

**LAW OFFICE OF PERHAM MAKABI, ESQ**  
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**Kew Gardens, NY 11415**

**November 13, 2025**

**BY ECF**

The Honorable Michael E. Farbiarz, U.S.D.J.  
U.S. District Court for the District of New Jersey  
2 Federal Square  
Newark, NJ 07101

***Re: Reyes Guzman v. Pamela Bondi, No. 25-17067***  
***Reply to Answer***

Dear Judge Farbiarz:

This Office represents Petitioner Jose Emmanuel Reyes-Guzman, a noncitizen in the custody of U.S. Immigration and Customs Enforcement (“ICE”). We write in reply to Respondent’s Answer, requesting Petitioner’s Petition for a Writ of Habeas Corpus be granted for the reasons below.

**1. Argument**

- a. The Court has jurisdiction to hear Petitioner’s habeas challenge to the lawfulness of his detention pending removal.**

Respondents assert that the ABC Settlement Agreement permits challenges to the lawfulness of Petitioner’s detention pending removal, but not over whether the removal itself is lawful, citing paragraph 36e of the Settlement Agreement, 8 U.S.C. § 1252(a)(5) and *Segura-Mundo v. Hudson*, No. 09-1717, 2009 WL 10711802, at \*3 (S.D. Tex. Nov. 30, 2009). However, in this case, Petitioner is challenging the lawfulness of his detention pending removal, which Respondents acknowledge that the Court has jurisdiction over. *See* the November 10, 2025 filing entitled “Answer to § 2241 Petition.” Petitioner is not asking this Court to declare the removal

order unlawful. It is clear from the settlement agreement that “[n]othing in this agreement shall be construed to afford a right to further deportation or exclusion proceedings for those class members with a final order of deportation or exclusion, with the exception of any stays granted pursuant to paragraph 19.” See ABC Settlement Agreement Paragraph 21, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 809–10 (N.D. Cal. 1991). Rather than challenge the legality of the removal order itself, Petitioner solely asserts that the order of removal cannot be executed at this time without violating the terms of the ABC Settlement Agreement.

Additionally, the ABC Settlement agreement itself states that this Court has full jurisdiction:

“If an individual class member who has sought the benefits or rights of this agreement raises any claim regarding the denial of any such right or benefit . . . that is not within the Court's retained jurisdiction under paragraph 33(a) or (b) above, such individual is entitled to seek enforcement of the provisions hereof by initiating a separate proceeding in any federal district court, and the Defendants will not contest the jurisdiction of such court to hear any such claim except for failure of the class member to follow the procedures specified in paragraphs 2, 6, 7 and 18 of this agreement to obtain rights hereunder.” See ABC Settlement Agreement Paragraph 35, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 809–10 (N.D. Cal. 1991).

Petitioner’s claim does not relate to the stated exceptions in paragraphs 2, 6, 7, and 18, so under the plain language of the Settlement Agreement, the Court has jurisdiction to hear Petitioner’s complaint that he was denied protection from detention under the Settlement Agreement. Additionally, the Settlement Agreement states that “[n]othing in this provision shall limit class members' entitlement to seek judicial relief through habeas corpus to challenge his or her detention.” See *id.* Paragraph 36e at 810.

The INA also cannot be cited to argue that this Court does not have habeas jurisdiction, as the ABC Settlement Agreement’s introduction clearly states that “Plaintiffs and Defendants enter into and stipulate that this agreement imposes binding obligations on the parties and their

successors and that this agreement constitutes a full and complete resolution of the issues raised in this action.” *See id.* at 799.

Respondents also assert that the that there are unresolved questions of fact that would be more appropriately addressed by the EOIR, thus preventing this Court from rendering a decision at this time. However, in the instant case, the legally determinative facts are undisputed. Respondents agree that petitioner is an ABC Class Member. Respondents further agree that Petitioner did not receive a final decision on his asylum application filed in 1995.

- b. Respondents are mistaken in arguing that the Court cannot grant Petitioner’s request for detention relief at this time because he has been detained for less than 6 months.**

Respondent’s assertions fail to address the core of Petitioner’s argument. The Petitioner is not simply challenging the length of his detention, but rather the legality of detaining him in the first place, since detention of an ABC Settlement Class Member prior to an asylum adjudication violates the Agreement’s terms. In this case, detention has been unlawful since the moment it began in violation of the Settlement Agreement and thus Petitioner need not meet any temporal requirement for detention.

- c. Respondents improperly characterized the rights granted by the ABC Settlement Agreement, as well as the effects of administrative closure on an asylum case.**

As an ABC class member, Petitioner is protected from removal until receipt of a final decision on his asylum application and not just an opportunity for an asylum interview. *See* ABC Settlement Agreement Paragraph 17, *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 804 (N.D. Cal. 1991) (stating that “[t]he special rules in this paragraph with respect to detention of class members shall not prevent the INS from detaining a class member after the Asylum Officer has issued a *final decision*”). In the instant case, Petitioner did not receive a final decision as no official decision was made on his asylum application. Rather, the administrative closure of his case shows that it was not adjudicated, as administrative closure is a non-decision, which defers the conclusion of proceedings until a later date, or asserts that a decision will be made at some time in the future. In this regard, contrary to the Respondent’s assertions that “[t]he issue is whether Petitioner had ‘the opportunity’ to pursue asylum before being detained,” the true issue is whether the Petitioner’s asylum application had been adjudicated to conclusion.

Additionally, de novo asylum adjudication is not the only benefit conferred upon ABC Settlement Class Members. Even if a class member had not received a prior asylum adjudication, the ABC Agreement “granted class members an unappealable asylum adjudication before an asylum officer under the regulations in effect on October 1, 1990.” *Chaly-Garcia v. U.S.*, 508 F.3d 1201, 1204 (9th Cir. 2007).

Respondents contend that if Petitioner “simply failed to appear for the August 5, 2004, interview, ICE could detain and remove him because he forfeited ‘the opportunity’ for the asylum interview provided under the Settlement Agreement.” *See* the November 10, 2025 filing entitled “Answer to § 2241 Petition.” Respondents cite paragraphs 17 and 20a of the Agreement to support their argument that detention and removal are allowed after class members receive the rights they are entitled to under the Agreement. However, paragraph 17 of the Agreement clearly states that

“[t]he special rules in this paragraph with respect to detention of class members shall not prevent the INS from detaining a class member after the Asylum Officer has issued a *final decision*.” *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 804 (N.D. Cal. 1991). However, once again, no final decision was issued. The administrative closure simply puts the case on hold for a final decision at a later date. Additionally, paragraph 20 of the Agreement states that paragraph 20a applies only “[i]f the asylum application is *finally denied* under the procedures set forth in this agreement.” *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796, 806 (N.D. Cal. 1991). As stated above, Petitioner’s asylum application never received a final denial; it was only administratively closed. Therefore, paragraph 20a does not apply to Petitioner, and he never received his asylum adjudication, nor did he receive the opportunity to have it.

Additionally, paragraph 13 of the ABC Settlement Agreement states that “[a]n unexcused failure to appear for interview will be a ground for recommendation to deny or a denial of asylum.” *See id.* at 803. If Petitioner had an unexcused failure to appear for an interview, then his application would have been denied, as the Settlement Agreement permits. However, Petitioner’s asylum application was not denied; it was administratively closed. Therefore, it is safe to presume that the government did not view Petitioner’s failure to appear as unexcused. It follows logically that Petitioner is still entitled to receive the benefits of the ABC Settlement.

It should also be noted that even denials for failure to appear can be reopened under the Settlement Agreement: “If the asylum claim has been denied due to a failure to appear at an interview and the applicant provides within a reasonable time such a reasonable excuse, . . . the asylum claim shall be reopened (without need to file a motion to reopen) and the application processed without regard to the failure to appear.” *See id.* It is unreasonable to argue that Petitioner

would be ineligible for the asylum adjudication benefit due to administrative closure of his case, when even those whose applications were denied can still be eligible for ABC Settlement benefits.

**d. Petitioner should not be precluded from receiving the benefits of the ABC Settlement Agreement because the government sent the asylum interview notice to a stale address despite knowledge of Petitioner's new address.**

Furthermore, Respondents acknowledge that if the Petitioner “had no notice of his interview, then he did not have the ‘opportunity,’ [to receive the benefits of the ABC Settlement Agreement] and he is still entitled to it.” *See* the November 10, 2025 filing entitled “Answer to § 2241 Petition.” Respondents claim that “[a]bsent any proof that he lacked notice of the interview, his claim that he has not had an opportunity to pursue ABC class relief lacks merit.” *See id.* Careful review of Petitioner’s immigration records, however, indeed prove that he did not receive notice, as USCIS sent his interview notice dated August 13, 2004, to a stale address (234 Caleb’s Path) despite knowledge of Petitioner’s new address. *See* **EXHIBIT E**.

On March 27, 1995, USCIS received the Petitioner’s asylum application under the Alien Number A094-103-895, and sent a receipt notice to Petitioner at the address “234 Caleb’s Path.” *See* **EXHIBIT A**. In 2001, Petitioner was assigned a second Alien number A078-967-984. By November 2002 the government was aware that Petitioner had two Alien numbers and thus consolidated the files. *See* **EXHIBIT B**.

Petitioner changed his address from 234 Caleb’s Path, which INS was clearly aware of, demonstrated by the August 13, 2003 EAD application receipt sent to “8 White St / Brentwood NY 11717.” *See* **EXHIBIT C**. A Transfer Notice regarding his TPS application from INS, dated

December 22, 2003, was also mailed to the Petitioner at 8 White Street. *See* **EXHIBIT D**. Therefore, it is undisputable that USCIS sent the asylum interview notice to a stale address, and Petitioner never received notice.

As Petitioner has now proven that he did not receive notice of his asylum interview, it is clear that he never received the opportunity to seek the benefits afforded to him by the ABC Settlement Agreement. Therefore, his detention is unlawful until he is afforded the asylum adjudication he is entitled to under the Agreement.

We thank the Court for its attention to this matter.

Respectfully submitted,

By: /s/ Perham Makabi  
Perham Makabi, Esq.  
Counsel for the Petitioner

cc: Counsel of record (by ECF)

# **EXHIBIT A**

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US DEPARTMENT OF JUSTICE  
US IMMIGRATION AND NATURALIZATION  
ASYLUM OFFICE  
1 CROSS ISLAND PLAZA  
ROSEDALE, NY 11422

COMPUTER GENERATE  
POSTAGE AND FEES PAID  
DOJ JUL 4 33  
YOUR POSTAL  
PLEASE FUNDICIA HERE

NAME: JOSE REYES

DATE: 4/12/95

A-NUMBER: 

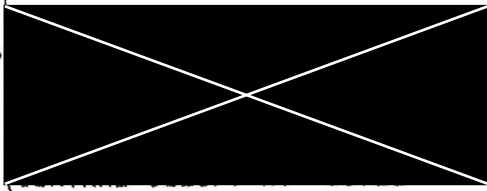
FORM: I-589

\*\*\* ACKNOWLEDGEMENT OF RECEIPT \*\*\*

Your complete Form I-589 asylum application was received and is pending as of 3/27/95. You may remain in the U.S. until your asylum application is decided. If you wish to leave while your application is pending, you must obtain advance parole from INS. If you change your address, send written notification of the change within 10 days to the above address. You will receive a notice informing you when you and those listed on your application as a spouse or dependents must appear for an asylum interview.

JOSE REYES

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REORDER SCIM-1

# **EXHIBIT B**

CIMIDN IMMIGRATION AND NATURALIZATION SERVICE  
COMMAND: CENTRAL INDEX SYSTEM - ID # SEARCH DISPLAY

11/18/02  
13:23:21

ID # (A/AA/AB/C/DA): [REDACTED] A#: [REDACTED] DOB: [REDACTED]  
(DL/FB/FP/I/PP/SS/TD)

LAST: REYES  
FIRST: JOSE  
MIDDLE: E  
ALIASES:  
NATZ DATE:  
COURT:  
LOCATION:

SEX: M POE: SDP COB: ELSAL DOE: [REDACTED]  
FCO: DAL COA: AO COC: [REDACTED] FATHER:  
PFCO: ZNY SFCO: DFO: 06071991 BIN: [REDACTED] MOTHER:

SSN:  
I-94 ADM #: [REDACTED] CONSOLIDATED A-NOS [REDACTED] --OTHER INFORMATION--  
PASSPORT #: [REDACTED] [REDACTED] APPL-X  
FBI #:  
DRIVER LIC:  
FINGER CD#:

(b)(7)(e)

OVER-KEY ID NUMBER TO DISPLAY NEW PERSON. PRESS ENTER.  
CLEAR EXIT PF3 REFRESH PF4 RETURN PF5 HELP PF6 MAIN MENU PF8 HISTORY PF9 EAD  
PF10 REQUIRES A SPECIAL SECURITY CLASS. PF10 NAILS PF11 EOIR

# EXHIBIT E

U.S. Department of Homeland Security



U.S. Citizenship and Immigration Services

August 13, 2004

Jose E. Reyes  
 C/O  
 234 Caleb's Path  
 Central Islip, NY 11722

Número de Archivo: A



En relación a un asunto oficial, favor de presentarse a la oficina abajo mencionada, a la hora y lugar indicados.

<b>LOCALIDAD</b>	New York Asylum Office, One Cross Island Plaza, 3rd Fl., Rosedale, NY 11422
<b>FECHA Y HORA</b>	
<b>RAZON POR LA CITA</b>	Entrevista para determinar su elegibilidad para el asilo ó para la retención de la expulsión. (Formulario I-589).
<b>TRAIGA CONSIGO</b>	<p>Los familiares incluidos en su solicitud de asilo deben venir a la entrevista con Ud. Por favor, traiga lo siguiente: documentos de identidad tanto suyos como para los familiares incluidos en su solicitud de asilo; comprobación de parentesco de los familiares incluidos en su solicitud (por ejemplo, certificados de nacimiento, de matrimonio o declaraciones oficiales notarizadas); cualquiera evidencia que establezca que Ud. se inscribió como miembro del grupo ABC; y cualquiera evidencia no presentada anteriormente que apoye su solicitud de asilo.</p> <p>Si Ud. no habla bien el inglés, tiene que venir con una persona que puede traducir para Ud. Esta persona no puede ser su abogado, un testigo, ni su representante, y debe tener por lo menos 18 años de edad.</p> <p>Ud. puede ser acompañado por un abogado o un representante.</p> <p>Explicación: Anteriormente, se suspendieron las entrevistas de todos los solicitantes de asilo quienes aparecieran ser miembros del grupo ABC, para que tuvieran tiempo de preparar sus solicitudes para los remedios otorgados por la sección 203 de la Ley de Ajuste para Nicaragua y Ayuda a Centroamérica (NACARA 203). Actualmente la Division de Asilo del Buró de Ciudadanía y Servicios de Inmigración (USCIS) está haciendo citas para entrevistas de asilo con ciertas personas que posiblemente sean miembros de grupo ABC. Si Ud. no se acude a su entrevista, sin tener una causa razonable, su solicitud de asilo puede ser negada o cerrada administrativamente. Si esto sucediera, Ud. podría ser citado para procedimientos legales que pueden conllevar a su expulsión de los EEUU.</p> <p>Ud. también puede ser elegible para solicitar los remedios de la NACARA 203. Si es elegible para estos remedios, su estado legal puede ser ajustado al de Residente Permanente Legal, o sea, la</p>

www.uscis.gov