UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

A.C.R., J.G.V., E.A.R., C.V.R., Y.A.M., B.R.C., J.C.B., L.M.R., and S.M.M., on behalf of themselves and all others similarly situated; CENTRAL AMERICAN REFUGEE CENTER (CARECEN-NY); and CENTRO LEGAL DE LA RAZA,

Plaintiffs,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security (official capacity); UNITED STATES DEPARTMENT OF HOMELAND SECURITY; JOSEPH EDLOW, Director, United States Citizenship and Immigration Services (official capacity); UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; and TERRI ROBINSON, Director, United States Citizenship and Immigration Services National Benefits Center (official capacity),

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

[Proposed Order to Show Cause; Motion for Class Certification; and Motion to Proceed Under Pseudonym, to Partially Seal Documents and for a Protective Order filed concurrently]

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I. INTRODUCTION

Special Immigrant Juvenile Status ("SIJS") was created by Congress to protect children who have been abused, neglected, abandoned, or similarly harmed, by offering them a pathway to lawful permanent residence. A grant of SIJS means that both a state court and U.S. Citizenship and Immigration Services ("USCIS") have recognized that it is not in the child's best interest to return to their country of origin. Yet because of visa backlogs, children who are granted SIJS must wait years before they can apply for permanent residence. While they wait for a visa to become available, they remain at risk of deportation and are unable to legally work. That is why USCIS established a policy in March 2022, providing that children granted SIJS are automatically considered, on a case-by-case basis, for deferred action (the "SIJS Deferred Action Policy").[1] Deferred action is a form of prosecutorial discretion that protects beneficiaries from deportation and makes them eligible to apply for employment authorization. Under this Policy, approximately 200,000 vulnerable youth have been granted deferred action, which has allowed them to safely build lives in the United States while they await the opportunity to apply for lawful permanent residency (a green card) without fear of deportation.

Yet on April 7, 2025, USCIS suddenly and without explanation ceased considering SIJS beneficiaries for deferred action. Then, on June 6, 2025, the agency issued a cursory and inadequately reasoned policy alert (the "2025 Policy Alert") announcing that it would no longer automatically consider SIJS beneficiaries for deferred action; would no longer conduct deferred action determinations for noncitizens with SIJS unable to adjust status due to backlogs; would not consider applications for employment authorization based on SIJS deferred action; and would not

[1] *See* Declaration of John Magliery ("Magliery Decl."), Ex. A, USCIS, Policy Alert: Special Immigrant Juvenile Classification and Deferred Action (Mar. 7, 2022) ("2022 Policy Alert").

consider requests to renew previous grants of SIJS deferred action (Plaintiffs refer to the 2025 Policy Alert, together with contemporaneous changes made to the USCIS Policy Manual, as the "Rescission Policy").[2] The Rescission Policy is already causing significant harm to SIJS beneficiaries, who are left unable to legally work and subject to the risk of arrest and deportation.

The Rescission Policy is illegal and must be enjoined. The Administrative Procedure Act requires courts to set aside agency action that is "arbitrary, capricious, … or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). This standard requires agency action to be reasonable and reasonably explained, particularly when the agency changes course from a prior policy. The Rescission Policy does not come close to meeting this standard. It provides no reasoned explanation for the government's dramatic policy reversal, and fails to consider significant aspects of the problem, including, most notably, the reliance interest of SIJS beneficiaries and the significant and immediate harm the Rescission Policy will cause them.

The three conclusory explanations the Rescission Policy does offer are vague and nonsensical. **First**, Defendants assert that Congress did not "expressly permit" deferred action for SIJS beneficiaries, so SIJS is not a "sufficiently compelling reason[]" for an automatic deferred action process. 2025 Policy Alert at 1. But one does not follow from the other: deferred action is a form of prosecutorial discretion that does not require congressional authorization and has for decades been used to provide relief for vulnerable groups shut out of statutory relief by visa backlogs and processing delays. **Second**, Defendants claim rescission avoids "unnecessarily restrict[ing]" USCIS from "considering potentially relevant information" in vetting and screening noncitizens. *Id.* at 2 n.4. They provide no explanation whatsoever of how that may be the case,

[2] USCIS, Policy Alert: Special Immigrant Juvenile Classification and Deferred Action (June 6, 2025) ("2025 Policy Alert"), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf (last visited July 16, 2025).

particularly since the rescinded policy provided for individualized, case-by-case consideration of SIJS beneficiaries for deferred action and in no way restricted them from being "vet[ted]." *Id.* **Third**, Defendants state that rescission "more closely align[s] agency policies and procedures with statutory requirements and authorities" but do not specify which statutory requirements or authorities they are referring to, nor why the Rescission Policy more closely aligns with them. *Id.* at 1. To the contrary, as Defendants expressly found in the 2022 Policy Alert, a deferred action policy most closely aligns with Congress's intent to provide protections for vulnerable youth.

The Rescission Policy is arbitrary and capricious for other reasons as well. It fails to explain Defendants' decision to depart from their own policy and reasoning in the SIJS Deferred Action Policy, which is particularly striking here, where the agency is reversing a "prior policy [that] has engendered serious reliance interests." *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 106 (2015). That demands a "more detailed justification than what would suffice for a new policy created on a blank slate." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Nor were Defendants allowed to simply stop conducting deferred action adjudications, as they did between April 7 and June 6. Such unexplained, sub silentio departures from established policy and practice are arbitrary and capricious by their very nature.

The Rescission Policy also appears to step significantly beyond rescinding the SIJS Deferred Action Policy. First, it either categorically excludes SIJS beneficiaries from being considered for deferred action *on any basis*, or categorically bars USCIS from considering individual applications for deferred action based on SIJS beneficiary status. Then, it purports to bar SIJS deferred action recipients from applying for employment authorization documents, ingrafting a novel exception to 8 C.F.R § 274a.12(c)(14). These are legislative rules that require notice-and-comment rulemaking, and in any case are entirely unexplained.

Make no mistake: the Rescission Policy is not reasoned agency action. It is a clumsy and ill-conceived attack on noncitizen youth that is already causing significant harm to thousands of vulnerable young people that the government has promised to protect, for no intelligible reason other than to clear the way for their deportation. This Court should grant a preliminary injunction setting aside this unlawful policy.

II. BACKGROUND

A. Special Immigrant Juvenile Status Protects Vulnerable Children and Provides a Pathway to Permanent Lawful Status.

Special Immigrant Juvenile Status ("SIJS") was created by Congress to offer a pathway to lawful permanent residence for children who have been abused, neglected, or abandoned by a parent and for whom it is not in their best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J). An unmarried young person under the age of 21 who is physically present in the United States qualifies for SIJS if a state court makes the aforementioned findings and determines the young person is dependent on the court, commits the young person to the custody of a state agency or department, or places the young person under the custody of an individual or entity appointed by the state or court. *Id*. Upon such order, the young person may petition USCIS for SIJS. *See* 8 C.F.R. § 204.11(b). USCIS grants SIJS petitions if they are "bona fide," meaning the SIJS petitioner sought the underlying state court determinations primarily to obtain relief from parental abuse, neglect, or abandonment. 8 C.F.R. § 204.11(c).

Once granted SIJS, a young person can apply for lawful permanent resident ("LPR") status and apply for work authorization, but only when an EB-4 special immigrant visa is immediately available based on their visa priority date. 8 U.S.C. § 1153(b)(4). If no such visa is available, the SIJS beneficiary must wait to apply for adjustment of status and work authorization.

Since 2016, a visa backlog has created significant delays between the grant of SIJS and eligibility to apply for a green card. Declaration of Dalia Castillo-Granados ("Castillo-Granados Decl.") ¶ 9; Declaration of Rachel Prandini ("Prandini Decl.") ¶ 16. That year, the U.S. Department of State ("State Department") determined that the annual limit of EB-4 visas had for the first time been exhausted for certain countries, including Mexico, El Salvador, Guatemala, Honduras, and India. *Id.*; Castillo-Granados Decl. ¶ 9. SIJS beneficiaries from those countries had to wait months or years before they were eligible to apply for LPR status and work permits. *Id.* ¶¶ 9, 10.

In December 2022, the State Department announced worldwide visa backlogs for the EB-4 category, meaning all SIJS beneficiaries became subject to years-long delays between receiving SIJS and applying for adjustment of status, regardless of their country of origin.[3] SIJS beneficiaries are generally unable to work lawfully while they await their visa priority date, and the government takes the position that they are subject to deportation.[4] This vulnerable population was therefore left in a state of legal limbo that effectively withholds the protections that Congress intended to afford them through SIJS.

A. The SIJS Deferred Action Policy Establishes a Deferred Action Adjudication Process for SIJS Beneficiaries.

On March 7, 2022, in response to the ongoing visa shortages, USCIS announced a new policy providing that it would automatically consider for deferred action all SIJS beneficiaries not

[3] U.S. Dep't of State, *Visa Bulletin Immigrant Numbers For December 2022*, No. 72, Vol. X (Dec. 2022), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_December2022.pdf ("[H]igh demand in the Employment Fourth category has necessitated the establishment of a worldwide final action date and application filing date for December to hold number use within the maximum allowed under the FY-2023 annual limit.") (last visited July 16, 2025).

[4] Plaintiffs do not concede that SIJS beneficiaries are subject to deportation and expressly reserve the right to argue that they are not subject to deportation while awaiting the availability of a visa. This Court need not decide this question in order to decide the issues presented here.

yet able to apply for LPR status due to the visa backlog, which in turn would confer eligibility to apply for employment authorization ("2022 Policy Alert").

In announcing the SIJS Deferred Action Policy, USCIS recognized that "Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available," and determined that "[d]eferred action and related employment authorization w[ould] help to protect SIJs who c[ould] not apply for adjustment of status solely because they are waiting for a visa number to become available." 2022 Policy Alert at 1. USCIS reasoned that, because SIJS beneficiaries are unlikely to be enforcement priorities, the policy helps "conserve[] DHS resources by focusing on the enforcement of higher priority cases, such as noncitizens who pose a threat to national security, public safety, and border security." *Id.* at 2–3. USCIS also explained that employment authorization provides valuable assistance to SIJS beneficiaries, who are vulnerable children and young adults with limited financial support systems in the United States, and also benefits the U.S. labor pool and economy. *See id*. USCIS determined that SIJS beneficiaries have a reliance interest in being granted deferred action and employment authorization "consistent with the congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years before a visa is available[,]" and that no parties have a reliance interest in USCIS withholding deferred action and employment authorization from SIJS beneficiaries. *Id.* at 3.

Under the SIJS Deferred Action Policy, USCIS automatically considered "on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion." *Id.* at 3 n.6. USCIS "weighs all relevant positive and negative factors that apply to the person's case" and "may generally grant deferred action if, based on the totality of the facts and circumstances of the case, the positive factors outweigh the negative factors." Magliery Decl.

Ex. B, USCIS, Pol'y Manual, Vol. 6, Pt. J, ch. 4.G(2) (archived Apr. 18, 2025). USCIS identified an approved SIJS petition (Form I-360) as a "particularly strong positive factor that weighs heavily in favor of granting deferred action," and the "eligibility for SIJ classification, including that a juvenile court determined that it was in the best interest of the SIJ not to be returned" to their country of origin as "generally strong, positive factors." *Id*.

Grants of deferred action confer significant benefits to SIJS beneficiaries. Those with deferred action are not at risk of deportation, providing them with a sense of security and stability that greatly benefits their mental and physical health and their ability to plan for their future. Declaration of Theresa Wilkes ("Wilkes Decl.") ¶ 5; Declaration of Elisa Minoff ("Minoff Decl.") ¶¶ 7–14; Declaration of Rachel Jordan ("Jordan Decl.") ¶ 12. Deferred action recipients may also apply for employment authorization, allowing them to legally work, support themselves, and access employer-based healthcare, while also protecting them from labor exploitation. Jordan Decl. ¶¶ 11, 14, 25; Declaration of Dr. Doug Bishop ("Bishop Decl.") ¶ 18; Wilkes Decl. ¶ 5; Minoff Decl. ¶¶ 8, 10, 12; Declaration of Bhairavi K. Asher ("Asher Decl.") ¶¶ 7–8. Access to lawful employment is particularly important for SIJS beneficiaries pursuing post-secondary education, because they are not eligible for federal tuition benefits. Declaration of Kent Wong ("Wong Decl.") ¶¶ 8, 12, 14. For SIJS beneficiaries in foster care, access to lawful employment aids child welfare agencies in the permanency planning process and in successfully transitioning foster youth to independence. *See* Declaration of Adolfo Mendez ("Mendez Decl.") ¶¶ 19–20; Declaration of Randi Mandelbaum ("Mandelbaum Decl.") ¶¶ 11, 24, 27–28. Finally, for SIJS beneficiaries, an employment authorization document serves as government-issued identification and allows them to receive Social Security numbers. Declaration of Jessica Greenberg, CARECEN-NY ("CARECEN-NY Decl."), ¶ 12; Declaration of Abby Sullivan Engen, Centro

Legal de la Raza ("Centro Legal Decl."), ¶ 6; *see, e.g.*, Minoff Decl. ¶¶ 8, 15; Jordan Decl. ¶¶ 13, 16, 25. This in turn facilitates filing tax returns, opening bank accounts, and in some states, obtaining driver's licenses and accessing certain forms of assistance such as emergency housing assistance. Mandelbaum Decl. ¶¶ 20, 24, 28.

Deferred action for SIJS beneficiaries was granted for four-year periods and was renewable for those SIJS beneficiaries who continued to lack an available visa at the end of the four-year period. Magliery Decl. Ex. B, USCIS, Pol'y Manual, Vol. 6, Pt. J, ch. 4.G(3) (archived Apr. 18, 2025).

B. The 2025 Policy Change Rescinds Automatic Adjudication of Deferred Action and Disqualifies SIJS Beneficiaries from Receiving Deferred Action.

Beginning on or around April 7, 2025, USCIS stopped issuing deferred action determinations for SIJS beneficiaries, in an unexplained and sub silentio reversal of the SIJS Deferred Action Policy. Previously, nearly all SIJS beneficiaries received a decision on deferred action at the same time they were granted SIJS, and as many as 99 percent were granted deferred action. Castillo-Granados Decl. ¶¶ 16-17; Jordan Decl. ¶¶ 10, 15; Asher Decl. ¶¶ 8, 10; *see* Wilkes Decl. ¶¶ 6–7; Declaration of Randy McGrorty ("McGrorty Decl.") ¶ 8; Declaration of Victoria Maqueda Feldman ("Feldman Decl.") ¶ 11. After April 7, 2025, close to zero SIJS approvals have included a decision granting or denying the SIJS beneficiary deferred action, though USCIS publicly claimed it was following the SIJS Deferred Action Policy and automatically considering SIJS beneficiaries for deferred action. Wilkes Decl. ¶¶ 11–12; McGrorty Decl. ¶¶ 9–11; Jordan Decl. ¶ 17–18; Asher Decl. ¶¶ 9–10; Feldman Decl. ¶ 13.

On June 6, 2025, after about two months of acting under the unannounced policy, USCIS confirmed the rescission of the SIJS Deferred Action Policy through a policy alert published on its website. The 2025 Policy Alert announced USCIS's decision "to eliminate automatic

consideration of deferred action (and related employment authorization) for [SIJS beneficiaries] who are ineligible to apply for adjustment of status to [LPR] status due to visa unavailability." *Id.* at 1. The Alert stated that USCIS would immediately stop considering SIJS beneficiaries for deferred action or for employment authorization. *Id.* at 2. The Rescission Policy announced in the Alert goes further than simply rescinding the SIJS Deferred Action Policy which provided for automatic consideration of deferred action by USCIS with the approved SIJS petition (Form I-360); rather, USCIS announced that it categorically "will no longer conduct deferred action determinations for [SIJS beneficiaries]." *Id.*

Under the updates to the USCIS Policy Manual, SIJS beneficiaries who had previously been granted deferred action "will generally retain this deferred action … [and] employment authorization" for the remainder of the SIJS beneficiaries' deferred action period, unless terminated by USCIS "on a case-by-case basis, as a matter of discretion;" however, USCIS "will not consider requests for renewal of deferred action for [SIJS beneficiaries] who remain ineligible to apply for adjustment of status because an immigrant visa number is not immediately available." USCIS Policy Manual Vol. 6, Part J, ch. 4.G(1), https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4 (last visited July 17, 2025).

The 2025 Policy Alert provides only cursory explanation for the change in policy. It states that Congress "did not expressly permit deferred action and related employment authorization" for SIJS beneficiaries, and that the grant of SIJS coupled with a court determination that a young person was abused, neglected, abandoned, and that it is in the young person's best interest to remain in the United States are not "sufficiently compelling reasons, supported by any existing statute or regulation, to continue to provide a deferred action process for this immigrant category." 2025 Policy Alert at 1. It also asserts that the policy change was necessary "to more closely align

agency policies and procedures with statutory requirements," and that the updated policy "adheres to Executive Order 14161, 'Protecting the United States From Foreign Terrorists and other National Security and Public Safety Threats' (January 20, 2025)." *Id.* at 1–2. USCIS also determined it is in the "national and public interest" to rescind the SIJS Deferred Action Policy. *Id.* at 2.

C. The Rescission Policy Causes Plaintiffs and Proposed Classes Significant Harm.

The sub silentio policy change and Rescission Policy have caused and will continue to cause significant harm to the Individual and Organizational Plaintiffs and Proposed Classes.[5] The Individual Plaintiffs and similarly-situated putative class members who were granted SIJS without consideration of deferred action are currently vulnerable to imminent immigration enforcement, including the pursuit of deportation orders against them, detention in pursuit of immigration enforcement, and deportation. So, too, are the Plaintiffs and putative class members whose deferred action and work authorizations will expire without the opportunity to renew. If they are deported before they can apply for a green card, they will be unable to adjust status from abroad. And because they will not be considered for employment authorization, they are exposed to financial instability and labor exploitation, as well as resulting anxiety, depression, and insomnia from fear of deportation.

- **Plaintiffs J.G.V** and **A.C.R.** were granted SIJS on April 7, 2025, and May 1, 2025, respectively, and neither received a determination on deferred action. Declaration of J.G.V ("J.G.V. Decl.") ¶¶ 18–19; Declaration of A.C.R ("A.C.R. Decl.") ¶¶ 16–17. Each of them subsequently filed a request with USCIS for deferred action, but got no response. J.G.V. Decl.

[5] The Proposed Classes are set forth in Plaintiffs' Motion For Class Certification, concurrently filed.

¶ 20; A.C.R. Decl. ¶ 18. J.G.V. was counting on deferred action and a work permit in order to work and pay for post-secondary education. J.G.V. Decl. ¶ 22. A.C.R. had planned to attend a university and dreamed of becoming an astronaut; instead, without the protection of deferred action, she fears deportation to the violent and abusive environment she fled. A.C.R. Decl. ¶¶ 20–22.

- **Plaintiffs E.A.R. and C.V.R.** were granted SIJS on April 17 and April 18, 2025, respectively, without receiving determinations on deferred action. Declaration of E.A.R. ("E.A.R. Decl.") ¶ 13; Declaration of C.V.R. ("C.V.R. Decl.") ¶¶ 16–17. Both are in ongoing removal proceedings in immigration court, and thus face the anxiety of future hearings and the risk of being ordered deported. E.A.R. Decl. ¶ 18; C.V.R. Decl. ¶¶ 14, 21.

- **Plaintiff Y.A.M.**, **J.C.B.**, and **B.R.C.** all received grants of SIJS deferred action that will expire in 2026. Declaration of Y.A.M. ("Y.A.M. Decl.") ¶¶ 16, 17, 19; Declaration of J.C.B. ("J.C.B. Decl.") ¶¶ 17–18, 21; Declaration of B.R.C. ("B.R.C. Decl.") ¶¶ 14–15, 17. Y.A.M. relies on her employer-provided health insurance to receive health care for a heart condition and needs to work to support her three-year-old child. Y.A.M. Decl. ¶¶ 11, 18, 20–22. She is afraid of being unable to support her son and of losing him if she is deported. *Id.* at ¶¶ 21, 24. The fear of deportation has given J.C.B. nightmares. J.C.B. Decl. ¶ 26. Both of J.C.B.'s parents are deceased, and he has no one to care for him in his country of origin. *Id*. B.R.C. is in college and relies on her work permit to be able to pay her tuition. B.R.C. Decl. ¶ 9. B.R.C. does not qualify for federal student aid because she cannot receive lawful permanent resident status due to the visa backlog. *Id*. She will have to drop out of school if she cannot renew her work permit and fears being deported to her country of origin, where she has no support. *Id.* at ¶¶ 18, 20.

- **Plaintiffs L.M.R. and S.M.M.** both were granted SIJS and deferred action in January 2025, but neither has received a response to the work permit applications they filed subsequently. Declaration of L.M.R. ("L.M.R. Decl.") ¶¶ 21–22; Declaration of S.M.M. ("S.M.M. Decl.") ¶¶ 14–15. This means that L.M.R. cannot work and save money to support herself when she ages out of foster care in fewer than two years. L.M.R. Decl. ¶ 23. L.M.R. needs a job that provides health insurance, as she relies on therapy to heal from traumatic harm. *Id*. For S.M.M., not receiving a work permit made it pointless to submit the college applications he prepared, as he can no longer afford to attend. S.M.M. Decl. ¶¶ 16, 18–19.

Organizational plaintiffs Central American Refugee Center – New York ("CARECEN-NY") and Centro Legal de la Raza ("Centro Legal") also are subject to ongoing irreparable harm.

Plaintiff CARECEN-NY maintains an active immigration practice serving the needs of vulnerable immigrants on Long Island. CARECEN-NY Decl. ¶¶ 3–4. CARECEN-NY established the Youth Immigration Project ("YIP") in 2023, and its clients include current and future SIJS beneficiaries, including some clients with approved SIJS petitions and grants of deferred action with pending applications for employment authorization based on their deferred action grants. *Id.* at ¶¶ 5, 11–12. CARECEN-NY also maintains programs to meet clients' needs beyond legal assistance, including social workers who help young clients navigate school-related issues such as requests for individualized education programs and college applications, job placement, financial aid services, health care enrollment, mental health referrals, food assistance, and in extreme circumstances, housing needs. *Id.* at ¶¶ 8–9. Many of these social services are contingent upon the clients possessing a valid work permit and Social Security card. *Id.* at ¶ 9. Because of the Rescission Policy, CARECEN-NY will have to allocate significant resources to defending SIJS beneficiaries who are either placed in removal proceedings, or whose administratively closed

removal proceedings will now be re-calendared, and will be forced to significantly alter the scope of the services it provides to existing clients because of the increased cost associated with representing SIJS youth with no protection from deportation. *Id.* at ¶¶ 26, 33–38.

Plaintiff Centro Legal maintains an active immigration practice focused on serving undocumented immigrants, including immigrant youth. Centro Legal Decl. ¶ 3. Centro Legal's clients include current and future SIJS beneficiaries who have not and will not be granted deferred action due to the Rescission Policy, as well as current deferred action beneficiaries who will not be able to renew. *Id.* at ¶¶ 20–22. Centro Legal will have to expend significant resources defending SIJS beneficiaries who are placed in removal proceedings after not being considered for deferred action. *Id.* at ¶¶ 19, 23–24, 26. To adequately defend SIJS beneficiaries in removal proceedings due to the Rescission Policy, Centro Legal will have to expend likely hundreds of hours that it could have otherwise devoted to other clients who also face pressing immigration issues. *Id.* at ¶¶ 19, 23–26. The Rescission Policy will greatly strain Centro Legal's resources and impact the types of services Centro Legal can offer and the number of individuals Centro Legal can represent. *Id.* at ¶¶ 19, 24–26.

III. LEGAL STANDARD

Preliminary injunctive relief is warranted where plaintiffs establish that (1) they are "likely to succeed on the merits," (2) they are "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in [their] favor," and (4) "an injunction is in the public interest." *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)), *cert. granted*, 141 S. Ct. 1292 (Mar. 9, 2021). "Where, as here, the government is a party to the suit, the final two factors merge." *Id*.

IV. A PRELIMINARY INJUNCTION SHOULD BE GRANTED

A. Plaintiffs Are Likely to Succeed on the Merits of Their Claims.

1. It Was Arbitrary and Capricious for Defendants to Rescind the SIJS Deferred Action Policy Automatically Considering SIJS Beneficiaries for Deferred Action. (*First Claim for Relief*).

Agency actions must "be reasonable and reasonably explained." *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). Under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) ("APA"), courts "must … 'hold unlawful and set aside [any] agency action'" if it is "'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.'"[6] *Hadwan v. U.S. Dep't of State*, 139 F.4th 209, 221 (2d Cir. 2025) (quoting 5 U.S.C. § 706(2)(A)). An agency action must be set aside as arbitrary and capricious if the agency fails to "give adequate reasons for its decision[]" or fails to consider all relevant factors and articulate a "rational connection between the facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (cleaned up). Review is generally limited to the agency's stated rationale for its decision and the administrative record before it. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *SEC v. Chenery Corp.*, 332 U.S. 194, 196, 67 S. Ct. 1575, 1577, 91 L. Ed. 1995 (1947) (*Chenery II*).

The rescission of the SIJS Deferred Action Policy was arbitrary and capricious: (a) Defendants have provided no reasoned explanation for their dramatic policy reversal, and the explanations they did provide are vague, conclusory and nonsensical; (b) Defendants have also failed to explain their departure from prior policy and have not engaged at all with the rationale and findings underlying the rescinded SIJS Deferred Action Policy; and (c) Defendants failed to

[6] Final agency action is subject to arbitrary and capricious review even if it was taken through informal processes. *See Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 24 (2020) (considering whether informal rescission of policy was arbitrary and capricious).

consider central and obvious factors relevant to the policy change. Each of these deficiencies in the 2025 Policy Alert provides an independent reason to set aside the Rescission Policy as arbitrary and capricious.

a. Defendants Failed to Adequately Explain the Basis for the Rescission Policy.

Defendants' proffered reasons for the Rescission Policy are incomplete and illogical, leaving SIJS beneficiaries and courts "to guess at the theory underlying the agency's action" and "chisel that which must be precise from what the agency has left vague and indecisive." *Chenery II*, 67 S. Ct. at 1577; *see also Encino Motorcars, LLC*, 579 U.S. at 224 ("It is not the role of the courts to speculate on the reasons that might have supported an agency's decision."). To survive judicial review, "conclusory statements will not do; an 'agency's statement must be one of *reasoning*.'" *New York v. U.S. Dep't of Health & Hum. Servs.*, 414 F. Supp. 3d 475, 556 (S.D.N.Y. 2019) (quoting *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014)). Defendants state only three grounds for the Rescission Policy, each of which is unreasoned, facially inadequate, or illogical.

(1) *Defendants' Assumption that Deferred Action Requires Express Statutory or Regulatory Authorization Is Baseless.*

First, Defendants state that neither SIJS status nor a judicial determination that it is in the best interest of the young person to remain in the United States are "sufficiently compelling reasons" to "provide a deferred action process" because Congress did not "expressly permit deferred action and related employment authorization," and such relief also is not "supported by any existing statute or regulation." 2025 Policy Alert at 1. But Defendants provide no coherent explanation of *why* the lack of express statutory or regulatory authorization for SIJS deferred action is a basis for rescission, and this reasoning makes no sense as a basis for rescission: extending deferred action to SIJS beneficiaries in the absence of express congressional authorization is both

lawful and consistent with a long history of deferred action programs created without promulgating statutes or regulations.

Deferred action is a form of prosecutorial discretion that was "developed without express statutory authorization" and "has been acknowledged by both Congress and the Supreme Court." PRIORITIZING & DEFERRING REMOVAL OF CERTAIN ALIENS UNLAWFULLY PRESENT IN THE UNITED STATES, 38 Op. O.L.C. 39, 55 (Nov. 19, 2014), *available at* https://www.justice.gov/d9/opinions/attachments/2021/03/10/2014-11-19-dapa-daca-wd.pdf; *see generally Regents*, 591 U.S. at 24. DHS and its predecessor agency, the Immigration and Naturalization Service ("INS"), have frequently used policy memoranda to channel this inherent prosecutorial discretion through deferred action programs similar to the 2022 SIJS Deferred Action Policy. After all, DHS is "charged with the administration and enforcement" of immigration laws, 8 U.S.C. § 1103(a)(1), which includes "the latitude that all executive branch agencies enjoy to exercise enforcement discretion—discretion necessitated by the practical fact that '[a]n agency generally cannot act against each technical violation of the statute it is charged with enforcing,'" *Arpaio v. Obama*, 797 F.3d 11, 16 (D.C. Cir. 2015) (quoting *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)). "[D]iscretion exercised by immigration officials" is a "principal feature" of the immigration system, *Arizona v. United States*, 567 U.S. 387, 396 (2012), and "whether to grant relief from deportation [is] among the discretionary decisions the immigration laws assign to the executive," *Arpaio*, 797 F.3d at 16 (citation omitted).

Many deferred action programs have been implemented in the absence of express congressional or regulatory authorization—including in circumstances where previously unforeseen visa or processing backlogs necessitate discretionary relief for vulnerable groups. For example, the Clinton Administration established a program encouraging INS officers to consider

deferred action for those with approved relief under the Violence Against Women Act of 1994 "pending the availability of a visa number." Paul W. Virtue, Acting Exec. Assoc. Comm'nr, INS, Suppl. Guidance on Battered Alien Self-Petitioning Process & Related Issues, at p. 3 (May 6, 1997), *available at* https://asistahelp.org/wp-content/uploads/2018/10/DOJ-Memorandum-Supplemental-Guidance-on-Battered-Alien-Self-Petitioning-Process-and-Realated-Issues.pdf (last visited July 16, 2025).[7] The Bush II Administration provided deferred action for certain applicants for T and U visas (victims of human trafficking and crimes such as domestic violence, respectively), who, due to processing backlogs, were awaiting final adjudication of their visa applications—a program that was only promulgated through notice-and-comment *after* being implemented through a policy memo. *See generally* Stuart Anderson, Exec. Assoc. Comm'ns Off. of Pol'y & Plan., INS, Mem., Deferred Action for Aliens with bona fide Applications for T Nonimmigrant Status (May 8, 2002), *available at* https://niwaplibrary.wcl.american.edu/wp-content/uploads/2015/IMM-Gov-DOJMemoAndersonDeferredAction-05.08.02.pdf (last visited July 16, 2025); William R. Yates, Assoc. Dir. of Operations, USCIS, Mem., Centralization of Interim Relief For U Nonimmigrant Status Applicants, (Oct. 8, 2003), *available at* https://www.uscis.gov/sites/default/files/document/memos/ucntrl100803.pdf (last visited July 16, 2025); *see also* Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for "T" Nonimmigrant Status, 89 Fed. Reg. 34864 (Dec. 16, 2016), *available at* https://www.federalregister.gov/documents/2024/04/30/2024-09022/classification-for-victims-of-severe-forms-of-trafficking-in-persons-eligibility-for-t-nonimmigrant (last visited July 16,

[7] Similar to the SIJS Deferred Action Policy, the Virtue Memo noted that deferred action "will almost always be appropriate" because "it has already been determined that these [petitioners] face extreme hardship if returned to the home country" and because "removal of battered [noncitizens] is not an INS priority." *Id.* at 3.

2025). And the Obama Administration created the Deferred Action for Childhood Arrivals program by policy memorandum. *Regents*, 591 U.S. at 8–9.

Defendants' reliance on the absence of express statutory or regulatory authorization as the basis for rescission is based on a misconception of law and is arbitrary and capricious. *See Massachusetts v. EPA*, 549 U.S. 497, 532, 534 (2007) (holding agency action arbitrary, capricious, and otherwise not in accordance with law because it was based on an incorrect legal conclusion); *SEC v. Chenery Corp.* (*Chenery I*), 318 U.S. 80, 94 (1943) ("[A]n order may not stand if the agency has misconceived the law."). Courts have rejected the argument that the lack of express congressional authorization for a program "means that Congress did not intend to authorize such a program." *Metro. Transp. Auth. v. Duffy*, --- F. Supp. 3d ----, 2025 WL 1513369, at *34 (S.D.N.Y. May 28, 2025).

Defendants' reasoning is further undermined by their own acknowledgement that "Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available." 2025 Policy Alert at 1. That Congress did not foresee the harmful effects of visa backlogs on a vulnerable population that it sought to protect *supports* the use of deferred action to address this unpredicted problem, which is why it was cited as a basis for *creating* the SIJS Deferred Action Policy in the first place. *Id.* at 1. There can be no serious argument that rescission of the SIJS Deferred Action Policy is more consistent with Congress's intent to provide relief to abused, neglected, or abandoned noncitizen youth. This unexplained inconsistency renders the Rescission Policy arbitrary and capricious. *See, e.g.*, *New York v. DHS*, 969 F.3d at 82 (finding policy arbitrary and capricious where, like here, "it is the new Rule, rather than the old Guidance, that strays from congressional intent.").

(2) *Defendants' Reliance on Executive Order 14161 and National Security Interests Is Unexplained and Nonsensical.*

Next, Defendants assert the Policy "adheres to" Exec. Order No. 14161, 90 Fed. Reg. 8451, Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats (Jan. 20, 2025), which directs federal agencies to "vet and screen to the maximum degree possible all [noncitizens] who intend to be admitted, enter, or are already inside the United States." 2025 Policy Alert at 2 n.4. But that Executive Order has no relation to SIJS beneficiaries or the SIJS deferred action process, and Defendants do not explain why automatic case-by-case consideration of SIJS beneficiaries for deferred action "unnecessarily restrict[s]" the agency from vetting SIJS beneficiaries. *Id.*; *Nat. Res. Def. Council v. U.S. Dep't of Energy*, 362 F. Supp. 3d 126, 147 (S.D.N.Y. 2019) (finding policy arbitrary and capricious where defendant's reasoning for policy was "conclusory" and "did not explain why [it] would provide any relief … it simply concluded that they did so.")

Nor could they. The SIJS Deferred Action Policy provided that SIJS beneficiaries would automatically be *considered* for deferred action; it did not automatically *grant* deferred action. As with all deferred action determinations, USCIS was directed to conduct a case-by-case deferred action analysis, considering whether "based on the totality of the evidence," the SIJS beneficiary "warrant[ed] a favorable exercise of discretion." 2022 Policy Alert at 2–3 & n.6. As part of this analysis, the adjudicating officer would update biographic background checks performed as part of the SIJS petition adjudication and could also request that the SIJS beneficiary submit biometrics for a background check or attend an interview. Magliery Decl. Ex. B, USCIS Policy Manual Vol. 6, Part J, ch. 4.G(2) & n.27 (archived Apr. 18, 2025). USCIS also considered "adverse factors weigh[ing] against a favorable exercise of discretion," including a "serious unresolved criminal charge" and whether a SIJS beneficiary "may be subject to an inadmissibility ground under INA

212(a) that cannot be waived." USCIS, Special Immigrant Juv. Pol'y Updates Pre-Submitted & Live Q&A National Engagement.at 6 (Apr. 27, 2022).[8] The SIJS Deferred Action Policy did not "restrict" the government from considering "relevant information within a record." This reasoning is baseless and nonsensical. 2025 Policy Alert at 2 n.4.

(3) *Defendants Fail to Identify Authorities with Which the Rescission Policy Purportedly Aligns.*

Finally, Defendants assert, without explanation, that the Rescission Policy is "necessary to more closely align agency policies and procedures with statutory requirements and authorities." 2025 Policy Alert at 1. This provides no cognizable basis for rescission: without identifying either the authorities Defendants relied upon in making this decision or specifying how the Rescission Policy "more closely aligns" with them, Plaintiffs (and this Court) are left "to guess at a theory underlying the agency's action." *Chenery II*, 67 S. Ct. at 1577; s*ee also L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 618–19 (S.D.N.Y. 2018) (finding policy arbitrary and capricious where defendants failed to provide reasoned analysis in adopting policy). And as explained above, the rescinded SIJS Deferred Action Policy in fact aligns most closely to Congress's intent.

b. Defendants Offer No Reasoned Explanation for Reversing the SIJS Deferred Action Policy, Despite the Reliance Interests at Stake.

The 2025 Policy Alert also fails to offer the reasoned explanation required "in light of the [agency's] change in position and the significant reliance interests involved." *Encino Motorcars*, 579 U.S. at 222.

When an agency reverses its own policy that has "engendered serious reliance interests," the agency must provide a "more detailed justification than what would suffice for a new policy

[8] *Available at* https://www.uscis.gov/sites/default/files/document/outreach-engagements/National_Engagement-Special_Immigrant_Juvenile_Policy_Updates-Q%26A.pdf (last visited July 16, 2025).

based on a blank slate." *Fox*, 556 U.S. at 515; *see Perez,* 575 U.S. at 106 (similar). The agency must "show that there are good reasons for the new policy" and provide "a reasoned explanation … for disregarding acts and circumstances that underlay or were engendered by the prior policy." *Fox*, 556 U.S. at 515–16. The agency must consider and account for factual findings supporting the prior policy and any "serious reliance interests" created by the prior policy. *Id*. "It would be arbitrary and capricious to ignore such matters," *Perez*, 575 U.S. at 106 (cleaned up), and "an unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino Motorcars*, 579 U.S. at 222 (cleaned up).

Here, Defendants (1) have not engaged with the reasoning of the 2022 Policy Alert or explained their decision to disregard the facts and circumstances underlying the prior policy; and (2) have not discussed or even acknowledged the substantial reliance interests that the 2022 Policy Alert created.

(1) *Defendants Fail to Engage with the 2022 Policy Alert or Adequately Explain the Reversal.*

Defendants fail to adequately explain their reasons for abruptly changing course from the SIJS Deferred Action Policy. *See Doe v. Mayorkas*, 585 F. Supp. 3d 49, 62 (D.D.C. 2022) (when agency "abruptly" changes course it must "acknowledge and explain its apparent change in position"); *Mei Fun Wong v. Holder*, 633 F.3d 64, 78 (2d Cir. 2011) (an "unexplained inconsistency can support holding that agency interpretation is arbitrary and capricious") (cleaned up) (citation omitted).

First, the 2025 Policy Alert cites the lack of statute or regulation as a reason for reversing its earlier policy, but it does not address USCIS's own findings that the 2022 SIJS Deferred Action Policy was an "exercise[]" of "[USCIS's] discretion" that did not require notice-and-comment

rulemaking because the policy was "based on [USCIS'] interpretation of the applicable terms in the Code of Federal Regulations and the Immigration and Nationality Act." 2022 Policy Alert at 3. Nor does it address the agency's March 2022 decision to *not* propose codifying regulations providing for grant of deferred action for SIJS beneficiaries precisely *because* "DHS may grant DA to individuals with SIJ classification, as in all DA determinations, through an individualized, case-by-case, discretionary determination based on the totality of the evidence" and could do so "via policy guidance using DHS' inherent authority to exercise DA without rulemaking." Special Immigrant Juv. Pets., 87 Fed. Reg. 13066-01, 2022 WL 671891, at 13095 (Mar. 8, 2022). Failing to even acknowledge this change in position is arbitrary and capricious. *See Nat. Res. Def. Council*, 362 F. Supp. 3d at 144; *Mei Fun Wong*, 633 F.3d at 78.

Second, Defendants do not explain the change in their understanding of congressional intent. Defendants imply that the Rescission Policy furthers congressional intent because Congress did not expressly provide for deferred action for SIJS beneficiaries. 2025 Policy Alert at 1. However, USCIS previously created the 2022 SIJS Deferred Action Policy to ensure SIJS beneficiaries received "the protection that Congress intended to afford SIJs through adjustment of status." 2022 Policy Alert at 1. USCIS also previously found the SIJS Deferred Action Policy "further[ed] congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children." *Id*. Again, this dramatic change in position is not even acknowledged, much less explained. *Doe*, 585 F. Supp. 3d at 62 (unacknowledged and unexplained change in agency position was arbitrary and capricious).

(2) *Defendants Failed to Consider the Serious Reliance Interests.*

The 2025 Policy Alert also completely—and fatally—fails to address the substantial reliance interests the program has engendered over the past three years. In the 2022 Policy Alert, USCIS recognized that "SIJ petitioners have a reliance interest in being provided with employment

authorization consistent with the congressional intent in creating the SIJ program to protect vulnerable children by providing them with a pathway to LPR status, without having to wait years before a visa is available." 2022 Policy Alert at 3. The 2025 Policy Alert did not address the agency's own prior findings and entirely failed to consider these reliance interests, an independent basis to hold the Rescission Policy arbitrary and capricious. *Regents*, 591 U.S. at 30 (failure to consider "legitimate reliance" on deferred action policy rendered rescission of that policy arbitrary and capricious) (cleaned up).

The reliance interests at stake here are significant. Relying on the SIJS Deferred Action Policy, approximately 200,000 SIJS beneficiaries with deferred action have invested in their communities, obtained employment, received drivers' licenses, and planned for their futures in the United States. Castillo-Granados Decl. ¶ 22; Y.A.M. Decl. ¶¶ 11, 18, 20 (works as assistant school bus driver to support her three-year-old son and access health insurance); J.C.B. Decl. ¶ 10 (works at a factory and saving for higher education); B.R.C. Decl. ¶¶ 9, 18 (pays for community college program to be a medical lab technician with wages from job). SIJS beneficiaries, with and without deferred action, have relied on the ability to await visa availability without fear of deportation or labor exploitation and have structured their lives "against this background understanding." *Cf. Encino Motorcars*, 579 U.S. at 222; J.G.V. Decl. ¶¶ 22–23 (planned to obtain job to support continued education); A.C.R. Decl. ¶¶ 20–22 (same); E.A.R. Decl. ¶¶ 17–18 (planned to work to live independently); Y.A.M. Decl. ¶¶ 11, 18, 20 (works to support her son and plans to continue education); J.C.B. Decl. ¶¶ 10–12 (plans to continue education and continue to work to live independently); B.C.R. Decl. ¶¶ 9, 18 (works to pay for school and rent); L.M.R. Decl. ¶ 23 (planned to work to pay for school, live independently, and access health insurance); S.M.M. ¶ 16 (planned to work to pay for higher education); Castillo-Granados Decl. ¶ 26 (youth counting on

renewal of employment authorization); Wong Decl. ¶¶ 11–18 (reliance on deferred action and employment authorization for educational and career advancement); Asher Decl. ¶ 14 (reliance on work authorization to avoid homelessness); Minoff Decl. ¶¶ 8–9 (achieving financial stability); Mandelbaum Decl. ¶ 25 (pursuing higher education and careers); Feldman Decl. ¶ 20 (scholarships tied to work authorization); Wilkes Decl. ¶ 10 (opening bank accounts).

The failure to consider these reliance interests renders the Rescission Policy arbitrary and capricious. *See, e.g.*, *Widakuswara v. Lake*, 773 F. Supp. 3d 46, 55 (S.D.N.Y. 2025) (finding likelihood of success on the merits of arbitrary and capricious APA claim where defendants "failed to indicate that they ever considered any of the reliance interests of the soon-to-be terminated employees, the defunded program recipients, or the 425 million listeners to [Voice of America] and other [impacted radio programs]"); *Duffy*, 2025 WL 1513369, at *40 (same where defendants failed "to assess [plaintiffs'] reliance interests, determine whether they were significant, and weigh them against competing policy concerns").

c. Defendants Failed to Consider All Factors Relevant to Rescission and Articulate a Rational Connection Between the Facts Found and Choices Made.

To withstand arbitrary-and-capricious review, an agency must "consider[] all relevant issues and factors," *Long Island Head Start Child Dev. Servs. v. N.L.R.B.*, 460 F.3d 254, 258 (2d Cir. 2006), and demonstrate "a rational connection between the facts found and the choice made," *Encino Motorcars*, 579 U.S. at 221 (cleaned up). Here, Defendants failed to consider two essential factors: the impact of terminating the Deferred Action Policy on SIJS beneficiaries, and reasonable alternatives to the Rescission Policy.

First, the 2025 Policy Alert entirely failed to consider either the benefits conferred by the rescinded SIJS Deferred Action Policy or the impact of its termination. The SIJS Deferred Action Policy allowed approximately 200,000 young people to live in the United States without fear of

deportation and with the ability to lawfully work while waiting to adjust to LPR status. Castillo-Granados Decl. ¶¶ 18, 26. Nowhere in the 2025 Policy Alert do Defendants acknowledge or consider the benefits conferred by the SIJS Deferred Action Policy or the impact of the rescission on SIJS beneficiaries with and without deferred action. Nor do they consider the harms caused by the growing visa backlog on SIJS beneficiaries without deferred action who live without the protection from deportation or ability to legally work, or the importance of employment authorization, which aids in protecting SIJS beneficiaries from labor exploitation. The failure to consider "the costs as well as the benefits" of the Rescission Policy renders it arbitrary and capricious. *See State Farm*, 463 U.S. at 54.

Second, Defendants also failed to consider any alternatives to terminating the SIJS Deferred Action Policy. For example, Defendants assert that rescission is necessary to avoid "unnecessarily restrict[ing]" the agency from vetting SIJS beneficiaries, but do not consider implementing supplemental vetting or screening procedures to the case-by-case review undertaken as part of the rescinded SIJS Deferred Action Policy. 2025 Policy Alert at 2 n.4. This failure is another independent reason why the Rescission Policy is arbitrary and capricious. *See State Farm*, 463 U.S. at 46–51 (finding policy arbitrary and capricious where agency failed to consider alternative method to achieving its objective); *see also Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 80 (2d Cir. 2006) ("[T]he agency must consider reasonably obvious alternatives and, if it rejects those alternatives, it must give reasons or the rejection, sufficient to allow for meaningful judicial review") (cleaned up).

2. Defendants' Categorical Exclusion of SIJS Beneficiaries from Deferred Action Consideration Is Arbitrary and Capricious and Did Not Comply with the APA's Notice-and-Comment Requirements. (*First and Fourth Claim for Relief*).

Even if there were some reasoned basis for rescinding the prior policy of *automatically* considering all SIJS beneficiaries for deferred action (and there is not), the 2025 Policy Alert goes much further in also providing that "USCIS will no longer conduct deferred action determinations for [noncitizens] with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa is not immediately available." 2025 Policy Alert at 2. Due to the complete absence of explanation, the meaning of this provision of the Rescission Policy is unclear: either **(1)** it categorically bars USCIS from considering individual applications for deferred action based on SIJS beneficiary status, or **(2)** it categorically excludes SIJS beneficiaries from being considered for deferred action *on any basis*. Neither of these policy changes would be lawful, and either would—with no explanation whatsoever—effect a shockingly broad and irrational shift in settled agency policy and practice. As a result, this change also required notice-and-comment rulemaking, which Defendants did not undertake.

a. Categorical Exclusion of SIJS Beneficiaries from Deferred Action Is Arbitrary and Capricious.

As to the **first** possible interpretation, categorically depriving SIJS beneficiaries of the ability to individually apply for deferred action based on their SIJS would be a radical departure from past policy and is entirely unexplained. After all, USCIS can grant deferred action in individual cases on an ad hoc basis, often for humanitarian purposes, even if certain categories of noncitizens are not *automatically* considered for it. *See* Sam Bernsen, Gen. Couns., INS, Mem., Legal Opn. Regarding Serv. Exercise of Prosecutorial Discretion (July 15, 1976).[9] The 2025 Policy

[9] *Available at* https://www.ice.gov/doclib/foia/prosecutorial-discretion/service-exercise-pd.pdf (last visited July 16, 2025).

Alert does not provide any reason that SIJS beneficiaries should be excluded from such individualized, non-automatic consideration for deferred action. And it is hard to conceive of one: as explained in the 2022 Policy Alert, SIJS beneficiaries, by virtue of the same factors that made them eligible for SIJS in the first place, are often "unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility Congress established." 2022 Policy Alert at 2–3. The 2025 Policy Alert also departs from these prior agency findings without acknowledgment or explanation, another reason this policy change is arbitrary and capricious. *Doe*, 585 F. Supp. 3d at 62 (agency must acknowledge and explain "abrupt[]" changes in course); *Fox,* 556 U.S. at 515.

The **second** interpretation is even more egregious, though most consistent with the text of the 2025 Policy Alert. As written, the alert would entirely exclude SIJS beneficiaries from consideration for deferred action—even on bases unrelated to SIJS, like a serious medical condition. That outcome would be nonsensical: there is no reason why the *award* of SIJS would have the negative effect of excluding SIJS beneficiaries from such individualized relief, while individuals who are denied SIJS would be able to individually apply for deferred action. Not only is this outcome totally unexplained by Defendants, it would be "so irrational as to constitute the decision arbitrary and capricious." *Dunlop v. Bachowski*, 421 U.S. 560, 572–73 (1975), *overruled on other grounds by Loc. No. 82, Furniture & Piano Moving, Furniture Store Drivers, Helpers, Warehousemen & Packers v. Crowley*, 467 U.S. 526 (1984).

b. Categorical Exclusion of SIJS Beneficiaries from Deferred Action Is a Legislative Rule Requiring Notice-and-Comment Rulemaking.

The categorical exclusion of SIJS beneficiaries from deferred action also must be vacated because it is a legislative rule that was required to pass through notice-and-comment rulemaking. APA § 553 requires federal agencies to publish notices of proposed rulemaking in the Federal Register and allow "interested persons an opportunity to participate in the rule making through

submission of written data, views, or arguments[.]" 5 U.S.C. § 553(b)–(c). The APA's notice-and-comment requirement applies to legislative rules, which establish binding legal norms that affect "individual rights and obligations." *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). Under any plausible interpretation, this policy is a legislative rule narrowly cabining agency discretion, thereby requiring notice-and-comment rulemaking.

Legislative rules "create rights, impose obligations, or effect a change in existing law pursuant to authority delegated by Congress." *Hemp Indus. Ass'n v. Drug Enf't Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003). A rule is legislative if it "narrowly limits administrative discretion" or establishes a "binding norm" that "so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion." *Colwell v. Dep't of Health & Hum. Servs.*, 558 F.3d 1112, 1124 (9th Cir. 2009) (cleaned up). In determining whether a new policy directive amounts to a legislative or interpretive rule, the "critical factor … is the extent to which the challenged [directive] leaves the agency, or its implementing official, free to exercise discretion to follow, or not to follow, the [announced] policy in an individual case." *Id.* at 1124 (cleaned up). Courts look to the nature of the impact of the agency action to evaluate whether a rule is legislative or interpretive. *Make the Rd. New York v. Pompeo*, 475 F. Supp. 3d 232, 264–65 (S.D.N.Y. 2020).

There can be no reasonable dispute that the rule announced in the 2025 Policy Alert strictly cabins the agency's discretion. In announcing, without qualification, that "USCIS will no longer conduct deferred action determinations"[10] for SIJS beneficiaries awaiting visa priority dates, the Rescission Policy either (1) prohibits the consideration of individual applications for deferred action on the basis of SIJS status or (2) bars an entire class of applicants (SIJS beneficiaries) from

[10] 2025 Policy Alert at 2.

deferred action eligibility on *any basis*. *See Colwell*, 558 F.3d at 1124 (narrow limits on agency discretion constitute legislative rules); *Cmty. Nutrition Inst. v. Young*, 818 F.2d 943, 948 (D.C. Cir. 1987) ("[C]abining of an agency's prosecutorial discretion can in fact rise to the level of a substantive, legislative rule.").

Similarly, both interpretations would "substantively change[] the framework associated with [deferred action] determinations" and "embod[y] a conscious change in policy" from which "legal consequences flow." *Pompeo*, 475 F. Supp. 3d at 256–57 (cleaned up). As opposed to simply rescinding the *automatic* consideration of SIJS beneficiaries for deferred action, this policy would categorically exclude them from even applying based on SIJS (or at all)—a significant change to the background presumption that deferred action is an act of individualized prosecutorial discretion. As such, the new policy announced in the 2025 Policy Alert does not merely interpret existing law but constitutes a legislative rule subject to Section 553 notice-and-comment procedures and must therefore be set aside. 5 U.S.C. § 553; *Chrysler Corp. v. Brown*, 441 U.S. 281, 313–16 (1979) (holding that when an agency had promulgated a rule without notice-and-comment rulemaking, the court would decline to afford it any "force and effect of law").

3. The Policy Blocking Deferred Action Beneficiaries from Their EAD Entitlement Is Arbitrary, Capricious, Contrary to Law, and Did Not Comply with the APA's Notice-and-Comment Requirements. (*Second and Fifth Claims for Relief*).

The 2025 Policy Alert also directs USCIS to stop accepting new Applications for Employment Authorization (Form I-765) from SIJS beneficiaries with deferred action (the "EAD Rescission Policy"). 2025 Policy Alert at 2. This is directly contrary to 8 C.F.R. § 274a.12(c)(14), which provides that "a[] [noncitizen] who has been granted deferred action" may "apply for work authorization" upon a showing of "economic necessity." *See also Regents*, 591 U.S. at 10. As a

result, this policy change was not only arbitrary, capricious, and contrary to law, but also unlawfully amends a codified regulation without notice-and-comment rulemaking.

"The [APA] requires federal courts to set aside federal agency action that is 'not in accordance with law[.]'" *F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (quoting 5 U.S.C. § 706(2)(A)). An agency action is contrary to law where it "contravene[s] the plain text of [the agency's] own regulations." *Hisp. Affs. Project v. Acosta*, 901 F.3d 378, 387 (D.C. Cir. 2018). Nothing in § 274a.12(c)(14)—which applies to all beneficiaries of deferred action except for DACA recipients, who are entitled to apply for employment authorization under separate authority—contemplates the exclusion of specific categories of deferred action beneficiaries from employment authorization. This EAD Rescission Policy is therefore directly in conflict with existing agency regulations and must be set aside. *See, e.g.*, *Acosta*, 901 F.3d at 386 (finding plaintiffs plausibly showed the agency's de facto policy was contrary to law where it contradicted regulations).

Separately, the EAD Rescission Policy is arbitrary and capricious for the same reasons as the Rescission Policy generally: Defendants provide no reasoned explanation whatsoever for the new policy or for reversing prior guidance; they fail to consider the serious reliance interests at stake; and they fail to consider all relevant factors in rescinding the prior guidance.

The EAD Rescission Policy also must be vacated because it purports to amend a codified regulation without notice-and-comment rulemaking. Agencies must "use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance." *Perez*, 575 U.S. at 101; *see also Fox*, 556 U.S. at 515 (the APA "makes no distinction ... between initial agency action and subsequent agency action undoing or revising that action"). Thus, an agency may not amend a regulation passed through notice-and-comment without that amendment itself passing

through notice-and-comment. *Env't Integrity Project v. E.P.A.*, 425 F.3d 992, 997 (D.C. Cir. 2005).

The EAD Rescission policy modifies 8 C.F.R. § 274a.12(c)(14) by specifically barring SIJS deferred action beneficiaries from applying for employment authorization documents, even though § 274a.12(c)(14) provides that any deferred action recipient[11] may apply for and receive employment authorization upon a showing of economic necessity. But § 274a.12(c)(14) was promulgated through notice-and-comment rulemaking, Control of Employment of Aliens, 52 Fed. Reg. 16216-01, 1987 WL 142272 (May 1, 1987), and may only be amended through subsequent notice-and-comment rulemaking. *See Perez*, 575 U.S. at 101; *Env't Integrity Project*, 425 F.3d at 997.

Because the Alert improperly attempts to modify a regulation promulgated through notice-and-comment rulemaking merely by the issuance of a policy memo, it must be vacated.

4. Between April 7 and June 6, 2025, Defendants Arbitrarily and Capriciously Departed from the SIJS Deferred Action Policy, in Violation of the *Accardi* Doctrine. (*Third Claim for Relief*).

Beginning on April 7, 2025, Defendants unlawfully and without explanation failed to follow the SIJS Deferred Action Policy by refusing to automatically adjudicate the deferred applications of SIJS beneficiaries. Castillo-Granados Decl. ¶ 21; Jordan Decl. ¶ 15; Asher Decl. ¶¶ 8, 10; Wilkes Decl. ¶¶ 6–7; McGrorty Decl. ¶ 8; Feldman Decl. ¶ 11. This unexplained departure was arbitrary and capricious.

"Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Morton*, 415 U.S. at 235. This principle is known as the *Accardi* doctrine. *See*

[11] With the sole exception of DACA recipients, who are separately authorized to apply for employment authorization. 8 C.F.R. § 274a.12(c)(33).

United States Ex Rel. Accardi v. Shaughnessy, 347 U.S. 260 (1954); *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004). The "procedures" that agencies are required to follow include both formal agency regulations and informal operating procedures and guidance. *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1487 (9th Cir. 1990). The *Accardi* doctrine applies "'even where the internal procedures are possibly more rigorous than otherwise would be required.'" *Alcaraz*, 384 F.3d at 1162 (quoting *Morton*, 415 U.S. at 235).

The SIJS Deferred Action Policy announced in 2022 constituted USCIS's binding internal guidance governing the consideration and processing of deferred action for individuals approved for SIJS. *See Zhang v. Slattery*, 840 F. Supp. 292, 296 (S.D.N.Y. 1994) (requiring that INS adhere to internal procedures in parole memorandum); *Steenholdt v. FAA*, 314 F.3d 633, 639 (D.C. Cir. 2003) ("The *Accardi* doctrine requires federal agencies to follow their own rules, even gratuitous procedural rules that limit otherwise discretionary actions."); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 340 (D.D.C. 2018) (DHS's failure to comply with "Parole Directive" policy was arbitrary and capricious under *Accardi* doctrine). Defendants failed to comply with the SIJS Deferred Action Policy beginning on approximately April 7, 2025, when they ceased automatically considering SIJS beneficiaries for deferred action, without first lawfully rescinding the SIJS Deferred Action Policy. Castillo-Granados Decl. ¶ 21; Jordan Decl. ¶ 15; Asher Decl. ¶¶ 8, 10; *see* Wilkes Decl. ¶¶ 6–7; McGrorty Decl. ¶ 8; Feldman Decl. ¶ 11. Defendants' failure to comply with the SIJS Deferred Action Policy from April 7, 2025, through at least June 6, 2025, represents a sudden and unexplained departure from the agency's own binding internal guidance. The failure to follow their own policy was arbitrary and capricious, evidencing that a de facto alternative policy usurped the official policy in violation of the *Accardi* doctrine. *Emami v. Nielsen*, 365 F. Supp. 3d 1009, 1021 (N.D. Cal. 2019) (State Department's implementation of de facto policy of

"blanket denials" of visa waivers usurped agency policy of making individualized waiver determinations, in violation of *Accardi* doctrine).

Nor was the Agency authorized to enact sub silentio policy or engage in the practice of declining to automatically consider SIJS beneficiaries for deferred action. "An agency may not ... depart from a prior policy sub silentio or simply disregard rules that are still on the books." *Fox*, 556 U.S. at 515; *Velesaca v. Decker*, 458 F. Supp. 3d 224, 229 (S.D.N.Y. 2020) (ICE's sub silentio adoption of blanket "No Release Policy" was contrary to agency policy of individualized custody determinations, in violation of *Accardi* doctrine). Despite the sudden change in policy and practice, Defendants did not attempt to rescind or otherwise change the SIJS Deferred Action Policy until the inadequate and legally ineffective June 6th rescission set forth in the 2025 Policy Alert. An agency may not depart from past practice "without [past] acknowledgement and without explaining its rationale," such unannounced changes are arbitrary and capricious. *Saget v. Trump*, 375 F. Supp. 3d 280, 359 (E.D.N.Y. 2019).

B. Plaintiffs and the Proposed Classes Will Suffer Irreparable Harm If Denied a Preliminary Injunction.

"To satisfy the irreparable harm requirement, Plaintiffs must demonstrate that absent a preliminary injunction they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm." *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007) (cleaned up). The Rescission Policy is already inflicting severe harm on Plaintiffs and members of the putative plaintiff classes. SIJS beneficiaries whose petitions are adjudicated after April 7, 2025, will not be considered for deferred action or employment authorization and so are currently at risk of deportation and unable to legally work. J.G.V. Decl. ¶¶ 18–20; A.C.R. Decl. ¶¶ 16–18; E.A.R. Decl. ¶ 13; C.V.R. Decl. ¶¶ 16–17; CARECEN-NY Decl. ¶¶ 27, 29–30, 32–33; Centro Legal Decl.

¶¶ 20–23. Furthermore, as many as 150,000 SIJS beneficiaries of deferred action under the SIJS Deferred Action Policy will lose protection from deportation and the right to legally work when their current deferred action period expires. Castillo-Granados Decl. ¶ 22; Prandini Decl. ¶ 26; Y.A.M. Decl. ¶¶ 16–17, 19; J.C.B. Decl. ¶¶ 17–18, 21; B.R.C. Decl. ¶¶ 14–15, 17.

Exposure to imminent immigration enforcement, including arrest, detention, and deportation, entails significant harm. *See Ramirez v. U.S. Immigr. & Customs Enf't*, 310 F. Supp. 3d 7, 31 (D.D.C. 2018) (deprivation of liberty constitutes irreparable harm) (collecting cases). Even without deportation, SIJS beneficiaries without deferred action or with expiring deferred action experience anxiety, depression, and insomnia due to fear of deportation and the inability to lawfully work. Declaration of Dr. Dylan Gee ("Gee Decl.") ¶¶ 7, 12, 14; Bishop Decl. ¶¶ 9, 16, 23–24; Minoff Decl. ¶ 8; *cf. J.S.R. by & through J.S.G. v. Sessions*, 330 F. Supp. 3d 731, 742 (D. Conn. 2018) (psychological harm to children constitutes irreparable harm); *Paulsen ex rel. N.L.R.B. v. All Am. Sch. Bus Corp.*, 967 F. Supp. 2d 630, 644 (E.D.N.Y. 2013) (anxiety and emotional hardship due to inability to support family constituted irreparable harm).

The Rescission Policy has and will continue to cause economic harm to SIJS beneficiaries, as well as their families, employers, and communities. *See* Minoff Decl. ¶¶ 6–12 (benefits of deferred action and work authorization for SIJS beneficiaries and families), 15–17 (benefits to community and society); *see Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (irreparable harm factors include "potential economic hardship"); *J.S.R.*, 330 F. Supp. 3d at 742. Without related employment authorization, SIJS beneficiaries are unable to legally work in the United States as they wait for years for a visa to become available. CARECEN-NY Decl. ¶¶ 11–12; Centro Legal Decl. ¶¶ 5–6. This prevents SIJS beneficiaries from finding long-term employment at a decent wage; exposes them to labor abuses and exploitation, including human trafficking;

jeopardizes their ability to financially support themselves; prevents them from obtaining certain government-authorized identification documents; and limits their access to employer-based healthcare, often making medical services prohibitively expensive. *See* Minoff Decl. ¶¶ 7–14; Wong Decl. ¶¶ 8, 11–15; Gee Decl. ¶ 13; Mandelbaum Decl. ¶¶ 11, 20, 24, 28; Bishop Decl. ¶¶ 16, 18–20; Asher Decl. ¶ 14; Jordan Decl. ¶¶ 24–26; Feldman Decl. ¶ 20; *see Saget*, 375 F. Supp. 3d at 375 (finding irreparable harm where "TPS holders will lose their work authorization and will no longer be legally employable in the United States, causing financial distress.").

In addition, the lack of employment authorization stymies SIJS beneficiaries' access to higher education, as SIJS beneficiaries are not eligible for federal tuition assistance until they can adjust their status. Wong Decl. ¶ 8; Feldman Decl. ¶ 20. Without the ability to legally work to pay for their continuing education, SIJS beneficiaries are left without access to educational opportunities. Wong Decl. ¶¶ 8, 13; Mandelbaum Decl. ¶¶ 20, 27; Feldman Decl. ¶ 20; J.G.V. Decl. ¶ 22; A.C.R. Decl. ¶¶ 20–21; S.M.M. Decl. ¶ 16; *see Jones v. Nat'l Conf. of Bar Exam'rs*, 801 F. Supp. 2d 270, 286–87 ("loss of the chance to engage in normal life activity," such as by pursuing educational opportunities or a "chosen profession," constitutes irreparable harm). These young people are at pivotal times in their lives, and the Rescission Policy has taken away their ability to plan for their futures. Wong Decl. ¶¶ 16–18. The "loss of opportunity to pursue one's chosen profession constitutes irreparable harm." *Ariz. Dream Act Coalition v. Brewer*, 855 F.3d 957, 978 (9th Cir. 2017) (cleaned up). This irreparable injury is further "exacerbated by Plaintiffs' young age and fragile economic status." *Id*.

The Rescission Policy will also irreparably harm the Organizational Plaintiffs by hampering their missions and forcing them to divert substantial resources away from their core programs. CARECEN-NY Decl. ¶¶ 33–38; Centro Legal Decl. ¶¶ 19–26; *Make the Rd. New York*

v. Cuccinelli, 419 F. Supp. 3d 647, 665 (S.D.N.Y. 2019) (organizations suffered irreparable harm where they were "forc[ed]" to "divert resources and by shifting the burden of providing service"), *aff'd as modified*, 969 F.3d 42 (2d Cir. 2020); *League of Women Voters of United States v. Newby*, 838 F.3d 1, 8 (D.C. Cir. 2016) (organizational plaintiffs establish irreparable harm where defendants' actions "perceptibly impair[] the organization's programs" and "directly conflict with the organization's mission") (cleaned up). For example, the Rescission Policy will require Centro Legal and CARECEN-NY to expended significant additional time and resources representing SIJS beneficiaries in removal proceedings, forcing them to divert resources from other cases and limit the number of individuals they can represent. CARECEN-NY Decl. ¶¶ 34–38; Centro Legal Decl. ¶¶ 23–26.

C. The Balance of Equities and the Public Interest Favor Issuance of a Preliminary Injunction.

The final requirements for preliminary relief are that "the balance of equities tips in [the moving party's] favor, and that an injunction is in the public interest." *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (cleaned up). These final two factors merge when the government is a party. *See New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d at 86 (considering final two factors together because government is a party).

The balance of equities and the public interest weigh overwhelmingly in favor of preliminary relief. "[T]here is a substantial public interest in 'having governmental agencies abide by the federal laws that govern their existence and operations.'" *Planned Parenthood of New York City, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 337 F. Supp. 3d 308, 343 (S.D.N.Y. 2018) (quoting *Newby*, 838 F.3d at 12). Further, cessation of deferred action for SIJS beneficiaries will have devastating familial, health, and economic impacts not just on the hundreds of thousands of individuals who rely on the program for protection from deportation and work authorization, but

also on their families, employers, communities, and the U.S. economy. *See Pompeo*, 475 F. Supp. 3d at 269 (final two factors satisfied where plaintiffs provided reports of the adverse consequences of the policies on plaintiffs, their families and communities, and the general public including "family destabilization, shortages in the labor market, increased medical costs, uncompensated medical care, and other economic and public health harms."); Bishop Decl. ¶¶ 9, 16, 19–20, 23–24 (mental and physical health impacts); Minoff Decl. ¶¶ 6–14 (economic impacts); Gee Decl. ¶¶ 7, 12, 14 (psychological impacts). And without work authorization, SIJS deferred action beneficiaries may be required to turn to the unregulated labor economy in order to survive; may suffer labor exploitation and abuse; and will not be able to continue filling crucial positions providing public services. Minoff Decl. ¶¶ 12–14. The Rescission Policy also will likely lead youth to remain dependent on the child welfare agency for longer, as child welfare agencies are stymied in their efforts to transition children out of care into independence. Mendez Decl. ¶ 20; *see* Mandelbaum Decl. ¶¶ 26, 28.

In sharp contrast, the government will not face any harm if a preliminary injunction is granted. There is "generally no public interest in the perpetuation of unlawful agency action." *Pompeo*, 475 F. Supp. 3d at 269 (internal quotation marks and citation omitted). To the contrary, as USCIS has found, "[e]xercising our discretion to grant deferred action and possibly authorizing employment provides significant benefits to the U.S. labor pool and the economy in general compared to delaying such status." Deferred Action Policy at 3. Furthermore, the government has no interest in enforcing unlawful rules. *Planned Parenthood*, 337 F. Supp. 3d at 343. Accordingly, both the balance of equities and the public interest favor preliminary relief.

Plaintiffs have demonstrated a strong prospect of success on the merits and have established irreparable harm if the Rescission Policy is permitted to proceed. The balance of

equities and the public interest likewise point to a single conclusion: the Court should award preliminary relief by issuing a preliminary injunction.

V. CONCLUSION

Plaintiffs have demonstrated they are likely to succeed on the merits of each of their claims, and have established they will suffer irreparable harm. For the reasons set forth above, this Court should set aside and enjoin the Rescission Policy and corresponding changes to USCIS's Policy Manual Update, and enjoin Defendants to reinstate and give effect to the SIJS Deferred Action Policy issued March 6, 2022.

Dated: July 17, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMITATIONS

I hereby certify that this Memorandum of Law contains 13,507 words, according to the word-processing system used to prepare this Memorandum of Law. Recognizing that this exceeds the word limit set forth in Local Rule 7.1, I further certify that pursuant to Local Rule 7.1(c), I have submitted a letter motion requesting the Court's leave to file an overlength brief.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: July 17, 2025

New York, New York

/s/ John Magliery
John Magliery