



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

**August 28, 2024**

On August 22, 2024, the U.S. District Court for the District of Maryland preliminarily approved a proposed 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 [here](#).

### **Background on the *J.O.P.* litigation:**

*J.O.P.* is 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 are 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) 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, the Trump administration 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.

On August 2, 2019, the District Court issued a nationwide temporary restraining order (TRO) prohibiting USCIS from applying the 2019 policy and requiring it to revert to the prior, more protective, policy. The TRO was later converted into a preliminary injunction, and in December 2020 the court certified a nationwide class and expanded the preliminary injunction's terms.

Among other things, the [preliminary injunction](#) generally requires USCIS to accept jurisdiction over asylum applications filed by people with previous UC determinations and prohibits DHS from opposing postponements of class members' removal proceedings while they await USCIS adjudication of their asylum applications. The preliminary injunction remains in place until the court approves the settlement agreement.

### **Key provisions of the settlement agreement:**

- The agreement **modifies the current class definition by creating a class cut-off date**. This means that after a certain date, those with previous UC determinations will be unable to join the class. To qualify as a class member under the settlement agreement, an individual must meet the following requirements before the date that is 90 days after the date the court grants final approval of the settlement agreement: (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.
- Class members will receive a number of benefits from USCIS and ICE under the agreement, which **will remain in place for 1.5 years** from the date it goes into effect, including the following:
  - **USCIS**
    - **Will 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.
    - **Will not apply the one-year filing deadline** to class members' asylum applications.
    - **Will 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).
    - **Will 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**
    - In a class member's removal proceedings, ICE:
      - **Will not argue against USCIS jurisdiction** over the class member's asylum application.
      - **Will generally join or not oppose the class member's request for dismissal/termination or postponement** to await USCIS's decision on the asylum application.

- **Will not remove class members** with final orders of removal while they await USCIS adjudication of their asylum application.
- **Will 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.
- In addition to the above benefits that will remain in effect for 1.5 years from the date the agreement goes into effect, 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 remain in effect for at least three years**.

### **Next steps and what practitioners should do now:**

The agreement will go into effect only if and when the court approves it after the fairness hearing, which will take place on **Monday, November 25, 2024**. In the meantime, practitioners should consider the following points:

- Once the agreement takes effect, would-be class members will have only 89 days to file asylum applications with USCIS to meet the cut-off for class membership. Practitioners should take steps to ensure that clients who might be eligible for class membership take the necessary step of properly filing their I-589 with USCIS to become class members before the deadline. We 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.
- The settlement, once it goes into effect, will be enforceable for only 1.5 years. 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.
- Practitioners should watch class counsel websites and the court’s docket for developments in this case, particularly regarding the final approval of the agreement and the to-be-determined class cut-off deadline. Once that cut-off deadline date is known, practitioners should add this date to their calendars and case management systems.
- The class notice can be found in English [here](#) and Spanish [here](#).
- Practitioners with questions about the agreement or concerns about a potential violation of the existing preliminary injunction can email class counsel at [DG-JOPClassCounsel@goodwinlaw.com](mailto:DG-JOPClassCounsel@goodwinlaw.com).