



ICWC v. Noem Practice Advisory and Toolkit

Immigration Center for Women and Children v. Noem, Case No. 2:25-cv-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026)

On May 20, 2026, the court in *Immigration Center for Women and Children v. Noem*, Case No. 2:25-cv-09848-AB-AS, 2026 WL 1455004 (C.D. Cal. May 20, 2026) (hereinafter “*ICWC v. Noem*”) issued an order temporarily restoring protections for certain immigrant survivors with pending petitions. The order addressed the 2025 Guidance issued by then-Acting ICE Director Caleb Vitello¹ and two related Trump administration policies resulting in the routine arrest, detention, and removal of immigrants with pending VAWA, U visa, and T visa petitions (collectively “2025 Guidance”). The court certified three classes and stayed the 2025 Guidance and policies nationwide as to those classes. This practice advisory explains the impact of the order and aims to provide practitioners with the tools to benefit from it.

In brief:

1. By staying the 2025 Guidance, the order reinstates the 2021 and 2011 policy guidance that generally protected against the detention and deportation of individuals with pending VAWA, U visa, and T visa petitions;
2. By staying ICE’s policy of unilaterally revoking deferred action status issued to U and T visa petitioners by detaining and removing them without USCIS having revoked that status, the order prohibits ICE from detaining or removing such individuals while in valid periods of deferred action status; and
3. By staying ICE’s policy of removing U and T petitioners who request a stay of their removal orders without first obtaining a determination of their prima facie eligibility for those visas, the order requires that petitioners who request a stay should no longer be removed until they first receive such a prima facie determination (a bona fide determination should qualify as a prima facie determination for these purposes).

Class counsel and the Organizational Plaintiffs in *ICWC v. Noem* have prepared the enclosed templates that we hope will help practitioners and class members implement the order in their individual cases:

¹ ICE Policy Number 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits* (Jan. 30, 2025), available at <https://www.ice.gov/doclib/foia/policy/11005.4.pdf> (last checked June 5, 2026).

- Template requests for prosecutorial discretion
 - Request for petitioners with Deferred Action
 - Request for petitioners without Deferred Action
- Template request for stay of removal
- Template ICE check-in letters
 - Letter for petitioners with Deferred Action
 - Letter for petitioners without Deferred Action
- Template request for release from ICE custody
- Habeas petition templates
 - Habeas template for U visa petitioners with Deferred Action
 - Habeas template for T visa petitioners with Deferred Action

If you have questions about these materials, or if the government raises issues not contemplated by these materials and you would like to discuss, please reach out to the *ICWC v. Noem* litigation team at ICWC_ClassCounsel@centerforhumanrights.org.

Class counsel are the Center for Human Rights and Constitutional Law (CHRCL), Public Counsel, The Coalition for Humane Immigrant Rights (CHIRLA), and La Raza Centro Legal (LRCL).

Organizational Plaintiffs are the Immigration Center for Women and Children (ICWC), California Collaborative for Immigrant Justice (CCIJ), CHIRLA, and LRCL.

Background

On January 30, 2025, ICE issued the 2025 Guidance, which authorized the routine detention and removal of noncitizen survivors of domestic violence, human trafficking or other serious crime who had petitioned for VAWA relief, U visas, or T visas. [ICE Policy Number 11005.4, Interim Guidance on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits \(Jan. 30, 2025\) \(“2025 Guidance”\)](#). The Guidance explicitly rescinded the [2021 ICE Directive 11005.3](#) (available [here](#)) and the [2011 ICE Policy Statement 10076.1](#) (available [here](#)). The 2025 Guidance marked an abrupt about-face from longstanding DHS practices, under which ICE generally refrained from immigration enforcement against noncitizen crime victims absent serious adverse factors. For example, the 2025 Guidance does not direct ICE to exercise favorable discretion in cases involving victims with pending U visa, T visa, or VAWA petitions, including those who had received interim benefits, directing ICE instead to “achieve the total and efficient enforcement of immigration laws against all inadmissible and removable” noncitizens to the greatest extent possible within “applicable legal limitations.” 2025 Guidance at 2 (internal citation omitted).

In addition to eliminating the presumption of favorable discretion for noncitizen victims of crime, this abrupt departure from longstanding protections for immigrant survivors also resulted in two profoundly harmful practices.

De Facto Revocation Policy: First, ICE implemented a policy and practice of arresting, detaining, and removing U and T visa petitioners who were in valid periods of deferred action granted in connection with their bona fide or approvable petitions. Because deferred action is a promise not

to arrest, detain, or remove the recipient, this practice effectively unilaterally revokes petitioners' deferred action without any notice or opportunity to be heard. *ICWC v. Noem* at *37 (stating the 2025 Guidance "reflects a decision to subject persons with deferred action to immigration enforcement, directly contrary to caselaw holding that deferred action protects a person from immigration enforcement action"). Plaintiffs and the court in *ICWC v. Noem* refer to this practice as the De Facto Revocation Policy.

Blind Removal Policy: Second, ICE implemented a policy and practice whereby it removes U and T petitioners with final removal orders without permitting the opportunity for USCIS to conduct a prima facie review of their petitions. As permitted by the 2025 Guidance, ICE rushed immigrant survivors through removal, refused to request expedited review of their petitions from USCIS, and ignored their requests for stays of removal. 2025 Guidance, p. 3, ¶ 4 ("ICE will no longer routinely request expedited adjudications from USCIS. ICE officers and agents may continue to do so subject to a case-by-case determination that it is in ICE's best interests."); *ICWC v. Noem* at *41 ("This policy therefore does what Plaintiffs allege it does: it allows ICE to deny stay requests and take enforcement action, including executing a final order of removal, without first determining if the petitioner's petition is prima facie approvable."). Plaintiffs and the court refer to this as the Blind Removal Policy.

The Classes

The court preliminarily certified the following classes:

1. *Pending Petition Class*: All 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. *Deferred Action Class*: All individuals to whom USCIS has granted 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.²*Stay of Removal Class*: All 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.

Individuals are automatically members of these classes if they meet the definition. No additional steps need to be taken to become class members or benefit from the order as class members.

Individuals may be members of more than one class.

² The Deferred Action Class only includes individuals who have been granted deferred action pursuant to their pending U and T visa petitions; it does not encompass individuals with non-U or T visa Deferred Action. However, the order holds that detaining or seeking to remove a person in unrevoked deferred action violates Due Process and the APA, and the same argument could apply to anyone in Deferred Action status pursuant to other immigration benefit programs like VAWA or SIJS.

The Order

The court's May 20, 2026, order requires:

1. DHS to stay the 2025 Guidance, including its rescission of prior policies. This stay applies in favor of the current and future clients of the Organizational Plaintiffs, and the members of all three Classes. This should necessarily reinstate the policies that the 2025 guidance rescinded: ICE Directive 11005.3: Using a Victim-Centered Approach with Noncitizen Crime Victims (Dec. 2, 2021) and ICE Policy Statement 10076.1: *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (Jun. 17, 2011).
2. DHS to stay the De Facto Revocation Policy, under which ICE arrests, detains, and/or removes individuals who have been granted deferred action in connection with their pending petitions for U or T visas. The court described the policy as one “under which ICE does not honor grants of deferred action conferred by USCIS to individuals with pending petitions for U or T visas.” *ICWC v. Noem* at *47. This stay applies to the current and future clients of the Organizational Plaintiffs, and the members of the Deferred Action Class.³
3. DHS to stay the Blind Removal Policy whereby it removes U and T petitioners with final removal orders without permitting the opportunity for USCIS to conduct a prima facie review of their petitions, as required by 8 U.S.C. § 1227(d). This stay applies in favor of the current and future clients of the Organizational Plaintiffs, and the members of the Stay of Removal Class.⁴

The Court also ordered the government to permit the return of three unlawfully deported named plaintiffs. This relief does not extend to the classes, but counsel is aware that many individuals were removed prior to the court's order and might be able to make similar claims, and we are considering options that may be available to such individuals.

What Happens Next?

The government is likely to appeal the May 20, 2026 order, in which case the Plaintiffs will defend it on appeal. Meanwhile, as this was merely a preliminary ruling to stay the policies while the litigation proceeds, Plaintiffs will also continue to pursue the case at the district court level until a final judgment is reached.

It is not yet clear how the government will implement this order and what challenges may arise on the ground. The court declined to issue a classwide injunction against the policies, electing to

³ Although VAWA petitioners with deferred action are not part of the Deferred Action Class, they are part of the Pending Petition Class and therefore should have their cases processed pursuant to the [2021 Directive](#) and [2011 Policy](#).

⁴ To be a member of the Stay of Removal class, a U or T petitioner must request a stay of removal, which triggers DHS' responsibility under 8 U.S.C. § 1227(d)(1) to conduct a prima facie determination before making a decision whether to stay a removal order. A BFD should constitute a prima facie determination.

“stay” them instead. As a practical matter, this means it may be necessary or prudent for practitioners to enforce class members’ rights in the context of their clients’ individual cases. We have included various tools and templates below to assist practitioners in doing so.

However, if the government engages in a pattern of refusing to comply with the order, it may be possible for class counsel to raise the issue with the *ICWC v. Noem* court. Therefore, class counsel is interested in monitoring compliance. If you believe your client is a class member and that ICE or another government agency is violating this order, please reach out to class counsel at ICWC_ClassCounsel@centerforhumanrights.org.

What Can You do for Your Client?

Request Prosecutorial Discretion

Pending Petition, Deferred Action, and Stay of Removal class members are all entitled to favorable review for prosecutorial discretion under the 2011 and 2021 policy guidance. Although still discretionary, the [2011 Policy](#) and [2021 Directive](#) make clear that absent exceptional circumstances, ICE should favor continuation, closure, and release for immigrant survivors. “Exceptional circumstances generally exist only” where the “noncitizen poses national security concerns” or the “noncitizen poses an articulable risk of death, violence, or physical harm to any person.” 2021 Directive at 3 ¶ 3.4.

This toolkit includes template requests for prosecutorial discretion.

Request Stay of Removal

U or T visa petitioners with a final removal order, including those who do not yet have a bona fide determination, are entitled to apply for a stay of removal. As the court held in *ICWC v. Noem*, 8 U.S.C. § 1227(d) requires ICE to seek a determination of prima facie eligibility before deciding a request for a stay of removal. For T visa petitioners, this is especially important because a bona fide determination, which qualifies as a prima facie determination, automatically triggers a stay of removal, without requiring favorable discretion. For U visa petitioners, faithful application of the 2011 Policy and 2021 Directive by the government should mean that if the petitioner receives a bona fide determination and there are no serious public safety concerns, ICE should grant the stay.

This toolkit includes a template request for a stay of removal.

Prepare for an ICE Check-in

Before an ICE check-in, we recommend that you prepare a letter explaining that, because your client is a class member, they should not be detained under the *ICWC v. Noem* order, because the agency must apply the 2021 Directive and the 2011 Policy. Because we do not yet know how ICE will respond to this order, we also recommend that you encourage your client to have a detention plan and that you be prepared to promptly file a habeas petition in the event of detention.

This toolkit includes template letters to bring to ICE check-ins for class members in various postures.

Request Release from ICE

Under the 2021 Directive, ICE must favorably consider a person's status as a survivor when making custody determinations. If ICE determines that a person must be detained despite their survivor status, ICE must request expedited review of the pending petition from USCIS.

This toolkit includes template letters requesting release directly before ICE.

Seek Release through Habeas

Deferred Action Class members should not be detained. If your client is a Deferred Action Class member, we recommend notifying ICE and the local United States Attorney of this order and attempt to secure a swift release. If that is unsuccessful, you may need to file a petition for writ of habeas corpus.

This toolkit includes template habeas petitions for people with deferred action issued in connection with pending U and T visa petitions.

Notify Class Counsel

Class Counsel is monitoring compliance with the court's order and documenting instances of non-compliance. If ICE is not responsive to or denies the requests in any of the toolkit materials, please email ICWC_ClassCounsel@centerforhumanrights.org.