

INSTRUCTIONS ON HOW TO FILE A MOTION TO REOPEN YOUR IMMIGRATION CASE UNDER THE PRELIMINARY INJUNCTION IN *AL OTRO LADO V. MAYORKAS*

Here are instructions on how to file a motion to reopen your immigration case under the preliminary injunction orders in *Al Otro Lado v. Mayorkas*, Case No. 17-02366 (S.D. Cal.) If you were in immigration proceedings before the immigration court or the Board of Immigration Appeals (“BIA”), including if your case is currently pending appeal before a federal circuit court, and you meet the criteria below, you may be eligible to have your case reopened under a court order issued by the District Court in the lawsuit called *Al Otro Lado v. Mayorkas*, Case No. 17-02366 (S.D. Cal.). If you are interested in reopening your case, please follow the instructions below.

How Can I Reopen My Immigration Case Under the Preliminary Injunction in Al Otro Lado v. Mayorkas?

STEP ONE: Determine if you qualify to have your case reopened under the preliminary injunction orders in *Al Otro Lado v. Mayorkas*. Only members of a group known as the *Al Otro Lado* preliminary-injunction class may have their cases reopened under the court orders in *Al Otro Lado v. Mayorkas*. This is separate from other reasons people can reopen their cases, not covered here. Please review the criteria below. If you meet all of these requirements, you might be able to reopen your case as an *Al Otro Lado* preliminary-injunction class member:

- You are not a Mexican citizen or national;
- You were subject to metering¹ before July 16, 2019;
- You entered the United States across the U.S.-Mexico land border² on or after July 16, 2019;
- You had the Third-Country Transit Rule³ applied during the adjudication of your asylum claim;

¹ A noncitizen may have been subject to metering if the noncitizen approached a land port of entry on the U.S.-Mexico border and was told to wait to enter the U.S. or that the port did not have capacity to process individuals, and thus the individual could not enter the port of entry at that time. A noncitizen may also have been subject to metering if the noncitizen registered, placed, or tried to place their name on a waitlist in Mexico in order to enter the U.S. at a land port of entry after arriving at a border town near the U.S.-Mexico border.

² Entered either through a land port of entry or between ports of entry without inspection.

³ The Third-Country Transit Rule was a rule implemented by the U.S. government on July 16, 2019, to limit who could seek asylum in the United States. The rule stated that if you are from a country other than Mexico and you did not seek and receive a final denial of asylum or other legal protection in Mexico or another country through which you traveled on your way to the U.S.-Mexico border, you cannot seek asylum in the United States, subject to limited exceptions.

The Third-Country Transit Rule could have been applied to your case during:

1. your initial screening with an asylum officer to determine if you had a fear of persecution;

[cont]

- You received a final order denying you asylum from the Immigration Court or the Board of Immigration Appeals (BIA);
- You continue to seek access to the U.S. asylum process (that is, you would still like to pursue asylum in the United States); and
- You have not previously had your case reopened based on the preliminary-injunction orders in *Al Otro Lado*.
 - If your case was previously reopened based on the order in *Al Otro Lado* or you previously filed a motion to reopen under *Al Otro Lado*, and that motion was denied, any subsequent motion to reopen or reconsider may be time or numerically barred, and may require a filing fee.

STEP TWO: If you qualify, prepare a motion to reopen. If you think you qualify to have your case reopened as an *Al Otro Lado* class member, then you should prepare a motion to reopen.

Select the proper template. Attached to these instructions are two template motions: one for filing in immigration court and one for filing at the BIA. You should file your motion with the last tribunal that issued a decision in your case:

- Select the immigration court template if the Immigration Judge issued the last decision in your case.
- Select the BIA template if you appealed your case to the BIA and the BIA issued the last decision in your case.⁴

Fill out all the required information in the template motion and attach additional information or documentation to the motion to show you meet the criteria above to qualify as an *Al Otro Lado* preliminary-injunction class member. You should attach a signed and dated statement in your own words describing in detail how and when you were subject to metering. You should also attach, if available to you, any evidence or documentation that shows that you were subject to metering before July 16, 2019, including any evidence or documentation showing that you had your name added to a waitlist or requested to add your name to waitlist upon your arrival in a Mexican border town.⁵ This evidence or documentation is not required, but it may be helpful to show that your case should be reopened.

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2. an immigration judge's review of a negative determination made during your initial screening by an asylum officer;
 3. a hearing before an immigration judge related to your asylum claim; or
 4. the BIA's review of an immigration judge's decision on your asylum claim.

⁴ If your appeal was dismissed because the BIA found it did not have jurisdiction to review the Immigration Judge's decision in your case, then your motion should be filed with the Immigration Judge.

⁵ Examples of possible evidence include: a declaration from a border organization that has access to copies of the waitlists at certain border towns and can attest that your name is on a waitlist, letters from shelters in Mexico with dates of arrival, ticket stubs from buses to the border, hotel receipts, affidavits or

If you have information related to your eligibility for asylum that you did not already submit to the Immigration Judge or BIA, you should also provide that information with your motion. You should try to submit as much information as possible to show you are eligible for asylum.

For additional information about preparing a motion to reopen, please visit the website for the attorneys representing the PI Class (“Class Counsel”), at:

STEP THREE: File your motion with either the immigration court or the BIA, depending on which tribunal issued the last decision in your case and which template motion you are using.

Please remember to attach any additional information and documentation in support of your motion. You must also send a complete copy of the motion and the attachments to the ICE Office of the Chief Counsel where proceedings were completed and submit proof of having done so (“proof of service”) to the immigration court or the BIA with your motion. There is a sample proof of service attached to the template motions attached to these instructions.

Because your motion is being filed pursuant to the District Court’s Order in *Al Otro Lado*, **your motion does not have to meet the timing requirements for regular motions to reopen.** You can also file this motion even if you previously filed one or more motions to reopen your case. You may not be able to file more than one motion based on these instructions, that is, motions based on the preliminary-injunction orders in *Al Otro Lado*. **There is no filing fee required for persons filing a motion to reopen based on these instructions, that is, based on the order in *Al Otro Lado*.**

You can find the addresses for the immigration courts and the BIA on EOIR’s website at www.justice.gov/eoir. You can find the addresses for the ICE Office of the Chief Counsel at www.ice.gov/contact/field-offices or you may send a copy of your motion electronically through the DHS ICE eService Portal, located at <https://eserviceregistration.ice.gov>.

If your address has changed since you were last in immigration proceedings, you must complete a change of address form, EOIR-33. You can complete this form electronically online at <https://respondentaccess.eoir.justice.gov>.

STEP FOUR: Wait for a response from the immigration court or the BIA. After the immigration court or the BIA receives your motion, it will decide whether or not to grant it. This may take some time, so please be patient. If you move or your address changes, be sure to complete a new change of address form, EOIR-33 and send it to the BIA or the immigration court where you filed your motion. You can complete this form electronically online at <https://respondentaccess.eoir.justice.gov>. Whether you send your form EOIR-33 by mail or

letters from friends, a photo of your name on the waitlist, or other similar evidence.

electronically online, you still need to send a copy to ICE at the same address you used to send a copy of your motion to ICE.

You should know that ICE has the right to oppose your motion if it has evidence that your case does not qualify for reopening. If ICE files an opposition to your motion, you should receive a copy of the filing in the mail. Because you may get important documents in your case by mail, please ensure your mailing address reliably gets mail and please check your mail carefully every day.

If the immigration court or the BIA denies your motion, you have the right to appeal this decision to either the BIA (if the decision is issued by the immigration court) and/or the relevant Court of Appeals (if the decision was issued by the BIA). This would have to be within 30 days from the day the immigration court or the BIA reached a decision, even if the decision takes days or weeks to get to you.

What Will Happen if My Immigration Case is Reopened?

If the immigration court or the BIA decides to reopen your immigration case, you will receive a notice that your case is reopened. You may also receive a decision on your case when your motion is decided. The decision may grant your request for asylum, or it may deny your request for asylum. If a decision is issued denying your request for asylum, you have the right to appeal this decision to either the BIA (if the decision is issued by the immigration court) and/or the relevant Court of Appeals (if the decision was issued by the BIA).

If your case is reopened and re-calendared before the immigration court or sent back to the immigration court by the BIA ('remanded to the immigration court'), you may have to appear in immigration court at a future hearing and ICE may again oppose your asylum application and argue for your removal from the United States.

What Should I Do If I Have Questions About How to Reopen My Case?

Although Class Counsel does not represent you in your immigration case, you may wish to contact them for additional information concerning the *Al Otro Lado* lawsuit. You can reach Class Counsel at: meteringclass@splcenter.org. You also have the right to retain your own legal representative, at no expense to the government, to represent you in your immigration proceedings.

DETAINED: Yes No

Respondent(s) Name(s): _____

Address: _____

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

In the Matter of: _____)

Respondent(s) Name(s): _____)

Alien Registration Number(s)

_____)

In Removal Proceedings _____)

_____)

RESPONDENT’S MOTION TO REOPEN

**Submitted Pursuant to the Preliminary Injunction Orders in
Al Otro Lado v. Mayorkas, Case No. 17-02366 (S.D. Cal.)**

****No filing fee required – reopening sought to reconsider asylum
eligibility under *Al Otro Lado v. Mayorkas*****

My name is _____, and
my A# is _____.

I am filing this motion to reopen my immigration proceedings, along with any supporting evidence, pursuant to the nationwide preliminary injunction orders in *Al Otro Lado v. Mayorkas*, Case No. 17-02366 (S.D. Cal.). The Court’s order dated October 30, 2020, ECF Dkt. No. 630, requires “EOIR [to] take immediate affirmative steps to reopen or reconsider past determinations that potential class members were ineligible for asylum based on the [third-country transit rule], for all potential class members in expedited or regular removal proceedings,” and thus provides specific authority for me to file and for EOIR to accept and adjudicate this motion to reopen. As this motion is filed pursuant to the District Court’s Order, the time and numerical limitations on filing motions to reopen under the Immigration and Nationality Act do not apply.

The *Al Otro Lado* court’s preliminary injunction orders prevent the U.S. government from applying a rule limiting asylum eligibility known as the “third-country transit rule” (“TCT”) to any *Al Otro Lado* preliminary-injunction class member’s (“class member”) asylum claims and orders the U.S. government to “return to the pre-[TCT] practices for processing the asylum applications of members of the certified class.” ECF Dkt. No. 330 at 36. The TCT stated that, absent some exceptions, a person is not eligible for asylum if he or she (1) is from a country other than Mexico; (2) did not seek asylum or other legal protection in Mexico or another country through which he or she traveled on his or her way to the United States; and (3) entered the United States through the U.S.-Mexico land border on or after July 16, 2019. *See* Asylum Eligibility and Procedural Modifications Interim Final Rule, 84 Fed. Reg. 33829 (July 16, 2019); Asylum Eligibility and Procedural Modifications Final Rule, 85 Fed. Reg. 82260 (Dec. 17, 2020). The TCT is not currently in effect. *See Capital Area Immigrants’ Rights Coalition v. Trump*, 471 F. Supp. 3d 25 (D.D.C. June 30, 2020); Order Entering Preliminary Injunction, *Al Otro Lado v. Pekoske*, Case No. 17-02366 (S.D. Cal. Feb. 1, 2021), at ECF Dkt. No. 676; Order Granting Preliminary Injunction, *East Bay Sanctuary Covenant, et al. v. William Barr, et al.*, Case No. 19-04073 (N.D. Cal. Feb. 16, 2021) at ECF Dkt. No. 138.

A noncitizen is a class member if he or she meets the following criteria: (1) is not a Mexican citizen or national; (2) was subject to metering before July 16, 2019; (3) entered the United States across the U.S.-Mexico land border (either through a land port of entry or between ports of entry without inspection) on or after July 16, 2019; and (4) continues to seek access to the U.S. asylum process. ECF Dkt. No. 330 at 36. If the U.S. government did apply the TCT to deny a class member’s asylum claim, he or she is entitled to have his or her case reopened or reconsidered. *See* ECF Dkt. No. 630.

I meet these criteria for class membership and thus, I am a class member who may properly file this motion to reopen. I have attached additional information showing why I believe I am a class member. Thank you for your time and consideration.

Print Name

Signature

Date

PROOF OF SERVICE
(You must complete this)

I _____ hereby certify that on _____
(Print Name) (Date)

I sent a copy of this motion to the ICE Office of the Chief Counsel at the following address:

(Number and Street, City, State, Zip Code)

Signed: _____