

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

LILIAN PAHOLA CALDERON
JIMENEZ, and LUIS GORDILLO, *et al.*,

Individually and on behalf of all others
similarly situated,

Plaintiffs-Petitioners,

v.

MARKWAYNE MULLIN, *et al.*,

Defendants-Respondents.

No. 18-cv-10225-PBS

**MEMORANDUM IN SUPPORT OF PETITIONERS' MOTION TO ENFORCE THE
CALDERON SETTLEMENT AGREEMENT ON BEHALF OF TWO CLASS MEMBERS**

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I. INTRODUCTION

Under Section II of the *Calderon* Settlement, Defendants agreed to join class members in moving to reopen and dismiss their final orders of removal—a step that facilitates and is often essential to class members’ pursuit of lawful status. The Settlement allows Defendants to decline to join such motions only when class members fall within certain public safety or serious fraud exceptions, or when they cannot show that they would be *prima facie* eligible to obtain lawful permanent resident status after getting rid of their removal orders.

Defendants now assert a new and unenumerated exception. They contend that they need not follow the requirements of Section II with regard to class members Nathalya Alves da Silva and Victor Alexander Granda Jimenez simply because these class members’ removal orders were issued by the Department of Homeland Security (“DHS”) in “expedited removal” proceedings—a streamlined removal process that was long limited to noncitizens encountered at or near the border—rather than by immigration judges in regular removal proceedings. Defendants do not dispute that Ms. Alves da Silva and Mr. Granda Jimenez are class members covered by the Settlement, including the protection from enforcement actions under Section III. Defendants also do not dispute that Ms. Alves da Silva and Mr. Granda Jimenez may file motions with DHS seeking to reopen and dismiss their expedited removal proceedings. Indeed, reopening and dismissal of their removal orders is *easier* for DHS in such cases because DHS *itself* receives and can grant such motions. But Defendants assert that class members with expedited removal orders are excluded from Section II’s benefits and must file such motions “on their own”—a constrained reading that ignores both the literal text of Section II and its clear purpose.

This dispute arises in the context of unprecedented immigration enforcement that is sweeping increasing numbers of noncitizens into an expedited removal process that was

previously reserved for recent entrants encountered at or near the border. Since January 2025—when the Settlement was approved—DHS has expanded expedited removal to capture noncitizens well beyond the border, summarily ordering removal even of those who have lived in the United States for years, developed significant equities and pathways to relief, and have U.S.-citizen spouses. In seeking to exclude Ms. Alves da Silva and Mr. Granda Jimenez from the benefits of Section II—thereby making them vulnerable to removal when the enforcement limitations of the Settlement expire in January 2027—Defendants have argued that the reopening and dismissal of expedited removal orders was not “contemplate[d]” by Section II. But the parties could not have “contemplated” the myriad ways in which this Administration has executed its deportation campaign. And in any case, the plain text of Section II and its clear intent are unavoidable: DHS must assist *all* class members by presumptively joining in their motions to reopen and dismiss their removal orders, regardless of what type they have.

Through Section II, the parties created a broadly available remedy that would bring lasting relief to class members by aiding their path to permanent status. The parties echoed this understanding in jointly representing to the Court that the Settlement should be approved in part because it “offers the same relief to every class member.” ECF No. 653 at 13. Because the Settlement’s plain text requires Defendants to join Ms. Alves da Silva and Mr. Granda Jimenez’s motions regardless of which agency the motions are addressed to, because the parties clearly intended to benefit all class members (subject to narrow and articulated exceptions not applicable here), and because the distinctions that Defendants draw between expedited and regular removal proceedings do not warrant departing from the Settlement’s explicit text and clear intentions, Defendants’ refusal to provide Section II benefits to Ms. Alves da Silva and Mr. Granda Jimenez violates the Settlement.

II. BACKGROUND

A. The Settlement and Section II's Benefits Regarding Reopening and Dismissal Procedures

Like all noncitizen class members, Nathalya Alves da Silva and Victor Alexander Granda Jimenez reside in New England, are married to U.S. citizens, and have final orders of removal. *See* ECF No. 654-1 (“Settlement Agreement”) § I(C).¹ Both seek to obtain lawful status through their U.S. citizen spouses and to keep their families together in the United States. Their final orders of removal, however, significantly impede their pursuit of lawful status.

Section II of the Settlement was created to provide a solution to this impediment. It commits DHS to helping noncitizen class members reopen and dismiss their removal orders, thereby facilitating their efforts to seek lawful status and remain in the United States with their U.S. citizen spouses. Specifically, Section II(A) provides:

[Attorneys at the Office of the Principal Legal Advisor (“OPLA”) of U.S. Immigration and Customs Enforcement (“ICE”)] who receive requests to join motions to reopen and dismiss will review each request on a case-by-case basis and will presumptively join motions to reopen and dismiss filed by Noncitizen Class Members who comply with the requirements in Section II(B) and demonstrate they are *prima facie* eligible for either (a) consular processing utilizing the Form I-601A, or (b) adjustment of status. ICE OPLA attorneys may decline to join a motion to reopen for a Noncitizen Class Member who has met the requirements of this paragraph and II(B) if ICE determines, in its sole discretion based on an assessment of the totality of the facts and circumstances, that an individual (1) is a threat to public safety, typically because of serious criminal conduct; (2) is a threat to national security; or (3) has engaged in serious immigration benefit fraud or is a repeat immigration violator.

Section II(B) further requires that an applicant supply documentation and file the request “with the OPLA field location having jurisdiction over the Class Member’s removal order.”²

¹ The procedural history of this litigation and the key terms of the parties’ Settlement have been detailed in Petitioners’ previous motions to enforce. *See, e.g.*, ECF No. 794 at 3-11.

² Soon after the Settlement period began, Defendants decided that class members should not in fact send their requests to individual ICE OPLA field offices in the locations in which their

Thus, under Section II, Defendants have committed to having ICE OPLA review “each” joint motion to reopen and dismiss (“JMTR”) request from a class member. Settlement Agreement § II(A). If a class member complies with the documentation requirements and demonstrates that, absent their removal order, they would be *prima facie* eligible to adjust their status, ICE OPLA may decline to join a motion to reopen and dismiss in only three circumstances: if it makes a determination that the class member is (1) a threat to public safety, (2) a threat to national security, or (3) has engaged in serious immigration benefit fraud or is a repeat immigration violator. *Id.* Absent one of those findings, ICE OPLA is required to join class members’ motions under the terms of the Settlement. *See* ECF No. 653 at 8 (joint memorandum seeking preliminary approval of Settlement, explaining that “ICE OPLA may decline to join a motion to reopen for a class member who has complied with these procedural requirements *only if* ICE OPLA determines” that public safety, national security, or fraud grounds are applicable (emphasis added)); ECF No. 671 at 8 (same, in joint memorandum seeking final approval); Oct. 25, 2024 Hr’g Tr. at 34:24-35:17.

In most cases, class members’ removal orders are issued by an immigration judge within the Executive Office of Immigration Review (“EOIR”), a subagency of the Department of Justice (“DOJ”). To seek to reopen such an order, a class member must file a motion with the immigration court that heard their case, or, if their case was at some point appealed to the Board of Immigration Appeals (“BIA,” also within EOIR), the motion must be filed with the BIA.

The benefits of Section II are significant. A motion joined by ICE OPLA seeking to reopen and dismiss a removal order before EOIR is expected to result in the elimination of the

removal orders had issued, and instead instructed class members to send requests to one national, central email box that ICE OPLA maintains specifically for *Calderon* requests.

removal order and the conclusion of all removal proceedings against the class member. Indeed, such motions are subject to a “mandatory termination” regulation requiring the immigration judge or BIA to terminate or dismiss proceedings unless the adjudicator “articulates unusual, clearly identified, and supported reasons for denying the motion.” 8 C.F.R.

§ 1003.18(d)(1)(i)(G); *see also* Jan. 20, 2026 Hr’g Tr. at 4:10-19 (“THE COURT: ... [I]sn’t it automatic if it’s a joint motion? MS. ANSARI: Your Honor, it will presumably be granted absent exigent circumstances.... THE COURT: ...[I]t has to be granted, as I understand it, by regulation if it’s a joint motion.”). ICE OPLA’s joinder is also essential to the motion even being considered in the first place: when ICE and a noncitizen jointly file a motion to reopen with EOIR, the motion is not subject to time limits or numerical restrictions that would otherwise apply. *See, e.g.*, 8 U.S.C. § 1229a(c)(7)(A) & (c)(7)(C)(i); 8 C.F.R. § 1003.23(b)(4)(iv).

B. Reopening and Dismissing Expedited Orders of Removal

While most class members’ removal orders are issued through the immigration court system, a growing number of class members, including Ms. Alves da Silva and Mr. Granda Jimenez, have removal orders issued by DHS itself. As relevant here, this occurs when DHS places a noncitizen in expedited removal proceedings under 8 U.S.C. § 1225(b)(1) rather than in proceedings before an immigration judge. Because these expedited removal orders are issued by ICE or U.S. Customs and Border Protection (“CBP”)—a sister subagency within DHS—only DHS may reopen the orders and dismiss the expedited removal proceedings, not EOIR.

The expedited removal process was created as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and generally allows immigration officers at or near the border to issue removal orders to certain noncitizens without full removal proceedings before an immigration judge. *See* 8 U.S.C. § 1225(b)(1)(A); *see also* Hillel R. Smith, Cong. Rsch. Serv.,

R45314, *Expedited Removal of Aliens: Legal Framework* (Oct. 8, 2019). A noncitizen who is initially placed in expedited removal proceedings may escape the process and be referred to full asylum proceedings before an immigration judge by demonstrating a “credible fear” of persecution either to an asylum officer or to an immigration judge serving in a limited function to review a credible fear determination. 8 U.S.C. § 1225(b)(1)(B)(ii). But where a noncitizen who is placed in such proceedings does not assert a credible fear or is found not to have a credible fear, the expedited removal process concludes and a DHS official enters an expedited order of removal. *Id.* § 1225(b)(1)(A)(i) & (B)(iii)(I).

Since January 2025, the expansion of the expedited removal process has resulted in an increasing number of *Calderon* class members whose removal orders are issued by DHS rather than EOIR. First, DHS promulgated regulations within days of President Trump’s inauguration that expanded expedited removal beyond the border region to apply to certain noncitizens “apprehended anywhere in the United States” for up to two years after their entry. *See* 90 Fed. Reg. 8139, 8140 (Jan. 24, 2025). Second, DHS has begun issuing expedited orders of removal to noncitizens who have been in the United States far longer than the statutorily authorized two-year period by reinitiating long-dormant expedited removal proceedings that began at the border years ago. Ms. Alves da Silva is one example. She entered the United States in 2021 and was paroled into the country before receiving a credible fear interview. Bandar Decl. ¶¶ 3-6. It was not until four years later, after she had married her U.S. citizen husband and established a life in the United States, that DHS decided to resume the expedited removal process, schedule her credible fear interview, and ultimately issue her an expedited removal order.³ *Id.* ¶¶ 7-8, 13-15.

³ While the legality of issuing an expedited removal orders four years after a noncitizen’s entry is questionable at best, class counsel acknowledge that the potential impropriety of an order of removal does not impact class membership. *See also* ECF No. 691 at 8 n.3 (motion to enforce

To seek reopening and dismissal of a removal order issued by DHS under 8 U.S.C. § 1225(b)(1), a noncitizen may file a motion under 8 C.F.R. § 103.5 directly with DHS. *See* 8 C.F.R. § 103.5(a)(1)(ii). That regulation allows an “affected party” to seek “reopening or reconsideration” of a proceeding, decision, or action of “the Service,” *id.*, which is defined to include U.S. Citizenship and Immigration Services (“USCIS”), CBP, and ICE, *see* 8 C.F.R. § 1.2. Accordingly, Section 103.5 provides a mechanism for noncitizens such as Ms. Alves da Silva and Mr. Granda Jimenez to formally ask DHS to reopen their expedited removal orders and to dismiss any expedited removal proceedings against them. *See also DHS v. Thuraissigiam*, 591 U.S. 103, 140 n.28 (2020) (noting in expedited removal context that “Department officials ... may reopen cases or reconsider decisions” under § 103.5).⁴

C. Factual Background Regarding Class Members

1. Nathalya Alves da Silva

Ms. Alves da Silva is a *Calderon* class member who resides in Massachusetts. Bandar Decl. ¶ 2. She was born in Brazil and came to the United States at age 24 in April 2021, in pursuit of a better life and to escape an abusive former partner. *Id.* ¶¶ 3-4. Shortly after she entered the United States, Ms. Alves da Silva was issued a Notice and Order of Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1). *Id.* ¶ 5; *see also* Bandar Decl. Ex. A. After expressing a fear of return to Brazil, Ms. Alves da Silva was referred for credible fear proceedings. Bandar Decl. ¶ 6.

Section III of Settlement relating to a class member who was issued an expedited order of removal in 2025, nine years after entry into the United States).

⁴ Section 103.5 does not use the term “dismiss,” but Defendants do not appear to dispute that DHS may grant motions under that section by “reopen[ing]” the order and dismissing any pending expedited removal proceedings, effectively rescinding such an order. *See* Luo Decl. Ex. A at 1 (email from Government counsel acknowledging that noncitizens wishing to get rid of their expedited removal orders can file a motion under 8 C.F.R. § 103.5(a)(1)(i)).

Over the next four years, while she awaited the scheduling of her credible fear interview with USCIS, Ms. Alves da Silva became deeply integrated into the community in Framingham, Massachusetts, where she put down roots, including through membership in her church. *Id.* ¶¶ 7-23. Shortly after arriving in the United States in 2021, she met her future husband, whom she married in April 2023. *Id.* ¶ 8. Since then, they have established a loving, stable life together, and have plans to raise a family. *Id.* ¶¶ 8-9. Ms. Alves da Silva is the primary caregiver to her husband in the face of his autoimmune disease, helping to manage his medications and respond to flare-ups. *Id.* ¶ 11. She is also pursuing a certification as a Certified Nursing Assistant and works both in a nursing home and as a home health aide, providing care to elderly and medically vulnerable patients. *Id.* ¶¶ 10-11. She has no criminal record. *Id.* ¶ 12.

After four years of residing in Massachusetts and building a new life here, Ms. Alves da Silva was abruptly notified that she would have a credible fear interview in September 2025. *Id.* ¶ 13. During her interview, Ms. Alves da Silva explained that she could not return to Brazil and expressed fear arising from her abusive former partner's affiliation with a criminal organization. *Id.* ¶¶ 4, 6, 13. The asylum officer issued a negative credible fear determination that same day, finding that Ms. Alves da Silva did not establish a credible fear of persecution or torture. *Id.* ¶ 14. Ms. Alves da Silva timely requested review of that decision by an immigration judge under 8 U.S.C. § 1225(b)(1)(B)(iii)(III). *Id.* After the immigration judge affirmed the credible-fear denial in September 2025, Ms. Alves da Silva became subject to an expedited order of removal, making her a *Calderon* class member. *Id.* ¶ 15.

On September 29, 2025, Ms. Alves da Silva submitted a joint motion to reopen request to ICE OPLA under Section II of the Settlement. *Id.* ¶ 16. Initially, her counsel framed the request as seeking ICE OPLA's joinder in a motion to reopen directed to the immigration court, even

though her removal order was issued by DHS. *Id.* ¶ 16; Bandar Decl. Ex. B at 1. Although ICE OPLA could have anticipated that such a motion would be rejected, it nevertheless agreed to join Ms. Alves da Silva’s motion to the Immigration Judge on January 30, 2026. Bandar Decl. ¶ 17. An ICE OPLA attorney conveyed by email that, “[t]o the extent that you believe EOIR has jurisdiction and the ability to entertain this [joint motion to reopen], DHS agrees. Signed motion attached.” *Id.*; Bandar Decl. Ex. B at 2. By agreeing to join in her motion, ICE OPLA confirmed that Ms. Alves da Silva is a class member with prima facie eligibility to obtain lawful permanent resident status, and that she is not subject to the public safety, national security, or fraud exclusions.

The motion that ICE OPLA counsel prepared and signed was filed with the immigration court on January 30, 2026 and directed to the Immigration Judge who had reviewed Ms. Alves da Silva’s credible fear determination. Bandar Decl. ¶ 19; Bandar Decl. Ex. C. That same day, the immigration court rejected the filing on jurisdictional grounds, stating that “motions [are] not accepted for [credible fear] proceedings.” Bandar Decl. ¶ 20; Bandar Decl. Ex. D at 1. The immigration court directed Ms. Alves da Silva to submit the matter to USCIS. Bandar Decl. Ex. D at 1. On March 9, 2026, after conferring with class counsel, Ms. Alves da Silva’s counsel asked ICE OPLA to join Ms. Alves da Silva in a motion to reopen and dismiss that would now be directed to ICE ERO, as her removal order was issued by DHS rather than EOIR. Bandar Decl. ¶ 22. In the submission, her counsel cited 8 C.F.R. § 103.5, the regulation that permits an affected party to seek reopening or reconsideration of a decision issued by DHS. Bandar Decl. Ex. F at 1. But ICE OPLA “decline[d] to take any further action,” stating simply that the agency “had previously responded to your request” and that “OPLA believes that we have fulfilled our obligations under the settlement agreement.” *Id.* at 2; Bandar Decl. ¶ 23.

2. Victor Alexander Granda Jimenez

Mr. Granda Jimenez is a *Calderon* class member who resides in Connecticut. Rothwell Decl. ¶ 2. He is a citizen of Ecuador and has been continuously present in the United States since February 2014, when, at just 12 years old, he entered the country in the care of his mother. *Id.* Days after their entry, on February 26, 2014, CBP issued Mr. Granda Jimenez an expedited order of removal pursuant to 8 U.S.C. § 1225(b)(1). *Id.* ¶ 3; *see also* Rothwell Decl. Ex. A. He has never departed the United States under that order. Rothwell Decl. ¶ 3. In the twelve years that have passed, the United States has become Mr. Granda Jimenez's only home. He grew up in Connecticut, where he completed his education by graduating from high school and subsequently built a stable life and steady employment, working full-time in a family construction business owned by his father. *Id.* ¶ 4. In 2020, he married his U.S. citizen spouse, who is a member of the U.S. Army National Guard and is currently stationed at Fort Leonard Wood in Missouri. *Id.* ¶¶ 5-6. In addition to supporting his wife and maintaining their home for her return, Mr. Granda Jimenez plays a central role in supporting other immediate family members, including his father, with whom he has a close relationship and who was recently diagnosed with colon cancer and depends on Mr. Granda Jimenez for care and assistance. *Id.* ¶¶ 6-9. Mr. Granda Jimenez has no criminal record. *Id.* ¶ 10.

After learning of the *Calderon* Settlement and his eligibility for class membership, Mr. Granda Jimenez sought to pursue relief contemplated by the Settlement. On April 28, 2026, Mr. Granda Jimenez, through his counsel, contacted ICE OPLA to request that it join in a motion to CBP to reopen and dismiss his removal order. *Id.* ¶¶ 12, 14; Rothwell Decl. Ex. B at 1-2. Because class counsel were already engaged in attempting to resolve a dispute about ICE OPLA's treatment of Ms. Alves da Silva's JMTR request, class counsel brought Mr. Granda Jimenez's request to the attention of DOJ counsel, asking that both requests be granted. Luo

Decl. ¶ 4; Luo Decl. Ex. A at 2. On May 19, 2026, DOJ counsel articulated Defendants’ position that Ms. Alves da Silva and Mr. Granda Jimenez were not entitled to Section II benefits. Luo Decl. ¶ 5; Luo Decl. Ex. A at 1. On June 17, 2026, ICE OPLA formally rejected Mr. Granda Jimenez’s request, stating that the request “does not comply with the terms of the *Calderon* settlement agreement.” Rothwell Decl. ¶ 13; Rothwell Decl. Ex. B at 1.

D. Conflict Resolution Procedure

Class counsel first raised ICE OPLA’s rejection of Ms. Alves da Silva’s Section II request with counsel for the Government on April 15, 2026. Luo Decl. ¶ 2; Luo Decl. Ex. A at 3-6. On May 12, 2026, class counsel followed up to alert Government counsel of Mr. Granda Jimenez, who also had an expedited removal order and had submitted a request under Section II to ICE OPLA. Luo Decl. ¶ 4; Luo Decl. Ex. A at 2.

On May 19, 2026, Government counsel responded, indicating that Defendants would not provide any benefits under Section II to Mr. Granda Jimenez, Ms. Alves da Silva, or any other class member with an expedited order of removal and stating Defendants’ position that “the settlement agreement only pertains to reopening immigration court removal proceedings where OPLA is a party and not expedited removal proceedings.” Luo Decl. ¶ 5; Luo Decl. Ex. A at 1. Government counsel stated that “any request to reopen [expedited removal proceedings] under 8 C.F.R. § 103.5(a)(1)(i), would be a request the affected party must make on their own directly to the official who made the latest decision – which would be an immigration officer (likely ERO or CBP).” Luo Decl. Ex. A at 1. She reasoned that “[b]ecause OPLA are not parties to expedited removals, they lack authority over the Class Member’s expedited removal orders,” adding that “OPLA has no basis to join any motion to reopen in expedited removal cases.” *Id.*; *see also* Luo Decl. ¶ 5. Government counsel further cited the language in Section II(B) that requires class members to file the JMTR request “with the OPLA field location having jurisdiction over the

Class Member’s removal order” as indicating that the provision “clearly contemplates actions taken by OPLA” in regular removal proceedings rather than expedited removal proceedings.

Luo Decl. Ex. A at 1.

Following subsequent discussion by the parties, Government counsel confirmed on August 14, 2026, that Defendants’ position was unchanged.

III. DISCUSSION

In the context of DHS’s unprecedented expansion of expedited removal into the interior of the United States and targeting of noncitizens years after their arrival, the question before the Court is whether the Settlement should be interpreted to *exclude* class members with expedited removal orders from the vital protections of Section II. The answer is undoubtedly no. First, Section II’s plain text sets out a closed universe of exclusions and cannot be read to exclude those with DHS-issued removal orders from the provision’s benefits. Second, the text of Section II aligns with the intent of the Settlement to provide benefits to all class members and treat them equitably relative to each other. And third, the distinctions between regular and expedited removal orders that Defendants rely on are inapposite in the face of the Settlement’s explicit text and clear intention to benefit all class members.

A. Section II of the Settlement Applies to All Final Orders of Removal, Including Expedited Orders of Removal

Section II’s plain language obligates ICE OPLA to join Ms. Alves da Silva’s and Mr. Granda Jimenez’s motions to reopen and dismiss, regardless of the agency to which they are addressed. Its text applies broadly to all orders of removal without regard to the issuing authority, enumerates with precision the limited circumstances in which a class member may be denied relief, and directs ICE OPLA to join qualifying motions without distinguishing between orders issued by EOIR and those issued by DHS.

First, nothing in the text of Section II or the Settlement as a whole distinguishes between the type or source of an order of removal. Section II enumerates the requirements class members must meet in order to qualify for the benefit of ICE joining in a JMTR request, and those requirements say nothing that limits such benefit only to individuals with a certain type of removal order. Instead, Section II's documentation requirements and obligation on class members to show prima facie eligibility for relief can be equally satisfied by noncitizens with both expedited and regular removal orders. *See* Settlement Agreement § II(A).

This lack of distinction between types of removal orders is reflective of the Settlement as a whole, which nowhere differentiates based on the type or source of the underlying removal order. Section I defines "Class Member" and "Noncitizen Class Member" by reference to the existence of a "final order of removal," without distinguishing among categories of removal orders, how they were issued, or which agency issued them. *Id.* §§ I(C)-(D). And Section III provides class members with protection from enforcement actions, exempting only those found to pose a public safety or national security threat, and undisputably applying to all class members regardless of the nature of their removal order. *Id.* § III. Indeed, Defendants do not contest that noncitizens like Ms. Alves da Silva and Mr. Granda Jimenez satisfy all the requirements of class membership, or that those with expedited removal orders are entitled to the protections of Section III of the Settlement. *See* ECF No. 710 at 4 (explaining how ICE previously "promptly identified" a noncitizen "as a *Calderon* class member" upon his CBP-issued expedited order of removal becoming administratively final). Nothing in Section II's language supports the view that it is intended to apply to a narrower set of class members than the Settlement as a whole.

Second, Section II's enumeration of specific exceptions to the joinder requirement indicates that when those exceptions do not apply, the joinder requirement does. Specifically, if

a class member demonstrates prima facie eligibility to obtain lawful status through one of two pathways, ICE OPLA may decline to join in a class member's request only when the individual (1) poses a public safety threat, (2) poses a national security threat, or (3) has engaged in serious immigration fraud. Settlement Agreement § II(A); ECF No. 653 at 8.

That clear enumeration of the circumstances under which a JMTR request may be denied reflects the parties' understanding and intent that ICE OPLA *must* join motions to reopen unless one of those three exceptions applies. *See Smart v. Gillette Co. Long-Term Disability Plan*, 70 F.3d 173, 179 (1st Cir. 1995) ("The maxim [*expressio unius est exclusio alterius*] instructs that, when parties list specific items in a document, any item not so listed is typically thought to be excluded."). The fact that none of those exceptions concerns the type of removal order issued to a class member underscores that Defendants cannot now read such a new exception into the Settlement. Moreover, the impropriety of reading in unenumerated exceptions is reinforced by Section II's instruction that ICE OPLA attorneys must review JMTR requests "on a case-by-case basis" and presumptively join "each" request that they receive from a class member. Settlement Agreement § II(A). This obligation to review each individual request speaks clearly to the intent to foreclose ICE OPLA from creating new exceptions *ex post facto* to Section II's mandate.

Third, because there is no impediment to ICE OPLA complying with Section II's exact requirements for class members with expedited removal orders and taking the specific action called for—*i.e.*, joinder of the class member's motion—the plain text of the Settlement compels ICE OPLA to take that action for Ms. Alves da Silva and Mr. Granda Jimenez. Just like class members with regular removal orders, those with expedited removal orders seek to benefit from Section II by filing motions that would reopen their removal orders and dismiss any removal proceedings against them, allowing them to pursue lawful status. They have asked ICE OPLA to

join in those motions, and absent a finding of one of the enumerated exceptions, the plain language of the Settlement compels ICE OPLA to join. That language must be given effect. *See Young v. IMO Indus., Inc.*, 541 F. Supp. 2d 433, 446–47 (D. Mass. 2008) (applying ordinary contract principles to settlement agreements and construing unambiguous language according to its plain and natural meaning); *see also Filiatrault v. Comverse Tech., Inc.*, 275 F.3d 131, 135 (1st Cir. 2001) (contract terms are given their “plain, ordinary, and natural meaning”).

For Ms. Alves da Silva and Mr. Granda Jimenez, there is no reason that ICE OPLA cannot join their JMTR requests. ICE OPLA can evaluate their requests, assess if they comply with Section II’s documentary requirements, and make determinations about whether the class members fall under one of the enumerated exceptions. Indeed, for Ms. Alves da Silva, ICE OPLA has *already* conducted that analysis and agreed that she does not fall under any enumerated exception. Bandar Decl. ¶ 17; Bandar Decl. Ex. B at 2. No part of Defendants’ Section II analysis or obligation to join in a class member’s request is constrained by the type of removal order, and Defendants have made no contention that ICE OPLA is unable to comply with the precise terms of Section II and join in their motions to reopen and dismiss. Unquestionably, ICE OPLA can. And because ICE OPLA *can* follow Section II as to those with expedited removal orders, it plainly *must*.

B. Denying the Benefits of Section II Is Inconsistent with the Settlement’s Purpose to Broadly Assist All Class Members

In addition to the unmistakable mandate of the plain text, allowing class members with expedited orders of removal to benefit from Section II is also consistent with the clear purpose of the *Calderon* Settlement. Section II is a central pillar of the Settlement, ensuring that the Settlement not only protects class members temporarily during its two-year duration, but also helps them in the long term by eliminating their removal orders. Doing so both aids noncitizen

class members in gaining permanent status more quickly and allows them greater stability during that process. *See* ECF No. 802 at 6-7 (Court order describing the purpose of Section II as “provid[ing] a mechanism for class members to eliminate their final removal orders, thereby removing an obstacle to their pursuit of lawful permanent residence”).

Conversely, excluding a subset of class members from the benefits of Section II—even though they are protected by Section III and meet all the requirements of class membership—would deprive them of a central benefit of the Settlement simply because their removal order was not issued by EOIR. Such an interpretation would leave class members like Ms. Alves da Silva and Mr. Granda Jimenez vulnerable to the execution of their removal orders and separation from their families as soon as the Settlement’s two-year enforcement protection expires. But this is plainly inconsistent with the parties’ agreement to provide broad relief to all class members, and any interpretation of the Settlement that results in an inequitable result should be rejected.

The intended broad reach of Section II is confirmed through the parties’ repeated statements to the Court during the approval process that they intended for the Settlement to treat class members equitably and avoid unnecessary distinctions between class members. In seeking the Settlement’s preliminary approval, the parties represented to the Court that the Settlement “provides meaningful relief for class members and treats them equitably relative to each other.” ECF No. 653 at 13. The parties explained that the Settlement “*offers the same relief to every class member,*” namely, “a process for seeking to reopen proceedings and limitations on enforcement actions.” *Id.* (emphasis added). And when seeking final approval, the parties again reiterated in their joint memorandum to the Court that “the Settlement Agreement treats class members equitably relative to each other” and that “all class members have fundamentally the same rights and protections under the Settlement Agreement.” ECF No. 671 at 13-14.

The parties' intent was clear: class members who were eligible to gain lawful status would receive DHS's help in getting rid of their removal orders in order to facilitate their path to staying in the United States with their families, a benefit that only those who were deemed to be dangerous or to have committed certain prior immigration abuses could be denied. *See* Restatement (Second) of Contracts § 202(1) (“[I]f the principal purpose of the parties is ascertainable it is given great weight.”). Even if the Settlement lacked “express terminology” covering the situation of those with expedited removal orders—which is not the case here, given that the Settlement’s broad language easily includes expedited removal orders—this Court would still be compelled to “discern from the contract as a whole what the parties ‘must have intended’” for this particular situation and “enforce that intention.” *Dobson v. Hartford Fin. Servs. Grp., Inc.*, 389 F.3d 386, 399 (2d Cir. 2004) (citing 11 Richard A. Lord, Williston on Contracts § 31:7, at 321 (4th ed. 1999)); *see also Barnes v. Gorman*, 536 U.S. 181, 188 (2002) (holding that “reasonably implied contractual terms are simply those that comport with community standards of fairness” (citations omitted) (cleaned up)); *Williams v. Metzler*, 132 F.3d 937, 948 (3d Cir. 1997) (“[C]ourts must often reckon with the effect of events unforeseen or not contemplated by the parties at the time agreement is reached. ... We do so by examining the agreement’s underlying purpose and integrated provisions.”).

Here, the clear intent to broadly provide remedies to all class members absent enumerated exceptions aligns with the plain text. Defendants broadly agreed in Section II to join in getting rid of removal orders for class members who do not fall within one of the enumerated exceptions—which Ms. Alves da Silva and Mr. Granda Jimenez do not. Nothing about having an expedited order of removal makes Ms. Alves da Silva and Mr. Granda Jimenez unsuited or less worthy of receiving the benefits of Section II. By denying them those benefits on that basis,

Defendants not only act inconsistently with the Settlement’s broader goals, but also violate their promise to assist all class members who can demonstrate *prima facie* eligibility to obtain lawful status and are not subject to the dangerousness or fraud exceptions.

C. The Distinctions Between Expedited and Regular Removal Orders Provide No Basis to Deny Benefits to Class Members Who Fall Within the Plain Language of Section II

Faced with this plain text and well-understood purpose of the Settlement, Defendants attempt to draw on the differences between expedited and regular removal proceedings, contending that because “OPLA are not parties to expedited removals, they lack authority over the Class Member’s expedited removal orders.” Luo Decl. Ex. A at 1. Defendants contrast this to regular removal proceedings, where they contend that “OPLA is a party.” *Id.* Pointing to the requirement to submit motions with the ICE OPLA office with “jurisdiction” over the removal order, Defendants argue Section II “clearly contemplates” only requiring ICE OPLA’s joinder for removal orders arising out of removal proceedings before EOIR and “not actions taken by ERO, CBP, or USCIS in the *expedited removal* process under INA § 235/8 U.S.C. § 1225.” *Id.* But the distinctions Defendants draw between ICE OPLA’s role in regular removal proceedings and expedited removal proceedings fail to explain why they are prevented from applying Section II to Ms. Alves da Silva or Mr. Granda Jimenez’s situations involving expedited removal orders.

To begin, while ICE OPLA is the legal representative of ICE during regular removal proceedings in immigration court, *see* 6 U.S.C. § 252(c), Defendants are incorrect in characterizing ICE OPLA as a “party” to these proceedings. ICE OPLA is not itself a “party” to *any* removal proceedings, regular or otherwise. And with respect to the language of Section II(B) that references a requirement to file the request “with the OPLA field location having jurisdiction over the Class Member’s removal order,” that language performs the channeling function of routing requests to the geographically-appropriate ICE OPLA office (generally,

where the order of removal was issued) and is not reasonably read as creating a limitation on the class members to whom Section II applies.⁵

The differences between regular and expedited removal orders, while significant in terms of the process that resulted in the order, are not meaningful distinctions when it comes to the purposes of Section II and ICE OPLA’s ability to achieve those purposes by doing exactly what Section II calls on them to do, *i.e.*, join a class member’s motion to reopen and dismiss. It is telling that Defendants have not argued that ICE OPLA “cannot” join motions for those with expedited removal orders. They can. Instead, Defendants simply contend that “OPLA has no basis” to do so because it is not a “party” to the expedited removal proceeding and has no “authority” over the orders. Luo Decl. ¶ 5; Luo Decl. Ex. A at 1. But far from having “no basis” to join motions seeking to get rid of expedited removal orders, ICE OPLA’s “basis” is that it has been given the specific duty to do so under the Settlement. This includes its commitment under Section II to review each class member’s case, determine if they are *prima facie* eligible to obtain status and if they are subject to the public safety, national security, or fraud exceptions to Section II, and join their motions to reopen and dismiss if none of those exceptions apply.

Defendants’ limited view of ICE OPLA’s role ignores that, in addition to being ICE’s legal representative during removal proceedings, ICE OPLA also serves as “legal advisor” to ICE, the DHS subagency that has agreed—pursuant to this Settlement—that it will not execute

⁵ That the term “jurisdiction” here refers to a geographic channeling and not to any limit on the authority of ICE OPLA to take action in cases is confirmed by the fact that Defendants long ago instructed class members to submit their JMTR requests to a national, centralized ICE OPLA inbox rather than the specific geographic field office where the removal order was issued. *See, e.g.*, Rothwell Decl. Ex. B at 1. This geographic understanding of the word “jurisdiction” makes sense, as ICE OPLA has no “jurisdiction” over any removal orders in any technical sense. *See generally Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 90 (1998) (“Jurisdiction, it has been observed, is a word of many, too many, meanings.” (citation omitted) (cleaned up)).

the removal orders of most class members and will instead help them to reopen and dismiss their removal cases. Having bound itself to help those class members who satisfy these criteria to reopen and dismiss their cases, it is incumbent upon “Defendants”—including the leaders of ICE and DHS, and the President, *see* Settlement Agreement § I(P)—to facilitate in good faith the reopening of the removal orders of those class members who have been evaluated by ICE OPLA. Paradoxically, Defendants have washed their hands of this obligation in the cases in which it is easiest for them to achieve Section II’s goals. But the plain text of the Settlement is clear about the narrow circumstances in which class members can be deprived of the benefit of Defendants’ assistance, and does not permit Defendants to create such gaps in Section II’s vital protections.

IV. CONCLUSION AND REQUEST FOR RELIEF

For the reasons stated above, the Court should find that ICE has violated Section II of the Settlement by refusing to join Ms. Alves da Silva’s and Mr. Granda Jimenez’s motion to reopen requests on the basis of their expedited removal orders, and should require that ICE OPLA review the requests in accordance with the Settlement. Additionally, in Ms. Alves da Silva’s case, because ICE OPLA has already completed its review and determined that she is not subject to any exception to Section II, the Court should compel ICE OPLA to join in her JMTR request.

Respectfully submitted this 17th day of August, 2026.

Counsel for the Petitioners

/s/ Kevin S. Prussia

Kevin S. Prussia (BBO # 666813)

Jonathan A. Cox (BBO # 687810)

Christina Luo (BBO # 705590)

Peter H. Merritt (BBO # 711435)

WILMER CUTLER PICKERING

HALE AND DORR LLP

60 State Street

Boston, MA 02109

Telephone: (617) 526-6000

Facsimile: (617) 526-5000

kevin.prussia@wilmerhale.com

jonathan.cox@wilmerhale.com

christina.luo@wilmerhale.com

peter.merritt@wilmerhale.com

Adriana Lafaille (BBO # 680210)

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION OF MASSACHUSETTS, INC.

One Center Plaza

Suite 850

Boston, MA 02108

(617) 482-3170

alafaille@aclum.org

Kathleen M. Gillespie (BBO # 661315)

Attorney at Law

6 White Pine Lane

Lexington, MA 02421

(339) 970-9283

kathleenmgillespiesq@gmail.com

CERTIFICATE OF SERVICE

I, Kevin Prussia, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: August 17, 2026

/s/ Kevin S. Prussia

Kevin S. Prussia (BBO # 666813)