

The Honorable Richard A. Jones  
United States District Judge

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

B.H., M.A., A.S.D., M.F., H.L.,  
L.M.M.M., B.M., G.K., L.K.G., and D.W.,  
Individually and on Behalf of All Others  
Similarly Situated,

No. CV11-2108-RAJ

Plaintiffs,

CORRECTED CLASS NOTICE<sup>1</sup>

v.

U.S. CITIZENSHIP AND  
IMMIGRATION SERVICES;  
EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; Janet  
NAPOLITANO, Secretary, Department of  
Homeland Security; Alejandro  
MAYORKAS, Director, U.S. Citizenship  
and Immigration Services; Eric H.  
HOLDER, Jr., Attorney General of the  
United States; Juan OSUNA, Director,  
Executive Office for Immigration Review,

Defendants.

**IMPORTANT CLASS NOTICE**

This Notice contains important information that may pertain to you. Please read it carefully. Under the Settlement Agreement in *B.H., et al. v. United States Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.) (also referred to as “ABT Settlement Agreement”),<sup>2</sup> certain individuals who seek to file an asylum

<sup>1</sup> The Corrected Class Notice contains an amended date for the Fairness Hearing.  
<sup>2</sup> The original caption for this action listed “A.B.T., K.M.-W., G.K., L.K.G., [and] D.W.” as the individual plaintiffs. This Notice will refer to this action as “ABT,” the Settlement Agreement in this action as “the

1 application or have already filed an asylum application, are entitled to new procedures  
2 relating to the crediting of time toward eligibility for employment authorization.

3  
4 On December 15, 2011, Plaintiffs filed a class action complaint challenging the federal  
5 government's practices with respect to Employment Authorization Documents ("EADs")  
6 of applicants for asylum. Plaintiffs are all noncitizens in the United States who have been  
7 placed in removal proceedings, have filed complete Form I-589, *Application for Asylum*  
8 *and Withholding of Removal* ("asylum application"), and have filed or will file a Form I-  
9 765, *Application for Employment Authorization* ("application for employment  
10 authorization") pursuant to immigration regulations (8 C.F.R. § 274a.12(c)(8)).  
11 Defendants include the U.S. Citizenship and Immigration Services ("USCIS") and the  
12 Executive Office for Immigration Review ("EOIR").

13  
14 After lengthy settlement negotiations, on March 29, 2013, Plaintiffs and Defendants  
15 submitted a stipulated motion for a nationwide class certification and stipulated motion  
16 for Settlement Agreement. The general terms of those stipulated motions are laid out  
17 below.

18  
19 On May 7, 2013, the Court granted the Parties' Joint Motion for Preliminary Approval of  
20 Settlement and ordered a Fairness Hearing on September 20, 2013. Any objections to the  
21 proposed settlement should be submitted to the Court within thirty (30) days of the date  
22 of this notice. The notice to the Clerk of the Court shall be sent to: Clerk, U.S. District  
23 Court for the Western District of Washington, 700 Stewart Street, Seattle, WA 98101,  
24 and both the envelope and letter shall state "Attention: *A.B.T., et al. v. United States*  
25 *Citizenship and Immigration Services, et al.*, No. CV11-2108-RAJ (W.D. Wash.)."  
26 Copies shall also be served on counsel for Plaintiffs and counsel for Defendants as set  
27 forth below:

28  
29 TO PLAINTIFFS:

30  
31 Matt Adams  
32 NORTHWEST IMMIGRANT RIGHTS PROJECT  
33 615 2nd Avenue, Suite 400  
34 Seattle, WA 98104

35  
36 TO DEFENDANTS:

37  
38 J. Max Weintraub  
39 Senior Litigation Counsel  
40 United States Department of Justice, Civil Division  
41 Office of Immigration Litigation – District Court Section  
42 P.O. Box 868, Ben Franklin Station  
43 Washington, D.C. 20044

44  
45 ABT Settlement Agreement," claimants under the Agreement as "ABT claimants," and the claim review  
46 process under the Agreement as the "Individual ABT Claim Review process."

1 The complete Settlement Agreement, including definitions of Class Members, exact  
2 terms of the relief, and the exact terms of any process available to seek review of an  
3 alleged violation of the Settlement Agreement, may be found at [www.nwirp.org](http://www.nwirp.org),  
4 [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org), [www.mlri.org](http://www.mlri.org), and [www.ghp-law.net](http://www.ghp-law.net). In  
5 addition, this information is available on the USCIS website, [www.uscis.gov](http://www.uscis.gov), and the  
6 EOIR website, [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).

## 7 8 9 **WHO IS AN ABT CLASS MEMBER?**

10  
11 This summary of the Class and Subclasses is meant to provide the general guidelines of  
12 who qualifies as Class members. The ABT Class is a nationwide class comprised of a  
13 general class and four subclasses. **There is no requirement and no process for**  
14 **applying for class membership.** A person who falls within the categories enumerated  
15 below need not take any other action to be recognized as a class member.

### 16 17 **Notice and Review Class:**

18 The general class, called the Notice and Review Class, includes noncitizens in the United  
19 States who have filed or will file (or as explained below, who will “lodge” at an  
20 immigration court window) a complete asylum application with Defendants, whose  
21 asylum applications have not been either approved or denied with all rights of review or  
22 appeal exhausted, and whose applications for employment authorization based on their  
23 status as asylum applicants have been or will be denied because of alleged insufficient  
24 notice and/or opportunity for review. In addition, a general class member must fall  
25 within one or more of the following subclasses:

#### 26 27 **Hearing Subclass:**

28 The Hearing Subclass includes noncitizens who have been placed in  
29 proceedings before an immigration judge; and who have filed or lodged (as  
30 explained below), or sought to lodge, or who will lodge or seek to lodge, a  
31 complete defensive asylum application with the immigration court prior to a  
32 hearing before an immigration judge; and whose eligibility for employment  
33 authorization has been or will be calculated from the date the asylum  
34 application was or will be filed at a hearing before an immigration judge.

#### 35 36 **Prolonged Tolling Subclass:**

37 The Prolonged Tolling Subclass includes noncitizens, who are not detained in  
38 immigration custody, who have filed an application for asylum and whose  
39 time creditable toward employment authorization is stopped or will be stopped  
40 due to delay attributed to them by Defendants, including for failure to accept  
41 the next expedited hearing date offered by the Immigration Court, and who  
42 have, or will have, allegedly resolved the issue causing the delay prior to the  
43 next scheduled hearing.

1                   **Missed Asylum Interview Subclass:**

2                   The Missed Asylum Interview Subclass includes noncitizens who have failed  
3                   or will fail to appear for an asylum interview with USCIS, and as a result will  
4                   not accrue time creditable toward eligibility for employment authorization  
5                   following the date of the missed asylum interview.  
6

7                   **Remand Subclass:**

8                   The Remand Subclass includes noncitizens: (i) whose asylum applications  
9                   were or will be denied by the immigration court before 180 days accrued  
10                  toward employment authorization; (ii) whose appeal to the Board of  
11                  Immigration Appeals (BIA) or a federal court of appeals was remanded for  
12                  further adjudication of their asylum claim by an immigration judge; and (iii)  
13                  who have not been credited time toward eligibility for employment  
14                  authorization from the date of the initial denial.  
15

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17                   **WHAT BENEFITS ARE PROVIDED TO ABT CLASS MEMBERS?**  
18

19                  This summary of the benefits available to Class members is meant to provide the *general*  
20                  guidelines of who qualifies as Class members. A person who believes he or she is a  
21                  Class member and has been denied an ABT Class member benefit should first review the  
22                  exact terms of the Settlement Agreement or seek legal assistance to do so.  
23

24                  **Notice & Review Class (General Class) Benefits:**

25                  EOIR will amend the November 15, 2011, Operating Policies and Procedures  
26                  Memorandum (“OPPM”) 11-02: The Asylum Clock from Chief Immigration Judge  
27                  Brian O’Leary, to state that an immigration judge must make the reason(s) for the case  
28                  adjournment clear on the record. Defendants also will provide a notice containing  
29                  general information regarding employment authorization for individuals with pending  
30                  asylum applications, including where to obtain case-specific information, the impact of  
31                  hearing adjournment codes on EAD eligibility, and where to direct inquiries relating to  
32                  requests to correct hearing adjournment codes and inquiries relating to EAD eligibility.  
33                  EOIR will provide that notice to an asylum applicant when an asylum application is  
34                  lodged or filed with an immigration court. In addition, EOIR will make a copy of the  
35                  notice available at each hearing. USCIS will make the information publicly available,  
36                  including providing the notice to an asylum applicant upon referral to immigration court.  
37

38                  Timeframe for Benefits: Defendants will amend the November 15, 2011, OPPM, within  
39                  six (6) months of the Effective Date of the Settlement Agreement. With regard to the  
40                  remaining resolutions regarding notice, Defendants will implement these resolutions as  
41                  soon as possible, but no later than twenty-four (24) months from the Effective Date of the  
42                  Settlement Agreement. However, within six (6) months of the Effective Date of the  
43                  Settlement Agreement, Defendants will create an interim notice regarding employment  
44                  authorization for individuals with pending asylum applications. EOIR will provide this  
45                  notice to an asylum applicant when an asylum application is lodged or filed with an  
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1 immigration court and also will make a copy of the notice available at each hearing.  
2 USCIS will make the information publicly available, including providing the notice to an  
3 asylum applicant upon referral to immigration court. Defendants also will provide  
4 contact information for inquiries regarding requests to correct the calculation of the  
5 asylum adjudications period before the Asylum Office, hearing adjournment codes before  
6 the Immigration Court, and asylum-related EAD denials before USCIS.  
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9 **Hearing Subclass Benefits:**

10 For noncitizens who have been placed in proceedings before an immigration judge, EOIR  
11 will accept complete defensive asylum applications at the immigration court clerk's  
12 window prior to the date of the Class members' hearing before an Immigration Judge as  
13 "lodged not filed." EOIR will transmit the "lodged not filed" date to USCIS. When  
14 eligible to apply for employment authorization, the applicant will then submit an  
15 application for employment authorization to USCIS, along with a copy of the asylum  
16 application that the EOIR immigration court clerk stamped "lodged not filed." USCIS  
17 will consider the date that an asylum application is "lodged not filed" at the EOIR clerk's  
18 window as the filing date for the purpose of calculating the time period for EAD  
19 eligibility.  
20

21 Timeframe for benefits: Defendants will implement these resolutions as soon as possible  
22 but no later than twenty-four (24) months from the Effective Date of the Settlement  
23 Agreement. In the interim, within six (6) months of the Effective Date of the Settlement  
24 Agreement, when eligible to apply for employment authorization, the applicant will  
25 submit an application for employment authorization to USCIS, along with a copy of the  
26 asylum application that the EOIR immigration court clerk stamped "lodged not filed." In  
27 adjudicating the application for employment authorization, USCIS will consider the date  
28 on which the application was stamped "lodged not filed" as the application filing date for  
29 the purpose of calculating the time period for EAD eligibility.  
30  
31

32 **Prolonged Tolling Subclass Benefits:**

33 EOIR will amend the November 15, 2011, Operating Policies and Procedures  
34 Memorandum 11-02: The Asylum Clock, section VI.E.2.c., to provide that, in setting  
35 individual hearing dates in expedited non-detained cases with a pending asylum  
36 application, an immigration judge must allow a minimum of forty-five (45) days between  
37 the date of the last master calendar hearing date and the individual hearing date.  
38

39 Timeframe for benefits: Defendants will implement these resolutions within six (6)  
40 months of the Effective Date of the Settlement Agreement.  
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43 **Missed Asylum Interview Subclass Benefits:**

44 USCIS will mail a "Failure to Appear" Warning Letter as soon as possible after an  
45 asylum applicant misses an interview. The letter will describe the effect of the failure to  
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1 appear on EAD eligibility and list procedural steps the applicant must take to establish  
2 “good cause” for failing to appear for the interview. It will also describe the effect of  
3 failing to respond to the warning letter within a forty-five (45) day period.  
4

5 If forty-five (45) days have passed with no action by the applicant, USCIS will include a  
6 “Referral Notice for Failure to Appear” with charging documents mailed to the applicant.  
7 This notice will describe the effect of the failure to appear on EAD eligibility after  
8 USCIS has referred a case to immigration court and list procedural steps the applicant  
9 must take to establish “exceptional circumstances” for failing to appear at an asylum  
10 interview with an Asylum Office. Upon determining whether exceptional circumstances  
11 exist, the Asylum Office will issue a determination letter to the applicant and his or her  
12 representative of record, and notify U.S. Immigration and Customs Enforcement’s Office  
13 of the Principal Legal Advisor (“ICE OPLA”) of the determination. If the Asylum Office  
14 determines that the applicant established “exceptional circumstances,” the applicant may  
15 then request that ICE OPLA file a joint motion for dismissal of immigration proceedings.  
16 If the immigration judge dismisses proceedings, and the asylum application is returned to  
17 the Asylum Office, the Asylum Office will reopen the asylum application and take  
18 jurisdiction over the applicant’s case. The time period for determining asylum  
19 adjudication and EAD eligibility, which stopped on the date of the applicant’s failure to  
20 appear for the asylum interview, will restart on the date the applicant appears for the  
21 rescheduled interview at an Asylum Office.  
22

23 Timeframe for Benefits: Defendants will implement these resolutions within six (6)  
24 months of the Effective Date of the Settlement Agreement.  
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27 **Remand Subclass Benefits:**

28 Following a BIA remand of a case for adjudication of an asylum claim, whether  
29 following an appeal from an immigration judge decision or following a remand from a  
30 circuit court of appeals, the applicant, for purposes of EAD eligibility, will be credited  
31 with the number of days that elapsed between the initial immigration judge denial and the  
32 date of the BIA remand order. An asylum applicant seeking employment authorization  
33 must attach a copy of the complete BIA order remanding his or her case to the  
34 immigration court for adjudication of the asylum claim to his or her application for  
35 employment authorization.  
36

37 Timeframe for Benefits: Defendants will implement these resolutions within six (6)  
38 months of the Effective Date of the Settlement Agreement.  
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41 **WHAT IS THE EFFECTIVE DATE OF THE SETTLEMENT AGREEMENT?**  
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43 The ABT Settlement Agreement becomes effective upon the U.S. District Court’s  
44 preliminary approval of the Settlement Agreement.  
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2 **WHEN WILL THE ABT SETTLEMENT AGREEMENT TERMINATE?**  
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4 The ABT Settlement Agreement and all of the rights acquired under the Agreement, shall  
5 end four (4) years following the full implementation of all the terms of Agreement, as  
6 documented by Defendants' reports to Plaintiffs and the Court with respect to each  
7 settlement term (*see* Section II.C.13, of the Settlement Agreement), or upon the following  
8 date: the Effective Date of Agreement plus six (6) years, whichever shall first occur.  
9

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11 **HOW DO I BRING A CLAIM UNDER THE SETTLEMENT AGREEMENT?**  
12

13 A person who believes he or she is a Class member and has been denied an ABT Class  
14 member benefit may be entitled to bring a claim under the ABT Settlement Agreement.  
15 To bring an individual claim about your case under the ABT Settlement Agreement, you  
16 must follow the Individual ABT Claim Review process and complete an ABT Claim  
17 Form, as outlined in section II.C.11.b of the Settlement Agreement. For further  
18 information regarding the dispute resolution process, including the complete ABT  
19 Settlement Agreement and the ABT Claim Form for individual ABT class members  
20 alleging violations of the ABT Settlement Agreement, go to the web site of class counsel,  
21 [www.nwirp.org](http://www.nwirp.org), [www.americanimmigrationcouncil.org](http://www.americanimmigrationcouncil.org), [www.mlri.org](http://www.mlri.org), and [www.ghp-law.net](http://www.ghp-law.net). In addition, this information is available on USCIS' web site, [www.uscis.gov](http://www.uscis.gov),  
22 and EOIR's website, [www.usdoj.gov/eoir](http://www.usdoj.gov/eoir).  
23  
24

25 You may also contact the lawyers representing the class:

26  
27 **NORTHWEST IMMIGRANT RIGHTS PROJECT**  
28 615 2nd Avenue, Suite 400  
29 Seattle, WA 98104  
30 (206) 587-4009  
31 (206) 587-4025 (Fax)  
32

33 **AMERICAN IMMIGRATION COUNCIL**  
34 1331 G Street NW, Suite 200  
35 Washington, DC 20005  
36 (202) 507-7516  
37 (202) 742-5619 (Fax)  
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Do not contact the U.S. District Court for additional information.