



March 31, 2017

Gerald S. Hartman  
Drinker Biddle & Reath LLP  
1500 K Street, NW  
Washington, DC 20005-1209

Re: Barbara McDowell and Gerald S. Hartman Foundation Six-Month Progress Report

Dear Jerry:

The American Immigration Council (Immigration Council) and the National Immigration Project of the National Lawyers Guild (NIPNLG) are grateful to the Barbara McDowell and Gerald S. Hartman Foundation for your support of our pending litigation challenging agency-imposed barriers which prevent asylum seekers from filing their asylum applications within the statutory one-year deadline. We are writing to provide an update on the case.

As you know, the Immigration Council and NIPNLG, with our partners the Northwest Immigrant Rights Project and Dobrin & Han, filed a nationwide class action lawsuit in June 2016 on behalf of asylum seekers who have been or will be released from the custody of the Department of Homeland Security (DHS) without first being provided notice of the one-year filing deadline. We argue that the lack of notice and other practices of DHS and the immigration courts violate the Immigration and Nationality Act (INA), the Administrative Procedure Act, and the Due Process Clause of the U.S. Constitution. We seek an order requiring Defendants to 1) provide plaintiffs and class members adequate notice of the one-year filing deadline; and 2) establish a uniform mechanism—adhered to by both DHS and the immigration courts—that ensures plaintiffs and class members an opportunity to timely file their applications.

1) *Case developments over the last six months*

Both the lawsuit, *Mendez-Rojas v. Johnson*, No. 2:16-cv-01024 (W.D. Wash.), and the plaintiffs' motion for class certification were pending at the start of the grant period. After initial settlement negotiations broke down, briefing on the class certification motion was completed on December 21, 2016 and, on January 10, 2017, the district court granted the motion and certified two classes of asylum seekers, each with two subclasses. As a result, thousands of asylum seekers—if not several tens of thousands—will be protected by any ultimate order in the case. Notably, in granting class certification, the district court found that the federal government had not “presented either a system whereby putative class members are guaranteed notice of the one-year filing deadline or a mechanism whereby putative class members are assured of the opportunity to timely file their asylum applications.”

In opposing class certification, the government argued that, because no plaintiff had been denied asylum, none had been injured and thus they all lacked standing. The district court roundly rejected this argument, finding instead that all plaintiffs had suffered a concrete injury; that is, all had been

deprived of the statutory right to file an asylum application and were left with only the option of seeking a discretionary waiver of the filing deadline. The court also rejected the government's argument that the INA stripped it of jurisdiction to consider this affirmative challenge to its practices. Finally, the court found that each element necessary for class certification was satisfied.

The court issued its decision granting plaintiffs' motion for class certification one day before the government was due to file its motion to dismiss. Defendants' primary arguments for dismissal are that plaintiffs lack standing and that the INA strips the court of jurisdiction—both of which were rejected by the court in its class certification decision. Briefing on the motion to dismiss was completed in early February, and the court denied defendants' motion on March 28. The court reiterated its determination that plaintiffs had alleged an injury sufficient for standing: the loss of the statutory right to apply for asylum. It also rejected again Defendants' arguments that the INA deprived it of jurisdiction.

## 2) *Attorney Contact Information*

For additional information about this case, please contact:

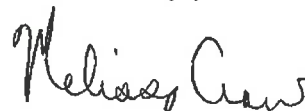
- Mary Kenney, Senior Staff Attorney, American Immigration Council, [mkenney@immcouncil.org](mailto:mkenney@immcouncil.org), (202) 507-7512
- Trina Realmuto, Litigation Director, National Immigration Project of the National Lawyers Guild, [trina@nipnlg.org](mailto:trina@nipnlg.org), (617) 227-9727 ext. 8

## 3) *Anticipated progress in the next six months*

Given the denial of the government's motion to dismiss, it is possible that defendants may agree to reopen settlement discussions. If that does not happen, the next steps in the case will be for the parties to hold the Rule 26(f) conference, for the court to enter a scheduling order, and for discovery to begin. The factual issues in this case are limited, and discovery also will be limited, most likely to document requests and a limited number of depositions. For these reasons, we expect the case will be decided—at least partially, if not wholly—on summary judgment motions.

Should you have any questions or wish to discuss this case further, please feel free to contact us.

Sincerely yours,



Melissa Crow