

Notice of Proposed Settlement
W.A.O. v. Jaddou, No. 2:19-cv-11696 (D.N.J.)

BACKGROUND

W.A.O. v. Jaddou is a class action that was filed in federal court in New Jersey in 2019. A class action is a lawsuit filed on behalf of a large group of people, rather than on behalf of one person or a small group of people. In *W.A.O. v. Jaddou*, the plaintiffs (who brought the lawsuit) challenged the refusal of U.S. Citizenship and Immigration Services (USCIS) to grant Special Immigrant Juvenile ("SIJ") classification to certain individuals between 18 and 21 years of age.

SIJ classification is a form of immigration relief for applicants (up to age 21) who have appeared in state family court for some reason related to their care and welfare (for example, in child custody, adoption, foster care, or juvenile delinquency proceedings). In these proceedings, the state family court may make certain findings, including (1) that the applicant cannot be safely reunified with their parents because of abuse, neglect, abandonment, or something similar, and (2) that it would not be in the best interest of the applicant to be returned to their home country. Based on these findings, the young person may apply to USCIS for SIJ classification.

In *W.A.O. v. Jaddou*, the plaintiffs claimed that USCIS had a policy of disqualifying 18-21-year-old applicants from SIJ classification (the "Challenged Policy"). In particular, the plaintiffs claimed that USCIS was delaying, questioning, denying, and revoking the SIJ petitions of 18-21-year-old applicants because USCIS believed that the New Jersey Family Court did not have the power to order a person in this age group to be reunified with, or placed in the custody of, a parent or another responsible adult or entity.

In July 2019, the federal District Court for the District of New Jersey ordered USCIS to stop applying the Challenged Policy. USCIS followed the Court's order and has since approved the petitions of 715 applicants whose SIJ petitions were pending at any time between January 1, 2018, and July 10, 2019; who were between the ages of 18 and 21 at the time of filing; and who listed a residential address in New Jersey. USCIS has also denied some SIJ petitions filed by individuals who fell within the above criteria, but the plaintiffs' lawyers have reviewed these denials and determined that they were not based on the Challenged Policy. It is also possible that, through no fault of the parties, some applicants who met the above criteria for help under the Court's decision were not identified. Their rights as Unidentified Potential Class Members are described below.

SETTLEMENT

The parties to this case have reached a proposed settlement agreement. This notice summarizes the main points you need to understand.

1. Who is protected by the settlement?

- a. "Presumed Class Members."** You are a Presumed Class Member if:
- i. Your SIJ petition was pending at any time between January 1, 2018, and July 10, 2019, AND
 - ii. You were between your 18th and 21st birthday when you filed your SIJ petition, AND
 - iii. You listed a residential address in New Jersey, AND
 - iv. Your SIJ petition was granted as of December 6, 2021, AND
 - v. You are not an Unidentified Potential Class Member (see below).
- b. Unidentified Potential Class Members.** You are an Unidentified Potential Class Member if:
- i. You received an order from the New Jersey Family Court on or before October 15, 2019, AND
 - ii. You filed your SIJ petition with USCIS on or before October 15, 2019, AND
 - iii. You were between your 18th and 21st birthdays when you filed your SIJ petition, AND
 - iv. USCIS delayed, questioned, denied, or revoked your SIJ petition on the basis of the Challenged Policy, AND
 - v. The parties to this case have not previously identified you as a member of the class or potential member of the class.

2. Can the government enforce the Challenged Policy?

No. The government has agreed not to disqualify SIJ applicants who are between their 18th and 21st birthdays on the ground that the New Jersey Family Court lacks the power to place them in the care or custody of a parent or other adult or entity. The government agrees that New Jersey law governs the exercise of jurisdiction (what the court has the power to do) by the New Jersey Family Court.

3. If I am an Unidentified Potential Class Member, how can I get help?

If you think you meet the definition of an Unidentified Potential Class Member (see above, Question 1.b.), you should call Class Counsel at the law firm of Lowenstein Sandler. Please call **973-422-2972**. We will help you figure out whether you are protected by the settlement, and we'll help you get protection if you are.

4. If I am a Presumed Class Member, how can I get help?

- a. SIJ Approval.** If you are a Presumed Class Member (see above, Question 1.a.), you will already have received significant help. USCIS has already approved your SIJ petition on a schedule set by the federal court to ensure compliance with the preliminary injunction.
- b. Ongoing Removal Proceedings.** Even though your SIJ petition has been approved, you may still be in removal proceedings while you wait for your "priority date" to arrive so that you can apply for lawful permanent residency (a green card). If that is your situation, and you are still in removal proceedings in immigration court, the settlement protects you in several ways.
- i. **Continuances, Placement on Status Docket, or Administrative Closure.** Except in some circumstances (see below), the government will join, or will not oppose, a motion you file in immigration court or the Board of Immigration Appeals (BIA) for a continuance, placement on the status docket, or administrative closure. These kinds of motions will give you time to wait for your priority date to become current so that you can apply for a green card. You will need to cite the settlement agreement in the motion. Here is what you can write: "I am a member of the Presumed Class in *W.A.O. v. Jaddou*, No. 2:19-cv-11696 (D.N.J.), and I am protected by the settlement in that case."
 - ii. **Termination of Removal Proceedings Without Prejudice.** Except in certain circumstances (see below), the government will join, or will not oppose, a motion you file in immigration court or the BIA to terminate removal proceedings without prejudice. If this motion is granted, the immigration court will end your removal proceedings, but the government will be able to refile against you if you do something that makes you ineligible for a green card. If you file this motion, you must do so within one year of reaching your priority date, and you must cite the settlement agreement in the motion. Here is what you can write: "I am a member of the Presumed Class in *W.A.O. v. Jaddou*, No. 2:19-cv-11696 (D.N.J.), and I am protected by the settlement in that case. I reached my priority date on January 24, 2022, less than one year ago."
 - iii. **Reopening Removal Proceedings.** Except in certain circumstances (see below), the government will join, or will not oppose, a motion you file in immigration court or the BIA to reopen your case. You will want to file a motion to reopen if the immigration court entered a removal order against you, but you now have an approved SIJ petition. The purpose of the motion is to ask the immigration court or the BIA to vacate (cancel) the removal order. If you make this kind of motion, you would also usually ask for a stay of removal (a temporary order preventing your removal)

so that the government does not remove you while your motion to reopen is pending. Except in certain circumstances, the government will join, or will not oppose, motions for stays of removal made in connection with motions to reopen. If you make these kinds of motions, you must do so within one year of the final settlement in this case, and you must cite the settlement agreement in your motion(s). Here is what you can write: "I am a member of the Presumed Class in *W.A.O. v. Jaddou*, No. 2:19-cv-11696 (D.N.J.), and I am protected by the settlement in that case. I am filing this motion on January 24, 2022, less than one year after the final settlement in that case."

iv. **Circumstances in which Defendants May Decline to Join Motions.** The government may decline to join, or may oppose, a Presumed Class Member's motion in the following circumstances:

- When the Presumed Class Member has been convicted of an aggravated felony as defined in INA § 101(a)(43) or convicted of an offense for which an element was active participation in a criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization to further the illegal activity of the gang or transnational criminal organization; OR
- When the Presumed Class Member engaged in or is suspected of engaging in terrorism or terrorism-related activities; has engaged in or is suspected of engaging in espionage or espionage-related activities; or whose apprehension, arrest, or custody is otherwise necessary to protect the national security of the United States; OR
- In extraordinary cases that do not fall within the enumerated categories above but are nonetheless national security or public safety risks. In such cases, the ICE Chief Counsel of the relevant Office of the Principal Legal Advisor (OPLA) field location must approve ICE's opposition.

c. **Other forms of immigration relief.** You are free to seek, and the Defendants are free to initiate or accept, other forms of immigration relief not explicitly outlined above.

d. **Challenges or appeals in your immigration case.** Nothing in the settlement affects in any way your right to challenge or appeal the adjudication of your SIJ petition, your application for a green card, your application for work authorization, or any other immigration application you may file. Similarly, nothing in the settlement affects your right to challenge or appeal a removal order entered against you. You are free to make whatever challenges or appeals you like in your individual immigration case or proceedings.

5. If I am a Presumed Class Member and I am being removed, how can I get help?

If you believe you are a Presumed Class Member and the government is trying to remove you, you should contact your individual immigration lawyer, if you have one. You should *also* call Class Counsel at the law firm of Lowenstein Sandler. Please call **973-422-2972**. The government should give you this same number again at least 14 days before you are removed. The government will also give Class Counsel notice at least 14 days before your scheduled removal, and we will try to contact you. We will work with you to figure out whether you are protected by the settlement and how to help.

APPEARANCES AND OBJECTIONS

You may want to appear at the settlement hearing and/or object to this proposed settlement. The settlement hearing will be on Zoom at 10:00 a.m on April 20, 2022. You can join at this link: <https://www.zoomgov.com/j/1601556238?pwd=ckFTeVVxQWY3cEIEZmh4UFJJbTdmdz09>

If you would like to appear or object, you will need to let the court know this. You must send a request to be heard or a written notice of objection to the court by April 4, 2022.

You can send the request or notice in either or both of two ways:

- By mail to this address:
Clerk of the Court
Martin Luther King Building & U.S. Courthouse
50 Walnut Street, Room 4015
Newark, NJ 07101
- By filing electronically, but you'll need a lawyer to help with that.

Your request to be heard or notice of objection should include the following information:

- The case name and number: *W.A.O. v. Jaddou*, No. 2:19-cv-11696 (MCA) (MAH)
- Your name
- Your address and telephone number, or the address and telephone number of your lawyer
- An explanation of why you want to be heard or why you want to object

You can only say anything you may want to say about the proposed settlement by sending a request to appear or a notice of objection. You cannot opt out of the settlement. If the Court approves of the settlement at the hearing, it will become final.