

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

**DECLARATION OF
CHRISTINA LUO
IN SUPPORT OF PETITIONERS'
MOTION TO ENFORCE THE
SETTLEMENT AGREEMENT**

I, Christina Luo, declare as follows:

1. I am an attorney with the law firm of Wilmer Cutler Pickering Hale and Dorr LLP (“WilmerHale”), co-counsel for the Petitioners in the above-captioned matter. I am an attorney licensed to practice in the Commonwealth of Massachusetts. I am over the age of eighteen and have personal knowledge of the facts set forth in this Declaration. If called as a witness, I could and would competently testify thereto. I submit this Declaration in support of Petitioners’ Motion to Enforce the Settlement Agreement.

2. On April 15, 2026, my co-class counsel, Adriana Lafaille, e-mailed counsel for the Government Susan Ansari regarding class member Nathalya Alves da Silva’s joint motion to reopen (“JMTR”) requests. In her e-mail to Ms. Ansari, Ms. Lafaille explained that Ms. Alves da Silva is subject to an expedited order of removal, that Ms. Alves da Silva’s first JMTR request was joined by OPLA but rejected by the Immigration Court, and that OPLA declined to join Ms. Alves da Silva’s second JMTR request directed to ICE ERO. Ms. Lafaille asked Government counsel to look into these matters.

3. On April 16, 2026, Government counsel Ms. Ansari asked Ms. Lafaille which “OPLA office this was.” Ms. Lafaille responded the same day, “OPLA in Hartford handled this case.”

4. On May 12, 2026, in the same e-mail chain, my co-class counsel Peter Merritt e-mailed Ms. Ansari to follow up on Ms. Alves da Silva’s case, as well as to raise class member Victor Alexander Granda Jimenez to the Government’s attention. In his e-mail to Government counsel, Mr. Merritt wrote that Mr. Granda Jimenez also had an expedited order of removal and recently submitted a JMTR request to ICE OPLA. He further requested that Government counsel confirm by May 26, 2026 whether ICE OPLA would agree to join both class members’ JMTR requests.

5. On May 19, 2026, Ms. Ansari responded and explained the Government’s position that “the settlement agreement only pertains to reopening immigration court removal proceedings where OPLA is a party and not expedited removal proceedings.” Ms. Ansari further confirmed the Government’s view that “[b]ecause OPLA are not parties to expedited removals, they lack authority over the Class Member’s expedited removal orders.”

6. Attached as **Exhibit A** is a true and correct copy of the e-mail chain dated April 15, 2026 through May 19, 2026, between class counsel and counsel for the Government regarding Ms. Alves da Silva’s and Mr. Granda Jimenez’s JMTR requests and the Government’s response, with the alien numbers for Ms. Alves da Silva and Mr. Granda Jimenez redacted.

7. I declare under penalty of perjury that, to the best of my knowledge and belief, the facts set forth above are true and correct.

Executed this 16th day of August, 2026 in Boston, Massachusetts.

/s/ Christina Luo

Christina Luo (BBO # 705590)

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christina.luo@wilmerhale.com

EXHIBIT A

From: [Ansari, Susan \(CIV\)](#)
To: [Merritt, Peter H.](#); [Larakers, Mary L. \(CIV\)](#)
Cc: [WH ACLU MA Calderon Class Action](#); [Adriana Lafaille](#); [kathleenmgillespieesg](#)
Subject: RE: Section II compliance (Nathalya Alves da Silva, A# [REDACTED])
Date: Tuesday, May 19, 2026 9:41:42 AM

EXTERNAL SENDER

Hi Peter,

Expedited removal proceedings are separate and apart from removal proceedings in immigration court. In removal proceedings, an immigration judge issues the removal order – not an immigration officer. In expedited removal proceedings, an immigration officer issues the removal order. While in certain circumstances the alien may request that an immigration judge review the negative credible fear finding, the immigration judge is only reviewing the USCIS asylum officer’s negative credible fear finding, not the expedited removal order. As made clear by 8 U.S.C. § 1225(b)(1), (d), USCIS gives the complete record of the USCIS asylum officer’s credible fear review determination to the immigration court. The Immigration Judge creates a record, which is kept separate from the Record of Proceedings in any subsequent immigration court proceeding involving the noncitizen. 8 C.F.R. § 1003.42(b). OPLA is not part of expedited removals which fall within the purview of immigration officers, including ERO and CBP, as these officers have the sole authority to issue expedited removal orders. USCIS and EOIR may have limited roles in the expedited removal proceedings process, but only if an alien claims a fear of persecution or an intention to apply for asylum and an alien requests to have an adverse credible fear determination reviewed.

While the regulations you cited allow an affected party to request reopening or reconsideration of “an action by the Service”, our position remains the same – that the settlement agreement only pertains to reopening immigration court removal proceedings where OPLA is a party and not expedited removal proceedings. Further, while expedited removal proceedings cannot be reopened under 8 U.S.C. § 1225, any request to reopen 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). See 8 C.F.R. §§ 103.5(a)(1)(i), (ii). OPLA is not a party to any expedited removal proceedings. Further, even for cases that go before an immigration judge for review of a negative credible fear determination, OPLA is not required to appear as they are non-adversarial hearings and OPLA does not defend an adverse credible fear determination.

Section II(B)(4) of the Agreement states: “The request should identify the requester as a Class Member, *must be filed with the OPLA field location having jurisdiction over the Class Member’s removal order*, and must comply with any applicable standard operating procedures of the specific OPLA field location, including but not limited to completing a background check or standardized form.” OPLA has no basis to join any motion to reopen in expedited removal cases. This section clearly contemplates actions taken by OPLA in *removal proceedings* under INA § 240/8 U.S.C. § 1229, not actions taken by ERO, CBP, or USCIS in the *expedited removal* process under INA § 235/8 U.S.C. § 1225. Because OPLA are not parties to expedited removals, they lack authority over the Class Member’s expedited removal orders. However, OPLA will continue to join motions to reopen in cases involving removal proceedings before EOIR where appropriate.

Best,
Susan

From: Merritt, Peter H. <Peter.Merritt@wilmerhale.com>
Sent: Tuesday, May 12, 2026 1:24 PM
To: Ansari, Susan (CIV) <Susan.Ansari2@usdoj.gov>; Larakers, Mary L. (CIV) <Mary.L.Larakers@usdoj.gov>
Cc: WH ACLU MA Calderon Class Action <WHACLUMACalderonClassAction@wilmerhale.com>; Adriana Lafaille <alafaille@aclum.org>; kathleenmgillespieesq <kathleenmgillespieesq@gmail.com>
Subject: [EXTERNAL] RE: Section II compliance (Nathalya Alves da Silva, A# [REDACTED])

Hi Susan,

We wanted to follow up on Ms. Alves da Silva's case, below. Please let us know if you have had a chance to look into this matter and if ICE OPLA will reconsider its decision and join Ms. Alves da Silva in a request to ICE ERO to reopen and dismiss her expedited removal proceedings.

Additionally, we wanted to flag the case of another class member—Victor Alexander Granda Jimenez (A [REDACTED])—who also has an expedited order of removal and has just recently submitted his JMTR request to ICE OPLA. Mr. Granda Jimenez lives in New Haven, CT, and is currently married to a U.S. citizen who is an active-duty member of the U.S. Army National Guard. Mr. Granda Jimenez meets all the requirements of class membership under our settlement agreement. Although we see no basis for OPLA to refuse to agree to join Mr. Granda Jimenez's JMTR request, given OPLA's position on Ms. Alves da Silva's request, we are writing to make sure that OPLA will appropriately consider and presumptively join his request under the settlement.

Please confirm **by May 26, 2026** whether ICE OPLA will agree to join Ms. Alves da Silva's and Mr. Granda Jimenez's motions to reopen and dismiss their expedited orders of removal. Let us know if it would be useful to discuss these cases over the phone.

Best,
Peter

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From: Adriana Lafaille <ALafaille@aclum.org>
Sent: Thursday, April 16, 2026 12:31 PM
To: Ansari, Susan (CIV) <Susan.Ansari2@usdoj.gov>; Larakers, Mary L. (CIV) <Mary.L.Larakers@usdoj.gov>
Cc: WH ACLU MA Calderon Class Action <WHACLUMACalderonClassAction@wilmerhale.com>; kathleenmgillespieesq <kathleenmgillespieesq@gmail.com>; Hiliana Santos <hsantos@bandarlawoffice.com>
Subject: RE: Section II compliance (Nathalya Alves da Silva, A# [REDACTED])

EXTERNAL SENDER

Hi Susan, thanks for looking at this. OPLA in Hartford handled this case.
Adriana

From: Ansari, Susan (CIV) <Susan.Ansari2@usdoj.gov>
Sent: Thursday, April 16, 2026 9:33 AM
To: Adriana Lafaille <ALafaille@aclum.org>; Larakers, Mary L. (CIV) <Mary.L.Larakers@usdoj.gov>
Cc: WH ACLU MA Calderon Class Action <whaclumacalderonclassaction@wilmerhale.com>; kathleenmgillespieesq <kathleenmgillespieesq@gmail.com>; Hiliana Santos <hsantos@bandarlawoffice.com>
Subject: RE: Section II compliance (Nathalya Alves da Silva, A# [REDACTED])

Hi Adriana,

Could you let us know what OPLA office this was?

Thanks,
Susan

From: Adriana Lafaille <ALafaille@aclum.org>
Sent: Wednesday, April 15, 2026 6:01 PM
To: Ansari, Susan (CIV) <Susan.Ansari2@usdoj.gov>; Larakers, Mary L. (CIV) <Mary.L.Larakers@usdoj.gov>
Cc: WH ACLU MA Calderon Class Action <whaclumacalderonclassaction@wilmerhale.com>; kathleenmgillespieesq <kathleenmgillespieesq@gmail.com>; Hiliana Santos

<hsantos@bandarlawoffice.com>

Subject: [EXTERNAL] Section II compliance (Nathalya Alves da Silva, A# [REDACTED])

Dear Susan and Mary,

I hope you are doing as well as possible. I'm writing about a recent JMTR request made on behalf of Nathalya Alves da Silva, A# [REDACTED]. Her counsel, Hiliana Santos, is copied here.

As background, Ms. Alves da Silva is subject to an expedited removal order (I have some concerns about some aspects of her ER process, so this is not a concession that she has a valid ER order, but that is outside the purpose of this email). OPLA previously agreed to join a joint motion to reopen directed to the Immigration Judge, reflecting OPLA's determination that Ms. Alves da Silva satisfies the Calderon JMTR requirements of showing prima facie eligibility, not being a threat to public safety, etc. The Immigration Court, however, rejected the filing on the ground that it lacked jurisdiction. Ms. Alves da Silva then requested ICE OPLA join a motion to reopen and dismiss under 8 C.F.R. § 103.5 directed to ICE ERO, under Calderon. OPLA declined to join that request.

Section II of the Settlement states that "ICE OPLA ... will presumptively join motions to reopen and dismiss filed by Non-Citizen class members," without stating that it will join only motions directed to EOIR. The Settlement does not place any restrictions on OPLA's Section II obligations based on the type of removal order or the procedural vehicle required to effectuate reopening. DHS regulations permit reopening and dismissal of DHS-issued removal orders under 8 C.F.R. § 103.5, which permits an "affected party" to seek reopening or reconsideration of a proceeding, decision, or action of "the Service," defined to include USCIS, CBP, and ICE, see 8 C.F.R. § 1.2, and while § 103.5 expressly excludes certain matters from its scope, expedited removal orders are not among those exclusions. Accordingly, there is no basis for OPLA's refusal to agree to join a motion to reopen the removal order for Ms. Alves da Silva, given that OPLA has already determined that she qualifies for relief under Calderon.

We would greatly appreciate you looking into this matter. Please let us know if it would be useful to discuss it over the phone.

Best regards,
Adriana

Adriana Lafaille

Pronouns: she, her

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