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 ROSE KENDRICK, Acting Director, United States Citizenship and Immigration Services National Benefits Center (official capacity),

Defendants.

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

Civ. Action No. 1:25-cv-03962-EK-TAM

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I. INTRODUCTION

Like their unlawful 2025 Rescission Policy, Defendants' Opposition misstates the law, ignores critical facts, and fails to account for the significant reliance interests of SIJS beneficiaries. The APA requires courts to set aside agency action that is not adequately explained; fails to consider all relevant factors; fails to follow the APA's procedural requirements; or is otherwise contrary to law. Defendants' Opposition[1] confirms they fell short of this standard in rescinding the 2022 SIJS Deferred Action Policy. Unable to defend the agency's rationale for the Rescission Policy on the merits—which they cannot do because the decision was plainly arbitrary and capricious in reversing the agency's prior, espoused understanding of Congressional intent—Defendants mischaracterize Plaintiffs' challenge to the *process* of considering SIJS deferred action as a disagreement with the *substance* of Government's individualized exercises of discretion. Defendants use this distortion in service of erroneous arguments that federal law strips this Court of jurisdiction and that Plaintiffs demonstrate insufficient injury for standing. The Court should reject Defendants' infirm jurisdictional and standing challenges, which also rely on mischaracterizations of the policies in dispute and a misconstruction of controlling law. Instead, this Court should find Plaintiffs are likely to succeed in showing the Rescission Policy is arbitrary and capricious because the stated reasons are incomplete, nonsensical, and premised on mistaken interpretations of law, and because Defendants failed to comply with notice-and-comment rulemaking. Preliminary relief is warranted to avoid irreparable harm to Plaintiffs, and because the equities and public interest weigh heavily against allowing an unlawful and harmful policy to remain in effect.

[1] Plaintiffs incorporate the naming conventions of the opening briefs. "Mot." refers to the Motion for Preliminary Injunction, Dkt. 6; "Opp." refers to the Opposition to Motion for Preliminary Injunction, Dkt. 42; "CC Reply" refers to Plaintiffs' Reply In Support of Motion for Class Certification.

II. ARGUMENT

A. The Court Has Jurisdiction to Issue a Preliminary Injunction.

1. 8 U.S.C. § 1252(g) Does Not Deprive This Court of Jurisdiction.

The Supreme Court, the Second Circuit, and this Court have repeatedly emphasized that § 1252(g) must be construed narrowly and only applies to "three discrete actions": decisions "to commence proceedings, adjudicate cases, or execute removal orders against" noncitizens. *Reno v. American-Arab Anti–Discrimination Comm.*, 525 U.S. 471, 478 (1999) (quotation omitted); *Ozturk v. Hyde*, 136 F.4th 382, 396-97 (2nd Cir. 2025) (same); *Vetcher v. Immigr. Customs Enf't Agents Grp. 1*, 2023 WL 6879594, at *4 (E.D.N.Y. Oct. 18, 2023) (Komitee, J.) (same). None of those actions are at issue here. Plaintiffs challenge the rescission of the 2022 SIJS Deferred Action Policy, not any decision to commence or adjudicate removal proceedings or execute removal orders. Accordingly, as the Supreme Court held in reviewing the rescission of the Deferred Action for Childhood Arrivals ("DACA") program, § 1252(g) does not bar Plaintiffs' claims. *DHS v. Regents of the U. of Cal.*, 591 U.S. 1, 19 (2020) [hereinafter *Regents*]. By contrast, Defendants' cited cases are inapposite as each involved requests for judicial review of discretionary, individual deferred action denials, not the process by which a policy was instituted or rescinded. Opp. 18–19.

Nor does § 1252(g) bar Individual Plaintiffs' request to temporarily stay their removal during the pendency of this litigation.[2] Section 1252(g) only strips jurisdiction "to hear any *cause or claim*" arising from the three discretionary decisions described above. 8 U.S.C. § 1252(g) (emphasis added). But Plaintiffs' underlying claims do not arise from any of these decisions, so § 1252(g) does not apply to their attendant stay request. *See, e.g., M.M.M. ex r el. J.M.A. v.*

[2] When Plaintiffs ask the Court to "[e]njoin Defendants from removing Individual Plaintiffs . . . during the pendency of this litigation," Dkt. 1 at 51, Dkt. 5 at 3, they are seeking a temporary stay. *See Nken v. Holder*, 556 U.S. 418, 429 (2009) (distinguishing between a stay and injunctive relief).

Sessions, 347 F. Supp. 3d 526, 538 (S.D. Cal. 2018) (staying removal pending resolution of preliminary injunction motion where underlying claims did not arise from discretionary decisions implicated by § 1252(g)); *Gomez v. Reno*, 167 F.3d 1228, 1233–34 (9th Cir. 1999) (same). And this Court has the "inherent authority" to stay Individual Plaintiffs' removal "to protect [its] proceedings[,]" *Degen v. United States*, 517 U.S. 820, 823 (1996), and to "ensur[e] that [it] can responsibly fulfill [its] role in the judicial process," *Nken*, 556 U.S. at 427; *see also Ozturk*, 136 F.4th at 394–95. District courts routinely exercise this inherent power by issuing stays of removal pending adjudication, notwithstanding § 1252(g).[3]

2. 8 U.S.C. § 1252(f)(1) Does Not Bar Issuing Injunctive Relief.

8 U.S.C. § 1252(f)(1) does not restrict the Court's jurisdiction to grant a preliminary injunction[4] in this case because deferred action is not part of the provisions subject to that section.[5] Section 1252(f)(1) only prohibits injunctions that "enjoin or restrain" the "operation of" certain specified provisions. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 544 (2022). Yet, as Defendants acknowledge, there is no express grant of statutory authority for deferred action in the INA, Dkt. 42-5, and the only references to deferred action lie outside the covered provisions, in § 1154. As such, the policies do not expressly implicate any covered provision.

Further, nothing in Plaintiffs' requested preliminary relief would "enjoin or restrain" the

[3] *See, e.g.*, *Galvez v. Cuccinelli*, 2019 WL 3996850 (W.D. Wash. Aug. 23, 2019) ("temporarily enjoining the removal of class members is necessary to safeguard the Court's judicial power" and "ensure that relief can be afforded if plaintiffs are able to establish that the denials of their SIJ applications were unlawful[,]" despite § 1252(g)); *Torres-Jurado v. Biden*, 2023 WL 7130898, at *1 (S.D.N.Y. Oct. 29, 2023) (similar).

[4] In its Proposed Order to Show Cause, Plaintiffs mistakenly requested that the order "declare[]" the Rescission Policy violates the APA. To clarify, Plaintiffs do not seek preliminary declaratory relief before the Court.

[5] Plaintiffs also reserve their right to file a motion for a stay under 5 U.S.C. § 705, which § 1252(f)(1) does not prohibit. *See, e.g.*, *Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990, at *11 (9th Cir. 2025); *Coal. for Humane Immig. Rights v. Noem*, 2025 WL 2192986, at *13 (D.D.C. Aug. 1, 2025). Additionally, every court to examine the issue has held that § 1252(f)(1) does not bar setting aside agency action under 5 U.S.C. § 706(2). *See Haitian Evangelical Clergy Ass'n v. Trump*, 2025 WL 1808743, at *6, *8 (E.D.N.Y. July 1, 2025); *Refugee & Immigrant Ctr. For Educ. & Legal Servs. v. Noem*, 2025 WL 1825431, at *18–21 (D.D.C. July 2, 2025); *Texas v. United States*, 40 F.4th 205, 219 (5th Cir. 2022); *see also* Dkt. 6 at 4, 38 (asking, in motion for preliminary relief, this Court to "set aside" and enjoin the Rescission Policy).

"operation" of any covered provisions, which relate to "the inspection, apprehension, examination, and removal of [noncitizens]." *Aleman Gonzalez*, 596 U.S. at 544. Plaintiffs do not seek to enjoin such actions, but rather to return to a status quo ante where the government *considered* SIJS beneficiaries for deferred action on a case-by-case basis. This would not require the government to *grant* deferred action to any putative class member, nor stop it from taking any of the enforcement actions implicated by the covered provisions.

Requiring Defendants to resume individualized deferred action adjudications would at most have only a collateral effect on any of the covered provisions.[6] As such, injunctive relief is available in this action. *See Aleman Gonzalez*, 596 U.S. at 553 n.4 ("[A] court may enjoin the unlawful operation of a provision *that is not specified in § 1252(f)(1)* even if that injunction has some collateral effect on the operation of a covered provision[.]"). The weight of authority after *Aleman Gonzalez* is in accord. *See Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1126 (9th Cir. 2025) ("The Supreme Court acknowledged our collateral-effect rule in *Aleman Gonzalez* and left it undisturbed."); *Texas v. DHS*, 123 F.4th 186, 210 (5th Cir. 2024) (injunction barring Border Patrol from cutting state-owned c-wire would have, at most, "a collateral effect on the operation of covered statutes," and (f)(1) therefore did not apply).

B. Plaintiffs Have Standing.

Individual Plaintiffs. Individual Plaintiffs have standing to assert injury based on the lost opportunity to be considered for or renew deferred action and EADs, which results in a "risk of real harm," including risk of deportation and associated detention; pecuniary harms due to lack of

[6] The provisions of the INA that these policies most clearly implicate are 8 U.S.C. §§ 1101(a)(27)(J) (defining the term "special immigrant juvenile") and 1255(h) (adjustment of status for SIJS beneficiaries), as the 2022 SIJS Deferred Action Policy "furthers congressional intent to provide humanitarian protection" for SIJS beneficiaries while they wait to adjust their status. Dkt. 9-25 at 1. It is therefore much like provisions that provide temporary or permanent protections to noncitizens, which reside elsewhere in the INA, not like the enforcement provisions covered by § 1252(f)(1). Similarly, with respect to relief for the EAD Subclass, § 1252(f)(1) is not implicated because the authority for EAD adjudication is not found within any covered provision.

EADs; and emotional harms. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016). This argument is fully addressed in Plaintiffs' CC Reply at 3–8.

Organizational Plaintiffs. Defendants' arguments that Organizational Plaintiffs lack standing fail. ***First***, Defendants mischaracterize the record and the law in arguing that *FDA v. All. for Hippocratic Med.*, 602 U.S. 367 (2024), does not allow standing based on "diversion of resources." Opp. 17–18. Organizational Plaintiffs have an injury-in-fact because the Rescission Policy "directly affect[s] and interfere[s] with [their] core business activities" by "perceptibly impair[ing] their ability to provide counseling" and other services to noncitizens. *Hippocratic Med.*, 602 U.S. at 394–95. *Hippocratic Medicine* affirmed the longstanding rule that organizations *have* standing where they are "not only an issue-advocacy organization, but also operate[] [other] service[s]" and defendant's actions "directly affect[] and interfere[] with [plaintiff's] core business activities[,]" while clarifying that "issue-advocacy" organizations "cannot manufacture" standing "simply by expending money to . . . advocate against the defendant's actions." *Id.* (citing *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

Organizational Plaintiffs CARECEN-NY and Centro Legal readily satisfy this test. Both are service providers—not merely "issue-advocacy" organizations—whose "core business activities" outside of any issue advocacy are directly affected by the Rescission Policy. CARECEN-NY Decl., Dkt. 9-9, ¶¶ 3, 26–38; Centro Legal Decl., Dkt. 9-10, ¶¶ 3, 20, 22–27. Both will have to divert significant staff time and resources due to the Rescission Policy, including by defending SIJS beneficiaries in removal proceedings, so will no longer be able to offer full-scope representation to other clients. *Id.* ¶¶ 26, 28, 34; CARECEN-NY Decl. ¶¶ 34, 36, 39. This is sufficient to establish organizational standing. *See Havens Realty*, 455 U.S. at 379*; Centro de la Comunidad Hispana de Locust Valley v. Town of Oyster Bay*, 868 F.3d 104, 110 (2d Cir. 2017);

Make the Rd. New York v. Cuccinelli, 419 F. Supp. 3d 647, 658 (S.D.N.Y. 2019).

Defendants argue, with no authority, that Organizational Plaintiffs may not rely on future injury and are required to prove at the preliminary injunction stage "from which services they will divert resources[,]" "how much money they will need to divert," or "how [they] will divert resources." Opp. 17–18. But Organizational Plaintiffs need not provide their budgets figures to establish standing; declarations explaining what the Rescission Policy will force them to do in the future suffice. *See New York*, 969 F.3d at 61 (finding organizational standing where "declarations ma[d]e clear that the Rule … required significant diversion of resources" from core activities, including, for one plaintiff, solely a declaration that it was "preparing to establish a network of social service providers" in response to the Rule); *see also Democratic Cong. Campaign Comm. v. Kosinski*, 614 F. Supp. 3d 20, 44–45 (S.D.N.Y. 2022) (declaration that plaintiff "had to and will continue to have to divert resources away from engaging and mobilizing voters" and the challenged practices "frustrate [plaintiff's] ability to fulfill its mission" sufficient for standing); *Rural & Migrant Ministry v. EPA*, 565 F. Supp. 3d 578, 597 (S.D.N.Y. 2020) (similar).

Second, Plaintiffs are not challenging government "enforcement priorities." Opp. 16. This case is unlike *United States v. Texas*, where the Supreme Court found states did not have standing to challenge DHS's enforcement priorities based on assertions that the policy "impose[d] costs on the States." 599 U.S. 670, 674 (2023). Here, Plaintiffs' claims target the process by which Defendants rescinded the 2022 Policy and categorically altered SIJS beneficiaries' ability to be considered for deferred action on an individual basis. None of Plaintiffs' causes of action relate to immigration enforcement priorities, and the relief sought would not require the Government to abide by the last administration's enforcement priorities. *See* Compl. ¶¶ 120–158, Prayer for Relief; *see also infra* at 7. In contrast, organizational plaintiffs routinely bring challenges to agency

actions under the APA. *See, e.g.*, *Regents*, 591 U.S. at 24.

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

1. The Rescission Is Reviewable, Not Committed to Agency Discretion by Law.

The Government cannot overcome the APA's "basic presumption of judicial review" of agency action, *see McLaughlin Chiropractic Assoc., Inc. v. McKesson Corp.*, 606 U.S. 146, 155, (2025), by asserting that the Rescission Policy is "committed to agency discretion by law," 5 U.S.C. § 701(a)(2); Opp. 19–23. The Government mischaracterizes automatic *consideration* for SIJS deferred action as an unreviewable "non-enforcement decision," but in this regard the SIJS Deferred Action Policy is indistinguishable from DACA, which the Supreme Court ruled was *not* a non-enforcement policy exempt from review. Opp. 19–20; *Regents*, 591 U.S. at 18–19; *see also Batalla Vidal v. Duke*, 295 F. Supp. 3d 127, 149 (E.D.N.Y. 2017) ("[T]he decision to eliminate [DACA]—was not itself a presumptively unreviewable exercise of enforcement discretion.").

The Government contends that, unlike DACA, the SIJS Deferred Action Policy was not a program created "*in-and-of-itself*" to provide "affirmative immigration relief[,]" because it did not "identify[] individuals who *met the enumerated criteria*," and then "*solicit*[] applications" and "institute[] a standardized review process." Opp. 20–21 (quoting *Regents*, 591 U.S. at 18). This argument fails. ***First***, like DACA, the SIJS Deferred Action Policy confers access to affirmative immigration benefits—EADs. *See Regents*, 591 U.S. at 18–19 (deferred action benefits including EADs are "interest[s] 'courts often are called upon to protect'"); *Texas*, 599 U.S. at 671 ("Executive Branch policy that involves both . . . prosecution priorities" and the "provision of legal benefits" implicate "more than simply the Executive's traditional enforcement discretion."). The Government ventures that because SIJS beneficiaries are not *required* to seek work authorization to receive deferred action, somehow the SIJS Deferred Action Policy "does not implicate the benefits considered by the *Regents* court." Opp. 22. This unreasoned distinction has no basis in

law. The SIJS Deferred Action policy affords SIJS beneficiaries access to work authorization they otherwise would not have and is a benefit courts are called upon to protect regardless of whether beneficiaries are *required* to apply for it. *Regents*, 591 U.S. at 18–19.

Second, the Government completely ignores the rigorous criteria Congress enumerated for obtaining SIJ status, which is a prerequisite to being considered for SIJS deferred action. *See* Mot. 5–6; *Alvarez Sosa v. Barr*, 369 F. Supp. 3d 492, 501 (E.D.N.Y. Mar. 31, 2019) (SIJS applicants must "satisfy[] a set of rigorous, congressionally defined eligibility criteria[]"). That the SIJS Deferred Action Policy condensed two steps into one—*i.e.* automatically considering deferred action upon granting SIJS—does not create a meaningful distinction from DACA.

2. The Rescission Policy Is Arbitrary and Capricious.

Ignoring controlling Supreme Court authority and the bulk of Plaintiffs' arguments, Defendants claim that in adopting the Rescission Policy the agency "displayed awareness of [the policy] change and offered good reasons for the change." Opp. 25. The previously unpublished internal USCIS memorandum dated June 6, 2025, that Defendants introduce in their Opposition, suffers from the exact same deficiencies as the 2025 Policy Alert.[7] Dkt. 39-5. Defendants entirely fail to address the multiple reasons the Rescission Policy is arbitrary and capricious:

- Defendants do not defend the 2025 Policy Alert's legally erroneous assumption that deferred action requires express statutory or regulatory authorization. Mot. 15–18.
- Defendants do not address the agency's failure to explain its reversal in its understanding of congressional intent, nor of its prior understanding that the lack of statutory or regulatory

[7] This internal memorandum also fundamentally mischaracterizes the 2022 SIJS Deferred Action Policy as a "categorical grant of deferred action" to SIJS beneficiaries, Dkt. 39-5 at 1, 6, 8, when in reality the Policy only required automatic consideration for deferred action on a case-by-case basis. By inaccurately framing the scope and function of the 2022 policy, USCIS defies the principle that an agency must provide a clear, honest explanation for policy reversals. *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019).

provision for deferred action *supported*, rather than weighed against, the creation of the SIJS Deferred Action Policy. Mot. 21–22.

- Defendants do not defend the agency's failure to consider "relevant factors," such as the numerous tangible benefits of the program, or "reasonably obvious alternatives" to rescission, such as enhanced biometric screening or other additional vetting. Mot. 24–25, 30.

- Defendants do not address Plaintiffs' arguments that the categorical exclusion of SIJS beneficiaries from deferred action, whether on the basis of SIJS or other grounds, was arbitrary and capricious as an unexplained, radical departure from past policy. Mot. 26–27.

- Defendants also concede that they were required to consider "serious reliance interests" and that neither the 2025 Policy Alert nor the June 6, 2025 internal memorandum actually considered such interests. Opp. 25. While Defendants *now* argue that Plaintiffs lacked "legitimate reliance interests" in SIJS deferred action, the agency previously found that "approved SIJ petitioners have a reliance interest in being provided with employment authorization." Dkt. 9-25 at 4. Defendants were required to examine this as part of the policy change itself, not through *post hoc* reasoning in legal briefing. *Regents*, 591 U.S. at 30–31 (rejecting same argument from government); *New York v. HHS*, 414 F. Supp. 3d 475, 534 n.35 (S.D.N.Y. 2019) ("court[s] generally need not defer to 'agency interpretations advanced for the first time in legal briefs'"); *MTA v. Duffy*, 2025 WL 1513369, at *36 (S.D.N.Y. May 28, 2025).

Defendants' argument that the Policy was not in place long enough to create reliance interests, Opp. 25, is also unsupported by law and foreclosed by *Regents*, which found sufficient reliance interests in DACA (in effect for only five years before rescission). *Regents*, 591 U.S. at 30–31. In any event, Plaintiffs' reliance interests were not merely speculative beliefs about enforcement discretion—they were based on USCIS's written policy explicitly creating a process

for considering SIJS beneficiaries for deferred action and employment authorization, conferring significant affirmative benefits. SIJS beneficiaries, like DACA-eligible noncitizens, planned their lives around the Policy. *See, e.g.*, Mot. 10–13, 22–24; *Regents*, 591 U.S. at 30–31.

Rather than address Plaintiffs' arguments, Defendants misstate the underlying policy and rely on a short, misleading gloss on the "change-in-position" doctrine. Opp. 24–25 (citing *FDA v. Wages & White Lion Invs., L.L.C.*, 145 S. Ct. 898, 918 (2025)). But *White Lion*'s explanation that agencies must, under the change-in-position doctrine, offer "good reasons" for policy changes does not exhaust the scope of the agency's obligations to explain its actions. *See Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). Nor could this dicta have abrogated decades of well-established Supreme Court APA jurisprudence, which Plaintiffs have described at length, Mot. 14–27. *See Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) ("[W]e are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated."). In any event, Defendants have failed to even offer "good reasons" for the policy change.

3. The Sub-Silentio Rescission Violated the *Accardi* Doctrine.

Defendants do not even address the agency's *sub silentio* reversal of the 2022 Deferred Action Policy beginning on April 7, 2025, which was independently unlawful. Mot. 31–33. They therefore concede the issue, *see Zhang v. Gonzales*, 426 F.3d 540, 541 n.1 (2d Cir. 2005) (an argument is "abandoned" where a party "fail[s] to discuss [the] claim anywhere in [its] brief").

4. The EAD Policy Was Arbitrary and Capricious and Required Rulemaking.

The Rescission Policy plainly provides that USCIS will no longer "accept new Applications for Employment Authorization" for SIJS deferred action recipients. Dkt. 1-2 at 2. Rather than defend this unlawful policy change, Mot. 29–31, Defendants attempt to disavow it, asserting by declaration that USCIS continues to adjudicate EAD applications by SIJS deferred

action beneficiaries. Opp. 28; Kendrick Decl. ¶¶ 5-7. But their 2025 Policy Alert says otherwise. June 6, 2025 Policy Alert (explaining that USCIS will not accept "new Applications for Employment Authorization . . . under category (c)(14) . . ." from SIJS beneficiaries). Moreover, Defendants have since updated the Policy Manual to remove provisions allowing SIJS deferred action recipients to apply for EADs. *Cf.* Dkt. 9-26 at 5 *with* USCIS, Pol'y Manual, vol. 6, pt. J, ch. 4.G.[8] When faced with a policy that says one thing and a declaration that says another, a "court may not ignore clear text based on . . . agency practice or prudential considerations." *Healthy Teen Network v. Azar*, 322 F. Supp. 3d 647, 654 (D. Md. 2018). Even if the Court were to consider extra-textual evidence, legal services providers' declarations demonstrate they collectively have hundreds of clients whose EAD applications have not been adjudicated since the Rescission Policy.[9] These cast significant doubt on Defendants' contention.

5. Categorial Exclusion of SIJS-Based Deferred Action Is Unlawful

Defendants fundamentally misunderstand, and so fail to address, Plaintiffs' Fourth Claim for Relief. Mot. 26–29. Plaintiffs do not argue that rescission of the 2022 Deferred Action Policy alone would have required notice-and-comment rulemaking. *Cf.* Opp. 23–24. The 2025 Policy Alert, however, goes beyond rescinding the 2022 Policy: it also states 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" at all. Dkt. 1-2 at 2. Under any plausible interpretation, this does more than just rescind the 2022 Policy: it appears to either bar USCIS from considering SIJS as a basis for deferred action at all (regardless

[8] Available at https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4.

[9] *See, e.g.*, Castillo-Granados Decl., ¶ 27, Dkt. 9-14 (legal representatives reported over 400 SIJS beneficiaries with pending EAD applications); Jordan Decl., ¶ 22, Dkt. 9-15 (82 clients with pending EAD applications); Asher Decl., ¶ 12, Dkt. 9-16 (60 clients with pending EAD applications); Wilkes Decl., ¶ 15, Dkt. 9-23 (26 clients with pending EAD applications); CARECEN-NY Decl., ¶ 27, Dkt. 9-9 (15 SIJS clients with pending EAD applications); Feldman Decl., ¶ 16, Dkt 9-18 (13 clients with pending EAD applications); McGrorty Decl. ¶ 14, Dkt. 9-19 (six clients with pending EAD applications); Centro Decl., ¶ 20, Dkt. 9-10 (at least two clients with pending EAD applications).

of whether such consideration is automatic or after individual application) or to bar SIJS beneficiaries from applying for deferred action *on any basis*. Even crediting Defendants' post-hoc representations that, notwithstanding the 2025 Policy Alert, SIJS beneficiaries individually *may* request deferred action on bases unrelated to SIJS, Opp. 27–28, the alternative interpretation of the policy (that the Rescission Policy removes SIJS as a basis for deferred action) is still a legislative rule because it would narrowly limit administrative discretion or establish binding legal norms that affect "[individual] rights and obligations[.]" *Colwell v. HHS*, 558 F.3d 1112, 1124 (9th Cir. 2009). Defendants do not address this argument.

D. Plaintiffs Have Demonstrated Irreparable Harm.

Unlawfully stripped of their ability to seek or renew protection from deportation or work authorization, putative class members face ongoing emotional harms and an imminent threat of exploitation, detention, and deportation, while Organizational Plaintiffs face a significant interference with their core business activities. Both establish irreparable harm.

Deferred Action Class. Contrary to the Government's argument, Opp. 27–28, the fact that members of this class are not *guaranteed* to be granted deferred action or EADs does not undermine their showing of irreparable harm. "[A]n allegation of future injury is sufficient where . . . there is a '*substantial risk*' that the harm will occur." *Saba Cap. Cef Opportunities 1, Ltd. v. Nuveen Floating Rate Income Fund*, 88 F.4th 103, 111 (2d Cir. 2023) (emphasis added). Mot. 6. Courts have held irreparable harm can be established by the Government's failure to consider discretionary immigration applications. *See S.A. v. Trump*, 2019 WL 990680, at *8 (N.D. Cal. Mar. 1, 2019) ("Whether DHS retains discretion [to grant or deny parole] … does not … render injunctive relief [requiring parole consideration] inappropriate."); *Abdi v. Duke*, 280 F. Supp. 3d 373 (W.D.N.Y. 2017), *see also J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1068 (N.D. Cal. 2018).

The Government's argument that members of the putative Deferred Action Class are not harmed because they can still individually apply for deferred action by submitting a Form G-325A, Opp. 27, is in bad faith: it does not mention that the Government is in the process of eliminating the SIJS basis for Deferred Action from the Form G-325A,[10] nor does it acknowledge that the 2025 Policy Alert forbids USCIS from considering such requests for deferred action that are based on a SIJS grant. Dkt. 1-22. Defendants' alternative suggestion that Plaintiffs can avoid irreparable harm by simply "apply[ing] for DA under the normal process," Opp. 35–36, (that is, on some basis other than SIJS) also rings hollow. *See* CC Reply 6-7.

While the Government attempts to compare this case to DACA district court decisions that did not preliminarily enjoin DACA's rescission as to potential initial applicants, Opp. 27, this argument equally fails. ***First***, Individual Plaintiffs here *already applied* for deferred action by submitting applications for SIJS under the 2022 Policy, which explicitly instructed them *not* to apply separately for deferred action. *See* Dkt. 9-25 at 3; *Rodriguez v. Nielsen*, 2018 WL 4783977, at *9 (E.D.N.Y. Sept. 30, 2018) (plaintiff "applied" for EAD by submitting U Visa application where regulations did not provide for, or allow, separate application). Failure to adjudicate applications for immigration benefits constitutes irreparable harm. *Supra* 12. Furthermore, those approved for SIJS have already met application requirements more stringent than those established for DACA, *cf.* Mot. 5–6 (SIJS application process) *with Regents*, 591 U.S. at 9–10 (DACA eligibility requirements), and the harm they face is therefore less speculative than it was for individuals who had not yet applied for DACA.

Second, there is also now a much greater risk of imminent detention and deportation than

[10] *See* 90 Fed. Reg. 22752 (May 29, 2025) and associated table of changes to the form, https://www.regulations.gov/document/USCIS-2005-0024-0075 (last visited Aug. 22, 2025), *id.* at 3 (reflecting deletion of SIJS as a "filing type" for "your deferred action request").

at the time of the DACA rescission. Then, DACA recipients were not enforcement priorities, *Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 434 n.13 (E.D.N.Y. 2018); now, Defendants admit that the very purpose of the Rescission Policy is to promptly remove putative class members. *See* Dkt. 39-5 at 2, 3. They have also shown they can make good on that plan, having already detained and deported SIJS youth without deferred action.[11]

Renewal Class. Every district court to consider similarly situated individuals in the DACA context found irreparable harm under less extreme circumstances. *Regents of the Univ. of Cal. v. DHS*, 279 F. Supp. 3d 1011, 1048 (N.D. Cal. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209, 243 (D.D.C. 2018); *Batalla Vidal*, 279 F. Supp. 3d at 437. The Renewal Class is already suffering ongoing injuries. Mot. 33–36. And while they will have deferred action for at least nine months, Opp. 27, courts granted preliminary injunctions with similar or longer timelines. *See, e.g.*, *Doe 1 v. Trump*, 275 F. Supp. 3d 167, 191 (D.D.C. 2017) (challenged policy going into effect in seven months); *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1368–69 (S.D. Ga. 2018) (nineteen months).

EAD Subclass. Defendants only argue that USCIS in fact continues to adjudicate EAD applications from SIJS beneficiaries with deferred action. Opp. 28; Kendrick Decl. ¶ 5. But the 2025 Policy Alert says the opposite, as do declarations from numerous legal services providers. *Supra* 11. These facts demonstrate ongoing harm to the EAD Subclass. *See* Mot. 33–36.

Organizational Plaintiffs. For the same reasons Organizational Plaintiffs have standing to challenge the Rescission Policy, *see supra* 5–7, the harms they face are neither speculative nor

[11] *See, e.g.*, Prandini Decl., Dkt. 9-12, ¶¶ 26, 32 (describing reports from legal representatives of arrests, detentions, and deportations of numerous SIJS beneficiaries without deferred action); *Benito Vasquez v. Moniz*, 2025 WL 1737216, at *4 (D. Mass. June 23, 2025) (denying habeas petition of SIJS beneficiary detained and subjected to expedited removal); Jade Eckhardt, *LI College Student Deported To Colombia After 2+ Months in Detention Center: Report*, Patch (Aug. 5, 2025), https://patch.com/new-york/shirley-mastic/disappointed-america-li-college-student-deported-columbia-report (describing arrest, detention, and deportation of Suffolk County Community College honors student with SIJS); Jenny Jarvie, *Home Depots across L.A. become tense battleground in new phase of ICE raids*, L.A. Times (Aug. 15, 2025), https://www.latimes.com/california/story/2025-08-15/home-depot-ice-enforcement-battleground-los-angeles (describing arrest and detention of young man with SIJS).

remote, and courts have consistently found irreparable harm to comparable organizations facing similar injuries. *See, e.g.*, *Immig. Defs. L. Ctr.*, at 145 F.4th at 987–90; *Am. Gateways v. DOJ*, 2025 WL 2029764, at *10 (D.D.C. July 21, 2025).

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

Contrary to Defendants' unsupported assertions, the public interest weighs heavily in favor of preliminary relief. "[T]here is no public interest in allowing Defendants to proceed with an unlawful, arbitrary, and capricious rule[,]" *Make the Rd.*, 419 F. Supp. 3d at 666, and the Rescission of the 2022 Policy will continue to have devastating impacts on the hundreds of thousands of individuals who rely on the program, as well as their families and communities. Mot. 37; *see also Make the Rd. New York v. Pompeo*, 475 F. Supp. 3d 232, 269 (S.D.N.Y. 2020).

Defendants argue injunctive relief would "frustrate and displace the USCIS's substantive judgment as to how its prosecutorial discretion. . . should be exercised." Opp. 29–30. But "DHS's inability to implement a standard that is as strict as it would like [does not] outweigh[]" the harms that Plaintiffs face. *New York*, 969 F.3d at 87. Defendants also argue that allowing SIJS Beneficiaries automatic consideration for deferred action would "undermine law enforcement and public-safety interests." Opp. 29–30. While the SIJS petition itself does not mandate all applicants to submit biometric data, the 2022 Policy empowered USCIS to request biometric data. *See* Dkt. 9-26 at 4 n.25. If the Court reinstates that Policy, as it should, it would continue to allow for case-by-case considerations to ensure proper vetting.

III. CONCLUSION

Plaintiffs respectfully request that this Court grant their Motion for preliminary injunction.

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Respectfully submitted,

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