

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

A.C.R., et al., 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, et al.,

Defendants.

Case No. 1:25-cv-03962-EK

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
MOTION FOR CLARIFICATION
OR RECONSIDERATION**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
I. Legal Standards.....	2
II. The Court Should Clarify or Reconsider Its Order to Hold That the Stay of the SIJS-DA Rescission Requires USCIS to Weigh the Enumerated Factors as They Existed on April 6, 2025	4
CONCLUSION.....	8

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Akran v. United States</i> , 997 F. Supp. 2d 197 (E.D.N.Y. 2014)	7
<i>In re Marc Rich & Co. AG v. United States</i> , 739 F.2d 834 (2d Cir. 1984).....	2–3
<i>Ferguson v. Lion Holding, Inc.</i> , 02 CIV 4258(PKL), 2007 WL 2265579 (S.D.N.Y. Aug. 6, 2007).....	3
<i>Fero v. Excellus Health Plan, Inc.</i> , 502 F. Supp. 3d 724 (W.D.N.Y. 2020)	2
<i>Haitian Evangelical Clergy Ass’n v. Trump</i> , 789 F. Supp. 3d 255 (E.D.N.Y 2025)	4
<i>Kelly v. Pension Benefit Guar. Corp.</i> , No. 79-CV-0547, 1980 U.S. Dist. LEXIS 12458 (S.D.N.Y. July 17, 1980)	3
<i>Lotze v. Hoke</i> , 654 F. Supp. 605 (E.D.N.Y.1987)	3
<i>McNamee v. Clemens</i> , No. 09-CV-1647(SJ)(CLP), 2013 WL 3968740 (E.D.N.Y. July 31, 2013)	2–3
<i>Metcalf v. Yale Univ.</i> , No. 15-CV-1696 (VAB), 2019 WL 1767411 (D. Conn. Jan. 4, 2019).....	2
<i>Minkina v. Ashcroft</i> , No. 01-CV-511, 2004 WL 1447947 (E.D.N.Y. June 25, 2004)	3–4
<i>Sheiner v. Mayorkas</i> , No. 21-Civ.-5272 (ER), 2023 WL 2691580 (S.D.N.Y. Mar. 29, 2023).....	7
<i>Shrader v. CSX Transp., Inc.</i> , 70 F. 3d 255 (2d Cir. 1995).....	3
<i>Van Buskirk v. United Grp. Of Cos.</i> , 935 F.3d 49 (2d Cir. 2019).....	3
<i>Veloz v. State of New York</i> , No. 98-CV-567, 1999 WL 642883 (S.D.N.Y. Aug. 24, 1999).....	4

Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd.,
956 F.2d 1245 (2d Cir. 1992).....3, 7

Statutes and Rules

5 U.S.C. § 551 *et seq.* (Administrative Procedure Act or APA)..... *passim*
5 U.S.C. § 705 (Section 705 of the APA) *passim*
Fed. R. Civ. P. 60(a)3
Local Civ. R. 6.33

Other Authorities

USCIS Policy Manual, vol. 6, pt. J, ch. 4. G *passim*
Wright, A. Miller & E. Cooper, Federal Practice & Procedure.....3

INTRODUCTION

Plaintiffs respectfully seek clarification or, if necessary, reconsideration of one critical aspect of the remedy ordered by the Court in its Memorandum and Order dated November 19, 2025, which granted a stay of the government’s rescission of the SIJS Deferred Action Policy (the “Order”) (ECF No. 60) under the Administrative Procedure Act (“APA”) and ordered the government to conduct deferred action adjudications. Order at 44–45. Plaintiffs submit this motion to ensure that the Court’s stated remedy—a stay of the SIJS-DA Rescission¹ and the resulting reinstatement of the policy in effect before the unlawful rescission—is achieved. Accordingly, Plaintiffs request that the Court clarify that its Order requires the Parties to return to the *status quo ante* as it existed on April 6, 2025, prior to Defendants’ *sub silentio* and unlawful SIJS-DA Rescission. Reversion to the pre-existing policy would entitle young people whose SIJS petitions were approved after April 6, 2025, to receive deferred action adjudications governed by the SIJS Deferred Action Policy as set forth in the USCIS Policy Manual in effect at that time, including the factors USCIS was required to consider in conducting such adjudications. Plaintiffs submit that this requirement directly follows from the Court’s stay of the unlawful 2025 Rescission Policy.

The SIJS Deferred Action Policy consisted of both the 2022 Policy Alert and the updates to the USCIS Policy Manual, issued contemporaneously with the Alert, that set forth the Policy that USCIS adjudicators would be implementing. The SIJS Deferred Action Policy included the factors that USCIS needed to consider in making individualized deferred action determinations, identifying a SIJS approval as “one particularly strong positive factor that weighs heavily in favor of granting deferred action.” ECF 9-26 and ECF 42-3 at Section G.2. “Case-By-Case Discretionary

¹ “SIJS-DA Rescission” or “2025 Rescission Policy” refer to the government’s rescission of the SIJS Deferred Action Policy, as described in the Court’s Order.

Determination.” The 2022 Policy Alert and updated Policy Manual remained in effect until Defendants’ unlawful rescission of the policy in April 2025. A return to the *status quo ante* must include this key component of the policy that the Court ordered the government to restore.

However, the Order states that it “should not be read to suggest that USCIS remains bound by the 2024 Policy Manual or any prior *presumption* in favor of granting deferred action to SIJS recipients.” Order at 45 n.24. Plaintiffs request that the Court revisit footnote 24 to ensure that the parties return to the *status quo ante* that Plaintiffs believe the Court intended in granting an APA stay of the 2025 Rescission Policy. The Court recognized the irreparable harms that the Individual Plaintiffs and those similarly situated are experiencing (*see* Order at 15–16 (“the risk of harm is real” as SIJS beneficiaries without deferred action “face an increased and imminent risk of removal”)), and any confusion over the scope of the remedy will only exacerbate these harms.

To the extent the Court did not contemplate that the Order’s remedy would include the SIJS Deferred Action Policy’s process for case-by-case adjudications of deferred action as set forth in the USCIS Policy Manual, Plaintiffs respectfully move for reconsideration. If Defendants do not implement this aspect of the SIJS Deferred Action Policy governing deferred action adjudications, they will once again be altering and/or rescinding the policy in violation of the APA.

ARGUMENT

I. Legal Standards

“Unlike a motion for reconsideration, a motion for clarification is not intended to alter or change a court’s order, but merely to resolve alleged ambiguities in that order.” *Fero v. Excellus Health Plan, Inc.*, 502 F. Supp. 3d 724, 747 (W.D.N.Y. 2020) (quoting *Metcalf v. Yale Univ.*, No. 15-CV-1696 (VAB), 2019 WL 1767411, at *2 (D. Conn. Jan. 4, 2019)). When ruling on a motion for clarification, “[t]he Second Circuit has allowed the use of Rule 60(a) for the correction of ‘inadvertent errors arising from oversight or omission.’” *McNamee v. Clemens*, No. 09-CV-1647

(SJ)(CLP), 2013 WL 3968740, at *3 (E.D.N.Y. July 31, 2013) (quoting *In re Marc Rich & Co. AG v. United States*, 739 F.2d 834, 836 (2d Cir. 1984)). Fed. R. Civ. P. 60(a) authorizes a court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a[n] . . . order[.]” The inadvertent error “can be any oversight or omission that leads to ambiguity in the ruling.” *McNamee* 2013 WL 3968740, at *3 (citation omitted). District courts apply Rule 60(a) at their own discretion. *Ferguson v. Lion Holding, Inc.*, 02-CIV-4258 (PKL), 2007 WL 2265579 (S.D.N.Y. Aug. 6, 2007) (“As the standard for clarification depends on the Court’s subjective assessment as to whether or not its own intention was accurately reflected in the record, the Court will only apply Rule 60(a) where it deems necessary.”).

On a motion for reconsideration, the movant must show “an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest justice.” *Virgin Atl. Airways, Ltd. v. Nat’l Mediation Bd.*, 956 F.2d 1245, 1255 (2d Cir. 1992) (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice & Procedure* § 4478 at 790)). Motions for reconsideration may be granted where “the moving party can point to controlling decisions or data that the court overlooked – matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Van Buskirk v. United Grp. Of Cos.*, 935 F.3d 49, 54 (2d Cir. 2019) (quoting *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 257 (2d Cir. 1995)); *see also* Local Civ. R. 6.3 (providing that the moving party must “set[] forth concisely the matters or controlling decisions which counsel believes the [c]ourt has overlooked”).

Reconsideration of a prior order may also be appropriate “if the court’s original order was ambiguous.” *Lotze v. Hoke*, 654 F. Supp. 605, 607 (E.D.N.Y.1987) (citing *Kelly v. Pension Benefit Guar. Corp.*, No. 79-CV-0547, 1980 U.S. Dist. LEXIS 12458, at *1 (S.D.N.Y. July 17, 1980)). Local Rule 6.3 is “narrowly construed and strictly applied so as to avoid repetitive arguments on

issues that have already been considered fully by the court.” *Minkina v. Ashcroft*, No. 01 CV 511, 2004 WL 1447947, at *1 (E.D.N.Y. June 25, 2004) (citing *Veloz v. State of New York*, No. 98 CV 567, 1999 WL 642883, at *2 (S.D.N.Y. Aug. 24, 1999)).

II. The Court Should Clarify or Reconsider Its Order to Hold That the Stay of the SIJS-DA Rescission Requires USCIS to Weigh the Enumerated Factors as They Existed on April 6, 2025.

The Court issued a stay pursuant to Section 705 of the APA to “postpone the effective date of an agency action” and/or to “preserve status or rights pending conclusion” of review. Order at 45. The Court further explained that a “stay under Section 705 restores the ‘last peaceable uncontested status existing between the parties *before* the dispute developed.’” *Id.* (quoting *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025)). Here, the “last peaceable uncontested status” was on April 6, 2025, when the Defendants were still implementing the SIJS Deferred Action Policy, prior to their *sub silentio* rescission and subsequent announcement of rescission through the June 2025 Policy Alert and accompanying Policy Manual update. *See* Order at 29–40. Accordingly, an APA stay under Section 705 must restore the SIJS Deferred Action Policy as it existed on April 6, 2025, prior to the Defendants’ rescission.

The SIJS Deferred Action Policy consisted of the March 7, 2022, Policy Alert and the contemporaneous updates to the USCIS Policy Manual that set forth the processes for implementing the SIJS Deferred Action Policy. *See* ECF 9-25. Indeed, the Policy Alert’s stated purpose was to notify the public of the new SIJS Deferred Action Policy, which, the Alert recognized, was “contained in Volume 6 of the Policy Manual”; the Alert incorporated the Policy Manual by including a link to it. *Id.* at 2; *see also id.* at 1 (“Purpose”—“U.S. Citizenship and Immigration Services (USCIS) is updating the USCIS Policy Manual to consider deferred action (and related employment authorization) for noncitizens classified as Special Immigrant Juveniles (SIJs) . . .”).

The revised USCIS Policy Manual, vol. 6, pt. J, ch. 4. G., in turn, explained how USCIS would make its “case-by-case discretionary determination.” USCIS identified the criteria it considered in deferred action adjudications and how it would weigh certain factors:

G. Deferred Action

....

2. Case-By-Case Discretionary Determination

As in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion. In doing so, USCIS weighs all relevant positive and negative factors that apply to the person’s case. USCIS 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.

One particularly strong positive factor that weighs heavily in favor of granting deferred action is that the person has an approved Form I-360 and will be eligible to apply for adjustment of status as soon as an immigrant visa number becomes available. Additionally, the eligibility criteria for SIJ classification are generally strong positive factors in such a determination, including that a juvenile court determined that it was in the best interest of the SIJ not to be returned to the country of nationality or last habitual residence of the SIJ or the SIJ’s parents.

(ECF 9-26 and ECF 42-3 (footnotes omitted)).² The Court described this balancing of factors as a “presumption in favor of deferred action.” Order at 6.

The above-articulated balancing test is a key element of the SIJS Deferred Action Policy. The weight USCIS assigned to the SIJS approval in the deferred action determination distinguishes SIJS deferred action from deferred action on other bases that is available to all noncitizens. *See* USCIS, G-325A, Biographic Information (for Deferred Action), <https://www.uscis.gov/g-325a>.

² Plaintiffs are quoting the Policy Manual in effect at the time of the SIJS-DA Rescission, which is available at ECF 9-26 and 42-3. As explained below, this identical provision appears in the Policy Manual issued along with the March 7, 2022, Policy Alert.

Any noncitizen may ask USCIS to grant deferred action if the overall positive discretionary factors outweigh the negative factors, irrespective of a SIJS approval. *Id.* Through the Policy Alert and accompanying revisions to the Policy Manual, USCIS instructed adjudicators to take into account that the agency had already determined, in granting SIJS, that the beneficiary had been subjected to parental maltreatment and that it was not in the child’s best interest to be returned to their country of origin. These prior determinations, in conjunction with the beneficiary’s eligibility for lawful permanent residence once visas became available, “weigh[ed] heavily in favor of” deferred action. ECF No. 9-26 at 5. As this Court recognized, the Individual Plaintiffs suffered a “loss-of-opportunity injury” when USCIS rescinded SIJS-DA and determined that it “will not consider SIJS recipients for deferred action based solely on their SIJS.” Order at 14. The loss of the weight USCIS assigned to the SIJS approval under the SIJS Deferred Action Policy’s balancing test is a critical component of the injury caused by the unlawful rescission.

To dispel any confusion about dates, the changes to the USCIS Policy Manual articulating the SIJS Deferred Action Policy were announced in the March 7, 2022, Policy Alert and became effective on May 6, 2022. *See* ECF 9-25, 2022 Policy Alert at 2 (“This update, contained in Volume 6 of the Policy Manual, is effective May 6, 2022[.]”); *see also* USCIS Pol’y Manual vol. 6, pt. J, ch. 4. G. (archived May 8, 2022), <https://web.archive.org/web/20220508074648/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>). Plaintiffs and Defendants provided the Court with the USCIS Policy Manual as it existed on April 18, 2025, because that is the version of the Manual that was in effect at the time of the *sub silentio* rescission of SIJS Deferred Action in April 2025. *See* USCIS Pol’y Manual vol. 6, pt. J, ch. 4., G. (archived Apr. 18, 2025) at ECF 9-26 and ECF 42-3. Although the Court referred to the archived USCIS Policy Manual in the record as the “2024 Policy,” *see* Order at 6, the updates

to the USCIS Policy Manual setting forth the SIJS Deferred Action Policy were not issued in 2024 but in conjunction with the Policy Alert in 2022. Moreover, as is evident from a comparison of the USCIS Policy Manual as it existed in May 2022 and April 2025, the “case-by-case discretionary determination” and required balancing test remained unchanged for the entire time the SIJS Deferred Action Policy was in effect. Compare USCIS Pol’y Manual vol. 6, pt. J, ch. 4., G. 2 (archived May 8, 2022), <https://web.archive.org/web/20220508074648/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>) with USCIS Pol’y Manual vol. 6, pt. J, ch. 4., G. 2 (archived Apr. 18, 2025), <https://web.archive.org/web/20250418205752/https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>.³

Nevertheless, footnote 24 of the Order states that it “should not be read to suggest that USCIS remains bound by the 2024 Policy Manual or any prior *presumption* in favor of granting deferred action to SIJS recipients.” Order at 45. To the extent the Court’s finding that “the government must conduct deferred-action . . . adjudications pursuant to the 2022 Policy Alert” excludes the process for case-by-case adjudications of deferred action laid out in the USCIS Policy Manual, Plaintiffs request clarification and, if necessary, reconsideration “to correct a clear error or prevent manifest injustice.” *Virgin Atl. Airways, Ltd*, 956 F.2d at 1255.

The SIJS Deferred Action Policy in effect at the time of the rescission was composed of the 2022 Policy Alert *and* the Policy Manual, which, among other things, set forth the processes and weighing of the factors that governed USCIS’s automatic consideration of deferred action for SIJS beneficiaries—key facets of the SIJS Deferred Action Policy that SIJS applicants and third

³ See *Sheiner v. Mayorkas*, No. 21-Civ.-5272 (ER), 2023 WL 2691580, at *1 (S.D.N.Y. Mar. 29, 2023) (“The Court takes judicial notice of the USCIS Policy Manual as a public record” (citing *Akran v. United States*, 997 F. Supp. 2d 197, 203 (E.D.N.Y. 2014))).

parties relied upon. The changes to the USCIS Policy Manual that were issued and went into effect on June 6, 2025, contemporaneously with the 2025 Policy Alert, “Revise[d] Section G (Deferred Action) in its entirety” and eliminated deferred action determinations for SIJS beneficiaries along with the balancing test that governed the case-by-case adjudications under the SIJS Deferred Action Policy. *See* ECF 1-2, 2025 Policy Alert at 2; USCIS Pol’y Manual vol. 6, pt. J, ch. 4 (December 3, 2025), <https://www.uscis.gov/policy-manual/volume-6-part-j-chapter-4>. Rescission of the relevant portions of the Policy Manual was unlawful for the same reasons that rescission of the 2022 Policy Alert was unlawful.

In order to fully “preserve status or rights pending conclusion of review” and restore the “last peaceable uncontested status existing between the parties *before* the dispute developed,” the Court should require USCIS to reinstate the SIJS Deferred Action Policy as it existed on April 6, 2025, which necessarily includes requiring the Policy to be implemented in accordance with the Policy Manual in effect at that time. Order at 45 (quotations omitted). USCIS’s weighing of the deferred action factors and treatment of a SIJS grant as a “strong positive factor” are a critical element of the SIJS Deferred Action Policy and should be included in any reinstatement of the Policy resulting from the APA stay. Otherwise, the Parties will not be returning to the *status quo ante* as ordered by the Court but rather to a different court-ordered version of the SIJS Deferred Action Policy.

CONCLUSION

For all the above reasons, Plaintiffs ask the Court to clarify or reconsider the Order to ensure that the Defendants are implementing the SIJS Deferred Action Policy as it existed immediately before the rescission, as required by the APA stay.

Dated: December 3, 2025

Respectfully submitted,

/s/ Natalie J. Kraner

Natalie J. Kraner, No. 4441598
Alexander Shalom
Catherine Weiss (*pro hac vice*)
Markiana Julceus
Noemi Schor (*pro hac vice*)
LOWENSTEIN SANDLER LLP
1251 Avenue of the Americas, 17th Floor
New York, NY 10020
212.262.6700
nkraner@lowenstein.com
ashalom@lowenstein.com
cweiss@lowenstein.com
mjulceus@lowenstein.com
nschor@lowenstein.com

Stephanie E. Norton, No. 5205539*
Rachel Leya Davidson**
Yulie Landan (*pro hac vice*)***
NATIONAL IMMIGRATION PROJECT
1763 Columbia Road NW
Suite 175 #896645
Washington, DC 20009
202.217.4742
ellie@nipnlg.org
rachel@nipnlg.org
yulie@nipnlg.org

Rebecca Scholtz (*pro hac vice*)
NATIONAL IMMIGRATION PROJECT
30 S. 10th St. (c/o Univ. of
St. Thomas Legal Services Clinic)
Minneapolis, MN 55403
202.742.4423
rebecca@nipnlg.org

Brad Miller (*pro hac vice* forthcoming)
Adam Sieff (*pro hac vice* forthcoming)
Zoë McKinney (*pro hac vice*)
Joseph Elie-Meyers (*pro hac vice*)
AK Shee (*pro hac vice* forthcoming)
Monica E. Gibbons (*pro hac vice*
forthcoming)
DAVIS WRIGHT TREMAINE LLP
350 South Grand Avenue, 27th Floor
Los Angeles, CA 90071
213.633-6800
bradmiller@dwt.com
adamsieff@dwt.com
zoemckinney@dwt.com
josepheliemeyers@dwt.com
akshee@dwt.com
monicagibbons@dwt.com

John Magliery, No. 60082
DAVIS WRIGHT TREMAINE LLP
1251 6th Avenue, 21st Floor
New York, NY 10020
212.489-8230
johnmagliery@dwt.com

Rebecca Brown (*pro hac vice*)
PUBLIC COUNSEL
610 S. Ardmore Ave.
Los Angeles, CA 90005
213.385.2977
rbrown@publiccounsel.org

*Attorneys for Plaintiffs 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., Central American Refugee Center
(CARECEN-NY), and Centro Legal de la
Raza*

Wendy Wylegala, No. 4154621
KIDS IN NEED OF DEFENSE (KIND)
252 West 37th Street, Floor 15
New York, NY 10018
646-970-2913
wwylegala@supportkind.org

*Not admitted in DC; working remotely from Wyoming and admitted in New York only.

**Not admitted in DC; admitted in New York only.

***Not admitted in DC; working remotely from New York and admitted in California only.

WORD COUNT CERTIFICATION

The undersigned hereby certifies that this Memorandum contains 2,635 words and is in compliance with Local Rule 6.3. In preparing this certification, the word-processing system that was used to prepare this document was relied upon.

Dated: December 3, 2025

/s/ Natalie J. Kraner

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of December 2025, I electronically filed the foregoing Motion for Clarification or Reconsideration using the CM/ECF system which will send notification of such filing to all counsel of record. This document was filed electronically and is available for viewing and downloading from the ECF system.

/s/ Natalie J. Kraner