



**Chart: DHS PD Memoranda and Guidance Relating to U/T/VAWA Petitions
by Immigrant Survivors Detained and/or in Removal Proceedings¹**
(December 2024)

In December 2023, in connection with our annual [Removal Conference](#), ASISTA began mapping out DHS memoranda and guidance regarding prosecutorial discretion as it relates to applications filed by immigrant survivors, so as to better understand the varied instructions to DHS components as to whether and when to request adjudication of pending USCIS petitions. ASISTA tracked memoranda and guidance spanning the last three administrations (Obama, Trump I, and Biden) to see which memos were formally superseded and which were still in effect from past administrations. We have updated the chart with additional information that was provided at our conference, and to reflect the Trump administration from 2016-2020 as “Trump I.” We share it now as an aid for practitioners to make the best use of current guidance and plan for changes anticipated in the next administration.

Green = current; Red = superseded/rescinded.

Date and Administration	Memo/Directive	Current status	Notes
Applies to Multiple Components			
Jan. 20, 2021 Biden	Pekoske Memo : Review of and Interim Revision to Civil Immigration Enforcement and Removal Policies and Priorities	Superseded by Mayorkas Memo	Applied to OPLA, ICE ERO, and USCIS Note: Appendix rescinds 2018 NTA Memo

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Sept 30, 2021 Biden	Mayorkas Memo : Guidelines for the Enforcement of Civil Immigration Law	In effect (after July 28, 2023)	Applies to OPLA, ICE ERO, and USCIS
August 10, 2021 Biden	Directive 11005.3 : ICE Victim Centered Approach (VCA) <ul style="list-style-type: none"> - Outlines policies and procedures for immigration enforcement for victims of crime, including those eligible for U visas, T visas, VAWA self-petitions, and SIJS. - Affirmatively states that ICE <u>will</u> refrain from taking civil immigration enforcement action against <u>known</u> beneficiaries of victim-based immigration benefits and those <u>known</u> to have a pending application for such benefits. - Instructs ICE to request expedite of petitions for detained/post-order survivors, facilitate file transfer to USCIS - OPR can issue certs 	In effect	Applies to ICE ERO <ul style="list-style-type: none"> - Doyle memo (see below) FN 8 notes that the VCA incorporates long standing policies of case-by-case discretion in cases involving victims of crime, trafficking, and domestic violence (that were also directed at OPLA, then referred to as the Office of Chief Counsel, or OCC). See Morton Memos below. <p>Incorporates prior guidance as noted below, including 2010* and 2011 Morton memos.</p> <p>*except that VCA does not <i>require</i> OPLA/ERO to request expedited adjudication or PFDs for non-detained survivors in removal proceedings.</p> <p>Identifies the DHS Office of Professional Responsibility (OPR) as a potential U certifier.</p>
June 17, 2011 Obama	Morton Memo/ICE Directive 10076.1 Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs <ul style="list-style-type: none"> - Against ICE policy to initiate removal 	In effect (cited in FN 8 of Doyle Memo)	Applies to OPLA and ICE ERO <p>Mostly incorporated into ICE VCA; cited at FN 8 of Doyle Memo</p>

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	<p>proceedings against a known crime victim or witness</p> <ul style="list-style-type: none"> - Absent serious adverse factors, release from detention and deferral or a stay of removal (or other forms of PD) is appropriate 		
<p>August 20, 2010 Obama</p>	<p>Morton Memo: Guidance regarding the handling of removal proceedings of aliens with pending or approved applications or petitions.</p> <ul style="list-style-type: none"> - <u>For detained respondents</u>, “OCC” [OPLA] shall affirmatively request expedited adjudication from USCIS; ICE will transfer file to USCIS; <u>decision within 30 days</u>. - <u>For non-detained respondents</u>, “OCC” [OPLA] shall affirmatively request expedited adjudication from USCIS; ICE will transfer file to USCIS; <u>decision within 45 days</u> - Urges dismissal w/o prejudice if ICE determines respondent is eligible for relief (if detained, in consultation with ERO) - Each OCC [OPLA] office must develop an SOP to implement memo 	<p>In effect (according to ASISTA Q&A in June 2022)</p>	<p>Applies to OPLA and ICE ERO</p> <p>Pertains to I-130s, relief leading directly to AOS; and petitions providing “an immediate basis for relief for the alien” within the exclusive jurisdiction of USCIS.</p> <p>USCIS Policy Manual at 3 USCIS PM A reflects the 30/45 day framework in cases where ICE requests expedited adjudication (see below).</p> <p>Mostly incorporated into ICE VCA</p>
<p>August 2, 2019 Trump I</p>	<p>ICE Directive 11005.2 Stay of Removal Requests and Removal Proceedings Involving U Visa Petitioners (Albence directive)</p> <ul style="list-style-type: none"> - ICE will not routinely request PFDs - Once on waitlist and USCIS issues 	<p>Superseded by 11005.3</p>	<p>Applied to OPLA and ICE ERO</p> <p>Rescinded and replaced by 11005.3</p> <p>References HSI and OPR as U certifiers, and HSI and OPR U cert guidance.</p>

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	<p>deferred action, no need for stay; no removals after deferred action grant</p> <ul style="list-style-type: none"> - Discusses U certs issued by HSI or OPR; those cases prioritized for stays - References HSI and OPR U cert handbooks and guidance (not found online) 		
<p>Sept. 24, 2009 Obama</p>	<p>ICE Directive 11005.1 Guidance: Adjudicating Stay Requests Filed by U Visa Applicants (also known as the Venturella Memo⁽¹⁾)</p>	<p>Superseded by 11005.2 (according to 11005.2 and ASISTA Q&A in June 2022, remains superseded)</p>	<p>Applied to OPLA and ICE ERO</p> <p>Referenced in VCA Q&A</p>
<p>Sept. 24, 2009 Obama</p>	<p>Vincent Memo: Guidance Regarding U visa applicants in removal proceedings or with final orders of deportation or removal</p>	<p>Superseded by 11005.2 (according to ASISTA Q&A in June 2022, remains superseded)</p>	<p>Applied to OPLA and ICE ERO</p>
ICE ERO Stay Requests and PFDs			
<p>August 8, 2023 Biden</p>	<p>ICE VCA Q&A</p> <ul style="list-style-type: none"> - No longer policy to require ICE to request PFDs - U/VAWA - ICE will refrain from taking enforcement action against the applicant 		<p>No PFD requests anymore, but will request expedite as per Section 5.4 of VCA:</p> <p>“5.4 (a): Pending applications. When</p>

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	<p>or petitioner until USCIS makes a BFD/PFD determination.</p> <ul style="list-style-type: none"> - T/SIJS - ICE will refrain from taking enforcement action against the applicant or petitioner until USCIS denies a T or SIJS petition. 		<p>encountering a noncitizen with a pending application or petition for a victim-based immigration benefit and the noncitizen is detained in ICE custody and their release is prohibited by law or exceptional circumstances exist, AOR POCs will request that USCIS expedite the decision and will notify USCIS if the noncitizen is subsequently released.” (Emphasis added)</p>
ICE OPLA Guidance			
<p>April 3, 2022 Biden</p>	<p>Doyle Memo: Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion.</p> <ul style="list-style-type: none"> - FN8: In general if a noncitizen has a survivor-based relief application pending, and appears prima facie eligible, they should be treated as a nonpriority until USCIS adjudicates - Status as victim or witness is a mitigating factor <p>FAQ for Doyle Memo/OPLA PD</p>	<p>In effect (after July 28, 2023)</p>	<p>Does not <i>require</i> OPLA to request expedited adjudication of pending applications that would result in relief from removal.</p>
USCIS Guidance			
<p>Current Biden</p>	<p>USCIS Policy Manual 3 USCIS PM A, reflects the 30/45 day framework</p>	<p>Online/In effect</p>	<p>Expedited adjudication will result in BFD or waitlist determination, or denial.</p>

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	<ul style="list-style-type: none"> - 1 USCIS PM A.5. (provides that expediting in proceedings “is coordinated” between USCIS and ICE) 5 USCIS PM C.4 - BFD satisfies PFD requirement of INA 237(d)(1), BFD is a more thorough review of the petition 		
February 4, 2011 Obama	<p>Policy Memorandum Guidance for Coordinating the Adjudication of Applications and Petitions Involving Individuals in Removal Proceedings; Revisions to the Adjudicator’s Field Manual (AFM) New Chapter 10.3(i): AFM Update AD 11-16</p> <ul style="list-style-type: none"> - ICE will affirmatively notify USCIS when an application or petition filed by or on behalf of the individual subject to removal proceedings <i>must be adjudicated for the removal case to move forward</i>. ICE will promptly transfer all necessary A-files to USCIS [emphasis added]. - Requires USCIS to consult with ICE/OPLA to develop SOPs to implement this policy 	As of 2011, USCIS Library considers this memo to be in effect	<p>Cites 2010 Morton Memo as companion guidance for ICE ERO, OPLA</p> <p>New PM sections included in this memo are consistent with current PM guidance</p>
Nov. 7, 2011 Obama	<p>2011 NTA Memo: Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens</p> <ul style="list-style-type: none"> - VAWA 485 denials can result in NTAs in accordance with the memo 	2018 NTA Memo rescinded by Pecoske Memo; 2011 NTA memo should guide NTA decisions	<p>2011 Memo refers to existing protocols with regard to VAWA I-360 petitions but is otherwise silent as to U and T petitioners.</p> <p>NTA protocols existing at the time of 2011 NTA memo have not been released in</p>

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	<ul style="list-style-type: none"> - I-360s for VAWA, SIJS, or widow/ers continue to be processed under existing protocols 	<p><u>But:</u> USCIS website not updated to reflect the Pekoske Memo's instruction re the 2011 NTA memo, says USCIS will issue further guidance</p>	<p>writing.</p> <p>USCIS to "issue further guidance."*</p> <p>*In the absence of formal NTA memo or guidance by USCIS, USCIS has stated at stakeholder engagements that it was abiding by the Mayorkas memo's priorities and not issuing NTAs based on denied survivor-based relief applications. See ASISTA Notes from USCIS Q&A (December Conference)</p>
<p>June 28, 2018 Trump I</p>	<p>2018 NTA Memo: Advised USCIS to issue NTAs to anyone present unlawfully, and online guidance (still on website) explicitly said the NTA memo would apply to U/T/VAWA applicants and related AOS/FTJ applicants.</p>	<p>2018 NTA Memo rescinded by Pekoske Memo; 2011 NTA memo should guide NTA decisions</p>	<p>2018 Memo allowed NTA issuance to anyone present unlawfully, and online guidance explicitly said the NTA memo would apply to U/T/VAWA applicants and related AOS/follow to join applicants.</p>