EXHIBIT E

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

June 6, 2025

Memorandum

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SUBJECT: Rescission of Special Immigrant Juvenile (SIJ) Deferred Action Policy

Purpose: Aliens filing a Special Immigrant Juvenile (SIJ) Form I-360 *Petition for Amerasian, Widow(er), or Special Immigrant*, are not currently subject to a routine biometric collection. When United States Citizenship and Immigration Services (USCIS) announced the categorical grant of deferred action (DA) for SIJs, it was a deviation from past agency practice regarding DA requests, which historically required biometrics in order to verify identity and identify security and public safety threats. At this time, USCIS is unable to reliably verify identity and accurately determine whether an alien is a national security or public safety threat prior to granting DA. The SIJ program was previously exploited by dangerous criminal aliens, but now has increased national security concerns since recent Executive Orders (EOs) designated certain gangs and cartels as Foreign Terrorist Organizations (FTOs), including Tren de Aragua (TdA) and La Mara Salvatrucha (MS-13). USCIS notes SIJ DA policy was a significant pull factor and contributed to an extraordinary increase in SIJ I-360 filings.

Effective immediately, this memorandum rescinds USCIS' 2022 DA policy for SIJs with an approved Form I-360, where an immigrant visa number is not immediately available.[1] SIJ classification alone does not render an alien lawfully present, does not confer lawful status, and does not result in eligibility to apply for employment authorization.[2] Aliens with an approved SIJ petition remain subject to removal for lack of lawful status and do not have the ability to obtain employment authorization until they can apply to adjust status.

Background: The SIJ classification was intended to protect alien children present in the United States who have undergone certain state juvenile court proceedings and cannot be reunified with their parents due to maltreatment. Approved SIJ petitioners may adjust their status to lawful permanent resident, even if they entered the United States without inspection. An alien granted SIJ classification may apply for adjustment of status to that of an LPR only if an immigrant visa number is immediately available in the EB-4 category,[3] and he or she may adjust status if otherwise eligible.[4] However, there is an annual limit on the total number of visas available in the EB-4 category,[5] and these visas are shared between SIJs and other categories of special immigrants.[6] Visas for special immigrants may not exceed 7.1 percent of the annual worldwide employment-based immigration limit and no more than 7 percent of visas can be issued to aliens from a particular country.[7] While the 7 percent per-country limit generally does not affect the EB-4 category as that limit applies to total family-sponsored and employment-based use, demand from the Northern Triangle countries (El Salvador, Guatemala, and Honduras) and Mexico is so high that visas cannot be made available for all SIJs or visa use would exceed the overall annual limit for the category.[8]

Authority: Executive Order (EO) 14159, *Protecting the American People Against Invasion*, 90 FR 8443 (Jan. 20, 2025), at Section 2 states "It is the policy of the United States to faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people." Section 3 continues by directing DHS to "employ all lawful means to ensure the faithful execution of the immigration

[1] *See* https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles.
[2] The approval of a visa petition, including SIJ Form I-360, vests no rights in the beneficiary of the petition but is only a preliminary step in the visa or adjustment of status application process. *See generally*, Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988) (the approval of a visa petition vests no rights in the beneficiary of the petition; it is just the first step required in obtaining status/immigration benefits).
[3] *See* INA § 245(a), (h); 8 CFR § 245.2(a)(2)(i)(A).
[4] *See* INA § 245(a), (h); 8 CFR § 245.2(a)(2)(i)(A).
[5] *See* INA § 203(b)(4).
[6] Some special immigrants no longer or rarely file for adjustment (for example, Amerasians, Panama Canal Zone Employees, Certain Armed Forces Members) and other special immigrants use very few EB-4 visa numbers (for example, Certain Broadcasters and Retired Employees of International Organizations). Other than SIJs, Ministers of Religion, Certain Employees or Former Employees of the U.S. Government Abroad, and Religious Workers are the other categories of special immigrants that use a significant number of EB-4 visas.
[7] *See* INA 203(b)(4). This means that there were approximately 19,951 visas available for all EB-4 immigrants in FY22. During a typical fiscal year, only 9,940 visas are available for all EB-4 immigrants.
[8] *See* INA § 202(a)(2).

laws of the United States against all inadmissible and removable aliens." Additionally, Section 12, expressly directs DHS to:

> …adopt policies and procedures to encourage aliens unlawfully in the United States to voluntarily depart as soon as possible, including through enhanced usage of the provisions of section 240B of the INA (8 U.S.C. 1229c), international agreements or assistance, or any other measures that encourage aliens unlawfully in the United States to depart as promptly as possible,"

Section 16, requires DHS to:

> …promptly take all appropriate action, consistent with law, to rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States, and align any and all departmental activities with the policies set out by this order and the immigration laws. Such action should include, but is not limited to:
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> (c) ensuring that employment authorization is provided in a manner consistent with section 274A of the INA (8 U.S.C. 1324a), and that employment authorization is not provided to any unauthorized alien in the United States."

Similarly, EO 14161, *Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, 90 FR 8451 (Jan. 20, 2025), at Section 2(a), requires that DHS, among other things:

> (ii) determine the information needed from any country to adjudicate any visa, admission, or other benefit under the INA for one of its nationals, and to ascertain whether the individual seeking the benefit is who the individual claims to be and that the individual is not a security or public-safety threat;
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> (iii) re-establish a uniform baseline for screening and vetting standards and procedures, consistent with the uniform baseline that existed on January 19, 2021, that will be used for any alien seeking a visa or immigration benefit of any kind; and
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> (iv) vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States, particularly those aliens coming from regions or nations with identified security risks.

EO 14165, *Securing our Borders*, 90 FR 8467 (Jan. 20, 2025), at Section 2 expressly states it is DHS policy to secure the borders of the United States through the following means:

> (b) Deterring and preventing the entry of illegal aliens into the United States;
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> * * *
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> (d) Removing promptly all aliens who enter or remain in violation of Federal law; and

> (e) Pursuing criminal charges against illegal aliens who violate the immigration laws, and against those who facilitate their unlawful presence in the United States…"

Finally, EO 14157, *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists*, 90 FR 8439 (Jan. 20, 2025) authorized the Secretary of Homeland Security and the Director of National Intelligence, to designate "certain international cartels and other organizations" as FTOs, including but not limited to transnational organizations such as TdA and MS-13.[9]

On April 4, 2025, the DHS Secretary issued the memorandum "Guidance on Deferred Action." The guidance clarified that "deferred action is ultimately vested in me as the Secretary" and concluded further guidance is needed because "In the past, DHS has made deferred action available to large populations of aliens, without detailed case-by-case scrutiny." The memorandum went on to identify numerous key principles in any deferred action decision, including "DHS should be very cautious before using prosecutorial discretion to circumvent the express will of Congress." The memorandum expressly directed "Deferred action should be exercised judiciously and only in compelling cases."

Discussion: There is no express statutory basis for DA; however, this form of relief is referenced in INA 204(a)(1)(D)(i)(II) and INA 204(a)(1)(D)(i)(IV). Rather DA is a longstanding practice by which DHS and the former Immigration and Naturalization Service (INS) have exercised their discretion to forbear or assign lower priority to removal action in certain cases for humanitarian reasons, administrative convenience, or other reasonable prosecutorial discretion considerations. Aliens granted DA do not accrue "unlawful presence" for purposes of INA § 212(a)(9), and they are eligible for employment authorization if they establish an economic necessity. However, DA does not provide lawful immigration status, cure prior periods of unlawful presence, or confer any right or entitlement to remain in the United States. DA was not intended to circumvent the lawful immigration process, but rather to serve as an administrative remedy of last resort to aliens currently in the United States. Further, DA is revocable, and DHS may initiate criminal or other enforcement action against an alien granted DA at any time.

The policy of categorically granting DA approved SIJ Form I-360 petitioners has existed since March 7, 2022 and was memorialized only by a website announcement; no regulation, Federal Register Notice, or other rulemaking was published.

[9] Pursuant to that EO, on February 20, 2025, the Secretary of State designated the following Transnational Criminal Organizations ("TCOs") as FTOs (or "Tier I"): Tren de Aragua (TdA; Aragua Train); La Mara Salvatrucha (MS-13); Cartel de Sinaloa (Sinaloa Cartel, Mexican Federation, Guadalajara Cartel); Cartel de Jalisco Nueva Generacion (New Generation Cartel of Jalisco, CJNG, Jalisco New Generation Cartel); Carteles Unidos (United Cartels, Tepalcatepec Cartel, Cartel de Tepalcatepec, The Grandfather Cartel, Cartel del Abuelo, Cartel de Los Reyes); Cartel del Noreste (CDN, Northeast Cartel, Los Zetas); Cartel del Golfo (CDG, Gulf Cartel, Osiel Cardenas-Guillen Organization); and La Nueva Familia Michoacana (LNFM, The New Family). See 90 FR 10030.

Historically, USCIS has required a biometrics submission for an alien when he or she requested DA.[10] Additionally, USCIS previously reviewed requests for DA on a case-by-case basis and following a stringent analysis using strict principles outlined in agency policy.[11] However, on March 7, 2022, USCIS implemented a policy to automatically consider granting deferred action to aliens with an approved SIJ Form I-360, including any SIJ Form I-360 approved prior to March 7, 2022, where such SIJ-classified aliens were ineligible for adjustment of status solely due to the unavailability of an immigrant visa number.[12] SIJ Form I-360 is not subject to a routine biometric requirement[13] and aliens with approved SIJ Form I-360 may not be eligible to file for adjustment of status because an immigrant visa number is not immediately available. As a result of these two circumstances, USCIS is unable to conduct identity verification and reliably or accurately determine whether an alien is a national security or public safety threat – two essential historical requirements for determining whether the alien warrants a favorable exercise of discretion for DA (and related employment authorization).

Categorically granting DA for any population without conducting identity verification or appropriate criminal history background checks to determine whether the alien warrants a favorable exercise of discretion does not comply with EO 14161 requiring DHS to re-establish baseline screening and vetting "consistent with the uniform baseline that existed on January 19, 2021" and screening and vetting aliens "to the maximum degree possible." Further, this categorical grant of DA is a significant deviation from past agency practice regarding true case-by-case DA requests, which historically required biometrics in order to verify identity and identify security and public safety threats.

Concerningly, the SIJ classification has been exploited by dangerous criminal aliens, including members of gangs and transnational criminal organizations. Like many SIJ petitioners, gang members have exploited this process to obtain SIJ petition approval based on the claim that they were raised by one of their natural parents without the other natural parent's involvement or

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[10] *See* Standard Operating Procedures for Handling Deferred Action Requests at USCIS Field Offices, Ver. 1.0 March 7, 2012, mandating "The following must be done before a recommendation for deferred action can be completed...Initiate TECS and fingerprint checks for requestor and any included family member(s) aged 14 or older as soon as possible if not previously initiated or the checks have expired." *See also* Consolidated Handbook of Adjudicative Procedures, Volume 3, Part F, Chapter 6, "Legacy Procedures for Pending Requests Filed Before November 13th, 2023" stating "If biometric-based FBI background check results are expired or if biometrics were not previously collected schedule an appointment at the Application Support Center (ASC) for biometrics submission."

[11] See Meissner, Doris, *Exercising Prosecutorial Discretion*, HQOPP 50/4 (Nov. 17, 2000) which stated "granting deferred action or staying a final order" is a discretionary enforcement decision but also identified the following non-exhaustive factors that should be considered when deciding to exercise such discretion: immigration status, length of residence in United States, criminal history, humanitarian concerns, immigration history, likelihood of ultimately removing the alien, likelihood of achieving enforcement goal by other means, whether the alien is eligible or likely to become eligible for other relief, effect of action on future admissibility, current or past cooperation with law enforcement, honorable U.S. military service, community attention, resources available to DHS.

[12] *See* https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles.

[13] *See* https://www.uscis.gov/sites/default/files/document/forms/i-360instr.pdf.

support. A recent analysis by Headquarters FDNS – Fraud Division identified more than 500 approved SIJ petitions for known or suspected MS-13 gang members and more than 100 approved SIJ petitions for known or suspected 18th Street gang members. EO 14157 designated "certain international cartels and other organizations" as FTOs, including but not limited to transnational organizations such as TdA and MS-13. Aliens associated with these transnational organizations and gangs now raise potential national security concerns in addition to the public safety concerns they previously raised. Even beyond these groups, USCIS has observed a significant increase in the number of SIJ petitions filed by aliens from regions and nations with identified security risks. For these reasons, USCIS is taking this action to improve its national security screening and vetting within the SIJ classification.

In addition to the screening and vetting concerns associated with granting DA in the absence of complete or recent criminal history record information, the 2022 SIJ DA announcement was a pull factor and appears to have caused a significant increase in SIJ Form I-360 filings. SIJ Form I-360 filing volumes did not meaningfully fluctuate from FY2016 to FY2021; remaining between 19,574 and 22,699.[14] In FY2022 the SIJ Form I-360 receipts increased significantly to 31,933[15]—but note because the SIJ DA announcement was made in March 2022, FY2022 was more than halfway over. In FY2023, the first full FY after the SIJ DA announcement, SIJ Form I-360 receipts increased again to 53,146; the trend continued in FY2024, when SIJ Form I-360 receipts increased to 67,906.[16] The SIJ DA announcement and accompanying USCIS policy change had a direct relationship with the overall year-over-year increase in SIJ Form I-360 filings. In addition to this dramatic increase in filings, the average age of SIJs who were granted DA but who do not have an approved Form I-485 is 18.7 years. SIJ program integrity issues have also had deleterious effects on other immigrant classifications because there is an annual limit on the total number of visas available in the employment-based fourth preference (EB-4) category,[17] and these visas are shared between SIJs and other categories of special immigrants. EO 14159 directs DHS to "rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States" including but not limited to ensuring "that employment authorization is not provided to any unauthorized alien in the United States."

Finally, there are many numerically limited immigrant visa classifications, and the law does not allow USCIS to simply allow such aliens who are awaiting a visa number to remain in the United States except in certain defined situations. The INA simply does not contain a provision to permit the category of SIJ I-360 petitioners described above to live and work in the United States as the previous Administration's DA program permitted.

[14] *See* https://www.uscis.gov/sites/default/files/document/data/i360_sij_performancedata_fy2024_q4.xlsx.
[15] *Id.*
[16] *Id.*
[17] *See* INA § 203(b)(4).

Recommendation/Decision: The grant of DA for aliens with an approved SIJ petitioners is entirely contrary to recent EOs and past USCIS practice. DHS is required under the EOs to "faithfully execute the immigration laws against all inadmissible and removable aliens," "adopt policies and procedures to encourage aliens unlawfully in the United States to voluntarily depart as soon as possible," and "promptly take all appropriate action, consistent with law, to rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States."

As such, the categorical DA program for aliens with an approved SIJ Form I-360, who are ineligible to file an application for adjustment of status to that of a LPR solely because an immigrant visa number is not immediately available, is hereby rescinded. At this time, USCIS is not terminating the previous categorical grants of DA for aliens with an approved SIJ Form I-360, however current agency policy grants USCIS the right to terminate the grant of DA and revoke the related employment authorization at any time as a matter of discretion.[18] USCIS continues to review previously granted individual SIJ Form I-360 DA cases to determine, on a case-by-case basis, whether any national security, public safety, fraud, program integrity or other concerns warrant termination of DA.

All Program Offices and Directorates will immediately update procedures and operational guidance to align with this memorandum. The Office of Policy and Strategy will update the USCIS Policy Manual within 5 days of the date of this memorandum.

CC: All Program Office Chiefs and Associate Directors

[18] *See* Volume 6: Immigrants, Part J, Special Immigrant Juveniles, Chapter 4, Adjudication [**6 USCIS-PM J.4**].