



## **Practice Alert: *J.O.P. v. DHS* Settlement**

**November 25, 2024**

On November 25, 2024, the U.S. District Court for the District of Maryland granted final approval of a settlement agreement reached by the parties in *J.O.P. v. DHS*, No. 8:19-CV-01944-SAG (D. Md.). The settlement agreement is the culmination of a class action lawsuit pending over five years. This practice alert highlights key points about the agreement that immigration practitioners representing asylum seekers need to know. You can read the full agreement [here](#), and learn more about the *J.O.P.* case by visiting [nipnl.org/work/litigation/jop-v-dhs](http://nipnl.org/work/litigation/jop-v-dhs).

### **I. Background on the *J.O.P.* Litigation**

*J.O.P.* was a class action lawsuit filed in the U.S. District Court for the District of Maryland in July 2019 by young asylum seekers whom the government had previously determined were unaccompanied children (UC). The plaintiffs and certified class were represented by Bet Tzedek Legal Services, Goodwin Procter, Kids in Need of Defense, National Immigration Project (NIPNLG), and Public Counsel.

Until 2019, U.S. Citizenship and Immigration Services (USCIS) had accepted asylum applications filed by people in immigration court proceedings who had previously been determined to be UC, even if they no longer met the UC definition at the time they filed their application because they had since turned 18 or reunified with a parent or legal guardian. Under this policy, USCIS also exempted these applicants from the one-year filing deadline that generally applies to asylum applications. In 2019, DHS reversed course, directing USCIS to reject the asylum applications of people in removal proceedings with previous UC determinations if they no longer met the UC definition and to retroactively apply the one-year filing deadline to former UC applicants. The *J.O.P.* lawsuit challenged USCIS's policy reversal. The District Court enjoined the policy soon after the *J.O.P.* lawsuit was filed in 2019, and an injunction remained in place from 2019 until the settlement took effect on November 25, 2024.

## II. Key Provisions of the Settlement Agreement

- **Class Definition & Class Cut-Off Date.** To qualify as a class member under the settlement agreement, an individual must meet the following requirements **no later than February 24, 2025**:
  - (1) they were determined to be a UC;
  - (2) they filed an asylum application that was pending with USCIS;
  - (3) on the date they filed their asylum application with USCIS, they were 18 years of age or older, or they had a parent or legal guardian in the United States who is available to provide care and physical custody; and
  - (4) they have not received an adjudication from USCIS on the merits of their asylum application.
  
- **USCIS Benefits for Class Members.** Under the agreement, USCIS must:
  - **Accept jurisdiction** over class members' asylum applications, even if they are in removal proceedings and even if an immigration judge (IJ) concludes that the IJ and not USCIS has initial jurisdiction.
    - *Limited exception:* USCIS can reject jurisdiction if the class member was placed in immigration detention as an adult (over age 18) before they filed their asylum application.
  - **Not apply the one-year filing deadline** to class members' asylum applications.
  - **Retract previous rejections** of class members' asylum applications that are not consistent with the agreement (for example, individuals whose applications USCIS rejected based on a purported pre-filing "affirmative act" other than adult ICE detention).
  - **Create a process for requesting an expedited asylum adjudication** if the class member is in immigration detention, has an order of removal, or received a jurisdictional rejection which was retracted under the agreement.
  
- **ICE Benefits for Class Members.** Under the agreement, ICE must:
  - **Not argue, in a class member's removal proceedings, against USCIS jurisdiction** over the class member's asylum application.
  - **Generally join or not oppose the class member's request for dismissal/termination or postponement of their removal proceedings** to await USCIS's decision on the asylum application.
  - **Not remove class members** with final orders of removal while they await USCIS adjudication of their asylum application.
  - **Generally not oppose the class member's motion to reopen**, and the agreement allows the motion to reopen to be styled as "joint," for class members with removal orders whom USCIS grants asylum.
  
- **Settlement Duration.** Except as described in the next paragraph, **the settlement agreement will terminate on May 27, 2026**. Thus, class members must take advantage of the above-described settlement terms on or before that date.
  
- **USCIS Memorandum Applicable to Class Members and Non-Class Members**

**with Prior UC Determinations.** In addition to the above benefits that will remain in effect until May 27, 2026, USCIS **will issue a memo implementing the settlement agreement**, which will apply to class members as well as people with UC determinations who file applications for asylum while the memo is in effect but after the class cut-off deadline. The memo **will take effect on February 24, 2025, and remain in effect for at least three years—that is, until at least February 24, 2028.**

- The final class notice can be found in English [here](#) and Spanish [here](#). The final class notice and the settlement agreement are available through the following web pages:
  - <https://supportkind.org/what-we-do/legal-services/j-o-p-v-dhs-class-action-on-childrens-asylum-rights/>
  - <https://nipnlg.org/work/litigation/jop-v-dhs>
  - <https://publiccounsel.org/our-cases/jop-v-dhs/>

### III. Practice Tips

Now that the settlement agreement has been approved, the *J.O.P.* preliminary injunction has been dissolved, and class members and would-be class members must act promptly to benefit from the agreement. In particular, practitioners should consider the following:

- Would-be class members have until February 24, 2025 to file asylum applications with USCIS to meet the cut-off for class membership, though we strongly suggest filing in advance of this deadline, *i.e.* ensuring that the asylum application is received by USCIS by Friday, February 21, 2025. We also suggest that practitioners do a comprehensive case audit to determine which clients are class members or can become class members before the class cut-off. Clients can become class members if they have a prior UC determination, have now reached age 18 or reunified with a parent or legal guardian, and file an asylum application with USCIS by February 24, 2025.
- The settlement will be in effect and enforceable only until May 27, 2026. Thus, practitioners should act promptly to take advantage of the settlement’s provisions, such as filing motions to terminate removal proceedings and seeking expedited USCIS adjudication for clients with removal orders while the stay provision is in effect.
- Class members who believe that USCIS or ICE has violated the settlement agreement should complete [this form](#) and email it with available relevant documents to class counsel at [DG-JOPClassCounsel@goodwinlaw.com](mailto:DG-JOPClassCounsel@goodwinlaw.com). Practitioners can also email class counsel with questions concerning the settlement agreement.