December 23, 2025

Hon. Eric Komitee
United States District Court, Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *A.C.R. et al. v. Noem et al.*, Case No. 1:25-cv-03962

Dear Judge Komitee:

Pursuant to the Court's Orders dated December 4 and 5, 2025, Plaintiffs submit this reply letter brief in further support of their motion for reconsideration or clarification. ECF No. 60.[1]

I. An APA Stay Requires Restoring the SIJS Deferred Action Policy in Effect Before the Unlawful Rescission, Which Includes the Policy Manual in Effect in April 2025. As Defendants acknowledge, the USCIS Policy Manual "reflect[s] the implementation" of the SIJS Deferred Action Policy.[2] ECF No. 68 at 1 ("Opp."). Contrary to Defendants' claim that reinstating the operative Policy Manual would deprive them of discretion in making case-by-case deferred action determinations, Opp. at 7, the Manual itself explains that "[i]t does not remove [officers'] discretion in making adjudicatory decisions." ECF No. 68-2 at 2. Without determining outcomes in any individual case, restoration of the Manual as of April 2025 would give Plaintiffs an "*opportunity to pursue* deferred action and/or work authorization" under the SIJS Deferred Action Policy in effect before the unlawful rescission, which recognized a SIJS approval and a state court finding that repatriation would not be in the child's best interest as "strong positive factors" in adjudicating deferred action. ECF No. 60 at 14, 40 (emphasis added); ECF No. 9-25 at 2; ECF No. 67-1 at 4.

II. The USCIS Policy Manual Is Binding on Officers Making Adjudications. There is no merit to Defendants' assertion that the Policy Manual is merely a "nonbinding guidance document[]." Opp. at 6. The Policy Manual states that it "is to be followed by all USCIS officers in the performance of their duties." ECF No. 68-2 at 2. This language expressly binds adjudicators.

[1] Defendants have represented that "USCIS will await clarification from the court [through this motion] before resuming implementation" of the Court's November 19 order. E-mail from Dean De Las Alas, Trial Attorney US DOJ, to John Magliery, Partner DWT (Dec. 15, 2025, at 6:01 PM ET). Plaintiffs therefore respectfully request as swift a resolution of this motion as possible.

[2] Defendants attached the applicable sections of the USCIS Policy Manual in effect in May 2022 to their opposition (ECF No. 68-1) instead of the April 2025 version that they had filed previously (ECF No. 42-3) and that Plaintiffs submitted in response to the Court's December 5, 2025 Order (ECF No. 67-1). The April 2025 manual is the one that should be restored under the APA stay because it was in effect immediately prior to Defendants' unlawful rescission of the SIJS Deferred Action Policy and represents the '"[l]ast peaceable uncontested status existing between the parties *before* the dispute developed."' *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255, 274 (E.D.N.Y 2025) (quotation omitted). Although the text of the two versions is largely identical, the April 2025 manual accounted for this Administration's rescission of Biden-era ICE Directive 11005.3 by removing the solitary reference to that directive from a footnote. *Compare* ECF No. 68-1 at 4 n.25 (current as of May 6, 2022), *with* ECF No. 42-3 at 4 n.27 (current as of Apr. 2, 2025).

See R.F.M. v. Nielsen, 365 F. Supp. 3d 350, 382 (S.D.N.Y. 2019) (holding that change in USCIS Policy Manual governing SIJS adjudications was binding, as demonstrated by adjudicators' consistent denial of SIJS to affected petitioners under the policy); *see also Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 81 (2d Cir. 2006) (upholding vacatur of Medicare policy manual provision adopted in violation of change of position doctrine, even if it was a "merely interpretive in nature," because it "operated with nearly undiminished force on beneficiaries" and "[w]as binding on [those] who paid for treatment"). The disclaimer that immediately follows this mandatory language—"The Policy Manual does not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person."—deprives individuals of any right to sue directly under the Manual, but does not make the Manual any less binding on USCIS officers. ECF No. 68-2 at 1.[3]

III. The APA Provides a Basis for a Stay to Reinstate the Status Quo Ante Regardless of the Disclaimer Denying Private Rights of Action under the Manual. The denial of a private right of action under the Manual similarly does not impact this Court's ability, as part of an APA stay, to restore the status quo ante by reinstating the version that existed in April 2025. It is not boilerplate disclaimer language that determines whether an agency guidance document is judicially enforceable under the APA but rather whether "[t]he rights of individuals are affected." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (citation omitted). Interpreting the *Accardi* doctrine in the immigration context, the Second Circuit has explained, "'[W]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required.'" *Montilla v. I.N.S.*, 926 F.2d 162, 167 (2d Cir. 1991) (quoting *Ruiz*, 415 U.S. at 235). Here, the rights of SIJS beneficiaries are undoubtedly affected by whether USCIS gives positive weight to SIJS approvals and related state court eligibility findings when adjudicating deferred action.

In these circumstances, a boilerplate disclaimer will not insulate the government from judicial review under the APA. Indeed, in three APA cases, the courts required immigration officials to follow ICE directives in making discretionary parole decisions even though the directives included the precise disclaimer at issue here. *Abdi v. Duke*, 280 F. Supp. 3d 373, 389 (W.D.N.Y. 2017), *vacated in part on other grounds*, *Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 152 (D.D.C. 2018); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 338 (D.D.C. 2018). As these courts emphasized, the *Accardi* doctrine holds agencies "accountable to their own codifications of procedures and policies[,] particularly those that affect individual rights[,]" and a stock disclaimer of private rights of action cannot obviate this rule. *Damus*, 313 F. Supp. 3d at 337. Here too, the disclaimer cannot defeat the force of an APA stay whose purpose is to prevent enforcement of an unlawful rescission pending further review. *Haitian Evangelical Clergy Ass'n*, 789 F. Supp. 3d at 274. While this case is litigated, therefore, USCIS must comply with the preexisting SIJS Deferred Action Policy, as set forth in the Policy Manual.

[3] To the extent that Defendants seek to show that a disclaimer of a private right of action undermines a policy's force and effect, an identical boilerplate disclaimer is included in all the executive orders and directives Defendants cite as current guidance for how USCIS officers should exercise their discretion. Opp. at 8 n.2.

IV. *Regents* Ordered Different Relief Because of the Different Procedural Posture. The procedural posture in *Regents* was different from this case: the *Regents* Court ruled on the merits that DHS had not "complied with the procedural requirement[s]" of the APA, and thus affirmed the vacatur of the DACA recission, recommending that the matter be "remand[ed] to DHS so that it may consider the problem anew." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 36 (2020). In contrast, this Court stayed the 2025 Rescission Policy under 5 U.S.C. § 705 pending further APA review. The *Regents* Court's observation, therefore, that the "appropriate recourse" after final vacatur of the DACA rescission was to remand to DHS, has no bearing on this Court's authority to restore—pending review of Plaintiffs' APA claims—the status quo ante. Should this Court ultimately determine that the 2025 Rescission Policy violated the APA, the appropriate remedy would be vacatur and the Court might then remand to DHS to reevaluate the policy, just as the Supreme Court did in *Regents*.

Nor would restoring the "strong factor" requirement under the April 2025 Policy Manual require the Court to "wad[e] into matters 'committed to agency discretion,'" and thus run afoul of 5 U.S.C. § 701(a)(2). *See* Opp. at 6. Rather, this requirement is a key element of "the standardized process for reviewing [SIJS-DA] applications" that the Court already found reviewable. Order at 18; *see also Roe v. Mayorkas*, 2024 WL 5711331, at *2, *15 (D. Mass. Oct. 2, 2024) (finding meaningful standard for review in requirement that USCIS "must weigh all positive factors present . . . against any negative factors" in adjudicating parole applications).

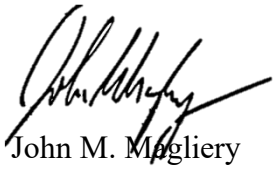
V. The Court Should Decline Defendants' Invitation to Alter the Prior Policy. Plaintiffs' request is simple: restore the Parties to the status quo ante and effectuate the Court-ordered APA stay by reinstating the applicable sections of the Policy Manual in effect on April 6, 2025. Because the Policy Manual speaks for itself, Defendants' request for judicial elaboration (Opp. at 8–9) is superfluous and risks allowing Defendants to alter the policy in a manner that fails to adhere to the APA. First, the SIJS Deferred Action Policy as described in the Policy Manual has always allowed USCIS to engage in whatever vetting is necessary to determine "whether the person warrants a favorable exercise of discretion." *See* ECF No. 67-1 at 4 n.25 (authorizing "biographic background checks[,]" the collection of biometrics for criminal background checks, and personal interviews during the review process).

Second, the Policy Manual in effect on April 6, 2025, already accounted for the rescission of Biden-era ICE Directive 11005.3 by removing any reference to that Directive from the Policy Manual. *See supra* n.1. Accordingly, reinstatement of the Policy Manual as it existed in April 2025 would allow USCIS to "consider current removal priorities and directives, and derogatory information obtained through enhanced vetting when determining on a case-by-case basis whether the positive factors outweigh the negative factors[,]" Opp. at 9, and Defendants' request for further confirmation of this fact is unnecessary.

To the extent that Defendants seek to rely on "current DHS priorities, directives, and guidance about deferred action[,]" Opp. at 9, to relieve themselves of the obligation to treat a SIJS approval and state court eligibility findings as "strong positive factors" that "weigh[] heavily in favor of granting deferred action" (ECF No. 67-1 at 4), they are asking the Court to convert an APA stay into a new policy or to revert to a de facto rescission of the SIJS Deferred Action Policy. If Defendants favor an alternative deferred action policy for SIJS beneficiaries, they may promulgate one within the bounds of the APA, but they may not ask this Court to devise one.

Respectfully submitted,

Davis Wright Tremaine LLP



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