



Quick Guide: Defending SIJS Clients in Removal Proceedings¹

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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 youth with approved SIJS wait for

the opportunity to become lawful permanent residents, the federal government considers them to be without lawful status, and they are thus at risk of removal. Although Congress intended for SIJS youth to adjust their status to lawful permanent residence in the United States, the second Trump administration has pursued policies and practices that make it increasingly difficult for SIJS youth to remain safely in the United States while they await a visa, often subjecting them to detention and pursuing their removal. It is thus 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 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 appeal.² 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. For any given strategy, practitioners should ensure that they comply with all applicable requirements, such as paying any associated filing fee or seeking a fee waiver.

Section II provides a brief background on SIJS deferred action. Section III covers strategies for pleading to the Notice to Appear. Section IV discusses challenging the Department of Homeland Security's (DHS) evidence of removability. Section V highlights arguments that can be made once removability has been established to avoid removal and/or preserve the best record for appeal. Section VI offers strategies after an immigration judge (IJ) has ordered removal. Section VII discusses detention issues that SIJS youth may face. And Section VIII 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 VIII 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.

² 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 that impacts 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).

II. A Note About Deferred Action for SIJS Youth

One way that the second Trump administration is pursuing the removal of SIJS youth awaiting a visa is by attempting to eliminate a [2022 policy](#) under which USCIS automatically considered youth with approved SIJS petitions for deferred action. On April 7, 2025, USCIS quietly halted SIJS deferred action adjudications, and then [publicly announced](#) the rescission of the SIJS Deferred Action Policy on June 6, 2025. A group of immigrant youth and legal service organizations sued to challenge the policy's rescission, resulting in a [November 19, 2025 federal court order](#) in *A.C.R. v. Noem*, 809 F. Supp. 3d 103 (E.D.N.Y. 2025), requiring USCIS to temporarily resume SIJS deferred action adjudications under the 2022 policy. Pursuant to a [subsequent order](#) in that litigation, those young people whose SIJS petitions were approved between April 7, 2025 and June 5, 2025 are entitled to receive a deferred action adjudication in which their SIJS approval is considered a “strong positive factor” (the standard under the 2022 policy), but youth whose SIJS petitions were approved on or after June 6, 2025, as well as those SIJS beneficiaries applying to renew their prior period of deferred action, are not entitled to that favorable standard.

On April 10, 2026, USCIS issued a [new memo](#) again terminating the SIJS Deferred Action Policy. The 2026 memo applies to young people who file an SIJS petition (Form I-360) or a deferred action renewal request (on Form G-325A) on or after May 10, 2026. In short, all SIJS beneficiaries (*i.e.* individuals with an approved SIJS petition) awaiting a visa whose SIJS petitions were filed before May 10, 2026 are entitled to an automatic deferred action adjudication under the 2022 policy, but only those whose petitions were approved between April 7, 2025 and June 5, 2025 are entitled to the favorable “strong positive factor” standard—though the proper standard to be applied in deferred action adjudications is currently under review at the Second Circuit.³ Individuals who file an SIJS petition on or after May 10, 2026 will not be automatically considered for deferred action if their SIJS petition is later approved. Like any other noncitizen, they may file a deferred action request with USCIS, but it will be subject to [restrictive guidance](#) under which USCIS only considers deferred action in “extraordinary and compelling situations”; further USCIS “[will deny](#)” a deferred action request submitted by a noncitizen in removal proceedings.

III. 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

³ For more on the *A.C.R. v. Noem* litigation, see the [National Immigration Project's litigation page](#).

found 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 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 consider timely objecting 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

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.

in mind that DHS may choose to re-serve the client—properly this time—and re-initiate proceedings.

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.⁵ It is often beneficial to decline to admit the NTA’s factual allegations, and deny, rather than admit, the charge of removal.⁶ Denying the charge avoids a concession⁷ 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 consider denying 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, it is generally wise to deny the removal charge if there is an argument that the SIJS client is not removable; for example:

- INA § 237(c) is an important section because it automatically waives certain deportation grounds for SIJS beneficiaries who were admitted to the United States.

⁵ The ABA’s Model Rule make clear that clients—including minor children—“with decision-making limitations often can understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being.” [ABA Model Rule 1.14 Comment](#). Furthermore, “a client with decision-making limitations is owed all the protections under the Rules ordinarily afforded by the client-lawyer relationship.” *Id.*

⁶ 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.”).

⁷ 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).

- For example, 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).
- Members of the End SIJS Backlog Coalition have seen multiple successful motions to terminate proceedings in this context, including of detained SIJS youth, such as [this December 2025 IJ decision from Adelanto Immigration Court](#).
- An SIJS client who entered without inspection but is 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.⁸
- An individual who entered without inspection should consider denying a removal charge under INA § 212(a)(7)(A)(i)(I) for lacking proper entry documents, 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).

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 decline to admit the NTA’s allegations and deny the charge in order to put DHS to its burden of proof. Doing so 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, or that they are clearly and beyond a doubt entitled to be admitted to the United States and not inadmissible as charged. *Id.*⁹

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 decline to admit the allegations and deny 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.

⁸ 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.

⁹ 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).

IV. Challenging DHS's Evidence of Removability

A. Challenging Reliability of DHS Evidence of Alienage

After a practitioner declines to admit the NTA's allegations, denies the 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,¹⁰ 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.¹¹ 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.¹² 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 inherent reliability in order to contest the I-213's use to establish alienage.¹³ [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

¹⁰ *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); *Matter of Mercado-Martinez*, 29 I&N Dec. 529 (BIA 2026).

¹¹ *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).

¹² *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").

¹³ *See Vera Punin v. Garland*, 108 F.4th 114, 125-26 (2d Cir. 2024); *Antia-Perea v. Holder*, 768 F.3d 647, 657 (7th Cir. 2014); *Matter of Espinoza*, 45 F.3d at 310-11; *Matter of Barcenas*, 19 I&N Dec. at 611.

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.¹⁴ 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).¹⁵ Examples of such violations could include entering a home without a warrant or consent, or a stop based solely on race.¹⁶ 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 prepare to respond if DHS seeks to introduce "independent" evidence of a client's alienage.

¹⁴ 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 certain 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).

¹⁵ 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).

¹⁶ *Noem v. Vasquez Perdomo*, 146 S. Ct. 1, 3 (2025) ("To be clear, apparent ethnicity alone cannot furnish reasonable suspicion; under this Court's case law regarding immigration stops, however, it can be a relevant factor when considered along with other salient factors.") (Kavanaugh, J., concurring) (internal citations omitted).

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 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”).¹⁷

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](#) and [here](#).
- A regulation, 8 CFR § 236.3(h),¹⁸ 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 statute or regulation during its arrest of an SIJS youth,¹⁹ practitioners should

¹⁷ 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.

¹⁸ Note that the publicly available version of this regulation, which shows the relevant provision as paragraph (g) rather than (h), is not in effect as it was permanently enjoined in *Flores v. Rosen*, 984 F.3d 720, 730 (9th Cir. 2020). Instead, the pre-October 2019 version of the regulation is in effect, under which the relevant provision is found at paragraph (h).

¹⁹ While there are statutes and regulations governing how DHS can arrest and process noncitizens, *see, e.g.* 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*, the Trump administration has expanded DHS's ability to effectuate arrests without due process. *See, e.g.*, Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the

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—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.

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

Advocates should consider seeking termination, administrative closure, and/or continuances for SIJS youth awaiting a visa in an effort to defend them against removal. Advocates should ensure that motions include all relevant and available arguments based in regulation, statute, and due process. Practitioners should be sure to address any applicable negative BIA decisions, distinguish them wherever possible, and argue that these cases are wrongly decided. Motions should also include a strong factual basis and supporting evidence. Even if these motions are unsuccessful with the IJ and the BIA, it is critical to preserve these arguments for SIJS youth and create strong records for the possibility of federal court review. Note that even if a motion to terminate, administratively close, or continue is granted by the IJ, a DHS appeal to the BIA is likely.

Many of the arguments discussed below for termination, administrative closure, and continuances are included in a template motion accessible to National Immigration Project members in the [member portal](#), or through creating a free CILA account [here](#). In addition, [here](#) is a resource on seeking administrative closure and termination under the Executive Office for Immigration Review (EOIR) regulations, and [here](#) is a resource on procedural options for youth in removal proceedings—though these resources have not been updated since the June 2026 legal development discussed immediately below.

A. June 2026 Collusive Settlement Vacating Administrative Closure Rule

Before describing arguments for administrative closure and termination based on a grant of SIJS, it is important to flag a troubling legal development that may impact the source of IJs' authority to grant administrative closure and termination: a [lawsuit](#) brought by the state of Texas which was filed and decided on the same day, *State of Texas v. DOJ*, No. 26-cv-00070 (N.D. Tex. June

Abuse of Humanitarian Parole (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse> (rescinding a 2021 policy forbidding arrests at schools, hospitals, and places of worship).

22, 2026). In that case, the state of Texas challenged a [2024 Final Rule](#) codifying the authority of IJs and the BIA to administratively close removal proceedings. Soon after filing, the plaintiff state of Texas and the defendant DOJ filed a [joint motion](#) asking the court to enter a final “consent judgment” to vacate the 2024 Rule, arguing that it was contrary to law. The district court obliged, issuing a [2-page order](#) on the same day the suit was filed, entering final judgment and vacating the Final Rule.

On August 7, 2026, three cities and a legal services provider filed a [motion to intervene](#) in the case, arguing among other things that there was no jurisdiction for the lawsuit because there was no “controversy” between the parties, that the INA provides authority for the 2024 Final Rule, that the collusive settlement agreement unlawfully bypassed required notice-and-comment procedures, and that the court’s judgment purporting to vacate the entire Rule was overbroad since Texas only challenged administrative closure, whereas the 2024 Rule contained many other provisions unrelated to administrative closure. On August 21, 2026, the district court [denied](#) the motion to intervene, concluding that the proposed intervenors lacked standing. That same day, the proposed intervenors filed an [appeal](#) with the U.S. Court of Appeals for the Fifth Circuit, which remains pending as of the date of this resource’s issuance.

Since the June 22 Texas court judgment, practitioners have reported inconsistent positions taken by DHS and IJs in immigration court proceedings. In some cases, DHS has filed motions to recalendar administratively closed removal proceedings or opposed motions for discretionary termination, citing the June 22 judgment. In some cases, IJs have denied motions for administrative closure or discretionary termination citing the June 22 judgment for the assertion that they lack such authority. Other practitioners have reported successful motions for discretionary termination or administrative closure since June 22, 2026.

In light of the fact that the legal status of the regulations is currently in dispute, we recommend the following when filing motions for administrative closure or termination in immigration court or before the BIA:

- When seeking termination, cite to both the relevant termination regulations (discussed further below) and other sources of authority for termination. Other sources for discretionary termination include *Matter of Coronado-Acevedo*, 28 I&N Dec. 648 (A.G. 2022), and *Gonzalez v. Garland*, 16 F.4th 131, 140–143 (4th Cir. 2021).
- If DHS and/or the IJ dispute that the termination regulations remain in effect, point out that the June 22 *Texas* case [challenged](#) only the legal authority for administrative closure, and that the Rule contains a severability clause which directs that “[t]o the extent that any portion of this rule is . . . held invalid by a court, the Department intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect. For example, administrative closure and termination are two separate procedural tools that operate independently of each other. If one of these tools was enjoined, for instance, the other tool is fully capable of separate operation.” 89 Fed. Reg. 46742, 46786 (May 29, 2024).
- When seeking administrative closure, cite to legal authority that pre-dated the 2024 Final Rule, for example *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012); *Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019); *Meza Morales v. Barr*, 973 F.3d 656, 664–67 (7th Cir. 2020); *Arcos Sanchez v. Att’y*

Gen. U.S., 997 F.3d 113 (3d Cir. 2021). *But see Hernandez-Serrano v. Barr*, 981 F.3d 459 (6th Cir. 2020) (finding no general administrative closure authority prior to the 2024 Rule).

- If DHS files a motion to recalendar a previously administratively closed case citing the June 22 *Texas* decision, file a timely opposition. The opposition could (1) preserve a short argument that the collusive settlement was unlawful because there was no “controversy” between the parties and the collusive settlement agreement unlawfully bypassed required notice-and-comment procedures (see the [intervenors’ arguments](#) on pages 15-25), (2) argue that in any event it is unlawful and violates due process to apply the judgment (which is effectively rulemaking) retroactively to previously administratively closed cases, *see, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“Retroactivity is not favored in the law. Thus, congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result.”), and (3) argue administrative closure authority exists independent of the 2024 Final Rule, citing *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and any applicable circuit precedents. The opposition might also point out that in the *Texas* case, the government conceded that the June 22 judgment “does not order recalendar[ing], reopen closed cases, or otherwise tell immigration judges what to do with their backlog of inactive cases.” [State of Texas’s opposition to intervention motion](#) at 7 (Aug. 17, 2026); *see also id.* at 14 (stating that the June 22 judgment “does not require recalendar[ing]”); [DOJ filing on August 18, 2026](#), at 2 (noting that “[DOJ’s] position aligns with the arguments set forth by [the state of Texas]”).

B. Seeking Termination Based on SIJS

Under the 2024 regulations currently at issue in the *Texas* case, termination is mandatory in some circumstances and discretionary in others.

Mandatory Termination:

First, 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 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.

Second, practitioners may argue that mandatory termination is appropriate because SIJS beneficiaries are not subject to the removability grounds charged in the NTA, even if they were subject to those grounds when pleadings were initially entered.²⁰ *See* 8 CFR §

²⁰ If pleadings were previously entered admitting the allegation of not being admitted or paroled and conceding a charge of removability under INA § 212(a)(6)(A)(i) (presence without admission or parole), practitioners should consider filing an amended pleading concurrently with the motion to terminate. The amended pleading would deny that allegation and the §

1003.18(d)(1)(i)(A) (termination is mandatory where no removal charge can be sustained). When the SIJS petition is approved, SIJS youth are deemed to have been paroled into the United States. INA § 245(h)(1). Thus, practitioners could argue that an NTA charge of removability for not being admitted or paroled is no longer sustainable. Further, pursuant to INA § 245(h)(2)(A), Special Immigrant Juveniles are exempt from many grounds of inadmissibility, including INA § 212(a)(6)(A)(i) for entry without inspection and INA § 212(a)(7) for entry without proper documents, and thus practitioners could argue for this additional reason that those NTA charges are not sustainable. While these arguments are unlikely to be successful with the immigration court or BIA, they are important to preserve for potential judicial review.

Third, practitioners may argue that termination is mandatory to comport with congressional intent and due process. *See* 8 CFR § 1003.18(d)(1)(i)(F) (termination is mandatory where “otherwise required by law.”). Practitioners may argue that SIJS beneficiaries must remain in the United States to maintain their SIJS, as removal would strip them of their ability to adjust status and act as a *de facto* revocation of their SIJS petition approval without following mandatory revocation procedures. SIJS beneficiaries can only access lawful permanent residence—the core purpose of the SIJS statute—through adjustment of status while remaining in the United States; they are prohibited from consular processing from abroad. *See* 22 CFR § 42.11 (describing SIJS-based permanent residence as an “adjustment-only” category); *see also* 9 FAM 502.5-7(C) (describing SIJS as an “adjustment-only category” and instructing consular officers that “[u]nder no circumstances should you issue an SIJ visa”); *see also* INA § 101(a)(27)(J) (requiring presence in the United States). Before DHS can revoke an approved SIJS petition, it must follow specific regulatory procedures, but removing an SIJS beneficiary and thus depriving them of the core benefit of SIJS would be a *de facto* revocation of their SIJS without following those mandatory processes. *See* 8 U.S.C. § 1155; 8 C.F.R. § 204.11(j) (allowing revocation of SIJS only for “good and sufficient cause” and outlining requirements to revoke SIJS, including providing notice and an opportunity to appeal). As such, removal of an SIJS beneficiary strips them of the main benefit of SIJS—the ability to pursue lawful permanent residency in the United States.

Practitioners making these arguments can cite to a growing list of federal court cases recognizing Congress’s intent that SIJS youth be allowed to remain in the United States safely until they can adjust status. *See, e.g., Garcia v. Holder*, 659 F.3d 1261, 1271 (9th Cir. 2011) (abrogated on other grounds) (“Congress’s intent in creating the SIJS statute was to assist a limited group of abused children to remain safely in the country with a means to apply for LPR status”); *Osorio-Martinez v. Atty. Gen. U.S. of Am.*, 893 F.3d 153, 178–79 (3d Cir. 2018) (“Congress granted SIJ designees a clear set of rights, including eligibility to apply for adjustment to LPR status,” and removing a SIJ beneficiary from the United States before they are eligible to apply for adjustment would “summarily strip[]” this right from them.”). Indeed, a number of federal courts have recently addressed and affirmed these arguments in the context of federal petitions for writs of habeas corpus for detained SIJS youth. *See, e.g., Alfaro Herrera v. Baltazar*, 2026 WL 91470,

212(a)(6)(A)(i) charge in light of the changed circumstances (the SIJS approval and corresponding parole) since initial pleadings were taken. Practitioners may cite to INA § 240(c)(1)(A), directing that “[a]t the conclusion of the proceeding the immigration judge shall decide whether [a noncitizen] is removable” and argue that the youth is no longer removable as charged.

at *7-8 (D. Colo. Jan. 13, 2026). District court habeas decisions affirming the right of SIJS beneficiaries to remain in the United States while they await their opportunity to pursue adjustment of status can be found in [this National Immigration Project outline](#). Practitioners may also 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.”

Discretionary Termination:

SIJS youth may also seek discretionary termination. *Matter of Coronado-Acevedo*, 28 I&N Dec. 648 (A.G. 2022); 8 CFR §§ 1003.18(d)(1)(ii), 1003.1(m)(1)(ii). Under the regulations, for cases in these discretionary categories, the IJ is permitted to terminate proceedings even if DHS opposes termination. Note, however, that the BIA’s recent decision in *Matter of Santiago-Santiago*, 29 I&N Dec. 589 (BIA 2026), related to discretionary termination for a DACA recipient highlights the importance of the IJ expressly considering and weighing the reasons for any DHS opposition. To support discretionary termination, practitioners should include any relevant evidence to support a positive exercise of discretion and should address any potential opposition by DHS.

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.
 - a. Practitioners could argue that SIJS constitutes relief from removal (see above arguments that SIJS youth are no longer removable). [Here](#) is a May 2026 Annandale Immigration Court decision granting termination under CFR § 1003.18(d)(1)(ii)(B) based on an approved SIJS petition.
 - b. Practitioners can also argue that SIJS beneficiaries are prima facie eligible for adjustment of status despite a visa not yet being available. [Here](#) is an April 2026 Fort Snelling Immigration Court decision granting termination under 8 CFR § 1003.18(d)(1)(ii)(B) for an SIJS beneficiary awaiting a visa based on prima facie eligibility for adjustment of status.
3. the young person filed an application for asylum with USCIS as a UC (as many SIJS youth have also filed for asylum);
 - a. This includes youth previously determined to be UCs who filed their application over the age of 18 despite the fact that *Matter of M-A-C-O-*, 27 I&N 477 (BIA 2018), allows IJs to take jurisdiction of those applications.
4. “termination is similarly necessary or appropriate for the disposition or alternative resolution of the case,” though termination cannot be for purely humanitarian reasons unless DHS agrees to termination.
 - a. Here, practitioners could highlight the fact that removal would separate the youth 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. [Here](#) is a May 2026 Hyattsville Immigration Court decision granting termination under CFR § 1003.18(d)(1)(ii)(F) based on approved SIJS.

Whether to seek termination as opposed to postponements such as administrative closure for an SIJS youth awaiting visa availability will depend on client-specific factors, including their potential vulnerability to expedited removal (see section VIII below), and is a decision that should be made with the client's informed consent. Given the BIA's heavy focus on the government's interest in the finality of proceedings in recent cases, *see, e.g., Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025), practitioners may argue that termination of proceedings serves the interest in finality by bringing proceedings to a close.

C. Seeking Administrative Closure Based on SIJS

Longstanding agency precedent (and the 2024 regulations purportedly vacated on June 22, 2026) give IJs and the BIA authority to administratively close any case upon a party's motion, after considering the totality of the circumstances. *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), *see* 8 CFR §§ 1003.18(c) (IJ regulations purportedly vacated by June 22 decision), 1003.1(l) (BIA regulations purportedly vacated by June 22 decision).²¹ Relevant administrative closure factors include:

- (A) The reason administrative closure is sought;
- (B) The basis for any opposition to administrative closure;
- (C) Any requirement that a case be administratively closed in order for a petition, application, or other action to be filed with, or granted by, DHS;
- (D) The likelihood the noncitizen will succeed on any petition, application, or other action that the noncitizen is pursuing outside of immigration court proceedings;
- (E) The anticipated duration of the administrative closure;
- (F) The responsibility of either party, if any, in contributing to any current or anticipated delay;
- (G) The ultimate anticipated outcome of the case pending before the immigration judge; and
- (H) The ICE detention status of the noncitizen.

The regulations noted that "an immigration judge shall consider the totality of the circumstances, including as many of the factors listed under paragraphs (c)(3)(i) and (ii) of this section as are relevant to the particular case. The immigration judge may also consider other factors where appropriate. No single factor is dispositive." 8 CFR § 1003.18(c)(3).

²¹ Given the current status of the *Texas* litigation pursuant to which the 2024 administrative closure regulations are not currently in effect, practitioners within the jurisdiction of the Sixth Circuit must contend with a pre-2024 Rule decision that concluded that IJs have no general administrative closure authority. *Hernandez Serrano v. Barr*, 981 F.3d 459 (6th Cir. 2020).

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 youth'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.

The BIA issued a precedential decision in November of 2025 holding 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. *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025). 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.” *Id.* at 305. Relying upon *Matter of B-N-K-*, 29 I&N Dec. 96, 99 (BIA 2025), 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.” *Id.* at 302. While the regulations directed IJs to consider the “anticipated duration of the administrative closure” as one of many factors, they did not contain any requirement that the administrative closure be for a reasonably short period of time—nor did pre 2024 Rule agency precedents like *Avetisyan* contain such a requirement.

Practitioners are urged to distinguish their cases from the facts of *Cahuec Tzalam* as they are able,²² including by pointing out that there has been significant forward movement in the EB-4 category of the visa bulletin in 2026, such that the final action date is December 15, 2022 in the September 2026 visa bulletin. This is a significantly shorter wait time than was identified in *Cahuec Tzalam*, and it also demonstrates the dynamic nature of the visa wait times. For additional information and guidance on *Cahuec Tzalam*, see the End SIJS Backlog's [guidance](#). Practitioners should also be aware that a subsequent BIA decision on administrative closure (involving a U visa petitioner) sets forth a presumption that an administrative closure period of more than six months is unreasonable. *Matter of Ibarra-Vega*, 29 I&N Dec. 476 (BIA 2026). Practitioners can argue that this presumption should not apply to SIJS youth, whom Congress intended to be allowed to remain in the United States until they have the opportunity to apply for adjustment of status. Additionally, practitioners are encouraged to argue that *Cahuec Tzalam* and *Ibarra-Vega* were wrongly decided, to preserve these arguments for appeal.

For those with SIJS petitions approved on or after April 7, 2025 who have not yet received a deferred action adjudication, advocates may also argue that administrative closure is appropriate based on the SIJS beneficiary's entitlement to an SIJS-based deferred action adjudication pursuant to the [A.C.R. ruling](#) (if their SIJS petition was filed prior to May 10, 2026). While there is no guarantee that these youth will be granted deferred action, they should at least have the opportunity to postpone their removal proceedings while they await a deferred action adjudication.

²² Practitioners could also note that *Cahuec Tzalam* is based on the 2024 Rule, which has been purportedly vacated pursuant to a joint motion by the DOJ and the state of Texas, and could argue that for this reason the decision is not currently binding on adjudicators.

Despite the unlikelihood, in light of the above decisions, that an IJ will grant administrative closure based on SIJS, advocates are still encouraged to seek administrative closure in the alternative if the IJ declines to grant a motion to terminate, or the client decides not to pursue termination in their case, in order to preserve the issue for appeal.

D. Seeking Continuances or Status Docket Placement Based on SIJS

Because of its limited duration, a continuance is not generally 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 and/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.* Unfortunately, in March 2026, the BIA held in *Matter of Pinzon Rozo*, 29 I&N Dec. 507 (BIA 2026), that the respondent—who had an approved petition for SIJS with a priority date of May 23, 2025—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 he faced for a visa, because he did not establish that he exercised due diligence in pursuing SIJS, and because DHS opposed the continuance. IJs will now likely deny requests for a continuance based on SIJS under *Pinzon Rozo*. Practitioners are urged to distinguish their cases from the facts of *Pinzon Rozo* (especially if their priority date is closer to becoming current), and also to argue that it was wrongly decided, to preserve the issue for appeal.²³

As discussed above, for those with SIJS petitions approved on or after April 7, 2025 who have not yet received a deferred action adjudication, advocates may also argue that a continuance is appropriate based on their entitlement to an SIJS-based deferred action adjudication pursuant to the [A.C.R. ruling](#) (if their SIJS petition was filed prior to May 10, 2026).

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

²³ On July 29, 2026, six immigrant youth and a nonprofit legal services provider [filed a lawsuit](#) in the U.S. District Court for the Eastern District of Pennsylvania challenging federal government policies that do not provide SIJS youth with adequate time to pursue SIJS relief, instead leading to removal orders. [L.B.R.P. v. DHS](#), No. 26-5346 (E.D. Pa. filed July 29, 2026).

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.

E. Interlocutory Appeals of Denied Motions to Terminate, Administratively Close, or Continue

If the IJ denies a motion to terminate, administratively close, or continue an SIJS youth's removal proceedings but the removal proceedings continue forward to pursue other relief, practitioners may contemplate filing an interlocutory appeal of the IJ's order denying the termination or postponement. An interlocutory appeal is an appeal taken while the removal proceedings are still pending and have not yet concluded through a final IJ decision. In contrast to filing a BIA appeal at the end of the removal proceedings, which the BIA is required to adjudicate, the BIA's review of interlocutory appeals is discretionary, and generally the BIA declines to adjudicate them. In other words, the likely outcome of an interlocutory appeal will be that the BIA declines to decide its merits. Given this reality and also the current hostile make-up of the BIA, it may not be worth the time, expense, and effort in most cases to file an interlocutory appeal. Like regular appeals, interlocutory appeals are filed on Form EOIR-26 and require a filing fee or fee waiver request. Unlike regular appeals, the BIA does not normally set briefing schedules for interlocutory appeals and thus the brief should be submitted with the appeal or filed shortly thereafter. [This provision](#) of the BIA Practice Manual describes the procedures for interlocutory appeals, and [this practice advisory](#) provides more information about interlocutory appeals with the BIA. Not filing an interlocutory appeal does not impact the respondent's right to appeal the relevant decision (*e.g.* denial of termination, administrative closure, or continuance) through a regular BIA appeal at the conclusion of the removal proceedings. This can and should be done.

F. Defending DHS Appeals of an IJ Order Terminating, Administratively Closing, or Continuing the Proceedings of an SIJS Beneficiary

If the immigration court grants termination of removal proceedings, practitioners should be prepared that DHS is likely to appeal that termination order to the BIA. If served with a Notice of Appeal filed by the government, Practitioners should file an EOIR-27 with the Board and be prepared to defend the appropriateness of termination in briefing to the Board. It will be critical that the immigration court record contains sufficient arguments and evidence supporting mandatory and/or discretionary termination and that the IJ addressed the relevant factors in the termination order, including the basis for any DHS opposition. Note that if an SIJS youth's priority date becomes current while on appeal to the BIA, neither the immigration court nor USCIS will have jurisdiction over the adjustment unless the case is remanded to the IJ or the BIA affirms termination of proceedings.

Similarly, if the immigration court granted administrative closure or a continuance, it is possible that DHS would file an interlocutory appeal of that order to the BIA. In this situation, practitioners should quickly file an EOIR-27 so that they can review DHS's appeal filing. It is recommended that practitioners file an opposition brief within a week or two of DHS's interlocutory appeal filing, as the BIA may rule quickly on the appeal without providing a

transcript or setting a briefing schedule. Practitioners may first argue that the standard for interlocutory review has not been met, *see, e.g., Matter of K-*, 20 I&N Dec. 418 (BIA 1991), and then defend the IJ’s decision on the merits.²⁴

G. 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). 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, [this USCIS memo](#).

Respondents who file for asylum with USCIS as UC—including those who filed applications after reaching 18 years of age—may request discretionary termination of their removal proceedings. *See Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022); 8 CFR §§ 1003.18(d)(1)(ii)(A), 1003.1(m)(1)(ii)(A). They may also seek administrative closure or postponements to await USCIS’s adjudication of their asylum application. Certain asylum seeking noncitizens with prior UC determinations are class members under the *J.O.P. v. DHS* Settlement Agreement and entitled to additional protections, including that DHS may not oppose requests for administrative closure or other postponements to await the USCIS asylum adjudication. The *J.O.P.* Settlement Agreement [is set to terminate](#) on November 18, 2026, though the [USCIS memo](#) and discretionary termination regulations will remain. [This practice advisory](#) discusses strategies for navigating removal proceedings for asylum seekers with prior UC determinations, both *J.O.P.* class members and those who do not meet the class definition.

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, but are not limited to, U visas for survivors of certain crimes, T visas for survivors of human trafficking, VAWA relief for certain survivors of family violence, and family-based petitions for certain family members of U.S. citizens and lawful permanent residents. 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.

²⁴ For more on interlocutory appeals, see [this June 2026 practice advisory](#) from Co-Counsel NYC titled “Interlocutory Appeals to the Board of Immigration Appeals Practice Advisory.” Some of the interlocutory appeal defense practice tips presented here derive from this excellent resource.

VI. 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 BIA. 8 CFR § 1003.38(b).²⁵ In early 2026, EOIR issued an [interim final rule](#) (IFR) which would have shortened the BIA appeal deadline in most cases to 10 days. The IFR also directs that most BIA appeals should be summarily dismissed without briefing. However, advocates [successfully sued to block those IFR provisions from going into effect](#), and thus as of this resource's issuance the appeal deadline remains 30 days. [Here](#) is a resource about the IFR, which also describes the parts of the IFR that *did* go into effect on March 9, 2026 (including a change to require simultaneous rather than consecutive briefing).

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 of the Notice of Appeal and reserve the right to supplement after receiving transcripts. After the Notice of Appeal is timely filed with the BIA, the BIA will provide a transcript of the IJ proceedings and issue a briefing schedule. [Here](#) is a resource on BIA appeals; the Coalition has created a sample BIA appeal packet for an SIJS beneficiary ordered removed due to lacking an available visa, which is available to National Immigration Project members via the [member portal](#) or by creating a free [CILA account](#). Practitioners whose SIJS clients have received IJ removal orders are encouraged to complete the Coalition's [survey about IJ/EOIR conduct](#). [This Coalition webpage](#) compiles various resources for defending SIJS youth; interested practitioners can sign up [here](#) to join a monthly strategy group on defending SIJS beneficiaries in removal proceedings and on 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, or if the SIJS beneficiary's priority date becomes current), 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 *Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022); 8 CFR § 1003.1(m)(1)(ii). For more on motions to terminate, see Section V.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. *Matter of Cruz-*

²⁵ 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.

Valdez, 28 I&N Dec. 326 (A.G. 2021); *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012). In theory, having a pending SIJS petition or awaiting visa availability could be reasons for administrative closure; however administrative closure in these circumstances is unlikely in light of *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025). See Section V.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 VI.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.

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. [Here](#) is a resource providing 15 steps to take when assessing and preparing a motion to reopen.

Practitioners pursuing motions to reopen based on a young person's approved SIJS petition will have to contend with a recent unfavorable BIA decision, *Matter of Z-R-C-N-*, 29 I&N Dec. 523 (BIA 2026). In that case, which involved a mother and two children, the BIA found that the two minor respondents could not establish prima facie eligibility for adjustment of status because their future adjustment was too "speculative" given the SIJS visa backlog and the children's recent priority dates. In light of this decision, practitioners should consider carefully the timing of any motion to reopen and seek to distinguish their case from the facts in *Z-R-C-N-*. Strategies might include: (1) highlighting the significant advancement in the visa bulletin EB-4 final action dates since *Z-R-C-N-* as well as, if true, their client's older priority date, (2) filing a motion to reopen and terminate (rather than a motion to reopen to pursue adjustment) based on the client's eligibility for discretionary termination if the client has deferred action, and (3) arguing that *Z-R-C-N-* was wrongly decided to preserve the issue for eventual petition for review. In particular,

contrary to the BIA’s conclusion, there is nothing “speculative” about an SIJS beneficiary’s ability to adjust status in the future; the time *will* pass and a visa *will* become available.²⁶

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,²⁷ 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.

VII. 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. [This resource](#) also provides information about ICE check-ins. Trump administration guidance permitted ICE to carry out enforcement actions at or near courts, both [immigration court](#) and [judicial courts](#), but litigation has resulted in a court order striking down that guidance.²⁸ An internet-based hearing does not present the same risk of detention following an immigration court hearing.

²⁶ Indeed, as of the publication date of this resource, the *Z-R-C-N-* decision was being challenged in the Third Circuit via a PFR.

²⁷ 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 November 18, 2026). [Here](#) is information on the *J.O.P.* settlement agreement.

²⁸ On May 18, 2026, a federal court [granted a stay](#) of ICE’s policy of conducting arrests at immigration courthouses, as to three immigration courts in New York City. *African Communities*

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](#). Due to the risk of detention most noncitizens currently face, we strongly advise that practitioners have a detention plan in place for all SIJS clients, which should include a plan for the prompt filing of a habeas petition. It is important to speak with clients beforehand about what to expect if they are detained. Clients should be advised that ICE may use coercive tactics designed to induce them to waive their right to appear before an immigration judge, including agreeing to a “stipulated removal order” or accepting an “incentivized voluntary departure.” [This community explainer](#), available in English and Spanish, explains these tactics.

B. Release Strategies

If an SIJS client is detained by ICE, the practitioner may contact the [ICE Enforcement and Removal Office](#) to speak with the officer assigned to the case and advocate for the client’s release. Before doing so, it may be helpful to inquire about local ERO practice to find out whether reaching out to the office will be futile or even detrimental to a case. In arguing for release with ICE, practitioners should highlight the client’s pending or approved SIJS petition. [This ICE memo](#) states that ICE agents should consult with OPLA before conducting enforcement against known beneficiaries of victim-based immigration benefits.²⁹

In May and September 2025, the BIA issued two decisions drastically expanding the scope of “mandatory” detention under INA § 235(b)(2)(A) to all noncitizens who entered the United States without admission: *Matter of Q. Li*, 29 I&N Dec. 66 (BIA 2025), and *Matter of Yajure Hurtado*, 29 I&N Dec 216 (BIA 2025). And in June 2026, the BIA issued a decision stating that neither a prior UC determination nor approved SIJS makes a youth eligible for bond; instead if they were not admitted to the United States they are subject to mandatory detention pursuant to *Yajure Hurtado. Matter of N-A-G-C-*, 29 I&N Dec. 662 (BIA 2026). There is a circuit split about the correct interpretation of this mandatory detention statute, with the [Fifth](#) and [Eighth](#) Circuits agreeing with the BIA and the [First](#), [Second](#), [Third](#), [Sixth](#), [Seventh](#), [Ninth](#), [Tenth](#), and [Eleventh](#) Circuits siding with noncitizens. Because of *Q. Li*, *Yajure Hurtado*, and *N-A-G-C-*, many SIJS

Together v. Lyons, 25-09848, 2026 WL 1455004 (May 18, 2026). Then, on June 23, 2026, a court vacated the ICE and EOIR courthouse arrest policies nationwide in a separate case, *Pablo Sequen v. Albarran*, No. 25-06487, 2026 WL 1805114 (N.D. Cal. June 23, 2026), *appeal filed*, July 7, 2026. Further, 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.

²⁹ On May 20, 2026, a federal court stayed this memo as to members of the certified classes and reinstated a prior more protective memo which generally requires ICE to refrain from pursuing enforcement actions against noncitizens seeking certain “victim-based immigration benefits.” *Immigr. Ctr. for Women & Children v. Noem*, No. 2:25-cv-09848, 2026 WL 1455004, at *46–47 (C.D. Cal. May 20, 2026). The certified classes do not include SIJS beneficiaries but include certain people with pending U visa petitions, T visa petitions, or VAWA self-petitions.

beneficiaries are subject, in the agency's view, to mandatory, no-bond detention and will likely need to file a federal court habeas petition to secure release.³⁰

For information on how to secure the release of SIJS youth through a habeas petition, see [this resource](#). This [outline](#) tracks habeas decisions for youth over 18 years of age with SIJS, SIJS-based deferred action, and/or who were previously determined to be UC. The Coalition encourages practitioners with SIJS clients whom ICE detains to complete our [survey about ICE enforcement](#).

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. [This](#) is an example of a case campaign that the End SIJS Backlog Coalition organized.

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

A. Identifying Clients Potentially Impacted by Expanded Expedited Removal

The Trump administration's [January 2025 expansion](#) of expedited removal (ER) to people residing in the interior of the United States has raised concerns about whether the government could try to apply this summary removal process to young people who entered the country as UC but no longer meet the definition, and/or to youth with SIJS. To date, the authors are aware of only a small number of cases in which ICE subjected a young person (now an adult) previously processed as a UC to expedited removal, and in three of those cases, ICE changed course and placed the young person into full removal proceedings after advocacy by counsel. For more information about the litigation challenging the expansion of ER, as well as arguments against its application to young people who were processed as UCs and young people with approved SIJS (should the government attempt to apply it to those groups), see this [resource](#). We encourage practitioners who hear of ER being applied to these groups to complete the Coalition's 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

³⁰ In some situations, such as for youth who were admitted on a visa, in jurisdictions where a circuit court has overturned the agency's policy, or in jurisdictions where habeas courts require exhaustion of administrative remedies, it may make sense to first seek a custody redetermination hearing before the IJ. For more information about seeking a bond hearing, see [this guide on release from immigration detention](#).

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 immigration court hearing, ICE check-in, or other immigration appointment. 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).

IX. 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. [This Coalition webpage](#) compiles various resources for defending SIJS youth.

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](#)
- [USCIS Adjudications "Pause" - Impact on SIJS Youth](#)

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, Maracuya Montoya at maracuya@nipnlg.org.