

From: (b)(6); (b)(7)(C)
To: OPLA HQ Personnel; OPLA Field Personnel
Subject: Broadcast Message: Implementing Matter of Cruz-Valdez, 28 I&N Dec. 326 (A.G. 2021)
Date: Thursday, July 22, 2021 7:18:30 AM

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Disseminated on behalf of Adam V. Loiacono and Karen Lundgren . . .

On July 15, 2021, Attorney General (AG) Garland issued *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021), vacating then-AG Sessions' decision in *Matter of Castro-Tum*, which had held that immigration judges and the Board of Immigration Appeals (Board) "do not have the general authority to suspend indefinitely immigration proceedings by administrative closure," and directed immigration judges and the Board to only administratively close cases if "a previous regulation or a previous judicially approved settlement expressly authorizes such an action[.]" 27 I&N Dec. 271, 272 (A.G. 2018). *Cruz-Valdez* directs immigration judges and the Board to apply the framework for administrative closure prior to *Castro-Tum*, set forth in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017), except to the extent that a court of appeals in the relevant jurisdiction has held in a precedent decision that immigration judges and the Board lack administrative closure authority under existing regulations.

As the AG noted in *Cruz-Valdez*, the U.S. Courts of Appeals for the Third, Fourth, and Seventh Circuits overruled *Castro-Tum*. See *Arcos Sanchez v. Att'y Gen.*, 997 F.3d 113, 121-22 (3d Cir. 2021); *Meza Morales v. Barr*, 973 F.3d 656, 667 (7th Cir. 2020); *Romero v. Barr*, 937 F.3d 282, 292 (4th Cir. 2019). The Sixth Circuit Court of Appeals, on the other hand, agreed with *Castro-Tum* in *Hernandez-Serrano v. Barr*, 981 F.3d 459, 464 (6th Cir. 2020), but subsequently ruled that immigration judges and the Board have the authority to grant administrative closure to allow noncitizens to apply for provisional unlawful presence waivers in *Garcia-DeLeon v. Garland*, 999 F.3d 986, 989 (6th Cir. 2021).

In light of *Cruz-Valdez*, OPLA attorneys should consider the following practice pointers:

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Thank you,

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