

Garcia Perez v. USCIS is a lawsuit on behalf of a proposed nationwide class of asylum seekers who have been prevented from obtaining employment authorization while their asylum applications are pending before the immigration court or the Board of Immigration Appeals. The lawsuit was filed in the Western District of Washington in June 2022 by the Northwest Immigrant Rights Project (NWIRP) and the National Immigration Litigation Alliance (NILA). The lawsuit challenges U.S. Citizenship and Immigration Services' (USCIS) and the Executive Office for Immigration Review's (EOIR) policies and practices dictating how to manage the asylum clock as it relates to employment authorization. Asylum applicants must demonstrate that their asylum applications have been pending for at least 180 days in order to qualify for interim employment authorization while they are waiting on a final decision on their asylum applications. However, if the asylum application is denied before the 180 days expire, or if the asylum applicant takes action to delay the adjudication process, the asylum clock is stopped, preventing the person from accruing the necessary 180 days to qualify for employment authorization, even if they are appealing the denial of their application. Similarly, if the applicant takes an action to delay the adjudication process, the asylum clock is stopped and does not continue to accrue time.

This lawsuit challenges USCIS' and EOIR's unlawful practices preventing asylum applicants from accruing the 180 days necessary to qualify for employment authorization, leaving these individuals unable to work and often in dire financial straits. Specifically, USCIS and EOIR practices included stopping the 180 day clock for actions that were not taken by the asylum applicant to delay proceedings, including 1) when applicants filed motions to change venue because they were released from detention or had moved to another part of the country after being detained at the border; and 2) where immigration courts continued or closed proceedings while waiting for USCIS to first adjudicate asylum applications for unaccompanied youth, as is required by statute. In addition, the lawsuit challenged the agencies' practice of failing to restart the asylum clock for those applicants who were initially denied asylum by an immigration judge, but subsequently prevailed on appeals to either the Board of Immigration Appeals or to the courts of appeals, and had their cases remanded back to the immigration court to move forward with their asylum claims. These individuals were prevented from obtaining employment authorization even though they had won their appeals, or even though they were not responsible for actions delaying removal proceedings. As a consequence, hundreds of applicants were prevented from obtaining work authorization while they were forced to wait years to complete their asylum process. Finally, the lawsuit challenged the agencies' failure to provide appropriate notice to asylum applicants regarding determinations of when the clock was being stopped, and failing to provide a meaningful mechanism to challenge erroneous agency decisions to stop the clock.

The parties have now reached an agreement in principle as to all claims and are working on finalizing the last terms of the settlement agreement. USCIS has already implemented two important components of the settlement. First, USCIS agreed to amend their policy to address the asylum clock for individuals whose cases are remanded after successful appeals, and has updated their website accordingly to clarify that these individuals will be credited with the total number of days on appeal toward the necessary 180 days. Second, EOIR has modified the online case portal website to now include the asylum clock information, so that applicants have notice of how many days they have been credited with, and whether the clock has been stopped. Counsel

for plaintiffs anticipate being able to announce the final terms of the settlement shortly, as the parties have provided the Court with notice that they expect to present a final settlement to the court within 45 days. Plaintiffs' counsel is excited by these developments, as they will apply to thousands of asylum seekers each year, ensuring that these asylum applicants who would have otherwise been unable to obtain employment authorization are now able to find work to support themselves and their family members. The support from the Barbara McDowell and Gerald S. Harman Foundation has been instrumental in providing resources for NWIRP and NILA to litigate this case.

Media coverage:

[Garcia Perez Practice Advisory - March 2023
Law 360](#)

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