311, 1320 (9th Cir. 1982), *vacated on*
20 *other grounds*, 459 U.S. 810, 103 S. Ct. 35, 74 L. Ed. 2d 48.
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23 However, the Court must also address Defendants’ argument that Plaintiffs cannot meet
24 the numerosity standard because none of the Plaintiffs can demonstrate an actual injury, and
25 therefore they do not have standing. Dkt. #29 at 6-7. Standing has three elements: (1) an
26 “injury in fact;” (2) a “causal connection between the injury and the conduct complained of;”
27 and (3) redressability, meaning that the injury is likely capable of being redressed by a
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1 favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L.
2 Ed. 2d 351 (1992). In a class action, standing is satisfied if “at least one named plaintiff meets
3 the requirements.” *Bates v. UPS*, 511 F.3d 974, 985 (9th Cir. 2007). In this case, Defendants
4 argue that none of the representative Plaintiffs has experienced any injury in fact, and that any
5 future injury is purely speculative because they don’t know whether their asylum applications
6 will be denied. Dkt. #29 at 6-7.

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8 The Court is not persuaded. Plaintiffs are not challenging any denial, past or future, of
9 asylum. *See* Dkt. #30 at 3. Rather, they challenge “their right to timely apply for asylum.” *Id.*
10 That is, they challenge the denial of an opportunity to apply within the one-year deadline,
11 which they allege is caused by Defendants’ failure to provide adequate notice of the deadline
12 and an alleged failure to implement a uniform method through which Plaintiffs can comply
13 with that deadline. *Id.* The Ninth Circuit has made clear that Plaintiffs and the proposed class
14 members have a statutory right to apply for asylum:
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16 Section 201(b) of the Refugee Act, 8 U.S.C. § 1158, conferred upon all
17 aliens a statutory right to apply for asylum. *Orantes-Hernandez v.*
18 *Thornburgh*, 919 F.2d 549, 553 (9th Cir. 1990). That right may be violated
19 by a pattern or practice that forecloses the opportunity to apply. *See Id.* at
20 564 (upholding finding that coercion of aliens to accept voluntary departure
21 violated their right to apply for asylum). The same provision of the
22 Refugee Act required the Attorney General to establish means by which
23 aliens, regardless of status, may apply for political asylum. *See* 8 U.S.C. §
24 1158.

25 *Campos v. Nail*, 43 F.3d 1285, 1288 (9th Cir. 1994). Plaintiffs allege that the failures by
26 Defendants have caused them to lose this right, and they must now rely on an immigration
27 judge to find, in his or her discretion, that either changed circumstances or extraordinary
28 circumstances justified their delayed filings. Dkt. #30 at 2; 8 U.S.C. § 1158(a)(2)(D) and 8
C.F.R. § § 208.4(a)(2)(B), a(4)-(5). If Plaintiffs’ allegations are true, they have lost the

1 statutory right to apply for asylum and must now depend on the discretion of an adjudicator to
2 apply. Accordingly, the Court finds that Plaintiffs have demonstrated standing.

3 Defendants next argue that this Court has no jurisdiction to review asylum applications,
4 and that such applications must go to review in the Circuit Court of Appeals. Dkt. #29 at 7-8.
5 Again, that argument misconstrues Plaintiffs' claims. Plaintiffs are not asking this Court to
6 make any finding with respect to how immigration judges analyze the extraordinary
7 circumstances exception. Rather, they allege that Defendants' action or inactions have
8 deprived them of a statutory right to apply for asylum by foreclosing their opportunity to apply
9 as of right. *See* Dkt. #30 at 4. Accordingly, the Court finds that Plaintiffs have standing.
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11 Because the only arguments that Defendants present in response to Plaintiffs' assertion
12 of numerosity pertained to standing, and based on the evidence of numerosity presented by
13 Plaintiffs as discussed above, the Court concludes that the proposed classes and their subclasses
14 are sufficiently numerous to satisfy Rule 23(a)(1).
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16 2. Commonality

17 The requirement of "commonality" is met through the existence of a "common
18 contention" that is of "such a nature that it is capable of classwide resolution." *Dukes*, 564 U.S.
19 at 350. A contention is capable of classwide resolution if "the determination of its truth or
20 falsity will resolve an issue that is central to the validity of each one of the claims in one
21 stroke." *Id.* Accordingly, "what matters to class certification . . . is not the raising of common
22 questions – even in droves – but, rather the capacity of a classwide proceeding to generate
23 common answers apt to drive the resolution of the litigation." *Id.* This requirement is
24 "construed permissively." *Hanlon*, 150 F.3d at 1019. Accordingly, "[a]ll questions of fact and
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1 law need not be common to satisfy the rule.” *Id.*; see also *Rodriguez v. Hayes*, 591 F.3d 1105,
2 1122 (9th Cir. 2010).

3 In this case, the Plaintiffs and proposed class members allege a violation of their
4 statutory right to apply for asylum, including adequate notice of the statutory deadline and a
5 meaningful opportunity to comply with that deadline. Dkt. #7 at 17-18. Those claims are also
6 based on a common core of facts. *Id.* at 18. Defendants argue again that none of the Plaintiffs
7 have demonstrated an injury in fact, and therefore cannot demonstrate commonality. Dkt. #29
8 at 8. The Court has already rejected that argument. Defendants also argue that Plaintiffs
9 cannot demonstrate commonality because the resolution of the claims requires an
10 individualized inquiry, and the government actually provides notice of the one-year deadline in
11 several circumstances. Dkt. #29 at 8-10. This argument misses the mark. Plaintiffs assert that
12 Defendants do not have a policy and practice of advising the proposed members of the classes
13 of the filing deadline, and that they do not have an adequate mechanism for timely filing.
14 Defendants do not dispute either of those claims. Rather they assert that some asylum seekers
15 are provided with such notice and filing opportunities. Accordingly, the Court concludes that
16 the resolution of the legal issues raised by Plaintiffs will generate one result for each member of
17 the putative classes and subclasses. Thus, the Court agrees that these legal issues constitute a
18 “common contention” that is “capable of classwide resolution.” *Dukes*, 564 U.S. at 350.
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22 3. *Typicality*

23 “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those of
24 absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020.
25 “Typicality refers to the nature of the claim or defense of the class representative, and not to the
26 specific facts from which it arose or the relief sought.” *Hanon v. Dataproducts Corp.*, 976 F.2d
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1 497, 508 (9th Cir. 1992). Nonetheless, the “commonality and typicality requirements of Rule
2 23(a) tend to merge.” *Falcon*, 457 U.S. at 157 n.13. “Both serve as guideposts for determining
3 whether under the particular circumstances maintenance of a class action is economical and
4 whether the named plaintiff’s claim and the class claims are so interrelated that the interests of
5 the class members will be fairly and adequately protected in their absence.” *Id.* In determining
6 typicality, courts consider “whether other members have the same or similar injury, whether the
7 action is based on conduct which is not unique to the named plaintiffs, and whether other class
8 members have been injured by the same course of conduct.” *Hanon*, 976 F.2d at 508.

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10 Plaintiffs convincingly argue that all Individual Plaintiffs suffered the same injury as the
11 putative class. Dkts. #7 at 20-22 and #30 at 7-10. Defendants primarily respond with the same
12 arguments regarding injury in fact as have already been rejected by this Court. Dkt. #29 at 10-
13 13. They are no more persuasive in the context of typicality. Accordingly, the Court concludes
14 that the individual Plaintiffs are typical of the classes and subclasses they seek to represent.
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16 4. *Adequacy*

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18 Defendants have not separately addressed the adequacy requirement. Instead, they
19 included their objections in their arguments as to typicality. Dkt. #29 at 10-13. For the same
20 reasons above, the Court concludes that the individual Plaintiffs and their proposed counsel
21 constitute adequate class representatives.

22 5. *Common Grounds*

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24 Plaintiffs contend that their class action satisfies Rule 23(b)(2) because Defendants have
25 “acted or refused to act on grounds that apply generally to the class, so that final injunctive
26 relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.
27 R. Civ. P. 23(b)(2); Dkt. #7 at 23-24. “Class certification under Rule 23(b)(2) is appropriate
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1 only where the primary relief sought is declaratory or injunctive.” *Zinser v. Accufix Research*
2 *Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001). The Court treats “[p]redominance and
3 superiority a[s] self-evident,” *Dukes*, 564 U.S. at 363, and requires “[o]nly a showing of
4 cohesiveness of class claims,” *Herskowitz v. Apple, Inc.*, 301 F.R.D. 460, 481 (N.D. Cal. 2014)
5 (citing *Fosmire v. Progressive Max Ins. Co.*, 277 F.R.D. 625, 635 (W.D. Wash. 2011)).

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7 In this case, the primary relief that Plaintiffs seek is declaratory and injunctive.
8 Plaintiffs seek a declaration that the DHS Defendants’ policy and practice of failing to give
9 notice of the one-year deadline is contrary to the statute and the Constitution and that the DHS
10 and DOJ Defendants’ failure to provide uniform meaningful and reliable mechanisms within
11 which to comply is contrary to the statute and the Constitution. Dkt. #1 at ¶ ¶ 127-131 and
12 *Prayer for Relief*, ¶ ¶ d.-e.

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14 Defendants argue that Plaintiffs fail to meet the 23(b)(2) standard because Defendants
15 have not failed to act or refused to act on grounds applicable to the class. Dkt. #29 at 13-15.
16 For the reasons set forth by Plaintiffs, the Court does not agree that Defendants have presented
17 either a system whereby putative class members are guaranteed notice of the one-year filing
18 deadline or a mechanism whereby putative class members are assured of the opportunity to
19 timely file their asylum applications. *See* Dkt. #30 at 10-12.

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21 Accordingly, the Court finds that Plaintiffs have also met the requirements of Rule
22 23(b)(2), and their proposed classes and subclasses should be certified.

23 IV. CONCLUSION

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25 Having reviewed Plaintiffs’ motion for class certification, the opposition thereto and
26 reply in support thereof, along with the Declarations submitted by the parties and the remainder
27 of the record, the Court hereby finds and ORDERS:
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1. Plaintiffs' Motion for Class Certification (Dkt. #7) is GRANTED.

2. Plaintiffs have satisfied the class certification requirements as discussed above.

Therefore, the following classes and subclasses are CERTIFIED:

a. **CLASS A ("Credible Fear Class"):** All individuals who have been 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).

i) **A.I.:** All individuals in Class A who *are not* 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.

ii) **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.

b. **CLASS B ("Other Entrants Class"):** All individuals who have been or will be 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 (NTA); 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).

i) **B.I.:** All individuals in Class B who *are not* 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.

ii) **B.II.:** All individuals in Class B 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.

3. Plaintiffs’ proposed representatives will fairly and adequately protect the class interests as discussed above. Therefore, the following class representatives are APPOINTED:

a. As Class A representatives: **Plaintiffs Elmer Geovanni Rodriguez Escobar and Concealy del Carmen Mendez Rojas.** Plaintiff Rodriguez will also serve as representative of Subclass A.I., while Plaintiff Mendez will serve as representative of Subclass A.II.

b. As Class B representatives: **Plaintiffs Maribel Suarez Garcia and Lidia Margarita Lopez Orellana.** Plaintiff Lopez will also serve as representative of Subclass B.I., while Plaintiff Suarez will serve as representative of Subclass B.II.

4. The Court also adopts Plaintiffs’ definition of “applied” as defined in footnote 1 of their motion for class certification (Dkt. #7 at 3, fn. 1).

5. Plaintiffs’ current counsel will also fairly and adequately protect the class interests as discussed above.

DATED this 10 day of January, 2017.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

**NOTICE FOR ASYLUM SEEKERS
ABOUT THE FILING DEADLINE FOR ASYLUM APPLICATIONS¹**

If you are an asylum seeker who has filed, or will be filing, an asylum application more than one year after you arrived in the United States, you may benefit from a recent court decision. Under U.S. law, an asylum seeker generally must file an asylum application within one year of arriving in the United States or the application may be denied. Following a recent court decision in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), the parties have entered into a joint stay agreement. Under this agreement, the government has agreed, on an interim basis, to treat pending or newly filed asylum applications by certain asylum applicants as though they were filed within the one-year deadline, if the application is adjudicated while the agreement is in effect. This means that while the agreement is in effect, Asylum Officers, Immigration Judges, and the Board of Immigration Appeals will not refer or deny certain asylum applications because the applicant did not file the application within one year of arriving in the United States. The agreement does not apply to asylum seekers whose asylum application has already received a final denial decision. This agreement will last until further notice.²

TO BENEFIT FROM THIS AGREEMENT, YOU MUST:

- 1. Depending on where your application is pending, notify the USCIS asylum office, EOIR immigration judge, or the Board of Immigration Appeals (if your case is before the Board on appeal) that you are a *Mendez Rojas* class member.** For example, you can do this by filing a motion or notice of class membership. Information and samples provided by class counsel are available at: https://www.americanimmigrationcouncil.org/sites/default/files/mendez_rojas_v_johnson_faq.pdf.
- 2. Be a member of one of the following classes of individuals:**

<p style="text-align: center;">Class A.I</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v); 2) did not receive notice from DHS of the one-year filing deadline for asylum applications; 3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 4) are not in removal proceedings. 	<p style="text-align: center;">Class B.I</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be detained by DHS upon their arrival into the country; 2) express a fear of return to their home country to a DHS official; 3) have been or will be released from DHS custody without a credible fear determination; 4) are issued a Notice to Appear; 5) did not receive notice from DHS of the one-year filing deadline for asylum applications; 6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 7) are not in removal proceedings.
<p style="text-align: center;">Class A.II</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be released from DHS custody after having been found to have a credible fear of persecution within the meaning of 8 U.S.C. § 1225(b)(1)(B)(v); 2) did not receive notice from DHS of the one-year filing deadline for asylum applications; 3) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 4) are in removal proceedings. 	<p style="text-align: center;">Class B.II</p> <p>Individuals who</p> <ol style="list-style-type: none"> 1) have been or will be detained by DHS upon their arrival into the country; 2) express a fear of return to their home country to a DHS official; 3) have been or will be released from DHS custody without a credible fear determination; 4) are issued a Notice to Appear; 5) did not receive notice from DHS of the one-year filing deadline for asylum applications; 6) have not filed an asylum application, or filed an asylum application more than one year after their arrival in the United States; and 7) are in removal proceedings.

¹ The information contained in this notice is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case.

² Further questions regarding this notice can be addressed to class counsel from the Northwest Immigrant Rights Project at mendezrojas@nwirp.org.