PRACTICE ALERT: What Just Happened in *Matter of Ibarra Vega*?[1]
(March 11, 2026)

On Feb. 27, 2026, the BIA decided *Matter of Ibarra-Vega*, 29 I&N Dec. 476 (BIA 2026), which held that administrative closure over DHS objection is "inappropriate" if it is to await a U visa that is not available "in the reasonably near future."[2] In so doing, the Board continued its recent trend of limiting administrative closure for pending collateral relief and recalendared proceedings on DHS's motion. It departed from its previous framework and the regulations on administrative closure and recalendaring[3] to impose a narrower and more rigid set of rules for analyzing these motions. Practitioners should carefully review the decision, as it will likely make IJs more hesitant to grant administrative closure, or even termination or a continuance, while a U or T visa is pending. Still, there remain opportunities for survivors to distinguish their own cases or otherwise prevent removal. In the near future, ASISTA will more deeply analyze the case and its fallout, via trainings and written resources.

Key things to know about *Ibarra-Vega* are below:

- The case was originally administratively closed based on a grant of prosecutorial discretion, five years before the U visa was filed. As such, it was arguably closed "indefinitely" in a way that would be distinguishable from cases closed for the purpose of pursuing a U. Closure for U adjudication would plausibly be more "definite," in that it would be delineated by a specific USCIS process guaranteed to have an end: either the U visa decision or an agreed-upon interim benefit.

- The basis for DHS's motion to recalendar was simply that it wanted to "resolve the removal proceedings on the merits."[4] There was no suggestion that the petitioner had committed any offenses or immigration violations since closure.

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[1] Copyright 2026, ASISTA Immigration Assistance. ASISTA thanks Tahirih Justice Center and Hillary Chadwick of Scott D. Pollock & Assocs. for their valuable review and input on this resource.
[2] 29 I&N Dec. at 481.
[3] *See Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012); 8 CFR § 1003.18(c)(3).
[4] *Id*. at 477.

- In opposing recalendaring, the respondent's only evidence was a copy of her 2018 U visa receipt. She did not submit a copy of any portion of the U petition itself, nor correspondence from USCIS about the petition's validity, like a BFD or waitlist placement. It is unclear if she argued to the IJ, or only the BIA, that a decision would come soon, but if she did, it was solely by assertions of counsel, not evidence. The IJ denied DHS's motion to recalendar on the receipt alone.

- When DHS appealed, the Board acknowledged the regulations that govern administrative closure and recalendaring, at 8 CFR § 1003.18(c)(3), including their requirement that IJs consider *all* listed factors present in the case, then make a decision based on the totality of the circumstances. However, the Board did not list out the factors nor even analyze all of them in its decision.

- The Board focused on just four criteria, which are conceivably similar to some of the regulatory factors, but different in some key ways. These were: (1) "prima facie approvability" of the U visa,[5] (2) whether "a visa would become available within a reasonably short period of time,"[6] (3) DHS's "persuasive reason to move forward with the case,"[7] and (4) the respondent's "desire to continue delaying removal proceedings."[8] It also spent multiple paragraphs questioning the concept of administrative closure itself, though the parties had not briefed this.[9]

- In discussing prima facie approvability, the Board held that the receipt was not sufficient evidence to determine this. It indicated that it may have viewed the factor differently if she had submitted a bona fide or waitlist determination, and it acknowledged that IJs could make a prima facie determination themselves under *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012).[10] Accordingly, practitioners should always submit BFD or waitlist notices, if available, or provide portions of the U petition packet to enable an IJ to determine prima facie eligibility, if not.[11]

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[5] *Id*. at 479-80.
[6] *Id*. at 480 (internal quotation omitted).
[7] *Id*. at 479.
[8] *Id*.
[9] 29 I&N Dec. at 482-83. In ASISTA's view, practitioners need not affirmatively address this lengthy dicta in their motions, only prepare to respond if DHS decides to argue it.
[10] *Id*. at 480.
[11] USCIS policy states that a BFD is intended to satisfy the "prima facie eligibility" standard, because, whereas "prima facie eligible" "refers to a petition appearing sufficient on its face," the BFD analysis "is a more complex evaluation than looking at the petition on its face alone." *See* 3 USCIS-PM 3, Ch. 5.C.4. While DOJ regulations do not expressly adopt the notion that a BFD is dispositive of prima facie eligibility, practitioners should raise this persuasive, well-reasoned authority with IJs. Meanwhile, waitlist placement entails finding the application wholly approvable but for the cap on visa availability; this should more than satisfy prima facie eligibility or "likelihood of succe[ss] on the petition," as the regulation calls for. In the absence of a BFD or waitlist finding, respondents should submit at least the Form I-918 Supplement B

- In *inquiring* whether a visa would be available in a "reasonably short period of time," the Board did not acknowledge that the regulation only calls for weighing, amid the totality of the rest of the circumstances, "[t]he length of time elapsed since the case was administratively closed."[12] The regulation does not require that the time period for visa issuance be "reasonably short."[13] The Board also did not acknowledge that its longstanding precedent had understood *continuances* as the mechanism for accommodating reasonably short delays, and *administrative closure* as ideal for "a significant or undetermined period of time."[14] Practitioners can insist on applying the regulation's actual terms and assert that the Board's departure from them renders its analysis improper. While this is unlikely to get traction before EOIR, it would preserve the argument for appeal to a circuit court.

- In *determining* whether closure for the visa would be for a "reasonably short period of time," the Board created, for the first time, a presumption that closure for longer than **six months** would not be "reasonably short."[15] This is now the presumption "regardless of what collateral action a party is waiting for," not just for survivors awaiting a U visa adjudication.[16] Some circuits may have case law strongly suggesting this is unreasonable or a violation of due process, and practitioners should research and cite those cases emphatically.[17] Otherwise,

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and other required initial evidence, which are the BFD requirements. If the survivor agrees, the full U visa packet may be wise to submit in some cases. With these, the IJ can do their own prima facie assessment.

[12] 8 CFR § 1003.18(c)(3)(ii)(C).

[13] Instead, this factor appears to have been invented in *Matter of B-N-K-*, 29 I&N Dec. 97, 99 (BIA 2025).

[14] *Avetisyan*, 25 I&N Dec. at 692 (providing that administrative closure was the preferred mechanism "to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period of time). That the departure from *Avetisyan* was not acknowledged, let alone explained, in *B-N-K-* or *Ibarra-Vega*, could arguably render it an improper agency action. *See generally Gamble v. United States*, 587 U.S. 678, 691 (2019) (described by the BIA in *Matter of B-N-K-* as "emphasizing that 'a departure from precedent 'demands special justification,' especially when the departure would overrule numerous major decisions spanning many years (citation omitted)").

[15] The Board did not explain how it landed on six months. Indeed, earlier in its opinion it appeared poised to determine "reasonably short" based on expected U visa processing times in 2012, when it decided a seminal case on U visa-based continuances. *See* 29 I&N Dec. at 478-79, 481 (finding that, at the time of *Sanchez-Sosa*, the wait was about one year and not explaining why it did not use this as the presumptive benchmark; not explaining why it turned to the *Sanchez-Sosa* era, instead of when the regulations were enacted in 2024; and not explaining why what is "reasonable" should be static at all, when it recognized that the totality of the circumstances would likely cause the reasonableness to "vary"). Practitioners may wish to argue this standard is arbitrary and capricious or an abuse of discretion. *See* 5 USC § 706(2)(A).

[16] *Id*. at 481.

[17] *See*, *e.g.*, *Malila v. Holder*, 632 F.3d 598, 606 (9th Cir. 2011) ("[D]elays in the USCIS approval process are no reason to deny an otherwise reasonable continuance request."); *Rajah v. Mukasey*, 544 F.3d 449, 454 (2d Cir. 2008) (similar); *Subhan v. Ashcroft*, 383 F.3d 591, 593-95 (7th Cir. 2004) (similar).

under *Ibarra-Vega*'s terms, administrative closure could only be appropriate for longer than six months in "unique circumstances specific to an individual case."[18]

- In evaluating DHS's "reason" for recalendaring, the Board held that DHS's "interest in bringing removal proceedings to a close on the merits" was "persuasive."[19] DHS had not alleged any interests specific to Ms. Ibarra Vega's case, such as a recent or dangerous criminal record, or failure or inability to pursue relief. Thus, its "reason" could be raised equally in every case. In some circuits, case law may hold that an agency's generalized case processing aspirations, uninformed by the "circumstances of the case itself," are improper grounds for an individual administrative closure or recalendaring decision.[20] *Matter of Hashmi*, 24 I&N Dec. 785, 793-94 (BIA 2009), arguably holds the same. Practitioners should insist that it is arbitrary and capricious to weigh heavily a generic, universal factor, in an analysis calling for an individualized, circumstance-specific assessment. Unfortunately, absent clearly binding case law, IJs are likely to follow *Ibarra-Vega*'s example and accept this DHS "reason."

- In discussing the respondent's basis for opposing recalendaring, the Board faulted her for not having "obtained any form of lawful status" while the case was closed, and characterized her reason for opposition as a "desire to continue delaying removal proceedings."[21] It is unclear if the respondent had articulated a more case-specific reason for opposition, but she certainly did not document such a reason with evidence beyond the U visa receipt. Arguably the receipt alone should have distinguished Ms. Ibarra-Vega, as a survivor seeking lawful protections and status, from respondents who have no statutory relief available and are using administrative closure as their only means of remaining in the US. However, ASISTA encourages practitioners to raise and document even more specific reasons against recalendaring or in favor of administrative closure, to prevent being regarded as seeking merely to "avoid an order regarding [their] removability, and the consequences an order of removal could bring."[22] For instance, practitioners may emphasize the timing of their client's U petition submission, its strength and/or nearness of adjudication, Congress's intention for inadmissible noncitizens to obtain U status by using a waiver instead of being forced to leave, or the ways active removal proceedings against this survivor would counteract the humanitarian and even law enforcement-strengthening

[18] 29 I&N Dec. at 481. The Board did not suggest what these may be. It also did not examine or direct the IJ to examine on remand whether Ms. Ibarra Vega herself presented such unique circumstances.
[19] *Id*. at 479 (citing, among others, *B-N-K-*, 29 I&N Dec. at 101).
[20] *See, e.g., Hashmi v. Att'y Gen. of the U.S.*, 531 F.3d 256, 261 (3d Cir. 2008) (continuance context).
[21] 29 I&N Dec. at 479.
[22] *Id*. at 482 (internal citation and alterations omitted).

purposes behind the U visa statute itself.

- The Board ended its purported discussion of the regulatory factors by deeming the "ultimate anticipated outcome if the case is recalendared" as "neutral."[23] Its reasoning appeared based on agnosticism as to whether the respondent could seek "relief from removal that the Immigration Judge has jurisdiction to grant."[24] This approach improperly assumes the U visa, or any of its interim benefits, is irrelevant to the outcome of proceedings. It could be problematic for survivors not clearly eligible to seek another form of relief from the IJ. However, practitioners may be able to distinguish their clients' cases if they submit documentation of a bona fide determination or deferred action, which could lead to discretionary termination by the IJ,[25] or justify asserting that active proceedings would waste resources as no *physical removal* could be carried out.[26] They may also urge the IJ to apply a different, more long-standing precedential decision from the BIA, instead of *Ibarra-Vega*: in *Matter of Avetisyan*,[27] which has not been vacated or overruled, the Board interpreted the pre-regulatory version of the "outcome" factor by assessing whether the pending collateral relief could result in status that would warrant termination based on lack of removability.[28]

- The Board did not address Ms. Ibarra-Vega's non-detained status, though this is a regulatory factor that would have fallen in her favor.[29] Practitioners can raise this where applicable in their cases: administrative closure in a non-detained case does not present any additional expenses for the government.

Even after *Ibarra-Vega*, many survivors will still have strong arguments for postponing a merits hearing or removal order while their USCIS relief is pending. Importantly, the

[23] *Id*. at 483.
[24] *Id*.
[25] *See* 8 CFR § 1003.18(d)(1)(ii)(B) & (C).
[26] *See*, *e.g.*, *Sepulveda Ayala v. Bondi*, 2:25-cv-01063-JNW-TLF at 6-9 (W.D. Wash. Aug. 4, 2025) (order granting writ of habeas corpus) (applying the "deferred action" definition approvingly quoted in *Reno v. AADC*, 525 U.S. 471, 484 (1999): that it means "no action will thereafter be taken to proceed against an apparently deportable [noncitizen]").
[27] 25 I&N Dec. 688 (BIA 2012).
[28] *Id*. at 697. A similar approach was hinted at in *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025). There, the Board noted that SIJS petitions do not result in status themselves, but require a subsequent application for adjustment of status, making their effect on removal proceedings' outcome more speculative than a U visa's effect. *See* 29 I&N Dec. at 305, n.3.
[29] 8 CFR § 1003.18(c)(3)(ii)(H). *See also* 89 Fed. Reg. 46742, 46749 (May 29, 2024) (explaining that this factor often militates against administrative closure for detained individuals, not nondetained individuals).

decision does not directly impact continuances[30] or termination,[31] though it could impact how factors that overlap with administrative closure factors are analyzed. Second, the case does not undermine the stronger position applicable to survivors who have been granted BFDs, deferred action, or waitlist determinations, as long as they submit *evidence* of these postures. Third, T visa applicants can remind IJs that they are differently situated from U visa applicants in three key ways: (a) physical removal would thwart their T visa eligibility, increasing the due process implications of refusing to await adjudication;[32] (b) a T-BFD, even without deferred action, automatically stays any final order of removal,[33] rendering it wasteful to continue active proceedings once a BFD is in place; and (c) the wait for final adjudication of a T visa is significantly shorter than a U visa and the 5,000-visa statutory cap has not been met.[34] Survivors who have not yet received a BFD or deferred action may seek to expedite the determination either directly or through a request by ICE-OPLA.[35]

Ibarra-Vega is a poorly reasoned case that will negatively impact countless survivors of trafficking, crime, and abuse. In the coming weeks, ASISTA will work with members and partners to develop further resources on its holdings, loopholes, and vulnerabilities to litigation, as well as devise ways to advocate to Congress to lift the U visa cap and take other actions to de-fang this decision and the administration's tactics more generally. We encourage readers to reach out to us on our ASISTA Experts listserv[36] or technical assistance portal to share experiences, arguments, and samples that can strengthen the movement and the prospects for immigrant survivors everywhere.

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[30] For a discussion on continuances for survivors, *see* ASISTA, Practice Advisory: The Impact of *Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020) (updated Apr. 2022). Note, however, that at least one recent BIA precedent decision demonstrates a shift against continuances for collateral USCIS relief as well: *Matter of Pinzon Rozo*, 29 I&N Dec. 507 (BIA 2026) found a lack of good cause to continue proceedings for visa availability on an approved Special Immigrant Juvenile Status (SIJS) petition. In that case, among other things, the Board repeated its *Ibarra* findings venerating DHS's generic, universal interest in concluding removal proceedings and deeming a visa delayed by statutory limits speculative. While there are grounds on which to distinguish U petitions from SIJS petitions, and *Sanchez-Sosa* has not been overruled, practitioners should expect resistance from DHS and IJs when trying to prove good cause to continue a case for U adjudication.

[31] For a discussion on discretionary termination for survivors, *see*, ASISTA, Practice Alert: New DOJ Rule: Administrative Closure and Termination in Removal Proceedings For Immigrants Seeking Survivor-Based Relief (Aug. 19, 2024).

[32] *See, e.g., Fatty v. Nielsen*, CASE NO. C17-1535-MJP (W.D. Wash. Jul. 20, 2018) (finding, on habeas petition, that due process required a stay of removal pending adjudication of a T visa).

[33] 8 CFR § 214.205(g)(1).

[34] *See* USCIS, USCIS, I-914 FY25 Q1 data on pending and approved applications.

[35] *See* 1 USCIS-PM A.5 & E.3. Many practitioners report that expediting is rarely granted, but ASISTA has heard of at least one recent success in both direct, discretionary requests to USCIS and requests through ICE-OPLA submitted upon approval of a motion to compel ICE to make the expedite request.

[36] To add yourself to the listserv, you must be a member. You can learn more here.