Quick Guide: Defending SIJS Clients in Removal Proceedings[1]

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I. Introduction

Special Immigrant Juvenile Status (SIJS) is a humanitarian status that provides protections and a pathway to lawful permanent residence to immigrant children up to the age of 21 years who have been abused, abandoned, or neglected by their parent(s), and where a state juvenile court has determined that it is not in their best interest to be returned to their country of origin. *See* Immigration and Nationality Act (INA) § 101(a)(27)(J). A child who receives SIJS can apply for lawful permanent residence once a visa is available and they meet other eligibility requirements. *See* INA § 245(h). Visas for Special Immigrant Juveniles come from the employment-based fourth preference (EB-4) category by statute, pursuant to which no more than 7.1 percent of the worldwide level of employment-based visas may be allocated to all categories of "special immigrants," which includes but is not limited to SIJS youth. *See* INA § 203(b)(4). Due to the backlog of available visas in the EB-4 visa category, SIJS youth must wait years before a visa is available for them to seek lawful permanent residence. While SIJS youth wait for the opportunity to become lawful permanent residents, they are eligible for deferred action and employment authorization.[2] However, many SIJS youth are also in ongoing removal proceedings. Although Congress intended for SIJS youth to adjust their status to lawful permanent residence in the United States, SIJS youth are at risk of removal due to the years-long wait for an immediately available visa. Given the Trump administration's desire to engage in mass arrests and removals of noncitizens—even if they have potential immigration relief—it is more important than ever to use all available legal tools to protect SIJS youth from removal while they await a visa.

The End SIJS Backlog Coalition created this resource to help practitioners navigate removal proceedings for clients with pending or approved SIJS. The Coalition is a national group of directly impacted SIJS youth and allied advocates working together to end the SIJS backlog and its harms, including by protecting the rights of SIJS youth to remain safely in the United States while they pursue permanency. This resource offers strategies at every stage of an SIJS client's removal proceedings to advocate against the client's removal and to preserve the record for

[2] U.S. Citizenship and Immigration Services, USCIS to Offer Deferred Action for Special Immigrant Juveniles (Mar. 7, 2022). USCIS considers SIJS recipients for deferred action when a visa is not immediately available to them in the EB-4 category to apply for lawful permanent residence. *See* USCIS Policy Manual, Vol. 6, Pt. J, Ch. 4.G.1.

appeal.[3] It is intended as a "quick guide" to help practitioners identify potential arguments and strategies. It does not comprehensively describe such arguments and strategies but instead links to other resources. Section II covers strategies for pleading to the Notice to Appear. Section III discusses challenging the Department of Homeland Security's (DHS) evidence of removability. Section IV highlights arguments that can be made once removability has been established to avoid removal and/or preserve the best record for appeal. Section V offers strategies after an immigration judge (IJ) has ordered removal. Section VI discusses detention issues that SIJS youth may face. And Section VII talks about risk mitigation strategies for SIJS clients who may be vulnerable to expanded expedited removal.

For all of the strategies discussed below, practitioners must assess whether the strategy is beneficial in the particular client's case and obtain the client's informed consent to pursue that strategy. For example, while in many situations termination of removal proceedings is advantageous for an SIJS client, there may be situations where termination of removal proceedings could put a client at higher risk of being subjected to expedited removal, as discussed in Section VII below. Further, some of the strategies described below may be extremely unlikely to succeed before a particular IJ and may even evoke a hostile response from the IJ, given the pressures adjudicators have to quickly complete immigration court cases. It can be helpful to investigate the IJ's receptivity to particular legal strategies in order to inform the client of likely outcomes. In the current enforcement climate, it is important to make all available legal arguments to preserve them for appeal.

II. Pleading to the Notice to Appear

A. Challenging Defects in the Notice to Appear

Practitioners representing SIJS youth should assess whether there are defects in the Notice to Appear (NTA), Form I-862, the charging document that starts removal proceedings. Removal proceedings commence once DHS serves the NTA on a respondent and files it in immigration court. 8 CFR §§ 1003.14(a), 1239.1. The statutory and regulatory requirements of an NTA are enumerated in INA § 239 and 8 CFR § 1003.15.[4] Practitioners should carefully review those requirements and compare them to their client's NTA to determine whether the NTA is facially valid. If it is not, practitioners may consider moving to terminate the removal proceedings, because the foundational document is defective.

Under Board of Immigration Appeals (BIA) case law, the statutory NTA requirements are "claim-processing" rules, and as such a respondent must timely object to an NTA defect in order to merit a remedy, such as termination. *Matter of Fernandes*, 28 I&N Dec. 605 (BIA 2022). An

[3] Although not discussed in this resource, it is important to recognize how an IJ's broad discretionary authority can create an environment for implicit racial bias and impact the IJ's decision-making. *See* Fatma E. Marouf, *Implicit Bias and Immigration Courts*, 45 New Eng. L. Rev. 417, 431 (2011). SIJS youth in particular face racialized harms due to the law's design and implementation. Dalia Castillo-Granados, Rachel Leya Davidson, Laila L. Hlass & Rebecca Scholtz, *The Racial Justice Imperative to Reimagine Immigrant Children's Rights: Special Immigrant Juvenile Status as a Case Study*, 71 Am. U. L. Rev. 1779 (2022).

[4] For example, INA § 239(a)(1) requires that the NTA specify the nature of the proceedings, the charges of removability and supporting factual allegations, the time and place of removal proceedings, and advisals of certain rights and responsibilities.

objection is considered timely if it is made prior to the close of pleadings. *Id.* at 610. If a respondent objects to a defective NTA, the IJ may allow DHS to "cure" it by moving the IJ to amend it. *Matter of R-T-P-*, 28 I&N Dec. 828 (BIA 2024). Respondents in the jurisdiction of the Seventh Circuit, however, are entitled to termination if they timely object to the NTA's defects. *See, e.g.*, *Arreola-Ochoa v. Garland*, 34 F.4th 603, 608 (7th Cir. 2022). More information about challenging defective NTAs is here.

Practitioners should timely object to an NTA's defects to preserve the issue for appeal, and should seek termination based on the NTA's defects if doing so is in the client's interests. If the IJ agrees to terminate proceedings on the basis of an NTA's defects, DHS may appeal or may refile a corrected NTA and re-initiate removal proceedings.

B. Challenging Improper NTA Service

Practitioners should assess whether DHS properly served the NTA on their SIJS client and consider pursuing termination if service was improper. Regulations require that, in cases of children under 14, DHS serve the NTA on "the person with whom the . . . minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend." 8 CFR § 103.8(c)(2)(ii). If DHS served the NTA when the client was under 14 and residing in a shelter or institution, DHS should serve the facility's director, as the "person or persons who are most likely to be responsible for ensuring that [a noncitizen] appears before the Immigration Court at the scheduled time." *Matter of Amaya-Castro*, 21 I&N Dec. 583, 585 (BIA 1996). In addition, upon release from ORR custody, DHS should serve the child's ORR sponsor. *See Matter of Mejia-Andino*, 23 I&N Dec. 533, 536 (BIA 2002). In the Ninth Circuit, when a child under the age of 18 is released from immigration custody to an adult's care, DHS must serve the NTA on that adult. *Flores-Chavez v. Ashcroft,* 362 F.3d 1150, 1163 (9th Cir. 2004). While BIA case law says that DHS should be given the chance to "cure" defective NTA service, *Matter of W-A-F-C-*, 26 I&N Dec. 880 (BIA 2016), practitioners can still achieve termination based on defective service if DHS fails to cure or if the regulatory violation was prejudicial. *See, e.g.*, *B.R. v. Garland*, 26 F.4th 827, 840 (9th Cir. 2022).

In sum, if DHS failed to properly serve an SIJS client, practitioners should deny proper service of the NTA at the beginning of pleadings (whether oral or written), and, if it is in the client's interest to do so, seek termination of the proceedings based on the defective service. Again, keep in mind that DHS may choose to re-serve the client—properly this time—and re-initiate proceedings, but given case backlogs it is possible that DHS may not re-file the NTA.

C. Denying the NTA's Allegations and/or Charge

Before pleading to the NTA on behalf of an SIJS client, practitioners should carefully consider the consequences of conceding the allegations and charge and should devise a pleading strategy with the client's informed consent. It is often beneficial to deny, rather than admit, the NTA's

factual allegations, and deny, rather than admit, the charge of removal.[5] Denying the allegations and charge avoids a concession[6] and preserves the issue of removability for appeal.

Practitioners should deny any NTA factual allegations that are incorrect. For example, if a client entered without inspection but subsequently obtained an approved SIJS petition, practitioners should deny an NTA allegation that the client was not paroled. *See* INA § 245(h)(1) (stating that Special Immigrant Juveniles are "deemed . . . to have been paroled into the United States").

Similarly, practitioners should deny the removal charge if there is an argument that the SIJS client is not removable; for example:

- An SIJS client who entered without inspection but was subsequently granted SIJS should consider denying a removal charge under INA § 212(a)(6)(A)(i) for being present without admission or parole. If the client plans to pursue SIJS, practitioners may similarly consider denying this charge to avoid being bound by the prior concession in the future when the SIJS petition is approved.[7]
- An individual who entered without inspection should consider denying a removal charge under INA § 212(a)(7)(A)(i)(I), arguing that that ground applies only "at the time of application for admission," *see Torres v. Barr*, 976 F.3d 918, 931 (9th Cir. 2020).
- An individual who overstays a visa and subsequently is approved for SIJS is not deportable under INA § 237(a)(1)(C) because of the special SIJS deportation grounds waiver found at INA § 237(c).

Even if there are no errors in the NTA's allegations and charge, practitioners should consider whether it is in the SIJS client's interest to nevertheless deny the NTA's allegations and charge and put DHS to its burden of proof. Denying the allegations and charge activates a burden-shifting framework that requires DHS to prove the respondent's alienage. *See* 8 CFR § 1240.8(c). Only if DHS proves alienage does the burden shift to the respondent to show by clear and convincing evidence that they are lawfully in the United States pursuant to a prior admission,

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[5] During the Biden administration, some practitioners who denied the NTA's allegations and charge on behalf of their clients were met with OPLA accusations that the attorney was making a false claim to U.S. citizenship on the client's behalf and/or of threats of bar complaints. *See* AILA Practice Alert: False Claim to USC Charge in Response to Contested Pleadings (Feb. 29, 2024). These OPLA practices apparently subsided after the issue was raised with OPLA leadership. *Id.* That said, the second Trump administration has taken aim at immigration lawyers, threatening sanctions and other consequences for lawyers who engage in what the government determines to be "frivolous, unreasonable, and vexatious litigation." Holding the government to its burden of proof is most certainly an appropriate litigation strategy for a removal defense practitioner, and one long recognized by the BIA. *See, e.g.*, *Matter of Guevara*, 20 I&N Dec. 238, 244 (BIA 1990, 1991) ("The legal concept of a 'burden of proof' requires that the party upon whom the burden rests carry such burden by presenting evidence.").

[6] Note, however, that regulations prohibit IJs from accepting an admission of removability from a pro se respondent who is "under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend," and must instead hold a hearing on removability in this situation. 8 CFR § 1240.10(c); *see also Matter of Amaya-Castro*, 21 I&N Dec. 583, 587 (BIA 1996) (IJs "must exercise particular care" in determining removability of pro se, unaccompanied minors).

[7] It is likely that the IJ will reject this argument and find that the INA § 245(h)(1) parole does not impact a removal charge under INA § 212(a)(6)(A)(i), perhaps concluding that the "parole" under INA § 245(h)(1) is only for purposes of adjustment of status under INA § 245(a). *See* INA § 245(h)(1) (stating that SIJS youth "shall be deemed, for purposes of subsection (a), to have been paroled"); 8 CFR § 1245.1(e)(3). Nonetheless, as with other arguments described in this section, it may be in the SIJS client's interest to make them to preserve issues for appeal.

or that they are clearly and beyond a doubt entitled to be admitted to the United States and not inadmissible as charged. *Id.*[8]

Much like a criminal defense attorney may counsel a client against pleading guilty because it is the government's burden to prove guilt beyond a reasonable doubt, an advocate for immigrant youth may decide to deny the allegations and the charge of removability in order to hold DHS to its burden. Requiring that DHS meet its burden protects respondents' rights and preserves important issues for appeal.

III. Challenging DHS's Evidence of Removability

A. Challenging Reliability of DHS Evidence of Alienage

After a practitioner denies the NTA's allegations and charge(s) and puts DHS to its burden to prove alienage, DHS will often introduce as evidence of the client's alienage Form I-213, Record of Deportable/Inadmissible Alien. Form I-213, which DHS typically creates after interviewing the individual, contains information such as the individual's alleged country of birth, birth date, time and manner of entry to the United States, and immigration and criminal history.

Practitioners should consider objecting to DHS's evidence of alienage, such as Form I-213, as unreliable, and seeking termination based on DHS's failure to meet its burden of proof. *See* 8 CFR § 1003.18(d)(1)(i)(A); *see also Matter of Y-S-L-C-*, 26 I&N Dec. 688, 690 (BIA 2015) (noting that to be admissible in immigration court, evidence must be "probative and its admission . . . fundamentally fair"). While courts have held that I-213s are generally presumed to be reliable,[9] if the I-213 purports to contain statements from the respondent that can easily be disproven or are clearly false, this can undermine the I-213's presumption of reliability, and therefore can be used to push back against the government's attempts to use the I-213 to establish alienage.[10] For example, sometimes CBP officers will copy and paste the details and narrative from someone else's I-213 and will accidentally leave details in the I-213 that do not apply to the client.[11] In addition, if information contained in an I-213 comes from a very young child or the source of the I-213 statements is unknown or a third party, it may not be inherently reliable. *See Matter of Mejia-Andino*, 23 I&N Dec. at 537-39 (concurring opinion). Finally, if elements of the I-213 were gathered under duress, practitioners can argue against the I-213's

[8] The burden scheme described here applies to respondents charged on the NTA as being present without being admitted or paroled; those respondents who were admitted to the United States enjoy a more favorable burden scheme in which DHS carries the burden to establish removability by clear and convincing evidence. 8 CFR § 1240.8(a).

[9] *See, e.g.*, *Espinoza v. INS*, 45 F.3d 308, 310-11 (9th Cir. 1995); *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988).

[10] *See, e.g., Murphy v. INS*, 54 F.3d 605, 610-611 (9th Cir. 1995) (no presumption of reliability for unauthenticated I-213, where respondent disputed information in the I-213, the form had crossouts and handwritten notes, and there was a significant gap between the time that the information was purportedly gathered and the creation of the form); *see also Hernandez-Guadarrama v. Ashcroft*, 394 F.3d 674, 680 (9th Cir. 2005) (finding unreliable an I-213 that relied exclusively on statements from witnesses that could not be corroborated or cross-examined).

[11] *See, e.g.*, John Washington, *Bad Information: Border Patrol Arrest Reports Are Full of Lies That Can Sabotage Asylum Claims*, The Intercept, Aug. 11, 2019 (describing I-213s reporting that toddlers and infants stated that they had come to the United States "to look for work").

inherent reliability in order to contest the I-213's use to establish alienage. This resource has more information on challenging a Form I-213.

Note, however, that if a practitioner successfully objects to the admission of unreliable alienage evidence, DHS may seek to introduce "independent" evidence of a client's alienage to meet its burden of proof. Practitioners should carefully examine each piece of evidence DHS seeks to introduce to determine if objections are warranted. Practitioners challenging DHS's alienage evidence should also take care to avoid conceding alienage during pleadings or in other fora, such as in filing FOIA requests.[12] An SIJS petition is likely to be found to be independent evidence of alienage, so practitioners who want to put DHS to its burden on alienage should consider the sequencing of events and if possible resolve pleadings issues before filing the I-360 petition with USCIS.

B. Motions to Suppress Evidence of Alienage

Practitioners should also assess whether DHS's evidence of alienage was obtained unlawfully and if so whether a motion to suppress that evidence is warranted. Evidence can be suppressed in immigration court proceedings if it was obtained in "egregious" violation of the client's Fourth Amendment rights. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984).[13] Examples of such violations could include entering a home without a warrant or consent, or a race-based stop. Evidence may also be suppressed if it was obtained in ways that would make use of the evidence "fundamentally unfair" and violative of a person's Fifth Amendment due process rights—such as through coercive questioning. *Matter of Garcia*, 17 I&N Dec. 319, 320-21 (BIA 1980); *Singh v. Mukasey*, 553 F.3d 207, 214-16 (2d Cir. 2009). Here is a practice advisory on suppression in immigration court generally, here is one about suppression based on CBP conduct that occurred near the border, and here is one about suppression in immigration court based on state or local law enforcement officer conduct.

Evidence can also be suppressed if it was obtained in violation of regulations intended to benefit noncitizens, and the violation "prejudiced interests of the [noncitizen] which were protected by the regulation." *Matter of Garcia-Flores*, 17 I&N Dec. 325, 328 (BIA 1980) (internal quotations omitted).

Practitioners pursuing suppression strategies should take care not to concede alienage and should prepare to respond if DHS seeks to introduce "independent" evidence of a client's alienage.

C. Termination Based on Prejudicial Regulatory Violations

Practitioners should also explore whether DHS violated any regulations, laws, or policies in handling the SIJS youth's case, and if so, consider seeking termination as a remedy. The BIA has

[12] For example, where the FOIA form asks for country of birth, the practitioner could write "DHS alleges [country listed on NTA]." Regulations prohibit IJs from using applications submitted defensively in removal proceedings as a concession of alienage in cases where the respondent does not admit alienage. 8 CFR § 1240.11(e).

[13] The Supreme Court also recognized that suppression could be warranted in immigration proceedings if there was "good reason to believe that Fourth Amendment violations by [DHS] officers were widespread." *Lopez-Mendoza*, 468 U.S. at 1050; *see, e.g. Oliva-Ramos v. Att'y Gen. U.S.*, 694 F.3d 259, 279-282 (3rd Cir. 2012) (remanding to consider argument regarding widespread violations).

recognized that termination of proceedings is an appropriate remedy where DHS violates regulations that were promulgated at least in part for the benefit of the individual, and there is either presumed prejudice or actual prejudice. *Matter of Garcia-Flores*, 17 I&N Dec. at 328-29. Prejudice is presumed where compliance with the regulations is mandated by the Constitution or where the entire procedural framework in question was created for the fair processing of individuals. *Id.* at 329; *see also Sanchez v. Sessions*, 904 F.3d 643, 655 (9th Cir. 2018) (recognizing termination as a remedy where "(1) [an] agency violated a regulation; (2) the regulation was promulgated for the benefit of petitioners; and (3) the violation was egregious, meaning that it involved conscience-shocking conduct, deprived the petitioner of fundamental rights, or prejudiced the petitioner").[14]

Examples of statutes, regulations, policies, and court-ordered settlement agreements benefitting noncitizen children include:

- The Flores Settlement Agreement, which remains in effect as to DHS, sets standards of care for children in immigration detention, and dictates that children must be placed in the "least restrictive setting" possible. *Id.* ¶ 11.
- The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), codified in relevant part at 8 U.S.C. § 1232, which establishes procedures for how cases of unaccompanied children (UC) should be processed.
- Regulations governing the treatment of UC in ORR custody, described here, here, and here.
- A regulation, 8 CFR § 236.3(h) that requires DHS to serve Form I-770, Notice of Rights and Disposition, when DHS arrests a noncitizen child.

Practitioners should ask SIJS clients about their treatment while in CBP, ICE, and/or ORR detention. If they describe poor treatment (rotten food, extremely cold temperatures, being forced to sleep on the floor, lack of access to proper hygiene, use of force, sexual abuse, etc.), practitioners may consider arguing for termination of their removal proceedings. Similarly, if DHS violated a regulation or policy during its arrest of an SIJS youth,[15] practitioners should consider seeking termination. The termination motion should address which regulation, law, or policy was violated, how the rule was promulgated for the benefit of immigrant youth, and how the violation was egregious, deprived the child of their fundamental rights, caused actual prejudice, or whether the regulation was part of a framework designed to ensure the fair processing of the case.

Termination based on a regulatory or other legal violation is often pursued in tandem with termination based on a challenge to DHS's alienage evidence, as described in the above sections. In contrast to seeking termination based on challenging alienage evidence—where DHS's successful introduction of "independent" evidence of alienage will defeat a termination motion—

[14] In *Sanchez,* the petitioner was detained "solely on the basis of his Latino appearance, which constitutes a particularly egregious regulatory violation." 904 F.3d at 646.

[15] Examples of rules governing DHS arrest and processing of noncitizens include INA § 287(a)(2) (limiting when DHS may arrest someone without a warrant); 8 CFR § 287.3 (procedures for warrantless arrests); *id.* § 287.8 (governing DHS enforcement activities, including use of force); and a nationwide ICE policy on warrantless arrests issued as part of the settlement agreement in *Castañon-Nava v. DHS* (policy in effect nationwide from May 13, 2022 to May 13, 2025).

termination based on a regulatory violation can succeed even if DHS has introduced sufficient admissible evidence of alienage to meet its burden. This is an important distinction since an SIJS petition is likely to be found to be independent evidence of alienage.

IV. After Removability Has Been Established: Avoiding a Removal Order and/or Preserving Arguments for Appeal

A. Seeking Termination Based on SIJS

Under the new Executive Office for Immigration Review (EOIR) regulations, termination is mandatory in some circumstances and discretionary in others. An SIJS youth can benefit from mandatory termination if DHS joins or affirmatively non-opposes their motion to terminate (unless the IJ articulates "unusual, clearly identified, and supported reasons for denying the motion"). 8 CFR §§ 1003.18(d)(1)(i)(G) (IJ regulations), 1003.1(m)(1)(i)(G) (BIA regulations). While the Trump administration has rescinded prosecutorial discretion guidance that encouraged DHS attorneys to join motions to dismiss for SIJS youth, DHS attorneys may still exercise prosecutorial discretion to do so in individual circumstances—though this will likely be rare.

Other SIJS youth can seek discretionary termination. 8 CFR §§ 1003.18(d)(1)(ii), 1003.1(m)(1)(ii). For cases in these discretionary categories, the IJ is permitted to terminate proceedings even if OPLA opposes termination. Most relevant to SIJS youth awaiting a visa are the categories permitting termination when:

1. the young person has deferred action;

2. the young person is prima facie eligible for relief from removal/lawful status before USCIS and has filed with USCIS. Although the government may argue that SIJS is neither lawful status nor relief for removal, SIJS youth could argue and provide evidence that they are prima facie eligible for adjustment of status despite a visa not yet being available, that there is no option for them to consular process, and that based on the statutory framework, Congress intended SIJS youth to be able to remain in the United States until they can adjust status. Practitioners may want to draw from arguments made in amicus briefs authored by the Lowenstein Center for the Public Interest, found on this webpage under "Protecting Immigrant Children with SIJS from Deportation," that the statute does not permit the removal of SIJS youth awaiting a visa. Youth with pending petitions for SIJS could also argue that the pending petition makes them prima facie eligible for deferred action, pointing to the main factors that USCIS considers in granting deferred action to SIJS youth;

3. the young person filed an application for asylum with USCIS as a UC (as many SIJS youth have also filed for asylum);

4. "termination is similarly necessary or appropriate for the disposition or alternative resolution of the case," though it cannot be for purely humanitarian reasons unless OPLA agrees to termination. Here, practitioners could highlight the fact that removal would separate them from their parent or guardian and return them to a country where a state juvenile court has determined it is not in their best interest to reside, the fact that DHS has

acknowledged the juvenile court's findings by exercising its statutory consent function under INA § 101(a)(27)(J)(iii) to consent to the grant of SIJS, as well as the young person's age and any specific vulnerabilities.

Whether to seek termination or administrative closure for an SIJS youth awaiting visa availability will depend on client-specific factors, including their potential vulnerability to expedited removal (section VII below), and is a decision that should be made with the client's informed consent.

B. Seeking Administrative Closure Based on SIJS

The EOIR regulations give IJs and BIA authority to administratively close any case upon a party's motion, after considering the totality of the circumstances, including specific factors that are set out in the regulations. *See* 8 CFR §§ 1003.18(c) (IJ regulations), 1003.1(*l*) (BIA regulations). For SIJS youth, factors to highlight in a motion for administrative closure include: their approved petition for SIJS, their eligibility for SIJS-based adjustment of status, evidence that they have taken steps to pursue relief as expeditiously as possible, and any factors related to the child's vulnerability, including age and that a state juvenile court has determined it is not in their best interest to return to their country of origin. This EOIR memo, issued before the regulations, states that administrative closure can be appropriate to await visa availability, to await USCIS adjudication of a petition or application, and to allow a respondent to file a petition or application with USCIS. Further, when the parties *jointly* request administrative closure, or when the nonmoving party affirmatively indicates its non-opposition, the IJ must grant administrative closure, unless the IJ articulates "unusual, clearly identified, and supported reasons for denying the motion." 8 CFR §§ 1003.18(c)(3), 1003.1(*l*)(3).

In some situations, an SIJS client may seek administrative closure in the alternative if the IJ declines to grant a motion to terminate. Even if administrative closure is not the first choice, if an SIJS client is at risk of the IJ ordering removal due to lack of visa availability, practitioners should seek administrative closure to preserve the record for appeal.

Here is a resource on seeking administrative closure and termination under the EOIR regulations.

C. Seeking Continuances or Status Docket Placement Based on SIJS

Because of its limited duration, a continuance is not the best option for an SIJS youth awaiting visa availability. However, if the SIJS youth is at risk of the IJ ordering removal due to lack of visa availability, practitioners should seek a continuance or status docket placement (in addition to seeking administrative closure and termination as discussed above) in order to preserve all arguments for appeal.

An IJ may grant a motion for a continuance of removal proceedings "for good cause shown." 8 CFR § 1003.29. In *Matter of L-A-B-R-*, the Attorney General held that the two main factors an IJ should consider for continuance motions to await a "collateral matter" are "(1) the likelihood that the [noncitizen] will receive the collateral relief, and (2) whether the relief will materially affect the outcome of the removal proceedings." 27 I&N Dec. 405, 413 (A.G. 2018). The IJ should also

consider whether the noncitizen "has exercised reasonable diligence in pursuing that relief, DHS's position on the motion, the length of the requested continuance, and the procedural history of the case." *Id.* A strong continuance motion for this purpose should address all relevant factors and be supported by evidence. For SIJS youth, this should include the I-360 and deferred action approval notice(s) as well as evidence of eligibility for adjustment of status (though practitioners should take care to address the issue of visa availability, *see L-A-B-R-*, 27 I&N at 418). This 2018 practice advisory discusses continuance arguments for SIJS youth awaiting visa availability.

Some immigration courts may have a status docket for cases in which the respondent has pending relief before USCIS or is awaiting a visa. However, on March 21, 2025, EOIR reinstated a 2019 memo with more restrictive criteria on status dockets, which among other things states that it is inappropriate to place a case on a status docket to await visa availability. It may still be beneficial to move for placement on the status docket if an SIJS youth is otherwise facing an IJ removal order, to preserve all issues for appeal. Further, different immigration courts may have different practices about the types of cases appropriate for status docket placement. For more information on the various termination and postponement options applicable to SIJS youth, see this resource discussing procedural options in removal proceedings for youth.

D. Pursuing Other Relief

SIJS youth may be eligible for other forms of relief. It is important to discuss the pros and cons of pursuing each form of relief with the client. One common form of alternative immigration relief for SIJS clients is asylum. An individual may apply for asylum if they have suffered persecution or have a well-founded fear of future persecution on account of their political opinion, nationality, race, religion, or because they are a member of a particular social group. *See* INA §§ 208(a)(1), 208(b)(1)(A), 101(a)(42)(A). Unaccompanied children (UC) have a right to have their asylum claim adjudicated first by USCIS even if they are in removal proceedings. *See* INA § 208(b)(3)(C). UC are also exempt from the one-year filing deadline and the safe third country asylum bar. *See* INA § 208(a)(2)(E). For more information regarding USCIS's initial jurisdiction over UC asylum applications, see this practice alert on the *J.O.P. v. DHS* Settlement, and this USCIS memo. Respondents who file for asylum with USCIS as UC may request discretionary termination of their removal proceedings. *See* 8 CFR §§ 1003.18(d)(1)(ii)(A), 1003.1(m)(1)(ii)(A). For those not eligible to seek asylum with USCIS as UC, or in whose cases USCIS does not grant asylum, they can seek asylum before the IJ in their removal proceedings. Other forms of relief include U visas, T visas, VAWA, and family-based petitions. For an overview of these forms of relief, check out this pro bono guide for working with youth in immigration cases.

Practitioners should assess all available forms of relief at various points during representation. Even if a client was not eligible for a certain form of relief previously, circumstances may change. For information on rescreening for relief, see this blog series on rescreening for relief.

V. Post IJ Removal Order Strategies

A. BIA Appeals

If the IJ orders removal, there is a 30-day deadline to file a Notice of Appeal to the Board of Immigration Appeals (BIA). 8 CFR § 1003.38(b).[16] An IJ's removal order is not final (and the noncitizen's removal is automatically stayed) while an appeal is pending at the BIA. 8 CFR §§ 1241.1, 1003.6(a). Practitioners should list all appeal bases in Box 6 and reserve the right to supplement after receiving transcripts. Here is a resource on BIA appeals. Coalition members whose SIJS clients have received IJ removal orders are encouraged to complete our survey about IJ/EOIR conduct and indicate if they would like technical support from the Coalition on the BIA appeal.

1. *Motions to Remand During Pending BIA Appeal*: If new relief becomes available while the BIA appeal is pending (for example, cancellation of removal or asylum), the respondent can file a motion to remand to the IJ for a hearing on that new relief. Information about the requirements for motions to remand is available here.

2. *Motions to Terminate During Pending BIA Appeal*: A respondent can file a motion to terminate with the BIA, for example if they are granted TPS or deferred action while the BIA appeal is pending, have filed an asylum application as a UC with USCIS, or are prima facie eligible to adjust status (for example, via an immediate relative petition). *See* 8 CFR § 1003.1(m)(1)(ii). For more on motions to terminate, see Section IV.A above.

3. *Motions for Administrative Closure During Pending BIA Appeal*: The BIA can also administratively close a pending BIA appeal, upon a party's motion and after considering all relevant factors including those specifically listed at 8 CFR § 1003.1(*l*)(3). Having a pending SIJS petition or awaiting visa availability could be reasons for administrative closure. See this EOIR memo and Section IV.B above.

B. Petitions for Review

If the BIA dismisses the appeal, the removal order becomes final and the respondent has 30 days to file a Petition for Review (PFR) in the U.S. court of appeals with jurisdiction over the case. 8 U.S.C. § 1252(b)(1). Practitioners may want to preemptively seek admission to the bar of the circuit court in the jurisdiction where they practice so that they are able to timely get a client's PFR on file. The filing of a PFR does not automatically stay a noncitizen's removal; the noncitizen must instead seek and obtain a judicial stay from the relevant court (see section V.D below on stays). Here is a practice advisory on PFRs, geared toward the Fifth Circuit. Amicus support may be available for SIJS youth ordered removed due to lack of visa availability; please contact Rebecca Scholtz, rebecca@nipnlg.org, to be connected to amicus efforts.

[16] Except that *in absentia* removal orders cannot be appealed to the BIA; they can instead be challenged by filing a motion to rescind and reopen under INA § 240(b)(5)(C). This practice advisory explains the requirements for filing a motion to rescind and reopen an *in absentia* removal order.

C. Motions to Reopen and Motions to Reconsider Following a Final Order of Removal

Respondents have a statutory right to file one motion to reopen a final removal order, if there are new facts that were not available at the time of the IJ merits hearing. INA § 240(c)(7). Generally the deadline to file a motion to reopen is 90 days from the entry of a final removal order by either the IJ or the BIA, *id.* § 240(c)(7)(C)(i), though there are some exceptions; this resource explains more, and some templates are available here. Separate rules govern motions to rescind and reopen removal orders issued *in absentia*; check out this resource for more. If the statutory deadline has passed, at what stage in the SIJS process to file an untimely motion to reopen depends on a number of case-specific factors that are beyond the scope of this resource; like any court filing, the motion to reopen must be served on DHS and may flag the SIJS youth for DHS.

Respondents can file one motion to reconsider a final removal order based on errors in fact or law; the deadline is 30 days from the date of the order. INA § 240(c)(6). In some cases, a respondent might simultaneously pursue a PFR with the U.S. court of appeals and a motion to reopen and/or reconsider with the BIA; the PFR can be held in abeyance pending the outcome of the motion(s) before the BIA.

D. Stays of Removal

Generally, people with a final order of removal are at risk of ICE summarily arresting, detaining, and removing them from the United States. People who have deferred action cannot be removed while their deferred action is still in effect; however, DHS could take steps to terminate an individual's deferred action and then remove them if they have a final removal order. For clients with final removal orders, unless an automatic stay provision applies to their case,[17] it is wise to prepare a stay application/motion so that it is ready to be filed with the relevant adjudicator(s) if removal becomes imminent. This resource explains more about stays, and this resource provides tips on crafting legal defense plans for UC clients with removal orders.

VI. Detention Issues for SIJS Youth

A. Detention Prevention

Under the Trump administration, ICE officers have been instructed to ramp up the detention of noncitizens, including those who were not an enforcement priority under the Biden administration. All noncitizens whom the government believes to be removable—which includes SIJS youth awaiting a visa—are at risk of being arrested and detained by ICE. Situations that can present a higher risk of detention include ICE check-ins and appearances at court hearings. If an SIJS client is subject to ICE check-ins, practitioners should attend the ICE check-in with their client if possible. Here are two resources to share with clients, in English and Spanish, about ICE check-ins. Under Trump administration guidance, ICE is also permitted to carry out enforcement

[17] People who are entitled to an automatic stay include those who have a motion to rescind and reopen an *in absentia* removal order based on lack of notice or exceptional circumstances pending before the IJ, INA § 240(b)(5)(C), and *J.O.P.* class members whose asylum applications are pending with USCIS (through May 27, 2026). Here is information on the *J.O.P.* settlement agreement.

actions at or near courts, both immigration court and judicial courts.[18] If an IJ issues a removal order against an SIJS client at an immigration court hearing, ICE may arrest and detain them. An internet-based hearing does not present the same risk of immediate detention at the immigration court following a hearing.

SIJS youth may also encounter ICE while at work or in their community. Practitioners should advise their clients to carry their Employment Authorization Document (EAD) or their state-issued identification. For more information on safety planning and Know Your Rights information, see this compilation of resources.

B. Release Strategies

If an SIJS client is detained by ICE, the practitioner should immediately contact the ICE Enforcement and Removal Office to speak with the officer assigned to the case. The practitioner may advocate for the client's release on parole, on their own recognizance, or on an ICE bond. Practitioners should highlight the client's pending or approved SIJS petition in arguing for release with ICE. This ICE memo states that ICE agents should consult with OPLA before conducting enforcement against known beneficiaries of victim-based immigration benefits. After ICE's initial custody determination, the practitioner can seek a custody redetermination hearing before the IJ, if the client is eligible for bond. For more information about seeking a bond hearing, see this guide on release from immigration detention, which includes information about mandatory detention due to certain criminal convictions. For information regarding the expanded mandatory detention provisions created by the Laken Riley Act, see this practice advisory, as well as this resource about the Laken Riley Act and juvenile delinquency, and this resource about the detention of children. If a client is facing imminent removal, a habeas petition may also be an option.[19] The Coalition encourages practitioners with SIJS clients in this situation to complete our survey about ICE enforcement and indicate if you would like support from the Coalition.

C. Public Case Campaigns

Case campaigns are public campaigns that are focused on securing the safety, release and/or freedom of individuals. Not only can they be effective ways to help an individual SIJS client by garnering the support and attention of the public and/or people with power to put pressure on the government, they are an important way that we can build community power and solidarity in this time. If a practitioner's SIJS client is detained or at risk of imminent removal, The End SIJS Backlog Coalition may be able to support them in building a public campaign to help secure their release or prevent their removal. We invite practitioners in need of immediate support to complete this survey and email Rachel Davidson at rachel@nipnlg.org for assistance.

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[18] However, the ICE courthouse guidance linked above states that ICE should generally avoid enforcement actions in courthouse areas wholly dedicated to non-criminal proceedings, such as family court, and must obtain pre-approval before conducting enforcement in such areas.

[19] *See, e.g.*, *Joshua M. v. Barr,* 439 F. Supp. 3d 632 (E.D. Va. 2020); *Osorio-Martinez v. Att'y Gen. U.S*, 893 F.3d 153 (3d Cir. 2018).

VII. Mitigating Risk for SIJS Youth Vulnerable to Expanded Expedited Removal

A. Identifying Clients Potentially Impacted by Expanded Expedited Removal

We do not yet know how broadly DHS will implement expanded expedited removal (ER) in practice, but based on the expansion Notice, this ICE memo, and this ICE email guidance, two groups of clients are generally at risk: (1) those who are encountered by DHS fewer than two years after they enter the United States without inspection; and (2) those who entered through a port-of-entry as an "arriving" noncitizen, even if they were previously granted parole. Read more about expanded ER here. If the client has approved SIJS, meets the definition of "unaccompanied alien child" at 6 U.S.C. § 279(g)(2), or was previously determined to be a UC, we believe there are strong arguments that ER is not legally permissible; we encourage practitioners who hear of ER being applied to these groups to complete our ICE enforcement survey here. Practitioners should also monitor developments in ongoing litigation challenging the Trump administration's expansion of ER, and challenging the application of ER to people paroled into the United States.

B. Risk Mitigation Strategies

For clients who are at risk of ER, practitioners should give them information about what to do if they are targeted for ER (here is a resource with important information, including about what documents to show and the right to a credible fear interview for those who assert fear of persecution or torture). It is especially important for clients at risk of ER to be prepared, and accompanied by counsel if possible, for any ICE check-in. Practitioners should also consider how the client's vulnerability to ER might impact other decisions in the case; in particular whether it is wise to seek termination of the removal proceedings. Whether to seek termination is a client decision; practitioners should give clients the pros and cons in writing and orally so that they can make an informed choice. Here is a resource on navigating difficult conversations with child clients. If DHS files a motion to terminate in the client's case to pursue ER, practitioners should promptly file an opposition (here is a sample).

VIII. Conclusion

Congress intended SIJS youth to reach permanency in the United States, regardless of the wait time for a visa number, in order to apply for lawful permanent residence. For each young person pursuing SIJS, a state court with expertise in the best interest of the child has found that they were subject to parental maltreatment and that it would not be in their best interest to return to their home country. USCIS has granted these youth SIJS because they meet specific statutory and regulatory requirements. Yet, due to the SIJS visa backlog and the Trump administration's approach to immigration enforcement, these youth are now at risk of being removed. Practitioners should make all legally available arguments to prevent the removal of their client.

To help The End SIJS Backlog Coalition monitor trends and develop resources to support SIJS youth, please consider completing the following surveys.

- ICE/OPLA Practices Vis a Vis SIJS-Eligible Children
- EOIR Practices Vis a Vis SIJS-Eligible Children

- SIJS Deferred Action Policy
- EAD Decisions for SIJS Deferred Action Recipients

Advocates can join the Coalition and help us put an end to the SIJS backlog and its harms by signing up here.

The End SIJS Backlog Coalition is organizing SIJS youth impacted by the backlog. It is important for SIJS youth to have peer support and community in this time and to learn how to advocate for themselves in case they are stopped, arrested, or detained. We invite practitioners to encourage their clients to join our community of trained and activated SIJS youth by signing up here or by reaching out to our Youth Organizer, Alejandra Cruz, at alejandra@nipnlg.org.