



NAVIGATING REMOVAL PROCEEDINGS WHILE PURSUING SURVIVOR-BASED FORMS OF RELIEF AT USCIS

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I. Introduction

U.S. Citizenship and Immigration Services (USCIS) has exclusive jurisdiction to adjudicate certain applications for immigration relief that protect survivors of crime and other forms of abuse, including U nonimmigrant status, T nonimmigrant status, special immigrant juvenile status, and VAWA self-petitions. Many people who are in active removal proceedings are eligible for one or more of these forms of relief. In the past, it was often possible to postpone or terminate removal proceedings to pursue such relief at USCIS. However, current policies at the Executive Office for Immigration Review (EOIR) and increasingly negative caselaw from the Board of Immigration Appeals (BIA) have made navigating removal proceedings for these applicants extremely challenging. The challenges are exacerbated due to visa backlogs and USCIS adjudication delays for these forms of relief. This advisory will provide an overview of affirmative relief for immigrant survivors, summarize recent BIA cases on point, and offer practice tips for protecting against removal.

II. Overview of Affirmative Relief for Immigrant Survivors of Child Abuse, Domestic Violence, Trafficking, and Other Crimes

The following four forms of immigration relief are all humanitarian options for certain immigrant survivors of crime. All of them require affirmative filing with USCIS.

A. Special Immigrant Juvenile Status

Special immigrant juvenile status (SIJS) is a form of relief for immigrant children (unmarried and under 21) who have been abandoned, abused, or neglected by at least one parent. Applicants must obtain a state court order determining, among other things, that reunification with one parent is not viable due to the abandonment, abuse, or neglect, and that it is not in the child's best interest to be returned to their country of origin.¹ An approved SIJS petition creates a path to lawful permanent residence.² However, by law, visas for special immigrant juveniles (SIJs) come from the employment-based fourth preference (EB-4) category.³ There is

¹ INA § 101(a)(27)(J).

² INA § 245(h).

³ See INA §§ 201(d), 202(a)(2), 203(b)(4).

currently a multi-year wait for a visa in the EB-4 category, resulting in a protracted wait time for SIJs to be eligible to apply for adjustment of status.

B. U Nonimmigrant Status

U nonimmigrant status (also known as a U visa) offers temporary immigration protection for survivors of certain qualifying criminal activities in the United States who have been helpful, are being helpful, or are likely to be helpful to certifying agencies in the detection, investigation, or prosecution of the qualifying criminal activity, and meet other requirements.⁴ U nonimmigrant status is valid for four years and can be extended in limited circumstances; recipients are also eligible for employment authorization.⁵ U nonimmigrants may be able to become lawful permanent residents if they qualify.⁶ Certain family members may also be eligible for U nonimmigrant status as derivatives.

C. T Nonimmigrant Status

T nonimmigrant status (also known as a T visa) provides temporary immigration protection to survivors of human trafficking who have complied with any reasonable request for assistance in investigating or prosecuting the trafficking.⁷ Human trafficking involves the use of force, fraud, or coercion to obtain some type of labor or commercial sex act. Victims can be of any age, race, gender, or nationality. T nonimmigrant status is valid for four years and can be extended in limited circumstances; recipients are also eligible for employment authorization.⁸ T nonimmigrants may be able to become lawful permanent residents if they qualify.⁹ Certain family members may also be eligible for T nonimmigrant status as derivatives.

D. Violence Against Women Act Self-Petitions

The Violence Against Women Act (VAWA) provides a special pathway to lawful immigration status for survivors of domestic abuse who would otherwise have to rely on their abusers to file an immigration petition for them.¹⁰ VAWA allows survivors of abuse who are close relatives of U.S. citizens and lawful permanent residents to file for status on their own (self-petition), without the abuser's knowledge, consent, or participation. This pathway is available to spouses and children of abusive U.S. citizens and lawful permanent residents, and to parents of abusive U.S. citizens who are 21 years of age or older.¹¹ These individuals may be eligible for lawful permanent residence, employment authorization, and public benefits.

⁴ INA § 101(a)(15)(U).

⁵ INA § 214(p).

⁶ INA § 245(m).

⁷ INA § 101(a)(15)(T) (authorizing limited exceptions to the helpfulness requirement).

⁸ INA § 214(o).

⁹ INA § 245(l).

¹⁰ INA § 101(a)(51).

¹¹ INA § 204.

III. Applying While in Removal Proceedings

Because the forms of relief mentioned above require affirmative filings with USCIS, applicants in removal proceedings cannot apply for these forms of relief directly with the immigration judge (IJ). This means that the applicants must still defend themselves in removal proceedings while their cases are pending with USCIS. In the past, applicants were often able to obtain continuances, administrative closure, or even termination of their removal proceedings while pursuing relief before USCIS.

In a trio of recent cases, the BIA has made it extremely difficult for people pursuing affirmative relief, specifically through SIJS or U nonimmigrant status, to delay their removal proceedings while they seek relief before USCIS. These decisions build on BIA caselaw from 2025 in *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025), that misapplied the regulations on administrative closure. In an even more recent case, the BIA also made it more difficult for people with deferred action to have their removal proceedings terminated, despite the fact the regulations specifically mention deferred action as a possible reason for termination.¹² Below we summarize each case and point out the flawed reasoning in the BIA's decisions.

Note: Many of these policies and practices are ever-evolving. A federal court's May 21, 2026, order in *ICWC v. Noem* may offer some additional relief and options for certain survivors of crime.¹³ In its order, the court preliminarily certified three classes: 1) individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement; 2) individuals with deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status; 3) individuals with a pending U or T visa petition who, since January 30, 2025, have been, are, or will be detained by ICE and who request or requested a stay of a final removal order prior to enforcement of that removal order.

The order requires DHS to stay the 2025 Vitello Memo governing enforcement against known applicants or beneficiaries of victim-based immigration benefits.¹⁴ The practical effect is that the prior 2021 victim-centered guidance¹⁵ and 2011 memo on prosecutorial discretion for immigrant survivors of crime¹⁶ are back in force. The order also requires DHS to stay its De Facto Revocation policy, under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas. The court also stayed ICE's

¹² 8 CFR § 1003.18(d)(1)(ii)(C).

¹³ *Immigr. Ctr. for Women and Children v. Noem*, Order Granting Plaintiffs' Motion for Class Certification [Dkt. No. 23] and Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction [Dkt. No. 31], No. 2:25-cv-09848-AB-AS (C.D. Cal. May 21, 2026).

¹⁴ ICE, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025), <https://www.ice.gov/doclib/foia/policy/11005.4.pdf>.

¹⁵ ICE, *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Aug. 10, 2021), <https://iptp-production.s3.amazonaws.com/media/documents/11005.3.pdf>.

¹⁶ ICE, *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011), <https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf>.

practice of detaining or removing petitioners who have requested a stay of removal without first conducting a statutorily-required inquiry into whether the petitions present a prima facie case for approval, such as by requesting prima facie determinations from USCIS. Note that this case does not include SIJS applicants.

While the case focuses on the apprehension, detention, and removal of survivors, much of the discussion in the court's order regarding due process and Congressional intent can be helpful to argue for postponement or termination of removal proceedings for survivors as well.

A. Matter of Cahuec Tzalam

In *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025), the BIA held that administrative closure based on a pending petition for SIJS was inappropriate where the respondent had not demonstrated the likelihood that he would succeed on the SIJS petition. The “likelihood of success” is one of many factors in a multi-factor analysis required by the regulations on administrative closure.¹⁷ In *Cahuec Tzalam*, the young person had submitted only the USCIS receipt notice for his I-360 SIJS petition without including any evidence supporting the likelihood that it would be granted. The BIA held that the absence of evidence of prima facie eligibility for SIJS (for example, the juvenile court order) “strongly militates against a grant of administrative closure.”¹⁸

However, the BIA went on to state that even if the respondent had established eligibility for SIJS, administrative closure still would have been inappropriate because of the “indeterminate and likely lengthy period of time until he would be eligible to adjust status.”¹⁹ Relying upon *Matter of B-N-K-* (issued by the BIA earlier in 2025),²⁰ the BIA stated that when a request for administrative closure is based on the pendency of a collateral matter, there must be “some foreseeable resolution to the ongoing proceedings within a reasonably short period of time.”²¹ Because there is a multi-year wait for visas for SIJs, the BIA proclaimed that “it is not realistic to expect the respondent to become eligible for relief from removal based on his special immigrant juvenile petition within a ‘reasonably short period of time’.”²² The BIA also noted DHS’s opposition to the grant of administrative closure, based on its interest in expeditiously bringing the respondent’s removal proceedings to a close. In a footnote, the BIA asserted that SIJS alone does not confer lawful status or affect removability.

There are several shortcomings with this case. The BIA did not faithfully apply the regulations on administrative closure, which require a “totality of the circumstances” analysis including as many of the factors listed in the regulations as are relevant, as well as other factors, and state that no “single factor is dispositive.”²³ Additionally, while the regulations direct IJs to consider

¹⁷ 8 CFR §§ 1003.18(c)(3) and 1003.1(l)(3).

¹⁸ *Cahuec Tzalam*, 29 I&N Dec. at 304.

¹⁹ *Id.* at 305.

²⁰ *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025).

²¹ *Cahuec Tzalam*, 29 I&N Dec. at 302 (citing *B-N-K-*).

²² *Id.*

²³ 8 CFR §§ 1003.18(c)(3), 1003.1(l)(3). Note that these regulations superseded *Matter of W-Y-U-*, which had held that the “primary consideration...is whether the party opposing administrative closure has provided a persuasive reason” to proceed to merits. 89 Fed. Reg. at 46753 (discussing *Matter of W-Y-U-*, 27 I&N

the “anticipated duration of the administrative closure”²⁴ as one of many factors, the regulations do not contain a requirement that administrative closure be for a reasonably short period of time. The “reasonably short period of time” standard comes from *Matter of B-N-K-*. However, there is no basis for the BIA’s adoption of this standard. In fact, *Matter of Avetisyan* states that administrative closure is appropriate to await actions that “may not occur for a significant or undetermined period of time,” and that continuances may be more appropriate for a delay of “reasonably certain and brief amount of time.”²⁵ Although IJs are bound by *Cahuec Tzalam*, addressing these issues in a motion for administrative closure will preserve them if the case goes up to the circuit court on appeal.

There may also be ways to distinguish your case from the facts of *Cahuec Tzalam*. First, if your client is seeking administrative closure based on a pending petition for SIJS, you could include not only the receipt notice, but also other evidence of prima facie eligibility for relief. The BIA suggested including the juvenile court order, which is not typically filed with EOIR and may present confidentiality and privacy concerns. Other ways to establish prima facie eligibility may include an attorney declaration or other evidence of abuse, neglect, or abandonment as well as the existence of the state court proceedings. If the client has already been granted SIJS, that will also distinguish their case from *Cahuec Tzalam*.²⁶ Next, if the client’s priority date is closer to visa availability than that in *Cahuec Tzalam*, you can argue that the wait time for your client is a “reasonably short period of time.” This may be more likely given recent forward movement in the employment-based fourth preference category (EB-4) for SIJS. In *Cahuec Tzalam*, the BIA noted that the respondent’s priority date was April 23, 2025, and that the November 2025 visa bulletin showed a final action date of July 1, 2020, constituting a nearly five-year gap. However, there was significant forward movement in the EB-4 category of the visa bulletin in March and April 2026, such that the final action date is July 15, 2022, in the

Dec. 17, 20 (BIA 2017)). Nevertheless, the BIA cites to *Matter of W-Y-U-* in its 2025 holding in *B-N-K-* that “whether there are persuasive reasons for a case to proceed and be resolved on the merits is the primary consideration in determining whether administrative closure is appropriate under the totality of the circumstances.” *Matter of B-N-K-*, 29 I&N Dec. at 100. For additional information, see ILRC, *Seeking Administrative Closure and Termination* (Feb. 2025), <https://www.ilrc.org/resources/seeking-administrative-closure-and-termination-using-new-eoir-regulations-hostile>.

²⁴ 8 CFR §§ 1003.18(c)(3)(i)(E), 1003.1(l)(3)(i)(E).

²⁵ *Matter of Avetisyan*, 25 I&N Dec. 688, 691 (2012). For additional information on these arguments, see ILRC, *Responding to DHS Motions to Recalendar* (July 2025), <https://www.ilrc.org/resources/responding-dhs-motions-recalendar>.

²⁶ The approval of the SIJS petition evidences DHS’s consent to the grant of SIJS. See INA § 101(a)(27)(J)(iii). Practitioners can argue that the SIJS grant is thus not consistent with DHS then pursuing removal of the child. But note that from DHS’s perspective, an approved petition for SIJS may still not be enough if the priority date is far from current. In *Matter of Z-R-C-N-*, 29 I&N Dec. 523 (BIA 2026), in which the BIA denied a motion to reopen, the BIA held that the minor respondents with approved SIJS and a priority date of April 24, 2025, had not demonstrated prima facie eligibility for relief because of the visa backlog. This case could be read to mean that young people with approved SIJS but who face a visa backlog are not able to demonstrate their prima facie eligibility for adjustment of status, which is relevant when seeking both administrative closure and discretionary termination of removal proceedings. See 8 CFR §§ 1003.18(c)(3)(i)(D), (d)(1)(ii)(B). Practitioners should note, however, that after this decision was issued, the final action dates in the EB-4 category advanced a whole year, demonstrating that the formula used by the BIA for calculating visa delay is not reliable. Further, this holding was in the context of a motion to reopen, and thus the BIA was not interpreting the docket management regulations at 8 CFR § 1003.18.

May 2026 visa bulletin.²⁷ This is a significantly shorter wait time than was identified in *Cahuec Tzalam*. On the other hand, subsequent caselaw on administrative closure (discussed next) sets forth a presumption that a delay of more than six months would make a grant of administrative closure unreasonable. Thus, practitioners must grapple with this caselaw as well.

Given the challenges that this case and the following ones present, practitioners are also encouraged to include statutory and constitutional arguments in support of their motions for administrative closure. See practice tips in Section IV.

B. Matter of Ibarra-Vega

Decided February 27, 2026, *Matter of Ibarra-Vega*, 29 I&N Dec. 476 (BIA 2026), held that: 1) administrative closure was inappropriate for a U visa petitioner over DHS objection where the U visa was not “likely to be reasonably available in the near future”; 2) the BIA’s decision in *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025), that administrative closure is only appropriate for a “reasonably short period of time” applies both to the decision to administratively close a case as well as the decision to recalendar a case; and 3) administrative closure may not be used as a “de facto extra-statutory form of relief.” The case was an interlocutory appeal of the IJ’s denial of a motion to recalendar. In this case, the respondent was placed in removal proceedings in 2010; in 2013, the proceedings were administratively closed after DHS filed a motion to administratively close the case in the exercise of prosecutorial discretion. In 2018, the respondent filed a U visa while the proceedings were still administratively closed. On June 26, 2025, DHS filed a motion to recalendar, and the IJ denied the motion because the U visa was not yet granted.

The BIA reversed, holding that the IJ should have re-calendared the case based on the totality of the circumstances, including that the respondent’s case had been administratively closed for 13 years, she had not obtained lawful status, and she had submitted only a U visa receipt. The BIA created a new presumption that absent unique circumstances, administrative closure for longer than six months is “presumptively unreasonable.” The BIA distinguished its 2012 decision in *Matter of Sanchez-Sosa*,²⁸ which held that there is a rebuttable presumption that a noncitizen who has filed a prima facie approvable U visa petition with USCIS warrants a continuance. The BIA found that although administrative closure and continuances are related mechanisms, a pending U visa could be expected to be granted within the next fiscal year in 2012, whereas a pending U visa now might not be granted for more than two decades. The BIA did not meaningfully address that the respondent’s U visa was filed in 2018, closer in time to 2012 than 2026, and would likely be adjudicated soon. Practitioners with cases filed years ago should submit evidence of processing times and try to establish the likelihood that the U visa might be adjudicated within a “reasonable period.”

Citing *Cahuec Tzalam*, which it had published just three months earlier, the BIA also noted that the respondent had submitted no evidence of prima facie eligibility, such as deferred action or placement on the waitlist. Petitioners with pending U visas should distinguish their cases by

²⁷ The significant forward movement in the EB-4 category also demonstrates that the formula used by the BIA to calculate the visa wait time is not reliable – another basis to argue that the case was wrongly decided.

²⁸ 25 I&N Dec. 807 (BIA 2012).

submitting evidence of eligibility. This could include a bona fide determination, deferred action, or waitlist placement if applicable; it could also be a signed law enforcement certification. Practitioners are also encouraged to include statutory and constitutional arguments in support of their motions for administrative closure, including helpful language from *ICWC v. Noem* regarding Congressional intent. For example, the court’s order reasons: “Congress clearly stated its purpose in creating victim-based benefits: to protect noncitizen victims of crime from unnecessary removal.”²⁹ See practice tips in Section IV.

C. Matter of Pinzon Rozo

In *Matter of Pinzon Rozo*, 29 I&N Dec. 507 (BIA 2026), the BIA addressed whether the respondent – who had an approved SIJS petition with a priority date of May 23, 2025 – established good cause for a continuance. This case was an interlocutory appeal of an IJ’s grant of a continuance based on an approved SIJS petition. The respondent entered on a nonimmigrant visa on December 3, 2018, and overstayed; he later filed for SIJS and his petition was approved. He was placed in removal proceedings and charged as removable under INA § 237(a)(1)(B).³⁰ He conceded removability and did not file any applications for relief with the court, but instead moved for administrative closure and a continuance in the alternative. The IJ denied the motion for administrative closure but granted a continuance to 2027.

Relying on *Matter of L-A-B-R*, the BIA stated that when determining whether good cause exists for a continuance based on the pendency of a collateral matter, the IJ “must focus principally on two factors: (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.”³¹ The IJ should also consider secondary factors, including whether the person 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.”³² The BIA stated that the two primary factors are not dispositive when “there are relevant secondary factors that weigh against continuing the proceedings.”³³ Applying this framework to the facts of this case, the BIA found that the respondent did not establish good cause for a continuance, even though the primary two factors were satisfied in that he would be eligible for adjustment if a visa were available and that would materially affect the outcome of the case. The BIA held that the secondary factors weighed against a continuance because of the significant wait time for a visa, because respondent did not establish that he exercised due diligence in pursuing SIJS, and because DHS opposed the continuance.

Given the visa backlog for special immigrant juveniles and DHS’s aggressive efforts to deport young people with SIJS, two of these secondary factors will be present in most SIJS cases. Advocates should advance arguments, where possible, that young people should not be penalized for delays in seeking SIJS, as most young people are not even aware that SIJS

²⁹ Slip op. at 73 (C.D. Cal. May 21, 2026).

³⁰ Under INA § 237(c), this ground does not apply to special immigrant juveniles. It appears this issue was not raised in this case.

³¹ *Matter of L-A-B-R*, 27 I&N Dec.405, 413 (A.G. 2018).

³² *Id.*

³³ *Matter of L-N-Y-*, 27 I&N Dec. 755, 758 (BIA 2020).

exists and typically depend upon adults for access to information and legal services. Advocates should also distinguish the facts of their case where possible, especially if their priority date is closer to becoming current than in *Pinzon Rozo*, which, as discussed above, may be more likely with recent forward movement in the EB-4 category of the visa bulletin.

In light of the challenges that this case presents, practitioners are also encouraged to include statutory and constitutional arguments in support of their motions for a continuance, as well as to research any Circuit caselaw that may support a continuance.³⁴ See practice tips in Section IV.

D. Matter of Santiago-Santiago

On April 24, 2026, the BIA issued *Matter of Santiago-Santiago*, 29 I&N Dec. 589 (BIA 2026), in which it held that the IJ erred in terminating removal proceedings based on the fact that the respondent had been granted deferred action (in this case, Deferred Action for Childhood Arrivals, or DACA), without considering the reasons for DHS's opposition to termination. The BIA stated that although the regulations permit discretionary termination based on deferred action, termination is an "exercise of discretion that involves consideration of the reason termination is sought and the basis for any opposition to termination."³⁵ The BIA repeated its position that "a party's interest in bringing removal proceedings to a close on the merits is a persuasive reason to move forward with the case."³⁶ It remanded the case for further consideration of whether termination is warranted.

This case erects potential barriers to termination for people with deferred action, including deferred action based on SIJS, U visas, T visas, and VAWA. Practitioners are encouraged to address the BIA's concern that termination based on deferred action is discretionary, by arguing and presenting evidence that their client merits a favorable exercise of discretion. Practitioners should also advance arguments that termination in these cases is aligned with the goal of bringing removal proceedings to a close on the merits since USCIS has already granted deferred action and termination will allow people to continue to pursue lawful status with USCIS.

IV. Practice Tips

These BIA cases continue this administration's trend of attacking immigrants' ability to pursue relief for which they are eligible while undermining due process rights in removal proceedings. These cases will assuredly make it more difficult for applicants in removal proceedings to pursue collateral forms of relief before USCIS. Practitioners should consider the following practice tips:

³⁴ See, e.g., *C.J.L.G. v. Barr*, 923 F.3d 622, 629 (holding that the IJ should exercise discretion to grant a continuance in light of respondent's apparent eligibility for SIJS).

³⁵ *Matter of Santiago-Santiago*, 29 I&N Dec. at 590 (citing 8 CFR § 1003.18(d)(1)(ii)(C)).

³⁶ *Id.*, at 591.

- Distinguish the case at hand from the BIA cases mentioned above, particularly if your client is eligible for relief before the IJ as well (such as asylum) or if your client has already received an I-360 approval, deferred action, bona fide determination, or waitlist placement.
- Thoroughly document your client's eligibility and diligent pursuit of collateral relief before USCIS. For example, include not only a filing receipt but also evidence of any progress in the case, anticipated processing times, and the difficulty (or for SIJS and T visas, the impossibility) of pursuing relief abroad.
- Draw on existing, non-vacated BIA case law, depending on the form of relief, such as *Matter of Sanchez Sosa*³⁷ and *Matter of Avetisyan*,³⁸ which held in favor of respondents seeking a continuance and administrative closure, respectively, while their petitions were pending with USCIS.
- Cite every section of the regulations that applies in your case and favors the relief you seek (continuance, administrative closure, and/or termination). Insist that the IJ consider all of the factors present in the case, as required by 8 CFR §§ 1003.18(c) and (d), in deciding whether to administratively close, recalendar, or terminate a case. For cases in which you seek a continuance, cite to BIA caselaw which emphasized the IJ's discretion to make an independent judgment regarding what constitutes good cause and the general preference for a continuance where there is a prima facie approvable petition pending with USCIS.³⁹
- For administrative closure motions or recalendar, challenge the notion that administrative closure must be for a "reasonably short period of time." The regulation does not require this, and such an interpretation neither tracks prior practice nor serves as an efficient docket management tool. While IJs may feel bound by this new standard introduced by *Matter of B-N-K-* and *Cahuec Tzalam*, distinguish the facts in those cases from your own case. Also keep in mind that even if the IJ feels bound by these cases, challenging the soundness of their holdings can preserve the issues for a future circuit court appeal.
- For applicants in removal proceedings for whom collateral relief (SIJS, U visa, T visa, etc.) is their only form of relief, request a continuance, administrative closure, and termination in the alternative, fully briefing each argument. In particular, applicants should include statutory and constitutional arguments. Practitioners should rely heavily on the Trafficking Victims Protection Act and congressional intent for these forms of relief to protect vulnerable populations. Emphasize that a contrary result would mean that survivors will be deprived of relief that they are eligible for and punished for agency backlogs out of their control.

³⁷ 25 I&N Dec. 807 (BIA 2012) (holding that a pending U visa petition that is prima facie approvable will ordinarily warrant a continuance for a reasonable period of time).

³⁸ 25 I&N Dec. 688 (BIA 2012) (listing six factors IJs should consider in deciding whether to administratively close removal proceedings based on the respondent's pending family-based petition with USCIS and emphasizing that the IJ may administratively close a case over DHS's objection).

³⁹ *Sanchez Sosa*, 25 I&N Dec. 807.

- For example, for SIJS, this would include an argument that Congress intended that applicants remain in the United States to have the opportunity to apply for adjustment of status, given the statutory framework and special provisions for adjustment of status that apply to those with SIJS. A number of recent federal district court decisions in the habeas context are helpful to cite for this proposition.⁴⁰
- Practitioners can make similar arguments for U petitioners, T applicants and VAWA self-petitioners, where the framework envisions U nonimmigrant status, T nonimmigrant status, and VAWA self-petitions as possible paths to adjustment within the United States. Furthermore, for U, T, and certain VAWA applicants, practitioners can invoke the language in the order in *ICWC v. Noem*⁴¹ to emphasize Congressional intent to protect survivors of crime.⁴²
- Argue the inefficiency of processing applicants for removal who will soon be considered for lawful status, particularly T visa applicants with BFDs, which automatically stay any removal order.⁴³
- In all materials submitted to the immigration court, create a strong record for appeal to the circuit court. Specifically, challenge the IJ's application of the regulations to your client's particular case, and also the BIA's failure to properly apply the regulations in its recent published decisions. Circuit courts may not review purely discretionary findings of an IJ or the BIA.⁴⁴ But the courts can consider legal and constitutional challenges to the IJ and BIA's application of the law and regulations to a particular case, for example, where they failed to properly consider each regulatory factor when adjudicating a motion or created new legal standards not anticipated by the statute or regulations.⁴⁵ An IJ's and the BIA's misapplication of the regulations (including failure to consider each factor in the regulations) constitutes legal error, which should give grounds for circuit court review.
- Keep in mind that experience varies by jurisdiction. Some IJs still grant continuances, administrative closure, and even terminations for respondents with pending collateral forms of relief. Others do not. Consult listservs and local practitioners for trends.

⁴⁰ See, e.g., *Xol-Maas v. Francis*, 2026 WL 457005 (S.D.N.Y., Feb. 18, 2026) (holding that removal from the United States of a young person who has an old removal order [MTR pending], and who has been granted SIJS but has yet to have the opportunity to apply for adjustment because of the visa backlog would violate due process); *Walter A. v. Easterwood*, 2026 WL 836428, at *20 (D. Minn. Mar. 26, 2026) (“The statutory language and history of the SIJS statutory scheme demonstrates Congress’s clear intent that Special Immigrant Juveniles are to remain in the United States pending their application for adjustment of status.”).

⁴¹ *Immigr. Ctr. for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS (C.D. Cal. May 21, 2026).

⁴² For a discussion of the congressional intent behind these forms of relief, see the court’s order in *ICWC v. Noem. Immigr. Ctr. for Women and Children v. Noem*, No. 2:25-cv-09848-AB-AS, slip op. at 73-74 (C.D. Cal. May 21, 2026).

⁴³ 8 CFR § 214.205(g)(1).

⁴⁴ INA § 242(a)(2)(B)(ii).

⁴⁵ INA § 242(a)(2)(D) see, e.g., for cases reviewing the BIA’s interpretation of administrative closure regulations: *Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019); *Meza Morales v. Barr*, 972 F.3d 656 (7th Cir. 2020); *Arcos Sanchez v. Att’y Gen. United States of Am.*, 997 F.3d 113 (3d Cir. 2021); *Garcia v. Garland*, 64 F.4th 62 (2d Cir. 2023).

- Consult further resources, including:
 - Template motion from End SIJS Backlog Coalition, which is available in the member portal if you are a National Immigration Project member, or by logging into your CILA account if you have one.
 - ASISTA’s *Practice Alert: What Just Happened in Matter of Ibarra Vega?* (Mar. 11, 2026).



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