Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Concely del Carmen MENDEZ ROJAS, et al.,

Plaintiffs,

v.

Elaine C. DUKE, Acting Secretary of the Department of Homeland Security, in her official capacity; et al.,

Defendants.

Case No. 2:16-cv-01024-RSM

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:
December 1, 2017

ORAL ARGUMENTS REQUESTED

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I. INTRODUCTION

Defendants do not claim to provide notice of the one-year deadline to all class members, but rather, only to "many" class members. Further, they acknowledge that they do not believe such notice is required. Moreover, Defendants admit that lack of notice regarding the one-year deadline does not provide class members an exception to overcome the one-year bar. In addition, Defendants admit that their policies regarding which agency has jurisdiction over asylum applications prevent the vast majority of class members from filing an asylum application until their cases are scheduled with an immigration court. Defendants further admit that some class members' cases are not even scheduled until *after* the one-year deadline has elapsed. Defendants' policies and practices obstruct class members' ability to secure their right to seek asylum. Defendants presented no evidence and failed to demonstrate any material factual dispute that would impede this Court from ruling on the questions of law presented. Accordingly, the Court should grant class members' motion for summary judgment.

II. ARGUMENT

A. NO GENUINE ISSUE OF MATERIAL FACT EXISTS AS TO DHS DEFENDANTS' FAILURE TO PROVIDE NOTICE TO CLASS MEMBERS OF THE ONE-YEAR DEADLINE.

Underlying class members' notice claims are two undisputed material facts. First, DHS does not *require* officials to affirmatively provide notice of the one-year deadline to class members. Second, Defendants do not *provide all* class members with notice of the deadline. Though Defendants dispute the percentage of class members who may receive notice by various means, these distinctions ultimately are not salient. The undisputed facts establish that Defendants do not provide notice to all class members at the time of or prior to their release from detention and that their policies do not require them to do so.

Defendants provide no independent evidence to demonstrate a factual dispute or undermine Plaintiffs' claims. They also generally do not challenge the evidence class members offered, other than quibbling with the conclusions that can be drawn from that evidence, including

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Defendants' Answer, discovery responses and testimony of Defendants' Rule 30(b)(6) witness. *See* Dkt. 57 at 4; *see also* Dkt. 61 at 6 n.2 (citing but not refuting class members' evidence). No genuine issue of material fact exists that inhibits this Court from granting summary judgment.

Given that there is no dispute that notice is not provided to *all* class members, any factual dispute as to the exact extent of notice that Defendants do affirmatively provide or make available, regardless of the absence of a policy requirement to do so, is not legally relevant.[1] Defendants assert immigration judges may affirmatively provide notice to some class members at subsequent court hearings. *See* Dkt. 57 at 10; Dkt. 61 at 8. Defendants also allege that DHS and other entities at times affirmatively provide materials containing notice of the deadline to many detained class members, *see* Dkt. 61 at 7-10, and that "the undisputed facts further show that Defendant EOIR also provides notice to many class members," *id.* at 8. But this falls far short of showing that they provide notice to all, or even the majority of class members. *See also* Dkt. 57 at 6-7 (describing materials provided at only "over-72 hour detention facilities" and EOIR programs provided only at 36 out of 203 detention centers and a minority of the 58 immigration courts); Dkt. 61 at 7 (describing a video played at "many" but not all ICE detention facilities); *id.* at 10 (estimating that between 50 to 70 percent of individuals detained in over-72 hour facilities "had access to" presentations that *may* include information on the one-year-filing-deadline).

Defendants attempt to manufacture a factual dispute by focusing on the particular number of class members with access to certain forms of notice that Defendants "elect[] . . . to provide," *id*. at 3, but this merely distracts from the relevant legal question: the significance of Defendants' failure to affirmatively and timely provide notice to *all* class members and to

[1] SignDefendants do not acknowledge their obligation under 8 C.F.R. § 208.5(a) to provide asylum applications, along with the relevant instructions, to class members–which would be one manner to provide written notice of the one-year deadline. Instead, Defendants claim that "making forms available" is distinct from "providing . . . forms" in describing their interpretation of § 208.5. Dkt. 61 at 10-11 (describing making forms referencing the one-year deadline available, inter alia, online and in law libraries). However, Defendants elsewhere conflate "providing" and "making available" information about the one-year deadline. *See, e.g.*, *id*. at 6 (citing documents available online as evidence that "DHS Defendants *do* provide" notice) (emphasis in original).

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establish a policy which would require such notice.

B. DHS DEFENDANTS' FAILURE TO PROVIDE ADEQUATE NOTICE OF THE ONE-YEAR FILING DEADLINE VIOLATES THE APA AND CLASS MEMBERS' RIGHT TO APPLY FOR ASYLUM.

Plaintiffs assert that Defendants violate class members' statutory right to apply for asylum by failing to notify them of the one-year deadline for filing asylum applications. Dkt. 1 ¶¶132-34; Dkt. 57 at 4 ("Notice of this one-year deadline is critical, and DHS's failure to provide such notice amounts to a denial of class members' statutory and regulatory right to seek asylum."). Defendants do not dispute that the INA and its implementing regulations provide a right to apply for asylum. Dkt. 61 at 5. Nor do they deny that failure to file an asylum application within one year of arrival to the United States is a basis to deny an individual's asylum application. Dkt. 61 at 4.

Instead, Defendants argue that there is no statutory provision explicitly requiring notice. Dkt. 61 at 4. However, they do not deny that *all* class members have a statutory right to a meaningful opportunity to apply for asylum. *See* Dkt. 61 at 5. As Plaintiffs demonstrated, adequate notice of the one-year deadline is necessary to ensure that class members are not deprived of their statutory right to seek asylum. *See also* § I.C.1 *infra*. Indeed, Defendants assert that that "lack of notice of the statutory requirements to apply for asylum was never one of [the] exceptions" that Congress created for those who were unable to comply with the one-year filing deadline. Dkt. 61 at 4. This only reinforces how crucial it is that class members receive notice of the filing deadline so they do not unwittingly forfeit this statutory right. [2]

Congress made clear that asylum seekers should have a fair opportunity to file their applications. Yet by failing to provide adequate notice of the filing, Defendants limit asylum

[2] Defendants' argument that Congress did not create a separate statutory exception to the one-year deadline for lack of notice like it did for changed or extraordinary circumstances, *see* Dkt. 61 at 4, ignores that a separate statutory exception for lack of notice is unnecessary where notice is a fundamental component of the asylum process, *see*, *e.g.*, 8 C.F.R. § 208.5(a), and further, is required to provide due process. *See* § I.C.1 infra. Moreover, Defendants' argument ignores Congress' expressed intent of ensuring that legitimate asylum seekers not be returned to persecution due to mere "technical deficiencies" in their applications. *See* 142 CONG. REC. S11,840 (daily ed. Sept. 30, 1996) (statement of Sen. Hatch).

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seekers' opportunity to timely pursue their claims and thus violate their statutory right to apply for asylum. *See Almero v. INS*, 18 F.3d 757, 763 (9th Cir. 1994) ("[T]he INS may not *restrict* eligibility to a smaller group of beneficiaries than provided for by Congress").

C. PLAINTIFFS ESTABLISHED THAT DHS DEFENDANTS' FAILURE TO PROVIDE ADEQUATE NOTICE VIOLATES THE DUE PROCESS CLAUSE.

1. Timely, Affirmative Notice Is Required By *Mullane v. Central Hanover Bank & Trust Co.*

Class members are entitled to notice that is "reasonably calculated, under all the circumstances, to apprise" them of the relevant action at a reasonable time. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Defendants argue that they are not required to affirmatively provide the notice class members seek and that sufficient notice is available through public documents. Dkt. 61 at 4, 12. However, this is insufficient.

Plaintiffs agree that courts recognize that publicly available information, including information in statutes and federal regulations, often constitutes legal notice. But Defendants entirely fail to engage with Plaintiffs' argument that such notice is not *always* sufficient. *See* Dkt. 57 at 10-12; *see also Martinez-De Bojorquez v. Ashcroft*, 365 F.3d 800, 805 n.8 (9th Cir. 2004) ("While the existence of regulations may provide sufficient notice for due process purposes in some contexts, we find that it does not do so here."). Even publicly available notice must be "reasonably calculated, under all the circumstances" to provide notice at "a reasonable time." *Mullane*, 393 U.S. at 314; *see, e.g.*, *Martinez-De Bojorquez*, 365 F.3d at 804 (requiring affirmative notice beyond regulations due to a "'concatenation' of circumstances" in the case, including lack of actual notice and serious consequences in immigration proceedings); *Grayden v. Rhodes*, 345 F.3d 1225, 1242-43 (11th Cir. 2003) (applying *Mullane* test to statutory notice). This is especially important where an individual has not been placed on notice that he or she should seek out publicly available information. *Cf. City of W. Covina v. Perkins*, 525 U.S. 234, 240-41 (1999) (not requiring personal notice of post-deprivation remedy for return of property where individual already received personalized notice of property seizure).

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Moreover, as the Ninth Circuit recognizes, notice which is "confusing" and "affirmatively misleading" is not sufficient to satisfy due process. *Walters v. Reno*, 145 F.3d 1032, 1043 (9th Cir. 1998) (holding that a form lacking relevant information "lulls the [noncitizen] into a false sense of procedural security"); *see also United States v. Charleswell*, 456 F.3d 347, 356-57 (3d Cir. 2006) (in a situation involving a misleading form, finding that "it is simply unrealistic to expect [a noncitizen] to recognize, understand and pursue his statutory right" to judicial review absent additional notice); *United States v. Montero*, No. CR-12-0095 EMC, 2012 U.S. Dist. LEXIS 134941 (N.D. Cal. Sep. 20, 2012) ("When 'the combined effect of all the forms together is confusion,' notice to the immigrant is constitutionally deficient.") (quoting *Walters*).

Class members face just such a situation. By definition, they have all asserted the desire to apply for asylum, and indeed, all Class A members were interviewed by asylum officers. However, they were not provided asylum applications or notice of the one-year deadline. Instead, DHS provided affirmatively misleading documents which state that once class members appear in court they will be provided with any necessary information about and/or the opportunity to seek relief from removal. *See, e.g.*, Dkt. 57 at 11 (discussing, inter alia, Form I-862, which states: "You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible . . . . You will be given a reasonable opportunity to make any such application to the immigration judge."). Class members are thus reasonably unaware that they should seek out information about any possible deadline. Indeed, Class A members may reasonably believe they have *already* applied for asylum in their credible fear interviews. *See* Dkt. 57 at 6; 8 U.S.C. § 1225(b)(1)(B)(ii) (describing "further consideration of the application for asylum" after a credible fear interview). This confusion is further compounded because class members are especially vulnerable: asylum seekers facing a complex legal process, often without counsel, after suffering severe trauma, and without familiarity with the English language. *See* Dkt. 57 at 10.

Plaintiffs have submitted uncontested evidence that the current process leads many class

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members to assume that they have already applied for asylum or while others believe they will be instructed how to move forward with such asylum applications when they late appear in court. *See* Dkt. 57 at 10-12. They have thus demonstrated the current process fails to provide class members the notice necessary to exercise their statutory right to apply for asylum. The confluence of factors in this case, including the confusing information that Defendants do provide, the complexity of the asylum process and class members' particular vulnerability, demonstrate that affirmative notice is required to comply with due process.[3]

Nor can other types of notice which Defendants allege they provide to class members meet their obligations under the due process clause. Defendants must provide notice that "afford[s] a reasonable time for those interested to make their appearance." *Mullane*, 339 U.S. at 314 (citations omitted). Notice provided through immigration court hearings, which may be scheduled only after the one-year deadline has already elapsed, are not provided at a reasonable time. *See* Dkt. 57 at 19 (discussing cases in which a Notice to Appear (NTA) is not filed with an immigration court until more than a year after entry). Other forms of notice that Defendants may provide earlier in the process are insufficient and are not provided to all class members. As noted, Defendants have no policy requiring uniform provision of such notice. *See Walters*, 145 F.3d at 1045 (requiring provision of additional notice even though some individuals "may have received adequate notice in spite of the constitutionally deficient official procedures").

2. Timely, Affirmative Notice Is Also Required Under *Mathews v. Eldridge*.

Defendants also argue that notice is not required under the balancing test in *Mathews v. Eldridge*, 424 U.S. 319 (1976), but the argument misstates Plaintiffs' claims, ignores relevant precedent, and fails to point to any evidence that would establish a material factual dispute.[4]

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[3] Defendants' citation to *Cheema v. Holder*, 693 F.3d 1045 (9th Cir. 2012), *see* Dkt. 61 at 7, is not relevant. That an individual who has personally signed an asylum application was found to have received notice of information contained in the application does not establish that class members have notice of the contents of the form simply because it is available online.

[4] Defendants claim that *Mathews* is irrelevant, but the Ninth Circuit applies the *Mathews* balancing test to certain due process notice claims. *See, e.g.*, *Martinez-De Bojorquez*, 365 F.3d at 805. Regardless, Plaintiffs have established that the relief they seek is required under the *Mullane* framework. *See supra* § I.C.1; Dkt. 57 at 9-12.

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Plaintiffs have an interest in pursuing their statutory right to apply for asylum, to seek relief from being forcibly returned to the possibility of persecution or torture. Dkt. 57 at 12-13. "[E]very individual in removal proceedings" is entitled to Fifth Amendment's procedural due process protections for such interests. *Oshodi v. Holder*, 729 F.3d 883, 889 (9th Cir. 2013) (en banc) (citation omitted); *see also Augustin v. Sava*, 735 F.2d 32, 37 (2d Cir. 1984) (recognizing a Congressionally created "substantive entitlement to relief from deportation" to a country where a noncitizen would face persecution); *Marincas v Lewis*, 92 F.3d 195, 203 (3d Cir. 1996) ("Congress instructed the Attorney General to establish an asylum procedure, and United States' treaty obligations and fairness mandate that the asylum procedure . . . provide the most basic of due process."). *Valencia v. Mukasey*, 548 F3d 1261 (9th Cir. 2008), cited by Defendants, Dkt. 61 at 13, is inapposite as it addressed the question of whether IJs must inform an individual of the possibility of applying for asylum where the petitioner had not expressed a fear of return, or otherwise demonstrated that such relief is even relevant to the case.

Defendants further claim that the steps they already take to provide notice are sufficient to overcome the risk of erroneous deprivation of class members' right to timely seek asylum, Dkt. 61 at 14, but the uncontested evidence submitted by Plaintiffs demonstrates the opposite. Defendants' efforts to provide notice are insufficient, and do not require uniform provision of timely, written notice. Moreover, the documents that DHS does provide to class members provide misleading information that discourages them from pursuing an asylum application prior to their first immigration court hearing.

Nor have Defendants established a material dispute as to any countervailing government interest. Defendants claim that creating and implementing the requested notice would produce unspecified monetary and employee work hour "costs" that could prevent Defendants from engaging in other work, but cite to no record evidence that would support their claim. Dkt. 61 at 14-15, 23. In so doing, they wholly fail to address their own Rule 30(b)(6) witness's testimony regarding the minimal time required to provide other forms of written notice, *see*

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Dkt. 57 at 14, and relevant precedent. *See, e.g.*, *id.* at 15; *Martinez-De Bojorquez*, 365 F.3d at 805 ("[W]e are confident that providing notice . . . would result in minimal cost to the government."); *Walters*, 145 F.3d at 1044 ("Requiring the INS to ensure that there are no significant inconsistencies in the written language of forms . . . and requiring minor modifications to the written content of the forms will not be unduly burdensome . . . .").[5]

D. DEFENDANTS FAIL TO PROVIDE A MECHANISM TO ENSURE CLASS MEMBERS MAY TIMELY FILE ASYLUM APPLICATIONS.

1. Defendants' Procedures Violate the INA and the APA.

In their motion for summary judgment, Plaintiffs argued that Defendants fail to provide a mechanism that permits class members to file their asylum applications in a timely manner. In response, Defendants do not address class members' arguments. Instead, they attempt to justify the lack of a uniform mechanism by essentially arguing that the agency's procedural scheme is entitled to deference. However, these arguments only serve to prove class members' point: even where class members become aware of the one-year deadline, Defendants' policies and procedures deny them a guaranteed mechanism to timely file their applications.[6]

Delayed NTAs: Class members claim that, in some cases, they are prevented from timely filing their asylum applications because their NTAs are not filed with and processed by an immigration court until the one-year deadline has passed, and that prior to that processing, neither agency will accept their applications. Dkt. 57 at 19-22. Defendants do not refute this but instead accuse class members of exaggeration and of citing "isolated instances of delay." Dkt. 61 at 16-17. In fact, the undisputed facts demonstrate delays of more than a year, and Defendants admit that they have no statutory or regulatory obligation to file NTAs within a

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[5] Defendants cite only a case which does not include a due process claim, *see Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094 (D.C. Cir. 2003), and one which does not apply the *Mathews* balancing test, *see Valencia v. Mukasey*, 548 F.3d 1261 (9th Cir. 2008). Dkt. 61 at 15. Both are wholly inapposite.

[6] Defendants again assert that 8 U.S.C. §§ 1252(a)(5) and (b)(9) preclude review of class members' claims in this Court. Dkt. 61 at 16 n.17. Defendants have already made this argument twice, and the Court has rejected it twice. Dkt. 37 at 9; Dkt. 41 at 4. These statutory jurisdictional bars do not apply.

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year.

Defendants suggest that the only delay in processing an NTA is within the immigration court. *See id*. 61 at 7. However, in a significant number of cases, DHS does not file the NTA with an immigration court before the one-year deadline has run. Dkt. 57 at 19. This is corroborated by the experiences of the named Plaintiffs and of attorneys who provided declarations, as well as by Defendants' admissions. *Id*. Defendants cite no evidence to the contrary. Moreover, Defendants' argument that class members have only cited to "isolated instances of delay" omits much of the evidence to which class members cited—evidence that demonstrates delays in immigration courts as diverse as Los Angeles, Boston, San Francisco, and Cleveland. *Id*. at 20.[7] In addition, class members have submitted attorneys' declarations corroborating this delay. *Id*. at 21 n.11. Defendants offer no evidence to contradict these claims.

Furthermore, Defendants themselves admit that there is no "temporal deadline on ICE's filing of an NTA with the immigration court or EOIR's entry of a filed NTA into its systems." Dkt. 61 at 20. This further illustrates the procedural problem; because neither agency is required to process an NTA within a year, it is unsurprising that these delays occur. Unless and until one of the Defendant agencies is required to accept an asylum application during the period in which an NTA remains unfiled, class members will continue to be unable to timely file their applications.

Moreover, nothing suggests that these delays are outside the norm. And class members need demonstrate only that Defendants' procedures preclude some of them from timely filing their applications. *See* Dkt. 37 at 10 (rejecting Defendants' argument that class members lack commonality because "*some* asylum seekers are provided with . . . notice and filing opportunities") (emphasis in original); *see also Almero* at 763 ("[Immigration officials] may

[7] Defendants suggest, without merit, that evidence of delays in the Los Angeles Immigration Court in 2015 and 2016 is "dated." Dkt. 61 at 17. These delays occurred only a few months before this lawsuit was filed. Moreover, other evidence demonstrates that similar delays have continued into this year. Dkt. 57 at 20.

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not *restrict* eligibility to a smaller group of beneficiaries than provided for by Congress.") (emphasis in original). The undisputed evidence clearly makes that showing.

Subclass A and USCIS: Defendants attempt to defend USCIS's refusal to accept asylum applications for Class A members by arguing that the Court should "afford deference to that procedure." Dkt. 61 at 17. However, no deference is owed to procedures that violate a statute or the Constitution. *See Schneider v. Chertoff*, 450 F.3d 944, 952 (9th Cir. 2006) ("[W]e must reject those [agency] constructions that are contrary to clear congressional intent or that frustrate the policy that Congress sought to implement.") (citing *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 843 n.9 (1984)) Here, Defendants have created a procedural scheme that obstructs class members' ability to timely file their asylum applications, no matter how diligent they are.

Defendants also erroneously argue that USCIS lacks jurisdiction over Class A members' asylum applications because they are in expedited removal proceedings until their NTAs are filed with an immigration court. Dkt. 61 at 18-19. In fact, expedited removal proceedings terminate once an asylum applicant is found to have a credible fear of persecution and issued an NTA. Dkt. 57 at 17. But even if this were not the case, the result remains that class members are prevented from timely filing their asylum applications because neither agency will accept these applications. Denying class members the opportunity to timely file their asylum application violates their statutory right to apply for asylum under the INA. The APA provides this Court with authority to remedy this violation. 5 U.S.C. §§ 702, 706.

Subclass B and USCIS: Defendants attempt to justify USCIS's refusal to accept asylum applications for Class B members before their NTAs are filed with an immigration court, arguing that USCIS is permitted, but not required, to accept asylum applications where an NTA has been issued but not filed with EOIR. Dkt. 61 at 19. This is inconsistent with the plain language of 8 C.F.R. § 208.2(a), stating that the USCIS "shall have initial jurisdiction"

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over such applications.[8] Again, though, Defendants' argument only highlights their statutory violation. Because neither agency immediately accepts a class members' asylum application when proffered, Class B members are left without a mechanism for timely filing their applications, and thereby without the opportunity to exercise their statutory right to apply for asylum.

2. Defendants' Procedures Violate Procedural Due Process.

Defendants argue their procedures do not violate due process because class members "lack a protected liberty interest in having DHS or DOJ Defendants alter their procedural mechanisms to issue or enter an NTA, respectively, within a strict temporal deadline." Dkt. 61 at 21. This misstates both the right at issue and the remedy class members seek.

First, class members do not argue that Defendants should be required to issue or enter NTAs within any time frame. Rather, they argue that Defendants violate class members' due process right to timely apply for asylum because neither USCIS nor EOIR will accept an asylum application when an NTA has been issued but not yet filed with the immigration court. *See* § II.D.1 *supra* (discussing NTA filing delays in excess of one year). Class members argue only that Defendants must create a procedure under which class members can file their applications before the one-year deadline expires. Plaintiffs suggested remedy imposes no deadline on Defendants with respect to NTAs. *See* Dkt. 57 at 23-24.

Second, Defendants suggest that asylum seekers do not have a protected liberty interest under the first prong of *Mathews* because asylum is a "discretionary form of relief." Dkt. 61 at 21. However, the Ninth Circuit has made clear that even with respect to discretionary relief, persons in removal proceedings are entitled to procedural due process protections: "We have repeatedly held that the Fifth Amendment guarantee of procedural due process . . . extends to individuals seeking discretionary relief from removal." *Hernandez-Mendoza v. Gonzales*, 537

[8] Defendants' efforts to contract their own jurisdiction violates "[t]he general rule" that "administrative agencies directed by Congress to adjudicate particular controversies" "may not decline to exercise" this authority. *See Union Pacific R.R. v. Brotherhood of Locomotive Engineers*, 558 U.S. 67, 71 (2009).

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F.3d 976, 978 (9th Cir. 2007). Defendants cite inapposite cases in which the Ninth Circuit held that non-citizens do not have a "substantive" due process interest in certain other forms of discretionary relief from removal. *Id*. at 21-22. These cases involve challenges to the terms of eligibility established by Congress with respect to the adjudication of applications for cancellation of removal; in contrast, class members have a constitutionally protected right to *apply* for asylum, rooted in the United States' treaty obligations. *See Haitian Refugee Center v. Smith*, 676 F.2d 1023 (5th Cir. 1982). "If this commitment by the United States is to have substance at all, it must mean that . . . [class members] be allowed the opportunity to seek political asylum, even if the grant of that benefit is discretionary." *Id*. at 1038. The entitlement to apply for asylum, whether it "be called a liberty or property interest . . . is sufficient to invoke the guarantee of due process." *Id*. at 1039.

Defendants also argue that the risk of erroneous deprivation is "lessened" because class members can try to persuade an immigration judge, in his or her discretion, that there were "extraordinary circumstances" for any late filing. Dkt. 61 at 22. This Court has rejected this argument twice already. Dkt. 37 at 8-9; Dkt. 41 at 3. As the Court correctly found, the injury to class members is the loss of their statutory right to timely apply for asylum. *Id*.

Finally, Defendants argue class members have not considered the costs to the government should the Court impose the remedies they have suggested. Dkt. 61 at 23. Defendants fail to explain this, other than to assert that their current procedures are "reasonable[]." However, Plaintiffs' proposed lockbox remedy, for example, would be similar to a system Defendants already utilize for individuals applying for relief in removal proceedings. Extending this same procedure to asylum applicants would impose a minimal burden.

III. CONCLUSION

For these reasons and those provided in the motion for summary for judgment, the Court should grant class members' motion.

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Dated this 1st day of December, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matt Adams, hereby certify that on December 1st, 2017, I electronically filed the foregoing reply in support of Plaintiffs' motion for summary judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties of record:

Executed in Seattle, Washington, on December 1, 2017.

s/ Matt Adams

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