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Non-Detained

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
100 Montgomery Street, Suite 800
San Francisco, CA 94104**

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In the Matter of)	
)	
Angelo Marcio Nicodemos)	File No. A# 216-541-471
Poliana Lima Nicodemos)	File No. A# 216-586-380
Nicolly Karine Lima Nicodemos)	File No. A# 216-541-472
Nicaelly Geovana Lima Nicodemos)	File No. A# 216-541-473
Nicollas Davi Lima Nicodemos)	File No. A# 216-586-381
)	
In Removal Proceedings)	
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Immigration Judge: Levine, Shira M.

Next Hearing: January 21, 2027, at 1:00 PM

RESPONDENTS' MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS

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RESPONDENTS’ MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS

I. INTRODUCTION

COME NOW the Respondents, Angelo Marcio Nicodemos, Poliana Lima Nicodemos, Nicolly Karine Lima Nicodemos, Nicaelly Geovana Lima Nicodemos, and Nicollas Davi Lima Nicodemos, by and through their undersigned counsel, and respectfully move this Court to administratively close these removal proceedings pursuant to 8 C.F.R. §§ 1003.18(c)(3) and 1003.1(l)(3), and in accordance with the standards set forth in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), as codified by the DOJ’s 2024 final rule, 89 Fed. Reg. 46742 (July 29, 2024).

Administrative closure is warranted for two independent reasons. First, Poliana Lima Nicodemos is the principal petitioner on a pending Form I-918 Petition for U Nonimmigrant Status filed with USCIS on May 23, 2025, listing Angelo Marcio Nicodemos, Nicaelly Geovana Lima Nicodemos, and Nicollas Davi Lima Nicodemos as derivative beneficiaries. Second, Nicolly Karine Lima Nicodemos is the principal petitioner on a separately pending Form I-360 VAWA self-petition before USCIS. Both petitions are filed, pending, and procedurally advanced. If either succeeds, these removal proceedings will be wholly or

substantially moot. Allowing them to proceed in parallel serves neither judicial economy nor the congressional policies underlying both statutes.

II. PROCEDURAL HISTORY

Lead Respondent Angelo Marcio Nicodemos and Respondent Poliana Lima Nicodemos were each served with a Notice to Appear in March 2018, upon their respective arrivals at the Eagle Pass, Texas Port of Entry, charging inadmissibility under INA § 212(a)(7)(A)(i)(I). Both Respondents were already in removal proceedings when they filed their defensive asylum applications (Form I-589) before the San Francisco Immigration Court, Angelo's docketed on or about March 21, 2019, and Poliana's on or about February 19, 2019. Poliana subsequently filed a Form I-918 Petition for U Nonimmigrant Status with USCIS on May 23, 2025, listing Angelo Marcio Nicodemos, Nicaelly Geovana Lima Nicodemos, and Nicollas Davi Lima Nicodemos as derivative beneficiaries. Prior to filing, the required law enforcement certification on Form I-918, Supplement B was obtained from the certifying agency, confirming Poliana's status as a victim of a qualifying crime and her cooperation with law enforcement authorities. The two asylum proceedings were subsequently consolidated before this Court, where all five Respondents now appear before Immigration Judge Levine with an individual in-person hearing scheduled for January 21, 2027. In September 2025, all Respondents received Notice of that hearing; no final adjudication has been issued on either pending USCIS petition.

III. FACTUAL BACKGROUND

Respondents Poliana Lima Nicodemos and Angelo Marcio Nicodemos were the principal witnesses whose testimony secured the criminal conviction of the perpetrators responsible for the politically motivated murder of community leader Mr. Fernandes in Ceilândia, Brasília, Brazil. Three individuals were convicted: Wellington "Coalhada" (22 years), Nabi (24 years), and Ana Paula Matias da Silva (18 years). The criminal enterprise was orchestrated by politically connected individuals, including former police chief Francisco Crisanto (Ana Paula's uncle). As a direct result of their cooperation with law enforcement, the family suffered years of death threats, police intimidation, targeted persecution, including the politically motivated demolition of their family home, and surveillance that made continued residence in Brazil untenable, ultimately forcing them to flee to the United States.

Poliana's U visa petition is grounded in her victimization and her cooperation with law enforcement authorities in the investigation and prosecution of the qualifying criminal activity. The Form I-918, Supplement B law enforcement certification has been executed by the certifying agency, satisfying the statutory helpfulness prong. *See Matter of Sanchez-Sosa*, 25 I&N Dec. 807, 813 (BIA 2012) ("the Immigration Judge should evaluate whether the alien has relevant information and has been, is being, or will be helpful to authorities investigating or prosecuting it. ... This requirement may be shown if the alien has obtained the LEC certification"). Angelo Marcio Nicodemos, Nicaelly Geovana Lima Nicodemos, and Nicollas Davi Lima Nicodemos are listed as derivative beneficiaries on Poliana's I-918 petition pursuant to 8 C.F.R. § 214.14(f)(1). Nicolly Karine Lima Nicodemos has additionally filed a Form I-360 VAWA self-petition, which is separately pending before USCIS.

IV. LEGAL STANDARD FOR ADMINISTRATIVE CLOSURE

Administrative closure is a docket-management tool used "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." *Matter of Avetisyan*, 25 I&N Dec. at 692. The BIA established in *Avetisyan* that IJs possess independent authority to administratively close a case even over DHS opposition, holding that allowing one party an absolute veto would require the IJ to "abdicate the responsibility to exercise independent judgment and discretion." 25 I&N Dec. at 693. Although *Avetisyan* was later overruled by AG Sessions in *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), that decision was in turn overruled by AG Garland in *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021), which restored the *Avetisyan* standard in full. The Ninth Circuit independently confirmed IJ authority to grant administrative closure over DHS opposition in *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885 (9th Cir. 2018).

Critically, the authority to administratively close proceedings is now codified in federal regulation. On May 29, 2024, the DOJ promulgated the final rule *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46742 (effective July 29, 2024), codifying administrative closure authority at 8 C.F.R. §§ 1003.18(c) and 1003.1(l). Regulatory codification is significant: unlike an AG decision, this rule can only be rescinded through new notice-and-comment rulemaking. The regulation is therefore operative regardless of current administration policy. Where DHS has not joined a motion, the Court decides on the "totality of the circumstances," weighing the eight factors codified at 8 C.F.R.

§ 1003.18(c)(3)(i). Under the 2024 Rule, DHS opposition is one relevant factor among eight, not the “primary consideration” that *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017), made it. 89 Fed. Reg. at 46753.

V. THE REGULATORY FACTORS WEIGH IN FAVOR OF ADMINISTRATIVE CLOSURE

A. Factor 1: Reason Sought — 8 C.F.R. § 1003.18(c)(3)(i)(A)

Closure is sought to allow USCIS to adjudicate two pending petitions, Poliana’s Form I-918 (filed May 23, 2025, with Angelo Marcio Nicodemos, Nicaelly Geovana Lima Nicodemos, and Nicollas Davi Lima Nicodemos as derivative beneficiaries) and Nicolly Karine’s Form I-360 VAWA self-petition, without the burden of simultaneous removal proceedings. USCIS has sole and exclusive jurisdiction over both. 8 C.F.R. §§ 214.14(c)(1), 204.1. The Ninth Circuit has recognized that administrative closure has been applied “to pause cases while the United States Citizenship and Immigration Services . . . adjudicates a noncitizen’s pending visa petition,” and that the results of a pending visa petition are uncertain, “outside the control of the parties or the court and may not occur for a significant or undetermined period of time.” *Meza-Garcia v. Bondi*, No. 23-3438 (9th Cir. 2025) (quoting *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 889 (9th Cir. 2018)); see also *Gonzalez-Caraveo*, 882 F.3d at 889 (quoting *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012)). The BIA abuses its discretion when it denies administrative closure on the basis that “it cannot be determined whether [the petitioner] is likely to be granted the U visa, and whether such event would occur within a reasonable period of time”, because “[t]hose two factors are, in fact, considerations that make administrative closure appropriate.” *Meza-Garcia*, No. 23-3438.

B. Factor 2: Basis for Any Opposition — 8 C.F.R. § 1003.18(c)(3)(i)(B)

Respondents anticipate DHS will oppose this motion on the basis of current enforcement priorities. Under the 2024 regulation and BIA precedent, “an Immigration Judge cannot review whether an alien falls within the DHS’s enforcement priorities or will actually be removed from the United States.” *Matter of W-Y-U-*, 27 I&N Dec. at 19. The Ninth Circuit confirmed this principle in *Gonzalez-Caraveo*, 882 F.3d at 885 (“Allowing the Department or a petitioner to have absolute veto power over administrative closure is an impermissible violation of the IJ and BIA’s delegated authority and responsibility to adjudicate cases”). Furthermore, “unsupported opposition does not carry much weight. The

Immigration Judge should evaluate the Government's objection, considering the totality of the circumstances." Matter of Hashmi, 24 I&N Dec. 785, 794 (BIA 2009) (cited here for its administrative closure footnote).

C. Factor 3: Regulatory Requirement — 8 C.F.R. § 1003.18(c)(3)(i)(C)

No regulation conditions USCIS's jurisdiction over the U visa or VAWA petitions on prior administrative closure. USCIS has exclusive jurisdiction over both. 8 C.F.R. §§ 214.14(c)(1), 204.2. Administrative closure eliminates institutional conflict between the two proceedings, ensuring that "only those cases that are likely to be resolved are before the Immigration Judge" and avoiding "the repeated rescheduling of a case that is clearly not ready to be concluded." Matter of Hashmi, 24 I&N Dec. at 791 n.4. The Fourth Circuit has held that where a petitioner has a "significant probability" of U visa approval, an IJ who fails to consider that the visa would "materially affect the outcome" of proceedings abuses its discretion in denying a continuance. *Cabrera v. Garland*, 21 F.4th 878 (4th Cir. 2022). That principle applies with equal force to administrative closure.

D. Factor 4: Likelihood of Success — 8 C.F.R. § 1003.18(c)(3)(i)(D)

This factor asks whether there is a realistic possibility of relief outside of EOIR. 89 Fed. Reg. at 46751. The Department of Justice has clarified that "the consideration of this factor is not intended to be a full adjudication of the merits of the outside relief." *Id.* Rather, the rule instructs adjudicators to consider the likelihood of success outside of EOIR along with any other relevant factors in the totality of the circumstances. *Id.* Furthermore, while the Department declines to make any specific evidence dispositive of this factor, such as bona fide determinations by USCIS, "such evidence may often weigh heavily in favor of this factor," and "the weight given to this factor will be dependent upon a totality analysis." *Id.* See also *Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010) ("Immigration Judges have broad discretion ... to admit and consider relevant and probative evidence."). Accordingly, administrative closure does not require a full prima facie eligibility determination, and Respondents are not required to present the full petition to this Court.

The U visa petition rests on a strong factual foundation. Poliana and Angelo were the principal witnesses in a prosecution that resulted in three criminal convictions. The facts underlying their victimization, threats, police intimidation, targeted destruction of property, and flight, are already documented in the asylum record before this Court. The Form I-918, Supplement B law enforcement certification has been executed, establishing the helpfulness

prong under INA § 101(a)(15)(U)(i) and 8 C.F.R. § 214.14(b)(3). *See Matter of Sanchez-Sosa*, 25 I&N Dec. at 813.

The Ninth Circuit has expressly held that uncertainty regarding the outcome and timing of a pending visa petition is not a basis to deny administrative closure — rather, such uncertainty is precisely what makes administrative closure appropriate. *Meza-Garcia v. Bondi*, 111 F.4th 325 (9th Cir. 2024). In *Meza-Garcia*, the BIA denied administrative closure on the ground that "it cannot be determined whether [Petitioner] is likely to be granted the U visa, and whether such event would occur within a reasonable period of time." *Id.* at 327. The Ninth Circuit reversed, holding that "[t]hose two factors are, in fact, considerations that make administrative closure appropriate." *Id.*

Administrative closure is proper when the parties are "await[ing] 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." *Id.* (quoting *Matter of Avetisyan*, 25 I&N Dec. at 692).

Here, Poliana's U visa petition and Nicolly Karine's VAWA petition are both pending before USCIS. The adjudication of these petitions is certain to occur; only the timing is uncertain. Moreover, the VAWA petition is subject to the "any credible evidence" standard, 8 U.S.C. § 1154(a)(1)(J), which is deliberately favorable to petitioners, and a petition that has survived to pending status has already cleared USCIS's initial review threshold.

E. Factor 5: Anticipated Duration — 8 C.F.R. § 1003.18(c)(3)(i)(E)

U visa petitions face significant USCIS processing times. Current processing times exceed five years for many petitioners. *Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919, 950 (N.D. Cal. 2021) ("USCIS reports that the processing time to "receive a final decision" is "currently 5-10 years." *Id.* "If filing trends continue, the pending queue and associated processing times will continue to grow significantly." *Id.* Just to be placed on the U Visa waiting list takes an average of 58 months.").

The 2024 regulatory preamble expressly recognizes that a U visa application that is complete but waiting on USCIS processing may support administrative closure even for a long period. 89 Fed. Reg. at 46751. The anticipated duration of this closure is attributable entirely to USCIS institutional processing volume, not to any conduct or inaction by Respondents. Administrative closure is the more efficient alternative to repeated continuances. *See Matter of Hashmi*, 24 I&N Dec. at 791 n.4.

F. Factor 6: Responsibility for Delay — 8 C.F.R. § 1003.18(c)(3)(i)(F)

Respondents bear no responsibility for the processing delay. USCIS has exclusive jurisdiction over U visa adjudications and sets its own processing timelines. 8 C.F.R. § 214.14(c)(1). Poliana's I-918 was filed on May 23, 2025; Respondents have continued to appear before this Court as required and have not sought to delay these proceedings in bad faith.

G. Factor 7: Ultimate Anticipated Outcome — 8 C.F.R. § 1003.18(c)(3)(i)(G)

This factor weighs heavily in favor of closure. If Poliana's U visa is approved, mandatory termination of removal proceedings for all five Respondents follows. 8 C.F.R. § 1003.18(d)(1)(i)(D) (termination is mandatory upon grant of U nonimmigrant status where the respondent would not have been removable as charged). If Nicolly Karine's VAWA petition is approved, she will be eligible for deferred action, an exercise of prosecutorial discretion by USCIS providing protection from removal, and adjustment of status before USCIS pursuant to INA § 245(a), 8 U.S.C. § 1255(a). The USCIS proceedings are not peripheral to these removal proceedings, they are potentially dispositive of them. Administrative closure preserves judicial resources by deferring the expenditure of court time until USCIS adjudications are complete. *See Avetisyan*, 25 I&N Dec. at 695 ("the decision to administratively close proceedings ... involves an assessment of factors that are particularly relevant to the efficient management of the resources of the Immigration Courts and the Board and that are routinely evaluated by Immigration Judges, the Board, and the circuit courts").

H. Factor 8: ICE Detention Status — 8 C.F.R. § 1003.18(c)(3)(i)(H)

None of the Respondents are in ICE custody. This factor weighs heavily in favor of administrative closure, as there are no ongoing detention costs to the government, no due process concerns arising from prolonged detention, and no urgent public safety or flight risk considerations requiring immediate adjudication. 89 Fed. Reg. at 46752.

VI. ADDITIONAL EQUITIES

The 2024 regulations confirm that the eight factors are non-exhaustive and that the Court may consider other relevant circumstances. 89 Fed. Reg. at 46750. The Nicodemos family has resided in the United States since approximately 2019, over six years. Their minor son Nicollas Davi (D.O.B. March 23, 2009), now seventeen, has spent the majority of

his adolescence in the United States, is currently enrolled in high school, and has developed strong educational and community roots here. Removing this family while meritorious victim-based petitions remain pending before USCIS would impose disproportionate harm on individuals who placed themselves at substantial personal risk by cooperating with law enforcement to secure criminal convictions in a politically orchestrated murder.

The policies underlying both the U visa and VAWA programs reflect a congressional determination that protecting crime victims and facilitating their cooperation with law enforcement serves the public interest. Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. No. 106-386, Sec. 1513(a)(1)(B), 114 Stat. 1464. Courts have recognized that administrative closure advances this congressional purpose, and “the elimination of administrative closure will lead to the deportation of noncitizens who have meritorious claims for relief pending before USCIS, such as through VAWA self-petitions and applications for U and T visas and SIJ status.”. *Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d.

VII. CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant this motion to administratively close these proceedings pending USCIS adjudication of: (1) Poliana Lima Nicodemos’s Form I-918 Petition for U Nonimmigrant Status, with Angelo Marcio Nicodemos, Nicolly Karine, Nicaelly Geovana, and Nicollas Davi Lima Nicodemos as derivative beneficiaries; and (2) Nicolly Karine Lima Nicodemos’s Form I-360 VAWA self-petition.

Respectfully submitted,



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Angelo Marcio Nicodemos
Poliana Nicodemos
Nicolly Karine Lima Nicodemos
Nicaelly Geovana Lima Nicodemos
Nicollas Davi Lima Nicodemos

File No. A. 216-541-471
File No. A. 216-586-380
File No. A. 216-541-472
File No. A. 216-541-473
File No. A. 216-586-381

PROOF OF SERVICE

On this day, I, Otavio Haverroth Silva, served a copy of the following documents:

RESPONDENTS' MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS

To the following:

Office Location:	Mailing Address:
Office of the Principal Legal Advisor Department of Homeland Security 100 Montgomery Street, Suite 800 San Francisco, CA 94104	Office of the Principal Legal Advisor Department of Homeland Security Office of the Chief Counsel P.O. Box 26449 San Francisco, CA 94126-644

by:

- Through the EOIR Courts and Appeals System (ECAS), which will automatically send service notification to both parties that a new document has been filed.



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