CHRCL
Center for Human Rights and Constitutional Law

INSIDE ICWC V. NOEM

QUESTIONS & ANSWERS FROM THE WEBINAR TRAINING

December 2025

On October 14, 2025, the Center for Human Rights and Constitutional Law, alongside co-counsel - Public Counsel, La Raza Centro Legal, and the Coalition for Humane Immigrant Rights - sued the Trump administration to protect immigrant survivors of domestic violence, human trafficking, and other serious crimes.

The class action lawsuit, ***Immigration Center for Women and Children et. al. v. Noem et. al. (ICWC v. Noem)***, challenges U.S. Immigration and Customs Enforcement ("ICE") policy guidance issued in early 2025, which has allowed, for the first time in decades, the arrest, detention, and deportation of immigrant survivors as a routine matter.

Our **Litigation Explainer** provides more detail.

Inside ICWC v. Noem: A New Class Action Protecting Immigrant Survivors Webinar Training (11/20/25)

On November 20, 2025, the Center for Human Rights and Constitutional Law hosted a webinar training on the *ICWC v. Noem* litigation. The **recording** of that training can be viewed on our website.

This Questions & Answers documents aims to provide answers to some of the questions asked by attendees of that training.

Classes

Q: Are derivates included in the classes?

A: Yes, derivates are protected:

Pending Petition Class: All individuals with pending or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement;

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 prior notice and an opportunity to be heard regarding potential revocation of their deferred action status; and

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.

Classes, Continued

Q: Do the classes cover individuals already deported?

A: Potentially, ICWC requests the return of unlawfully deported immigrant survivors. The order on our preliminary injunction motion will give us a sense of whether this is relief might be available to class members. We will be able to provide more information after the issuance of that order.

Q: You mentioned that recalendaring removal proceedings could also be de facto revocation of deferred action - is that also covered by the classes?

A: We seek an order preventing DHS from revoking deferred action without due process and without complying with USCIS written policy. Whether re-calendaring proceedings counts as a revocation of deferred action is not a question we have presented to the court yet. However, if we are successful in preliminarily vacating/postponing the 2025 Vitello Memo, that should operate to reintate the 2021 Victim-Centered Approach guidance during the pendancy of the litigation, meaning the requirements of the 2021 Guidance should apply to DHS's recalendaring decisions.

Classes, Continued

Q: Will ICWC cover people who have been impacted by enforcement (i.e. detained) but whose NTAs have not (yet?) been filed?

A: Yes, petitioners whom ICE has detained or seeks to detain are class members, regardless of their immigration case posture.

Stay of Removal Class

Q: Does the Stay of Removal class include petitioners who re-entered after removal and are subject to reinstatement?

A: The Stay of Removal class includes individuals who have a pending U or T visa and final removal order and request a stay, regardless of their immigration case history. As long as they requested a stay of removal based on a currently-pending petition for a U or T visa, they are a class member.

Stay of Removal Class, Continued

Q: Where is a stay request filed? USCIS or the court that has the removal case?

A: A stay request should be submitted formally via an I-246 directly to ICE if possible and time permitting, consistent with applicable regulations. However, ICWC Counsels' position is that any request for a stay sent to DHS triggers the requirements for prima facie review pursuant to 8 U.S.C. § 1227(d). If the court agrees, then an attorney or petitioner may also informally request a stay with ICE by email, and may request a stay by filing a motion in their immigration proceedings and serving ICE. Again, the best approach when possible is to submit the I-246.

Stay of Removal Class, Continued

Q: How does having a BFD differ from the prima facie standard for INA 237(d) admin stay of removal? If a petitioner has BFD and final order, is that a case where requesting prima facie/admin stay is recommended?

A: Courts and USCIS consider a BFD to satisfy the prima facie standard, and, once granted, the person must be considered for a stay. The grant of a stay for U visa petitioners remains discretionary, so ICE may still reject them. However, a return to the previous 2021 victim-centered approach would require ICE to consider the BFD as a positive discretionary factor. Further, T visa petitioners have an automatic stay pursuant to a BFD, and therefore receive automatic protection if granted a BFD. Raghav v. Jaddou, No. 2:25-cv-00408-DJC-JDP, 2025 WL 373638 at *2, 2025 U.S. Dist. LEXIS 18889 at *4 (E.D. Cal. Feb. 3, 2025) ("[t]he decision to grant or deny a stay after the prima facie determination [requirement is satisfied by a BFD] ... is solely in the discretion of the Secretary of Homeland [S]ecurity").

Stay of Removal Class, Continued

Q: If we submit a T visa and the client has an old removal order, are we submitting a stay at the time of filing (or once we receive receipts) to ICE?

A: It depends on the statuts of the client's case. When to submit a request for a stay is a case-by-case decision, based on the client's urgency. If ICE is arranging to immediately deport them, if they are already under intense supervision, or if they are already detained, it may make sense to submit the request for a stay immediately after filing, noting in the request that the client has applied for a T visa and that they are requesting a stay pursuant to 8 U.S.C. § 1227(d). If you can wait until you receive a receipt, that is preferable.

If the person is not subject to frequent check-ins or intensive monitoring, is not detained, and is not at risk of imminent deportation, it may be safer to wait until their situation changes, since submitting a stay may heighten the possibility of putting the person on ICE's radar. Once you request a stay of removal, our position is that your client is entitled to prima facie review before ICE considers the stay request. See also Sanchez v. Dep't of Homeland Sec., No. 2:22-cv-00967-SSS-JPRx, 2022 WL 19410308, at *3 (C.D. Cal. Nov. 14, 2022). That's especially important for T visa petitioners because if the prima facie review results in a positive BFD, that triggers an automatic stay of removal pursuant to 8 CFR 214.205(g)(1).

Stay of Removal Class, Continued

Q: If an individual has a final order of removal and pending U without U-BFD status, but is not currently on ICE's/ERO's radar, should we hold off on a stay of removal if/until one is needed?

A: This is a case-by-case strategic determination for counsel, depending on the cleint's risk factors. However, if the person is free and not at risk of imminent removal, submitting a stay may heighten the possibility of putting the person on ICE's radar. It is also worth considering the strength of a client's underlying petition, as a negative determination is likely to trigger removal. The speed at which ICE removes people to the particular country of origin is also a factor to consider.

Habeas Petitions & Protections for Petitioners with Deferred Action

Q: Related to this case, have we seen potential class members prevail in habeas cases on the basis that the petitioner has deferred action pursuant to their U Visa BFD?

A: Yes. CHRCL is developing a habeas toolkit which will be coming out in early 2026. The following cases will be useful to individuals detained with deferred action:

- Protection for petitioners with deferred action generally:
  - ***Inland Empire-Immigrant Youth Collective v. Duke***, No. EDCV-172048-PSG-SHKX, 2017 WL 5900061, at *8 (C.D. Cal. Nov. 20, 2017); Inland Empire-Immigrant Youth Collective v. Nielsen, No. EDCV172048-PSG-SHKX, 2018 WL 1061408, at *1 (C.D. Cal. Feb. 26, 2018); Inland Empire—Immigrant Youth Collective v. Nielsen, Case No. EDCV 17-2048, 2018 WL 4998230, at *19 (C.D. Cal. Apr. 19, 2018) (rescission of deferred action, including by detention, without due process is unlawful).
  - ***Santiago v. Noem***, Case No. EP-25-CV-361-KC, 2025 WL 2792588 at *12-13 (W.D. Tex. Oct. 2, 2025) ("Where an individual is protected from removal through deferred action, their detention serves no valid purpose.") (ordering release because there is no "articulable, legitimate interest in detaining" individual with deferred action).

Habeas Petitions & Protections for Petitioners with Deferred Action , Continued

Q: Related to this case, have we seen potential class members prevail in habeas cases on the basis that the petitioner has deferred action pursuant to their U Visa BFD? (continued)

- Protection for petitioners with deferred action generally (continued):
  - ***Sepulveda Ayala***, 2025 WL 2084400 at *8 ("[T]he Government's position that it can grant deferred action while simultaneously ignoring it entirely in order to detain people would also create the kind of 'arbitrary imprisonment without law or the appearance of law' that violates due process.").
  - ***Primero v. Mattivelo***, Case No. 1:25-CV-11442-IT, 2025 WL 1899115, at *5 (D. Mass. July 9, 2025) ("[W]here Petitioner has shown that USCIS granted him deferred action that will remain valid until September 7, 2026" and "early termination has not occurred," the "Petitioner has shown that there is no significant likelihood of his removal in the reasonably foreseeable future.") (SIJ deferred action)

Habeas Petitions & Protections for Petitioners with Deferred Action , Continued

Q: Related to this case, have we seen potential class members prevail in habeas cases on the basis that the petitioner has deferred action pursuant to their U Visa BFD? (continued)

- Protection for petitioners with deferred action based on survivor-based interim benefits:
  - ***F.R.P. v. Wamsley***, No. 3:25-CV-01917-AN, 2025 WL 3037858, at *4 (D. Or. Oct. 30, 2025) (holding VAWA petitioner with deferred action was likely to succeed on merits of claim that his detention violated due process).
  - ***Maldonado v. Noem***, No. 4:25-CV-2541, 2025 WL 1593133, at *2 (S.D. Tex. June 5, 2025) ("ICE detained Petitioner and initiated removal proceedings without notice or a hearing on the effect his lawful grant of deferred action has on his potential removal.... Had he received due process" before such detention, "he could have challenged his detention and removal, as his BFD and deferred action status arguably rendered him presumptively ineligible for removal under 8 U.S.C. § 1184(p)(6) . . . Thus, the "decision to detain and remove Petitioner without an opportunity to respond and without a hearing appears to be a procedural due process violation that is likely to succeed on the merits.").

Habeas Petitions & Protections for Petitioners with Deferred Action , Continued

Q: Would deferred action prevent an IJ from ordering deportation?

A: Deferred action should protect an individual from deportation if it has not been revoked. ICWC argues that revocation of deferred action requires due process, in most cases the process set out and adjudicated by USCIS. In all cases, ICWC argues that deferred action cannot be rescinded without a finding that changed circumstances make the recipient no longer eligible (for example, a denial of the visa or a criminal conviction) or a finding that they were ineligible at the time deferred action was granted.

Q: There are a lot of habeas trainings happening now - it would be great to have one specifically geared towards representing people who have a removal order and have a U/T/VAWA pending.

A: There is an upcoming survivor-based petition habeas AILA panel which will include ICWC Counsel. You can also find a recording of CHRCL's recent habeas training and links to resources on our website here. CHRCL is also developing habeas templates and a toolkit. Please look out for this resource!

Habeas Petitions & Protections for Petitioners with Deferred Action , Continued

Q: Does the lawsuit address the DHS argument that deferred action is only granted once a BFD-based EAD is approved and that the BFD itself does not equal grant of deferred action?

A: ICWC does not currently address the issue of whether deferred action is conferred with a BFD. Recent BFD notices have revised language indicating that even where the petitioner "warrants favorable discretion," USCIS "may" grant deferred action. ICWC Counsel's position is that a BFD confers deferred action. In the case of a T visa applicant, it confers an automatic stay by regulation. In the case of a U visa petitioner, failure to grant an EAD results in adjudication for the waiting list. USCIS Policy Manual vol. C., pt. 3, chap. 5. Therefore, if the person is not placed on the waiting list track, they have been granted deferred action. The Policy Alert provides in part "that USCIS conducts an initial review of Form I-918 and will issue BFD EADs and deferred action for 4 years to petitioners for U nonimmigrant status and qualifying family members if USCIS deems their petition 'bona fide,' instead of completing a full waiting list adjudication." An EAD necessarily indicates deferred action because USCIS grants them pursuant to 8 CFR § 274a.12(c)(14). In an abundance of caution, ICWC Counsel recommends requesting a work permit with the petition and promptly moving to obtain one upon receipt of the BFD.

Administrative Closure

Q: We've been trying to argue in immigration court to admin close proceedings against folks with U/T and BFDs over DHS opposition, stating that their opposition to admin closure is inconsistent with the USCIS grant of deferred action. Any advice on how this litigation might be useful in this context?

A: ICWC argues that a person in unrevoked deferred action status cannot be removed. We will provide resources if we get an order granting judgment on this issue. The cases under the deferred action section in this Q&A may be helpful.

Q: For those who are being detained, do they have receipts that are shown to ICE showing their pending cases at USCIS?

A: Yes, petitioners with receipts and petitioners who have been granted BFDs or NPFCs, including those with employment authorization, are being detained although ICE is aware or becomes aware of their pending petition, BFD, or NPFC.

Administrative Closure, Continued

Q: Based on *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025) - where the BIA ruled the respondent failed to submit prima facie eligibility for SIJS and due to extended delay of a visa, that the IJ erred in granting admin closure - can we expect admin closure to go away for U applicants without BFD status?

A: While we cannot say that closure is never granted, we have seen a consistent pattern of ICE refusing to administratively close immigration proceedings where a respondent has a pending survivor based petition, even where that petitioner has interim benefits. Immigration judges generally aver that they have no jurisdiction to adjudicate such petitions and because they may not know the timeline for or likelihood of approval they often do not administratively close or terminate proceedings based on these pending benefits.

Protections for Survivors w/ or w/out Pending Petitions

Q: Many attorneys encourage clients to carry their receipts in case they come in contact with ICE to show BEFORE detainment that a case is pending with USCIS. Is THIS happening at the time of contact with ICE and they are ignoring the receipts?

A: Yes, ICE is ignoring receipts, BFD notices, and work authorization cards in some cases. ICWC Counsel nonetheless agrees with the advice to carry these documents and we hope that in some cases, individual ICE agents will respect these protections. By rescinding the victim-centered policy, ICE granted individual agents authority to detain and deport immigrant-survivors at their discretion. However, individual ICE agents may choose to decline to detain an individual who produces a receipt or EAD.

Q: For individuals who have U certs but have not yet filed an I-918 who are detained by ICE, previously the 2021 guidance was able to be used for us to request victims' release from detention. Would this litigation only help people who haven't yet filed I-918s if the judge enjoins the 2025 guidance?

A: If the judge sets aside the 2025 guidance, the protections in the 2021 guidance would once again apply, including protection for individuals known to be potentially eligible who have not yet applied. There is no independent claim in ICWC asking the Court to require protection for survivors who have not yet submitted petitions.

Special Immigrant Juvenile Status (SIJS)

Q: Is there a reason that SIJS is not included in the lawsuit? The ICE memo which was rescinded in Jan. included SIJS as a victim-based form of relief.

A: Although the memo rescinds a memo that includes SIJS recipients, it does not refer to SIJS recipients itself. SIJS recipients are in a slightly different posture, because their interim benefit - deferred action while they await their priority date - was a 2022 Biden policy that has been rescinded by the administration. Finally, there is separate ongoing litigation related to protecting SIJ recipients which protects an overlapping class. A.C.R., et al., v. Noem, et al., 1:25-cv-03962-EK-TAM (E.D.N.Y.). On November 19, 2025, the district court granted a stay of the rescission and deferred action was reinstated until further orders. We hope that a positive outcome in ICWC will protect SIJS petitioners, including by reinstating the 2021 guidance and affirming that deferred action prevents recipients from being detained or removed absent exceptional circumstances, but encourage those representing SIJS recipients to follow A.C.R.

Special Immigrant Juvenile Status (SIJS), Continued

Q: Are there any implications you see for individuals who have deferred action through SIJS coming out of this litigation? My understanding is that they are not covered by the Vitello memo you are challenging, but do you foresee any litigation down the line that would cover that group?

A: Yes, SIJS recipients will be able to rely on the same due process arguments made on behalf of immigrant survivors in ICWC. However, SIJS recipients are not class members.

ICWC v. Noem Lawsuit

Q: How can I stay updated on this litigation?

A: We will send updates in the case to our listserv. You can sign up at the bottom of our website, centerforhumanrights.org. You can also follow the case on our website here.

Q: What is the timeline for this lawsuit?

A: We will have our hearing on class certification and our motion for preliminary injunction on February 10, 2026. We hope to have an order by late February.

ICWC v. Noem Lawsuit

Q: What is your timeframe for needing declarations to be complete?

A: If you would like to provide a declaration, we would greatly appreciate receiving it by January 5, 2026.

Q: For a U2 currently detained who has been issued a BFD, who should I contact to potentially be a part of this class action? What information would you like for me to provide on behalf of the client?

A: Individuals who fit the class definition are automatically putative members, and will be class members if the class is certified. In most cases, class members will still need an attorney to advocate for the classwide relief to be granted in their individual case given the current climate of ICE and immigration judges defying federal court orders. CHRCL will be providing resources for attorneys so that any positive order can be used to protect individual survivors.