



Fact Sheet

Garcia Perez Settlement – Asylum EAD Clock

Overview and Purpose

On September 26, 2024, the U.S. district court for the Western District of Washington approved the settlement agreement in *Garcia Perez, et al. v. USCIS, et al., No. 2:22-cv-00806-JHC*, which addresses policies and practices that the Executive Office for Immigration Review (EOIR) and U.S. Citizenship and Immigration Services (USCIS) use for administering the Asylum Employment Authorization Document (EAD) Clock. This factsheet describes the settlement agreement and EOIR's implementation of it.¹

What is the Asylum EAD Clock?

The Asylum EAD Clock is the 180-day waiting period before an asylum applicant becomes eligible to receive employment authorization based on a pending Form I-589, *Application for Asylum and for Withholding of Removal*, before EOIR or USCIS.

Who Challenged the Asylum EAD Clock and Why?

The *Garcia Perez* plaintiffs are four aliens who each applied for asylum or withholding of removal and had their asylum applications pending for more than 180 days. The plaintiffs had not obtained EADs upon reaching the 180-day eligibility period. The plaintiffs challenged EOIR and USCIS policies and practices for administering the Asylum EAD Clock.

What Was Agreed Upon in the Settlement?

For settlement purposes, the parties agreed to the certification of a nationwide class and three subclasses.

The nationwide class is defined as:

All [aliens] in the United States who have filed or will file with USCIS or EOIR a complete [Form I-589, *Application for Asylum and for Withholding of Removal* ("Asylum Application")] and who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that their Asylum EAD Clock was stopped or not started prior to 180 days after the date the [alien] filed a complete Asylum Application.

The subclasses are listed as follows:

- (1) Remand;
- (2) Unaccompanied [Alien] Children; and
- (3) Change of Venue.

You may wish to note the following regarding the settlement's provisions and EOIR's implementation:

- I. Immigration Judges: (1) must clearly articulate the reason for the case adjournment on the record at the end of each hearing; and (2) may inform the parties of whether the Asylum EAD Clock is running or stopped.²
- II. Applicants appearing in immigration court *pro se* (unrepresented) may request printouts of their case-specific Adjournment Code history relating to the 180-day Asylum EAD Clock orally or in writing. Absent

¹ The settlement agreement is available on EOIR's website: <https://www.justice.gov/eoir/media/1362801/dl?inline>.

² For a list of Adjournment Codes, you may refer to <https://www.justice.gov/eoir/eoir-policy-manual/appendices-o>.

exceptional circumstances, EOIR court personnel will provide the requested printout to the *pro se* applicant at the time the in-person oral request was made. EOIR personnel will respond within 25 business days of receipt of an oral telephonic or written request.³

- III. An applicant may raise an Asylum EAD Clock Correction Request in writing or orally at an Immigration Court proceeding. If an applicant makes an oral Asylum EAD Clock Correction Request at a proceeding, the Immigration Judge should address the request on the record. Written Asylum EAD Clock Correction Requests must be addressed to the Court Administrator of the relevant Immigration Court and must be submitted via email to the designated Asylum EAD Clock email box for the Court, or mailed directly to the Immigration Court.⁴
- IV. For cases on appeal, applicants must submit a written Asylum EAD Clock Correction Request by email or in writing to EOIR's Office of the General Counsel (OGC).⁵
- V. For written Asylum EAD Clock Correction Requests, Immigration Courts and OGC (for cases on appeal) must respond in writing within 25 business days of receipt of the request, absent exceptional circumstances. In response to a written Asylum EAD Clock Correction Request, Immigration Courts and OGC will provide the reasoning for written Asylum EAD Clock Correction Requests that are rejected or denied.
- VI. USCIS guidelines and policies control the Asylum EAD Clock for unaccompanied alien children. Pursuant to USCIS policy, EOIR adjournment codes associated with the transfer of jurisdiction from EOIR to USCIS do not stop the Asylum EAD Clock in these cases.
- VII. A granted change of venue no longer stops the Asylum EAD Clock in cases pending before EOIR. EOIR updated the relevant Decision Codes to reflect this requirement.
- VIII. If you are part of the remand subclass, you may contact USCIS for more information.⁶

Additional Questions?

You may visit EOIR's Frequently Asked Questions for the *Garcia Perez* settlement or review Policy Memorandum 25-01, *Asylum EAD Clock in Immigration Court Proceedings*, available at <https://www.justice.gov/eoir/media/1381801/dl?inline>.



³ EOIR will provide a digital copy of the printout unless specifically requested to provide a physical copy. In the case of oral requests from *pro se* applicants that are not made in-person, EOIR personnel will email a digital copy of the printout to the applicant's email address of record on file with EOIR within 25 business days of receipt of the request, absent exceptional circumstances. If an applicant does not have an email of record on file, EOIR personnel will mail a printed copy of the printout to the applicant's address of record on file.

⁴ The relevant Asylum EAD Clock Correction Request email box can be located by visiting the following website, selecting the relevant Immigration Court, and finding the "Contact the Court" section: <https://www.justice.gov/eoir/find-immigration-court-and-access-internet-based-hearings>. The Asylum EAD Clock Correction Request email box is ONLY for Asylum EAD Clock requests. The Immigration Courts will not respond to any other communications sent to these email boxes.

⁵ Contact information for OGC is available at <https://www.justice.gov/eoir/asylum-ead-clock-requests>. The Asylum EAD Clock Correction Request email box is ONLY for Asylum EAD Clock requests. OGC will not respond to any other communications sent to these email boxes.

⁶ You may refer to USCIS' guidance, entitled "The 180-Day Asylum EAD Clock Notice," here: <https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf>.