

26-0236

United States Court of Appeals *for the* Second Circuit

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Plaintiffs-Appellants,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF AND SPECIAL APPENDIX FOR PLAINTIFFS-APPELLANTS

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– v. –

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CORPORATE DISCLOSURE STATEMENT

Neither the Central American Refugee Center (CARECEN-NY) nor Centro Legal de la Raza has any parent corporation, and no publicly held corporation owns any part of either organization.

PRELIMINARY STATEMENT

In 2022, U.S. Citizenship and Immigration Services (“USCIS”) created the Special Immigrant Juvenile Status (“SIJS”) Deferred Action Policy to protect noncitizen children who had suffered parental maltreatment from removal and to provide them access to work authorization while they waited in a years-long visa backlog for the opportunity to apply for lawful permanent residence. An essential component of the SIJS Deferred Action Policy was the “Strong Factors Standard,” set forth in the USCIS Policy Manual, which required USCIS adjudicators to treat both SIJS eligibility and having an approved SIJS petition as strong positive factors weighing in favor of granting deferred action. Before USCIS discontinued SIJS deferred action adjudications sub silentio around April 7, 2025, some 200,000 SIJS beneficiaries had received deferred action, shielding these vulnerable young people from deportation and entitling them to apply for work authorization. USCIS formally rescinded the SIJS Deferred Action Policy on June 6, 2025.

When the district court correctly concluded that the rescission likely violated the Administrative Procedure Act (“APA”) and was causing irreparable harm, the proper remedy was to stay the entirety of the unlawful rescission under 5 U.S.C. § 705 and restore the status quo ante. Instead, the district court declined to restore the pre-rescission USCIS Policy Manual provisions, including the Strong Factors

Standard, for SIJS beneficiaries whose petitions were approved on or after June 6, 2025, as well as for those seeking to renew prior grants of deferred action.

This was an abuse of discretion. The district court's refusal to reinstate the relevant provisions of the USCIS Policy Manual stripped the SIJS Deferred Action Policy of the standards and procedures necessary for it to function as intended. Beneficiaries with post-June 5, 2025 SIJS grants or expiring grants of deferred action were left exposed to the looming risk of deportation and other irreparable harms that the district court had found warranted an APA stay in the first place. In reaching this result, the district court committed several legal errors that reflect its fundamental misunderstanding of the key components of the SIJS Deferred Action Policy, the principles governing the reviewability of agency action under the APA, and the remedy required to stay what the district court had determined was an unlawful rescission.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this matter under 28 U.S.C. § 1331. This Court has jurisdiction over this appeal under 28 U.S.C. § 1292. Plaintiffs timely filed a notice of appeal on February 3, 2026. ECF No. 1. A timely appeal from denial of a motion to reconsider “suffices to bring up for review the underlying order or judgment[.]” “*R*” *Best Produce, Inc. v. DiSapio*, 540 F.3d 115, 121 (2d Cir. 2008); *see also Banister v. Davis*, 590 U.S. 504, 509 (2020) (when timely appealed, “the

ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing court takes up only one judgment”).

STATEMENT OF THE ISSUES

1. Did the district court commit legal error when it concluded that the USCIS Policy Manual has no legal force and changes to it are not subject to review under the APA in general or the change-in-position doctrine in particular?

2. Did the district court abuse its discretion by declining to reinstate the pre-rescission USCIS Policy Manual, which required adjudicators to treat SIJS eligibility and SIJS approval as strong positive factors for granting deferred action, as to SIJS beneficiaries whose SIJS petitions were granted on or after June 6, 2025, or who seek to renew their deferred action?

STATEMENT OF THE CASE

This appeal arises from a challenge to USCIS’s rescission of a deferred action policy for young immigrants granted SIJS. Plaintiffs, who are SIJS beneficiaries and nonprofit organizations that represent them, brought this action under the APA seeking to set aside the rescission and restore the policy that had protected certain SIJS beneficiaries from removal while they waited for immigrant visas to become available. The district court concluded that Plaintiffs were likely to succeed on the merits of their APA claims (that the rescission was arbitrary and capricious) and stayed the rescission under 5 U.S.C. § 705. Mem. & Order, Nov. 19, 2026, SPA-1–

49. But in a footnote and subsequent order denying reconsideration, the district court declined to stay the rescission of the Strong Factors Standard, a central component of the prior policy that required USCIS adjudicators to treat both SIJS eligibility and having an approved SIJS petition as strong positive factors weighing in favor of granting deferred action. SPA-45. As a result, the district court failed to fully reinstate the prior policy, and therefore the status quo ante, as contemplated by an APA stay. SPA-48–49. Plaintiffs appeal only this narrow aspect of the district court’s ruling.

A. Statutory and Policy Background

Congress created SIJS to protect noncitizen children in the United States as to whom a state court has made findings of abuse, neglect, or abandonment by a parent and determined that it would not be in the child’s best interest to return to their country of origin. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11. Individuals granted SIJS are eligible to apply for lawful permanent residence, but they may do so only when an immigrant visa becomes immediately available. 8 U.S.C. §§ 1153(b)(4), 1255(a). Because visas in the relevant category are subject to annual limits, SIJS beneficiaries must wait years in a visa backlog before they can apply for adjustment of status, during which time they remain at risk of deportation and are not authorized to legally work. As of March 2025, more than 150,000 SIJS beneficiaries were estimated to be waiting in this backlog. A-196–197 ¶ 20; SPA-4.

To counter these unintended harms, USCIS created the SIJS Deferred Action Policy by announcing in a March 7, 2022 Policy Alert (the “2022 Policy Alert”) that it was “updating the USCIS Policy Manual” to require adjudicators to automatically consider all individuals with an approved SIJS petition for deferred action. A-258–260. A grant of deferred action would protect a SIJS beneficiary from removal for four years, with renewal terms available if the individual was still waiting in the visa backlog at the end of that period. A deferred action approval would also make SIJS beneficiaries eligible to apply for employment authorization. 8 C.F.R. § 274a.12(c)(14).

USCIS concurrently changed its Policy Manual to effectuate the SIJS Deferred Action Policy, which identified an approved SIJS petition as a “particularly strong positive factor that weighs heavily in favor of granting deferred action,” and stated that the eligibility criteria for SIJS are “generally strong positive factors in such a [deferred action] determination, 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 (collectively, the “Strong Factors Standard”). Pre-Recission Policy Manual, A-265. The USCIS Policy Manual update also included a renewal process for individuals whose deferred action grants were expiring. *Id.*

On or around April 7, 2025, USCIS abandoned the SIJS Deferred Action Policy without public announcement and ceased conducting automatic deferred action determinations upon approval of SIJS petitions. SPA-7–8.

Two months later, on June 6, 2025, the agency formally rescinded the SIJS Deferred Action Policy, announcing in a cursory policy alert (the “2025 Policy Alert”) that it was again updating its Policy Manual (which it did simultaneously) to reflect that (1) it would no longer automatically conduct deferred action determinations for noncitizens with SIJS unable to adjust their status due to visa backlogs; (2) it would not consider applications for employment authorization based on SIJS deferred action; and (3) previously granted deferred action would remain valid only through the current eligibility period (the “Rescission Policy”). SPA-8–9.

B. Proceedings in the District Court

On July 17, 2025, Plaintiffs filed this action in the United States District Court for the Eastern District of New York. ECF No. 1. Plaintiffs alleged that USCIS’s failure to follow the SIJS Deferred Action Policy from April 7 to June 6, 2025, as well as its formal rescission of the Policy on June 6, 2025, violated the APA. *Id.* The Rescission Policy, Plaintiffs claimed, was arbitrary and capricious for failing to consider SIJS beneficiaries’ reliance interests and reasonable alternatives to total rescission, and departed from established agency procedures. *Id.* Plaintiffs

simultaneously moved to stay the Rescission Policy pending a final decision on the merits. ECF No. 6.

On November 19, 2025, the district court granted that motion in part and entered a stay under Section 705 of the APA. SPA-1–2. The district court held that Plaintiffs had shown a likelihood of success on the merits of several of their APA claims, including that USCIS had failed to consider the serious reliance interests generated by the SIJS Deferred Action Policy and had violated the *Accardi* doctrine by sub silentio discontinuing deferred action adjudications before formally rescinding the policy. SPA-24–40. The district court therefore stayed the Rescission Policy pursuant to 5 U.S.C. § 705, restoring the pre-rescission framework under which USCIS would automatically consider SIJS beneficiaries for deferred action. SPA-44–48.

In footnote 24 of its opinion, however, the district court stated that its stay order should not be read to require USCIS to follow the pre-rescission version of the USCIS Policy Manual by applying the Strong Factors Standard or any “*presumption*” in favor of granting deferred action to SIJS beneficiaries. SPA-45 n.24.

Plaintiffs moved for clarification or reconsideration, explaining that footnote 24 was legally erroneous, as it was directly at odds with the district court’s order staying the Rescission Policy, as well as with the purpose of an APA stay,

which is to restore the status quo prior to the unlawful agency action pending a final decision. ECF No. 61. As Plaintiffs explained, it is not just the 2022 Policy Alert, but the USCIS Policy Manual—including the Strong Factors Standard—that constituted the SIJS Deferred Action Policy that the Rescission Policy unlawfully rescinded. Both must thus be reinstated to restore the status quo ante. *Id.*

On January 5, 2026, the district court denied Plaintiffs’ motion for clarification or reconsideration. Docket Order, Jan. 5, 2026. In a subsequent opinion issued on January 14, 2026, the district court reiterated that its November 19 stay order did not require USCIS to “treat SIJ status as a ‘strong factor that weighs heavily in favor of granting deferred action[,]’” nor to follow the relevant provisions of the USCIS Policy Manual as it existed before the Rescission Policy—at least not for individuals approved for SIJS or seeking to renew grants of deferred action on or after June 6, 2025 (all beneficiaries seeking renewals will apply after this date, as prior deferred action grants will not begin to expire until May 2026). Mem. & Order, Jan. 14, 2026, SPA-50–59. The district court reasoned that the USCIS Policy Manual has “no legal force[,]” and that restoring the status quo prior to the Rescission Policy did not extend to restoring the pre-rescission Policy Manual or its Strong Factors Standard. SPA-54 (citation omitted).

Despite this holding, the district court recognized that individuals who received SIJS approvals between April 7 and June 5, 2025, inclusive, are entitled to

application of the Strong Factors Standard when their deferred action is adjudicated under the court’s stay order. SPA-56. The district court explained that it “reach[ed] a different conclusion” as to this group of SIJS beneficiaries because they were denied adjudications of deferred action before Defendants formally rescinded the SIJS Deferred Action Policy, in violation of the *Accardi* doctrine. *Id.* at n.7. As to SIJS beneficiaries denied adjudications on the basis of the Rescission Policy publicly announced on June 6, 2025, however, the court ruled that the agency need not apply the Strong Factors Standard because, unlike the *Accardi* doctrine, the change-in-position doctrine did not apply to, and therefore did not require reinstatement of, the USCIS Policy Manual. SPA-56–59. The district court thus declined to reinstate the status quo prior to the unlawful agency action. *Id.* As a result of this ruling, different groups of SIJS beneficiaries—all unlawfully deprived of the opportunity to be considered for deferred action in violation of the APA—are subject to entirely different standards when considered for deferred action under the APA stay ordered by the district court.

C. The Present Appeal

Plaintiffs appeal only the components of the district court’s order declining to restore the USCIS Policy Manual that made up the SIJS Deferred Action Policy. Plaintiffs do not contest the district court’s decision to stay rescission of the Policy Manual for those individuals whose SIJS petitions were approved between April 7

and June 5, 2025, inclusive. Rather, Plaintiffs appeal the district court's holding that otherwise identically situated SIJS beneficiaries—those whose petitions were approved on or after June 6, 2025, and those seeking renewal of SIJS deferred action—are not entitled to adjudication under the same standards.

SUMMARY OF THE ARGUMENT

The district court held that USCIS's rescission of the SIJS Deferred Action Policy was likely unlawful under the APA but failed to grant the appropriate remedy to forestall the harms it identified while the litigation proceeds. In declining to restore the operative USCIS Policy Manual provisions—including the Strong Factors Standard that governed deferred action adjudications—the court left in place a hollow version of the Policy that does not restore the status quo ante and cannot function as intended. That result rests on several fundamental legal errors, each of which independently warrants reversal.

First, the district court erred in cleaving the pre-rescission Policy Manual from the 2022 Policy Alert. The SIJS Deferred Action Policy comprised both the Policy Alert that announced the program and the contemporaneously issued Policy Manual that operationalized it. The Policy Alert said little about the substance of deferred action adjudications; it was the Policy Manual that supplied the standards for conducting those adjudications, including the Strong Factors Standard, which is the mechanism through which the Policy's stated goal of providing special

protection to vulnerable SIJS beneficiaries was achieved. By restoring only the 2022 Policy Alert for beneficiaries whose petitions were approved on or after June 6, 2025, as well as those seeking deferred action renewals, the district court failed to restore the status quo ante as required by an APA stay. Instead, it created a court-fashioned hybrid policy that USCIS never promulgated—one that leaves thousands of SIJS beneficiaries without meaningful access to deferred action.

Second, the district court erred in holding that changes to the USCIS Policy Manual are not subject to review under the APA. The district court reasoned that the Policy Manual is an “internal” document with “no legal force.” SPA-54. Yet the test for APA reviewability is whether agency action affects individual rights and carries legal consequences. The Policy Manual is public and binding on USCIS adjudicators, governs how they exercise discretion in deferred action determinations, and has profound consequences for SIJS beneficiaries. Courts regularly review changes to sub-regulatory documents like policy manuals under the APA when those changes carry such consequences.

Third, the district court erred in holding that the change-in-position doctrine does not apply to revisions to the USCIS Policy Manual, drawing an untenable red line between this doctrine and the *Accardi* doctrine. The *Accardi* doctrine stands for the basic proposition that agencies must follow their own policies. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954). The change-in-position doctrine, in turn, requires

agencies to provide “a reasoned explanation for [a policy] change,” “display awareness” of the change in position, and “consider serious reliance interests.” *FDA v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 568 (2025) (internal quotation marks and citations omitted). Both doctrines stem from the same core APA principle: agencies may not irrationally depart from existing policies that regulate the rights and interests of individuals.

The district court itself held that “USCIS failed to consider reliance interests and reasonably obvious alternatives here, likely rendering its decision to rescind SIJS-DA arbitrary and capricious.” SPA-29–30. It also found that USCIS’s sub silentio abandonment of the Policy Manual between April and June 2025 likely violated the *Accardi* doctrine. SPA-38–40. There is no principled basis for holding that USCIS’s formal rescission of the very same Policy Manual provisions—without considering reliance interests or alternatives—is immune from review under the change-in-position doctrine. This Court and others have regularly applied that doctrine to agency departures from policies embodied in policy manuals, handbooks, and similar guidance documents.

Fourth, the boilerplate language in the Policy Manual disclaiming an intention to create “any substantive or procedural right or benefit that is legally enforceable” cannot defeat review under the change-in-position doctrine. When a policy is

otherwise final and reviewable, as this one is, the agency cannot shield it from judicial scrutiny under the APA by inserting a stock disclaimer.

Finally, the district court erred in failing to reinstitute the Strong Factors Standard for *all* SIJS beneficiaries. Without that Standard, beneficiaries are effectively relegated to seeking deferred action on the same narrow grounds available to all noncitizens—grounds unrelated to their SIJS and approved at rates far below the approval rate that prevailed under the Strong Factors Standard. The district court’s own finding that the rescission was likely arbitrary and capricious applies no less to the elimination of the Strong Factors Standard than to the cessation of automatic consideration for deferred action. The remedy must be a full stay of the Rescission Policy during the pendency of the litigation, restoring the SIJS Deferred Action Policy in its entirety—including the Strong Factors Standard—for all SIJS beneficiaries subject to the rescission.

STANDARD OF REVIEW

This Court reviews the denial of a motion for reconsideration for abuse of discretion. *Van Buskirk v. United Grp. of Cos., Inc.*, 935 F.3d 49, 53 (2d Cir. 2019). Denials of APA stays are also reviewed for abuse of discretion. *See Nat’l TPS All. v. Noem*, 150 F.4th 1000, 1015–16 (9th Cir. 2025) (reviewing APA stay under same abuse of discretion standard as preliminary injunction, as both are decided based on the same factors); *see also New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42,

58, 58 n.14 (2d Cir. 2020) (reviewing district court’s combined APA stay and preliminary injunction halting enforcement of agency rule for abuse of discretion).

Under this standard, the legal conclusions underpinning the district court’s decision are reviewed de novo, the factual conclusions are reviewed for clear error, and the scope of relief is reviewed for abuse of discretion. *New York v. U.S. Dep’t Homeland Sec.*, 969 F.3d at 58 (citing *Cnty. of Nassau v. Leavitt*, 524 F.3d 408, 414 (2d Cir. 2008)). A district court “necessarily abuse[s] its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence.” *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 162 F.3d 724, 729 (2d Cir. 1998) (internal quotation marks and citation omitted).

ARGUMENT

I. The District Court Erred as a Matter of Law in Declining to Stay in Full the Unlawful Rescission of the SIJS Deferred Action Policy, Which Comprised Both the USCIS Policy Manual Update and the Policy Alert.

The district court inexplicably and incorrectly severed the two interrelated documents that together make up the SIJS Deferred Action Policy, both of which should have been reinstated under the APA stay to restore the status quo ante. One document, a Policy Alert, summarized and announced the effective date of an “update” to the USCIS Policy Manual, which is “the agency’s centralized online repository for USCIS’ immigration policies.” A-257–260; USCIS, Policy Manual

(Feb. 3, 2026).¹ The second document, the update to the Policy Manual announced in the Policy Alert, included the specific provisions of the SIJS Deferred Action Policy. From March 2022 until June 6, 2025, the Policy Manual update not only directed USCIS adjudicators on policy implementation, but also put the public on notice of the standards and procedures relevant to SIJS deferred action adjudications. USCIS Policy Manual, Volume 6, Part J, Chapter 4 – Adjudication, A-261–267. Because core elements of the Policy were elaborated *only* in the Policy Manual, it was legal error for the district court to cleave the Policy Manual from the Policy Alert and restore only the latter. The APA requires more: a return to the status quo ante, including the provisions of the pre-rescission Policy Manual.

A. The Policy Alert and the Policy Manual Update Are Both Part of the SIJS Deferred Action Policy.

In holding that its stay of the Rescission Policy did not in fact stay the rescission of the provisions of the Policy Manual that implemented the SIJS Deferred Action Policy, the district court erroneously treated the Policy Manual update as expendable when it was in fact at the core of the SIJS Deferred Action Policy.

There was nothing unusual in USCIS’s promulgation of multiple documents to establish a single policy; agencies do so all the time. *See, e.g., Barrick Goldstrike Mines Inc. v. Browner*, 215 F.3d 45, 48–49 (D.C. Cir. 2000) (finding that a preamble,

¹ <https://www.uscis.gov/book/export/html/68600> (last visited Apr. 1, 2026)

guidance, and EPA enforcement letter together constituted final agency action under APA's § 704, and noting "we have recognized that final agency action may result 'from a series of agency pronouncements rather than a single edict'" (citation omitted); *Nat. Res. Def. Council, Inc. v. U.S. Env't Prot. Agency*, 438 F. Supp. 3d 220, 227 (S.D.N.Y. 2020) (finding that a new EPA directive unlawfully departed from a prior policy comprising both a guidance document and a handbook).

From the outset, USCIS acknowledged that the 2022 Policy Alert was not a complete statement of the SIJS Deferred Action Policy; the Alert itself directed the public to an "update, contained in Volume 6 of the Policy Manual." A-259. While the Alert briefly encapsulates basic terms of the SIJS Deferred Action Policy (*id.*, "Policy Highlights"), most of its text is devoted to explaining USCIS's motivation, rationale, and authority for adopting the program. A-258 (explaining that SIJS deferred action and employment authorization "will help to protect" youth during the wait for a visa number); A-259–60 (noting that SIJS deferred action conserves enforcement resources for higher priority cases); A-258, A-260 (locating authority for the SIJS Deferred Action Policy in Congressional purpose, the Immigration and Nationality Act, and associated regulations). In short, the Policy Alert spells out the "why" of the SIJS Deferred Action Policy, but very little of the "how" or "what."

In contrast, the Policy Manual supplies standards and procedures to give practical effect to the SIJS Deferred Action Policy, as befits a document that

“contains the official policies of USCIS and assists immigration officers in rendering decisions.”² This function of the Policy Manual is clearest with respect to three core aspects of the policy: how USCIS conducts deferred action adjudications, how beneficiaries may request and how USCIS should adjudicate a renewal of deferred action, and when USCIS may terminate deferred action.

First, as to the conduct of deferred action determinations, the Policy Alert states only that “USCIS considers on a case-by-case basis, based on the totality of the evidence, whether the person warrants a favorable exercise of discretion.” A-258–260 n.6. As the district court recognized, *see* SPA-6, it falls to the Policy Manual to clarify how adjudicators should channel that discretion, specifying and assigning weight to factors that USCIS must consider:

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.

A-265. In short, to ensure that the SIJS Deferred Action Policy achieves its aim of humanitarian protection for a vulnerable population, *see* A-258, the Strong Factors

² USCIS, Policy Manual, <https://www.uscis.gov/policy-manual> (last visited Apr. 17, 2026).

Standard focuses officers' discretion on evidence of the applicant's need for protection from both parental maltreatment and removal from the United States.

Second, while the Policy Alert defined a four-year period for SIJS Deferred Action, A-259, it was silent on what might happen if the initial deferred action grant expires before an immigrant visa number becomes available to the SIJS beneficiary. The Policy Manual provides the recourse: "A person may submit a deferred action renewal request to USCIS 150 days before expiration of the period of deferred action." A-265. It is also uniquely the Policy Manual that dictates how USCIS will evaluate the evidence: "Renewal requests are subject to the guidance outlined above regarding eligibility and adjudication," *i.e.*, the Strong Factors Standard. *Id.*

Third, the Policy Manual briefly addresses USCIS's discretion to terminate a grant of deferred action—a topic not even mentioned in the Policy Alert. The non-exhaustive list of examples provided in the Policy Manual, A-265–266, indicates the scope of the considerations that may support termination, again serving to channel USCIS's broad discretionary authority.

Further, the Policy Manual guides adjudicators (and the regulated public, including the intended beneficiaries of the SIJS Deferred Action Policy) on additional topics the Policy Alert did not reach. The Policy Manual specifies that in conducting a deferred action adjudication, a USCIS officer may update biographic background checks, require biometrics collection, or interview the SIJS beneficiary.

A-266 n.25. The Policy Manual also specifies that ongoing removal proceedings, an absence of removal proceedings, a final order of removal, and an order of voluntary departure are all compatible with a grant of SIJS deferred action. *Id.* at n.27.

Because the Policy Manual updates contained core aspects of the SIJS Deferred Action Policy, the district court erred in carving them out from its order staying the rescission of the SIJS Deferred Action Policy. As in other cases in which agency policies comprised multiple documents, the court should have reinstated the *entire* policy.

B. The District Court Erred in Characterizing the Policy Manual as Non-Binding and Non-Public.

To justify its decision not to restore the Policy Manual (at least not as to individuals approved for SIJS on or after June 6, 2025, or seeking to renew their deferred action), the district court erroneously held that the Policy Manual, unlike the Policy Alert, had “no legal force.” SPA-54. The Policy Manual itself states the opposite: that it “contains the official policies of USCIS” and “is to be followed by all USCIS officers in the performance of their duties” even while it “does not remove their discretion in making adjudicatory decisions.” USCIS, *About the Policy Manual*.³ The Policy Manual also sets forth the Strong Factors Standard in mandatory terms: a SIJS approval “weighs heavily in favor of granting deferred

³ <https://www.uscis.gov/policy-manual>.

action,” and the “eligibility criteria for SIJ classification are generally strong positive factors.” A-265; *see Bennett v. Spear*, 520 U.S. 154, 172 (1997) (“It is rudimentary administrative law that discretion as to the substance of the ultimate decision does not confer discretion to ignore the required procedures of decisionmaking.”).

Nor is the Policy Manual merely an “internal” document, as the district court mistakenly described it. *See* SPA-54. USCIS’s website publicly displays all twelve volumes of the Policy Manual,⁴ stating that it “provides transparency of immigration policies and furthers consistency, quality, and efficiency consistent with the USCIS mission.”⁵ At the advent of the Policy Manual, USCIS’s director called it a step “to provide our customers, stakeholders and workforce with an efficient and effective adjudication process that provides a high level of quality and consistency,”⁶ and invited the public to a national “stakeholder engagement.”⁷ Moreover, a “Feedback” button on the Policy Manual web page⁸ invites public input “at any time.”⁹

⁴ <https://www.uscis.gov/policy-manual/table-of-contents>.

⁵ <https://www.uscis.gov/policy-manual>.

⁶ <https://www.uscis.gov/archive/uscis-begins-transition-to-centralized-policy-manual> (Statement of Alejandro Mayorkas, Jan. 7, 2013)

⁷ <https://www.uscis.gov/archive/national-stakeholder-engagement-with-director-alejandro-mayorkas>.

⁸ <https://www.uscis.gov/outreach/feedback-opportunities/policy-manual-feedback/policy-manual-feedback>.

⁹ This Court “regularly take[s] judicial notice of agency documents on official websites.” *Lewis v. M&T Bank*, No. 21-933, 2022 WL 775758, at *2, *2 n.4 (2d Cir. Mar. 15, 2022) (collecting cases).

C. The “Strong Factors Standard” Is Integral to the Operation of the SIJS Deferred Action Policy.

The district court’s refusal to reinstitute the Strong Factors Standard contained in the Policy Manual effectively cuts off access to deferred action for SIJS beneficiaries except on narrow grounds available to all noncitizens and unrelated to SIJS. Thus, while purporting to stay the Rescission Policy, the district court’s decision in fact defeats the stated goal of the prior SIJS Deferred Action Policy, which was to offer special protection to vulnerable young people who had suffered parental maltreatment and could not be safely returned to their countries of origin.

Deferred action is a tool that has long been available to immigration adjudicators for both humanitarian purposes and administrative convenience. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 484 (1999). Historically, considerations have included medical needs, family crises, statelessness, and service of the individual or a family member in the United States military. *See, e.g.*, USCIS Form G-325, <https://www.uscis.gov/sites/default/files/document/forms/g-325a.pdf>.

The Strong Factors Standard is the core feature that distinguishes SIJS deferred action from these other forms of deferred action. Absent the strong positive weight accorded to a SIJS approval and the state court’s SIJS findings, beneficiaries would qualify for deferred action only on the preexisting grounds available to all noncitizens. But the premise of SIJS deferred action was to offer a reprieve from immigration enforcement and access to work authorization for young people who

had demonstrated their need for humanitarian protection by qualifying for SIJS but who, through no fault of their own, faced a years' long wait before they could apply for lawful permanent residence. A-258 (intent to rescue an “especially vulnerable population” from “limbo”). The district court’s refusal to restore the Strong Factors Standard thus leaves SIJS beneficiaries without meaningful access to deferred action.

D. To Restore the Status Quo Ante, the Court Must Restore the SIJS Deferred Action Policy As It Existed at the Time of the Unlawful Rescission—including the Policy Manual.

The district court correctly found that the Rescission Policy is likely to cause SIJS beneficiaries irreparable harm, including “a looming risk of deportation.” SPA-41. To forestall this harm while the litigation progresses, the district court stayed the Rescission Policy under APA Section 705, SPA-44–45, invoking the settled principle that such relief restores the status quo ante, described as “the last peaceable uncontested status existing between the parties *before* the dispute developed.” SPA-45 (quoting *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 274 (E.D.N.Y. 2025)). Here, the last peaceable uncontested status was the pre-rescission SIJS Deferred Action Policy, comprising *both* the 2022 Policy Alert and the pre-rescission Policy Manual, including the Strong Factors Standard.

Yet in denying Plaintiffs’ motion for reconsideration, the district court held that “USCIS is not bound by those portions of the [pre-rescission] Policy Manual

that go further[]” than the 2022 Policy Alert. SPA-59 (excusing USCIS from applying the Strong Factors Standard to individuals approved for SIJS on or after June 6, 2025 or seeking renewal of their deferred action). This ruling carves out an essential part of the SIJS Deferred Action Policy and fails to restore the status quo ante based on a legally erroneous distinction between the Policy Alert and the Policy Manual.

This error is starkly reflected in the district court’s uneven application of the stay. For members of the proposed *Accardi* subclass (those whose SIJS petitions were approved without deferred action adjudications between April 7 and June 5, inclusive, before USCIS had announced any change in policy), the district court directed USCIS to apply the pre-rescission framework as set forth in the Policy Manual, including the Strong Factors Standard. SPA-59. In contrast, similarly situated SIJS beneficiaries whose SIJS petitions were granted after June 5 or who are seeking to renew their deferred action will not receive the benefit of the Strong Factors Standard, resulting in differing adjudication standards and, inevitably, disparate outcomes. *Id.* In other words, the district court’s failure to fully restore the status quo ante means that a subset of SIJS beneficiaries will be subjected to a court-created hybrid of the June 2025 Rescission Policy (including corresponding Policy Manual changes) and the 2022 Policy Alert—a regimen never promulgated by USCIS.

An APA stay must suspend an unlawful policy change and reinstate pre-existing conditions, not introduce new ones. *Wages & White Lion Invs., LLC v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021). Here, the district court altered the pre-rescission framework by selectively reinstating only the Policy Alert without the full elaboration of standards and procedures found in the Policy Manual. This falls short of restoring the status quo ante and leaves the thousands of individuals whose SIJS were approved on or after June 6, 2025, and the thousands more who seek to renew their deferred action, with diminished protection. Unless both components of the prior policy are reinstated, the district court's order is an APA stay in name only, prescribing a new policy rather than restoring the preexisting one for all SIJS beneficiaries affected by the Rescission Policy.

II. The District Court Erred as a Matter of Law in Holding That USCIS's Elimination of the Strong Factors Standard Is Not Subject to Review Under the Administrative Procedure Act.

No party to this action ever questioned the finality or reviewability of USCIS's decision to rescind the SIJS Deferred Action Policy under the APA, and Plaintiffs were clear from the start that the policy change included revisions to the Policy Manual. Compl. ¶¶ 3, 66, 83, 158, Prayer for Relief ¶¶ 6–8, 11–13. Yet the district court cast doubt on the reviewability of changes to the Policy Manual, which it mischaracterized as an “internal” document with “no legal force[,]” and “unlikely to create enforceable rights for SIJS petitioners.” SPA-54–55. The Court determined,

therefore, that it would not order USCIS to adhere to the Policy Manual’s contents under the stay. *See* SPA-56–57. But the Rescission Policy—including its changes to the Policy Manual—indisputably meets the test for reviewable agency action: it was the “consummation of the agency’s decisionmaking process,” and it had “direct and appreciable legal consequences.” *Bennett*, 520 U.S. at 177–78 (internal quotation marks and citation omitted).

A. The Core Test for Reviewability Under the APA Is Whether Individual Rights Are Affected.

The district court erred in holding that USCIS’s rescission of the updates to the Policy Manual was not reviewable. The APA creates a right of action for “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute[.]” *Sharkey v. Quarantillo*, 541 F.3d 75, 83–84 (2d Cir. 2008) (alteration in original) (quoting *Darby v. Cisneros*, 509 U.S. 137, 146 (1993)). By entitling such individuals to judicial review, the APA “sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.” *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). Accordingly, “[t]here is a strong presumption favoring judicial review of administrative action” through the APA, and unless there is a congressionally enacted statute stripping judicial review (and there is none here), the “agency ‘bears the heavy burden of overcoming the strong presumption’” of reviewability. *Salazar v. King*, 822 F.3d 61, 75 (2d Cir. 2016)

(quoting *Dunlop v. Bachowski*, 421 U.S. 560, 567 (1975), *overruled on other grounds*, *Loc. No. 82 Furniture & Piano Moving v. Crowley*, 467 U.S. 526 (1984)).

To be subject to APA review, the challenged agency action must be final: “First, the action must mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett*, 520 U.S. at 177–78 (citation modified) (comparing the agency policy challenged, which “has direct and appreciable legal consequences,” with certain agency reports in other cases, which were not final because they “were purely advisory and in no way affected the legal rights of the relevant actors”); *see also Larson v. United States*, 888 F.3d 578, 587 (2d Cir. 2018). “For the second prong, the core question is whether the result of [the agency’s decisionmaking] process is one that will directly affect the parties.” *6801 Realty Co. v. U.S. Citizenship & Immigr. Servs.*, 719 F. App’x 58, 60 (2d Cir. 2018) (alteration in original) (quoting *Salazar*, 822 F.3d at 82).

Courts regularly review changes to policy manuals and other sub-regulatory documents that have legal consequences and affect individual rights. The Fifth Circuit has held, for example, that agency “Enforcement Guidance” was reviewable where it was written in mandatory terms, bound agency staff to an “analytical method,” and limited discretion as to how the agency used certain evidence, stressing

that “[c]ourts consistently hold that an agency’s guidance documents binding it and its staff to a legal position produce legal consequences or determine rights and obligations, thus meeting the second prong of *Bennett*.” *Texas v. Equal Emp. Opportunity Comm’n*, 933 F.3d 433, 441, 443 (5th Cir. 2019). Similarly, as the D.C. Circuit has long recognized, “the issuance of a guideline or guidance may constitute final agency action[.]” *Barrick Goldstrike Mines Inc.*, 215 F.3d at 48 (reviewing guidance posted on agency’s website, which explained that individuals would be subject to enforcement actions and fines for failing to follow it, thereby carrying legal consequences); *see also S.F. Herring Ass’n v. Dep’t of the Interior*, 946 F.3d 564, 579 (9th Cir. 2019) (“[T]here will be many final agency actions that do not take the form of [formal] rules.”).

Unsurprisingly, district courts within this Circuit have reached the same conclusion. *See, e.g., R.F.M. v. Nielsen*, 365 F. Supp. 3d 350, 376 (S.D.N.Y. 2019) (finding a USCIS guidance document reviewable “under the second prong of *Bennett*”); *Afr. Communities Together v. Lyons*, 799 F. Supp. 3d 362, 387 (S.D.N.Y. 2025) (finding that even an email was reviewable, regardless of its informality, because it “determine[d] an agency’s obligations, from which legal consequences flow[.]”).¹⁰

¹⁰ Notably, in *Lyons*, one of the government’s arguments against the reviewability of the email was that the email’s policy was not published in the EOIR [i.e.,

A sub-regulatory policy change need not be binding to trigger APA review. *See, e.g., Saget v. Trump*, 375 F. Supp. 3d 280, 355–56, 59 (E.D.N.Y. 2019) (reviewing DHS Secretary’s departure from agency practice in evaluating designations for Temporary Protected Status, as even “*practices* implied from agency conduct” are subject to APA review) (emphasis added); *Cal. Trout v. F.E.R.C.*, 572 F.3d 1003, 1024 (9th Cir. 2009) (finding an alleged change in adjudicative practice not governed by any written guidelines subject to APA review). Nonetheless, courts have looked to whether written guidance is binding on adjudicators in holding that the policy change reflected there affects individual rights and carries legal consequences, thus satisfying the second *Bennett* reviewability factor. *See, e.g., Nat’l Org. of Veterans’ Advocs., Inc. v. Sec’y of Veterans Affs.*, 981 F.3d 1360, 1380–82 (Fed. Cir. 2020) (finding an interpretive rule contained in a manual to be final agency action in part because it was binding on “front-line adjudicators”); *Equal Emp. Opportunity Comm’n*, 933 F.3d at 445 (“But as we have explained, whether the agency action binds the *agency* indicates whether legal consequences flow from that action.”); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (holding Immigration and Customs Enforcement (“ICE”) memorandum subject to APA review in part because the agency intended it to

Immigration Court] Policy Manual, and as such the email “is not—and could not be—an operative EOIR policy.” *Id.* at 386–87 (quotation marks omitted).

establish a “binding norm” to govern parole decisions). Courts make this determination not by reference to the document’s characterization of itself, but instead through an assessment of the agency’s “intent in authoring it, as ascertained by an examination of the provision’s language, its context, and any available extrinsic evidence.” *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977).

B. Because USCIS’s Elimination of the Strong Factors Standard Affects the Rights of Individuals and Has Significant Legal Consequences, It Is Final Agency Action Reviewable Under the APA.

Contrary to the district court’s erroneous conclusion, the Rescission Policy’s changes to the USCIS Policy Manual, including the elimination of the Strong Factors Standard, are reviewable as final agency action under the APA. USCIS’s elimination of the Strong Factors Standard will have life-altering effects and profound legal consequences on SIJS beneficiaries, cutting off their access to deferred action based on factors designed to take account of their personal histories and circumstances. It was error for the district court to hold that this policy change was not reviewable.

1. *USCIS intended to and did affect individual rights through the Policy Manual.*

Courts assessing an informal policy’s effect on individuals often look to the intent of the agency issuing the policy. *See, e.g., Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987); *Abdi v. Duke*, 280 F. Supp. 3d 373, 388–89 (W.D.N.Y. 2017), *vacated in part on other grounds sub nom., Abdi v. McAleenan*, 405 F. Supp. 3d 467

(W.D.N.Y. 2019); *Damus*, 313 F. Supp. 3d at 338. The record here shows that USCIS intended the SIJS Deferred Action Policy to benefit SIJS beneficiaries. *See* A-257 (“This process furthers congressional intent to provide humanitarian protection for abused, neglected, or abandoned noncitizen children for whom a juvenile court has determined that it is in their best interest to remain in the United States.”). These benefits included protection from removal and eligibility for work authorization. *Id.* at A-259 (“In general, SIJs are unlikely to be enforcement priorities as evidenced by the broad waivers of inadmissibility Congress established.”); *id.* (“Employment authorization will provide invaluable assistance to these vulnerable noncitizens who are children or young adults, and have limited financial support systems in the United States, especially as they age out of care, while they await an immigrant visa number.”).

The effects of the SIJS Deferred Action Policy reflect this intent. Many SIJS beneficiaries have in fact benefited from SIJS deferred action granted under the Strong Factors Standard. Conversely, SIJS beneficiaries stand to lose security, freedom, and economic self-sufficiency because of the elimination of this standard. This is perhaps best illustrated through the district court’s findings on reliance and irreparable harm.

The district court identified several reliance interests in its stay decision: “Plaintiffs aver that they have ‘enrolled in degree programs [and] embarked on

careers’ in reliance on the SIJS-DA program. And just as in *Regents*, Plaintiffs note that the ‘consequences of the [deferred-action program] rescission ... would radiate outward’ to their families, schools, and employers.” SPA-31 (citations omitted).

The record amply supports these findings. *E.g.*, Y.A.M. Decl., A-120 (Plaintiff would be unable to support her three-year-old son without work authorization associated with SIJS deferred action); J.C.B. Decl., A-87–88 (Plaintiff relies on work authorization to continue job in a car parts factory, saving money toward further education); B.R.C. Decl., A-54 (Plaintiff could not continue education without being able to work to pay tuition); Minoff Decl., A-215–217 (lack of lawful employment authorization subjects undocumented youth to severe economic penalties including lower wages, lack of employment mobility, and exposure to labor exploitation); Wong Decl., A-176–177, 179 (lack of work authorization impairs educational advancement); Mandelbaum Decl., A-234–236 (children in the foster care system especially harmed by lack of work authorization). SIJS beneficiaries who are denied deferred action because USCIS no longer considers SIJS a strong positive factor will face the very same obstacles to achieving family well-being, economic stability, and educational advancement as would impede them if the SIJS Deferred Action Program were rescinded altogether. Centro Legal Decl. (Feb. 18, 2026), A-150–153 (detailing harms of elimination of Strong Factors Standard); CARECEN Decl. (Feb. 18, 2026), A-136–139 (same).

The Individual Plaintiffs and others similarly situated also rely on access to deferred action through application of the proper standard to shield them from the realistic, unrelenting fear of deportation. Indeed, the district court found that SIJS beneficiaries would suffer irreparable harm without access to deferred action because of their increased exposure to immigration enforcement, including arrest, detention, and removal. SPA-41 (“The Individual Plaintiffs who received SIJS without being considered for deferred action face a looming risk of deportation.”); *see also* SPA-15–16 (noting “heightened risk of deportation”). An extensive record supports this finding as well. *E.g.*, J.G.V. Decl., A-105 (fear of deportation); A.C.R. Decl., A-37 (same); C.V.R. Decl., A-68 (same); E.A.R. Decl., A-79 (same); Prandini Decl., A-166–172 (detailing risks of deportation); A-150–153 (increased risk of deportation for clients because of elimination of Strong Factors Standard and strain on organizational resources as a result); A-136–139 (same); *see also* ECF 9-20, Bishop Decl. ¶ 22 (prolonged stress associated with fear of deportation compromises patients’ health). Elimination of the Strong Factors Standard would therefore have indelible effects on the individual rights of members of the putative class, meaning that the policy change is subject to APA review.

2. *Elimination of the Strong Factors Standard has serious legal consequences.*

The reviewability of the elimination of the Strong Factors Standard is further supported by the serious legal consequences the change in policy carries for SIJS

beneficiaries. From the time the SIJS Deferred Action Policy was launched in May 2022 to its sub silentio abandonment in April 2025, USCIS adjudicators weighed heavily that the applicant had an approved SIJS petition and that, in establishing eligibility for SIJS, the applicant had demonstrated to a state juvenile court that “it was in the best interest of the SIJ not to be returned to the country of nationality[.]” A-261–267. The weight of these positive factors contributed to a more than 99% approval rate of deferred action for SIJS beneficiaries. Castillo-Granados Decl., A-195–196.

In contrast, those who apply for deferred action on other grounds face tall odds. Unless a noncitizen is part of some designated group (such as the nuclear family of present or former active-duty service members in the military), the applicant must show urgent medical or other humanitarian reasons for deferring any removal. USCIS, G-325A, Biographic Information (for Deferred Action), Special Instructions, <https://www.uscis.gov/g-325a>. While USCIS does not track the filing and adjudication of these applications in any official “system of record,” it has responded to an inquiry from Congress on this subject. Letter from Joseph Edlow, Deputy Dir. for Pol’y, USCIS, to Senator Edward J. Markey (June 29, 2020).¹¹ USCIS’s informal tracking shows between approximately 660 and 1,200 non-

¹¹ https://www.uscis.gov/sites/default/files/document/foia/Non-military_deferred_action_Senator_Markey.pdf.

military deferred action applications filed each year from FY2018 to FY2020. *Id.* at 13. The low numbers reflect the uncommon circumstances that give rise to these applications—only a small fraction of noncitizens need ongoing medical treatment in the United States or are supporting family members in crisis. Even so, grant rates are low, approximately 27% in the three fiscal years reported. *Id.* at 13–15 (data show 2,815 applications filed in FY2018–FY2020 and 759 grants during this period). Being relegated to seeking deferred action based on these factors is simply not a viable alternative for the more than 60,000 young people whose SIJS petitions are approved each year. *See, e.g.*, USCIS, I-360, Petition for Amerasian, Widow(er), or Special Immigrant Adjudications and Processing Times by Month, Oct. 1, 2024 – Sept. 30, 2025.¹²

The result of eliminating the Strong Factors Standard would therefore be widespread ineligibility for deferred action among SIJS beneficiaries and high denial rates even for those whose circumstances would support an application. This wide discrepancy in outcomes—a serious legal consequence—supports the reviewability of the elimination of the Strong Factors Standard as “final agency action” under the APA. *See Make the Road New York v. Pompeo*, 475 F. Supp. 3d 232, 257 (S.D.N.Y. 2020) (“[A] twelve-fold increase in denials [of green cards] on public charge

¹² https://www.uscis.gov/sites/default/files/document/data/i360_sij_congressional_fy2025_q4_v1.xlsx.

grounds ... corroborates the conclusion that [the policy change] constitute[s] a final agency action.”).

III. The District Court Erred as a Matter of Law in Concluding that the Change-in-Position Doctrine Does Not Apply to Changes to the USCIS Policy Manual.

The district court also erroneously held that the APA’s change-in-position doctrine does not apply to changes to the USCIS Policy Manual, making a false distinction between this principle and the *Accardi* doctrine. This was an independent error warranting reversal. When an agency adopts a new policy, such as the Rescission Policy, it must justify its departure from any prior policy, including by considering reliance interests and viable alternatives to total rescission. This principle applies even to departures from sub-regulatory documents like the Policy Manual where, as here, they constitute final agency action.

A. The *Accardi* Doctrine and the Change-in-Position Doctrine Stem from the Same Root APA Violation—Failure to Justify a Departure from Policy.

The district court’s conclusion that USCIS may not depart from the Policy Manual while it is in effect, pursuant to the *Accardi* doctrine, but may rescind provisions of that same manual without sufficient justification, because the change-in-position doctrine does not apply, SPA-55–57, reflects a misunderstanding of these two APA doctrines. By drawing a false red line between them, the district court ignored the fundamental principles that govern the relevant agency actions here. *See*

Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221–22 (2016). Both doctrines are based on the core tenet that agencies may not irrationally depart from their existing policies in a way that impacts individual rights. The *Accardi* doctrine applies when agencies fail to follow their existing policies, while the change-in-position doctrine applies when agencies change their existing policies by adopting new ones without adequate explanation or consideration of impact.

As this Court has explained, “The seeds of the *Accardi* doctrine are found in the long-settled principle that the rules promulgated by a federal agency, which regulate the rights and interests of others, are controlling upon the agency.” *Montilla v. I.N.S.*, 926 F.2d 162, 166–67 (2d Cir. 1991); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”); *Fed. Defs. of N.Y., Inc. v. Fed. Bureau of Prisons*, 954 F.3d 118, 130 (2d Cir. 2020) (“When agencies fail to [follow their own policies], the APA (as developed by case law) gives aggrieved parties a cause of action to enforce compliance.”).

The change-in-position doctrine stems from the same principles: when an agency wishes to change a policy that regulates the rights and interests of others, it must do so in a rational way that considers the effect on those who have relied on the existing policy. *White Lion*, 604 U.S. at 570. Or, as the Supreme Court has put it, when an agency departs from a prior policy and begins applying a new one, it

must “display awareness that it is changing position,” offer “a reasoned explanation for the change,” and “consider serious reliance interests.” *Id.* at 568, 570 (citation modified). So interrelated are the two doctrines that when an agency fails even to acknowledge that there has been a change in policy, thereby violating the change-in-position doctrine, it is effectively doing no more than “disregard[ing] rules that are still on the books,” which the *Accardi* doctrine prohibits. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (citing *U.S. v. Nixon*, 418 U.S. 683, 696 (1974)). Thus, under *both* the *Accardi* doctrine and the change-in-position doctrine, “disregarding facts and circumstances that underlay or were engendered by the prior policy” is arbitrary and capricious. *Id.* at 516; *see also INS v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996) (If an agency “announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy ... could constitute action that must be overturned” under the APA.).

B. Courts Regularly Apply the Change-in-Position Doctrine to Review Agency Departures from Policies Set Forth in Policy Manuals and Similar Guidance Documents.

The district court’s confusion about the *Accardi* and change-in-position doctrines led it to the muddled conclusion that USCIS violated the APA by failing to follow its own Policy Manual but not by arbitrarily changing it. SPA-55–57. The Supreme Court has long confirmed that agencies cannot disregard their own policy

manuals under the *Accardi* doctrine. *See Morton*, 415 U.S. at 235 (holding that Bureau of Indian Affairs must follow its own manual). And while the Supreme Court has left open whether the change-in-position doctrine “applies when an agency abandons a position it first articulated in a nonbinding guidance document[,]” as opposed to “a position expressed in a more formal setting[,]” *White Lion*, 604 U.S. at 569 n.5, here both Parties have agreed that the change-in-position doctrine applies, SPA-25, n.13, and in any event, the USCIS Policy Manual is binding on adjudicators, which is sufficient to trigger review, *supra* Points I.B., II.A.

Moreover, the Supreme Court itself applied the change-in-position doctrine in *Dep’t of Homeland Sec. v. Regents of the University of Cal.*, 591 U.S. 1, 30 (2020) even though the original policy in that case was set forth in an informal policy statement, because the statement “‘instituted a standardized review process that effectively resembled adjudication.’” SPA-25, n.13 (citing *White Lion*, 604 U.S. at 570 n.5). Here, the district court made the same finding as to the SIJS Deferred Action Policy in granting the stay. *Id.* at 17–18, SPA-18 (“SIJS-DA was ‘more than a non-enforcement policy’—it was a ‘program for conferring affirmative immigration relief.’”) (quoting *Regents*, 591 U.S. at 18–19). Importantly, it is the USCIS Policy Manual, including the Strong Factors Standard, that institutes this standardized review process. *See supra* Point I.B. Under the reasoning in *White Lion*,

then, USCIS’s changes to the Policy Manual are subject to the change-in-position doctrine.

Since *White Lion*, no court, to Plaintiffs’ knowledge, has found that the change-in-position doctrine does *not* apply to policies adopted without formal rulemaking, unless those policies are too informal to constitute final policies at all. See *New York v. Trump*, 778 F. Supp. 3d 578, 596 (contrasting “internal personnel actions [that] are not properly characterized as agency ‘policy’” with guidance set forth in “a regulation, a guidance memorandum, or an agency enforcement action”) (citation omitted), *modified by* 784 F. Supp. 3d 619 (S.D.N.Y. 2025), *appeal filed*, No. 25-1860 (2d Cir. (July 31, 2025)); see also *Shenzhen Youme Info. Tech. Co. v. FDA*, 147 F.4th 502, 512 (5th Cir. 2025) (months after *White Lion*, similarly “assum[ing], without deciding” that informal policy changes are subject to the change-in-position doctrine). This makes sense, as whether an action can be reviewed under the APA is not a question of form but of substance—focused on how the change in policy affects individual rights and legal consequences. *Bennett*, 520 U.S. at 177–78; *supra* Point II. Notably, the district court itself applied the change-in-position doctrine to review USCIS’s rescission of the 2022 Policy Alert via the 2025 Policy Alert, although the Alerts too are sub-regulatory documents. SPA-25, n.13.

Other courts also regularly review agency departures from policies established in agency manuals and handbooks under the change-in-position doctrine. Despite the district court’s suggestion that Plaintiffs had not cited, and the district court was unable to find, any cases in which courts had applied the change-in-position doctrine to departures from policy manuals, slip op. at 8, ECF No. 76, there are many such cases. In *R.F.M. v. Nielsen*, for example, a case Plaintiffs cited in their briefing before the district court [ECF No. 71 at 2], but which the district court failed to address in its January 14 decision, the court considered new legal guidance adopted by USCIS that effectively precluded its officers from granting SIJS to young people over the age of eighteen in New York. In part because that new guidance departed from the agency’s prior policy on this issue—including as set forth in the USCIS Policy Manual—without even acknowledging that it was a change in position, the court found it arbitrary and capricious and set it aside. *R.F.M.*, 365 F. Supp. 3d at 381.

Similarly, in *Physicians for Soc. Responsibility v. Wheeler*, the D.C. Circuit considered a new directive issued by the Environmental Protection Agency (“EPA”) that prohibited individual recipients of EPA grants from serving on EPA scientific advisory committees, despite a longstanding policy of generally allowing this practice. 956 F.3d 634, 641 (D.C. Cir. 2020), *abrogated on other grounds as recognized by Centro de Trabajadores Unidos v. Bessent*, 167 F.4th 1218, 1237

(D.C. Cir. 2026). That prior policy was set forth, in part, in the EPA Peer Review Handbook, *id.* at 645, which represents “a single, centralized source of implementation guidance on peer review for EPA staff and managers.” EPA, *Peer Review Handbook* xiv (4th ed. 2015).¹³ The court found that the new directive failed to acknowledge this prior policy, much less provide a reasoned explanation for departing from it, rendering the change arbitrary and capricious. *Wheeler*, 956 F.3d at 646–47; *see also Nat. Res. Def. Council*, 438 F. Supp. 3d at 227 (reaching the same conclusion about the same policy change); *Ctr. for Taxpayer Rights v. IRS*, No. CV 25-0457, --- F. Supp. 3d ----, 2025 WL 3251044, at *3–4, 31 (D.D.C. Nov. 21, 2025) (finding IRS’s unexplained departure from its longstanding policy regarding nondisclosure of confidential taxpayer information, which was set forth, in part, in the IRS policy manual, arbitrary and capricious).

Similarly, *Pompeo*, involved a challenge to changes the Department of State (“DOS”) made to its Foreign Affairs Manual (“FAM”), which is “a single, comprehensive, and authoritative source for the [DOS]’s organization structures, policies, and procedures that govern the operations of the State Department [and other agencies].” DOS, Foreign Affairs Manual, <https://fam.state.gov/>. The court found that DOS’s 2018 revisions to the FAM, which changed the way consular

¹³ https://www.epa.gov/sites/default/files/202008/documents/epa_peer_review_handbook_4th_edition.pdf.

officers determined whether visa applicants were ineligible for a visa because they were likely to become a “public charge,” were likely arbitrary and capricious because DOS “*never* provided a rationale for its substantial departure from the public charge framework under the FAM that existed” previously. *Pompeo*, 475 F. Supp. 3d at 260–61.

Despite these on-point cases, the district court cited only inapposite cases to justify its conclusion that the change-in-position doctrine does not apply to USCIS’s changes to its Policy Manual. SPA-54. For example, *Schweiker v. Hansen*, 450 U.S. 785, 786 (1981) (per curiam), is not an APA case at all, but is about the distinct and unrelated legal concept of estoppel. There, the Court did note that the SSA Claims Manual “has no legal force, and it does not bind” the agency, in part because the handbook was only for internal use and the deviation at issue was only a “minor breach.” *Id.* at 789–90. But this was in an entirely different legal context. In contrast, the USCIS Policy Manual is not just for internal use, and does in fact bind the agency. *Supra* Point I.B. Partly for this reason, USCIS’s departure from its Policy Manual affected the substantive rights of individuals in this case, making that departure reviewable under the APA, just as in all the cases discussed above.

The district court’s reliance on *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141 (D.C. Cir. 2006) is similarly misplaced, as it is also not an APA case—the court’s consideration of the enforceability of Department of Justice (“DOJ”)

guidelines arose in the completely different context of a contempt proceeding. *Miller* involved the refusal of reporters and media outlets to comply with grand jury subpoenas that would have required them to reveal sources, which led to civil contempt convictions. *Id.* at 1152–53. The reporters challenged their convictions in part on the ground that the DOJ had failed to follow its own guidelines when issuing the subpoenas. *Id.* Citing the guidelines’ statement that they did not “create or recognize any legally enforceable right in any person,” the D.C. Circuit rejected the reporters’ challenge to their convictions, concluding that “the guidelines provide no enforceable rights to any individuals, but merely guide the discretion of the prosecutors.” *Id.* at 1152, 1153 (citation omitted).

In *United States v. Caceres*, 440 U.S. 741 (1979), the Supreme Court explained why criminal cases like *Miller*, involving a motion to quash a subpoena or exclude evidence based on a violation of agency guidelines, are not instructive for courts considering APA challenges. Holding that the exclusionary rule was not applicable to electronic surveillance evidence obtained in violation of internal IRS regulations, the Court reasoned:

[T]his is not an APA case, and the remedy sought is not invalidation of the agency action. Rather, we are dealing with a criminal prosecution in which respondent seeks judicial enforcement of the agency regulations by means of the exclusionary rule ... [and] our precedents enforcing the exclusionary rule to deter constitutional violations provide no support for the rule’s application in this case.

Id. at 754–55.¹⁴

The district court also erroneously relied on a case it described as involving an “internal” Immigration and Naturalization Service memorandum that “as such does not grant petitioner any rights.” SPA-54 (quoting *Thevarajah v. McElroy*, No. 01-CV-3009, 2002 WL 923914, at *5 n.3 (E.D.N.Y. Apr. 30, 2002)). The quotation the district court relied upon was in fact from *the government’s argument* in *Thevarajah*. The court itself did not even decide the issue. 2002 WL 923914, at *5 n.3 (finding that regardless of whether the memorandum’s criteria were binding, the agency had properly applied them). Ultimately, none of the cases cited by the district court can justify its erroneous conclusion that the change-in-position doctrine does not apply here.

IV. The District Court Erred as a Matter of Law in Holding That the Disclaimer in the USCIS Policy Manual Defeats APA Review Under the Change-in-Position Doctrine.

In a final failed attempt to shield changes in the USCIS Policy Manual from review, the district court relied on the Policy Manual’s boilerplate disclaimer to

¹⁴ In the same vein, the district court mistakenly relied on *United States v. Cooks*, 589 F.3d 173, 184 (5th Cir. 2009), for the unremarkable proposition that several circuits have held that DOJ guidelines “do not create enforceable rights for criminal defendants.” SPA-55. As explained in *Carceres*, the legal effect of a prosecutor’s failure to follow DOJ guidelines is likely to arise in a criminal proceeding rather than an APA challenge. 404 U.S. at 754. Even so, the fact that no one has *challenged* an agency’s policy change for violating the change-in-position doctrine does not constitute proof the doctrine is inapplicable.

discount its legal force and to dismiss reliance interests. But the disclaimer cannot bear the weight the district court placed on it. A boilerplate disclaimer cannot insulate inadequately explained policy changes from review under the APA. Federal agencies habitually add boilerplate disclaimers to documents that set policy. If that were enough to defeat APA review, the statute would be neutered.

A. A Disclaimer Does Not Prevent APA Review of an Otherwise Qualifying Final Agency Action.

The district court made much of the final sentence in the introduction to the USCIS Policy Manual: “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.” USCIS Pol’y Manual, *About the Policy Manual*, <https://www.uscis.gov/policy-manual>, *quoted in part*, SPA-52, 58. In at least three APA cases, however, district courts required immigration officials to follow ICE directives in making discretionary parole decisions even though the directives included the precise disclaimer language at issue here. *Abdi*, 280 F. Supp. 3d at 389; *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 152 (D.D.C. 2018); *Damus*, 313 F. Supp. 3d at 338.

As these courts emphasized, agency action is subject to APA review when it affects individuals and carries legal consequences, *see supra* Point II.A., with the heart of the matter being whether the agency action has “actual or immediately threatened effects,” *Aracely, R.*, 319 F. Supp. 3d at 139; *see also Abdi*, 280 F. Supp.

3d at 387 (“[T]he important consideration was that the memorandum affected detainees’ rights and was intended to benefit detainees seeking asylum.”); *Damus*, 313 F. Supp. 3d at 336 (reviewability depends on the “intent of the agency action, as well as whether it confers individual protections or privileges”). If a policy meets this threshold, as the Strong Factors Standard does, *supra* Point II.B., then a stock disclaimer of private rights of action will not defeat review of the agency’s deviation from the policy. *Aracely, R.*, 319 F. Supp. 3d at 152 (“The Court is not convinced that an agency can avoid challenges based on a policy that appears to be binding and that impacts the rights of individuals, simply by including a boilerplate disclaimer.”); *accord Damus*, 313 F. Supp. 3d at 338; *Abdi*, 280 F. Supp. 3d at 388–89.

The district court once again attempted to distinguish these cases on the ground that they fall under the *Accardi* doctrine rather than the change-in-position doctrine. SPA-56. But that is irrelevant. Whether a departure from policy is reviewable under the APA depends on its effects, and it can have significant effects whether it is a violation of an existing policy (*Accardi*) or an insufficiently explained change in policy (change-in-position). *See supra*, Points II.A., III.A.

This point is reinforced by several circuit court decisions that review express policy changes, despite disclaimers, and reject the new policies for lack of notice-and-comment rulemaking. Although these cases do not fall into the *Accardi* line of precedent, they deal with disclaimers in exactly the same way as the district courts

did in *Abdi*, *Aracely, R.*, and *Damus*. For example, in *State of Tennessee v. Dep't of Educ.*, 104 F.4th 577 (6th Cir. 2024), the Sixth Circuit considered new guidance documents that directed schools to avoid discrimination based on sexual orientation and gender identity in the aftermath of *Bostock v. Clayton Cnty., Ga.*, 590 U.S. 644 (2020). The district court concluded that the guidance was subject to APA review despite disclaimers stating that the documents “do not have the force and effect of law and are not meant to bind the public in any way.” *State of Tenn. v. U.S. Dep't of Educ.*, 615 F Supp. 3d 807, 831 (N.D. Tenn. 2022) (internal quotation marks and citation omitted), *aff'd*, 104 F.4th 577 (6th Cir. 2024). The circuit court, affirming, reasoned that the “particular label placed upon [it] is not necessarily conclusive,” because, as in determining APA reviewability in general, “it is the substance of what the [agency] has purported to do and has done which is decisive.” 104 F.4th at 600 (alternations in original) (internal quotation marks and citations omitted). Because the documents in question “bind the Department [of Education] to a legal position and create legal consequences[,]” *id.* at 599, the court held that they were subject to review, *id.* at 599–601, which they were likely to fail for lack of notice-and-comment rulemaking, *id.* at 609–12.

The Eighth and D.C. Circuits have likewise reviewed and set aside new policies in spite of disclaimers. *Iowa League of Cities v. EPA*, 711 F.3d 844, 865, 875–76 (8th Cir. 2013) (setting aside new EPA policies for lack of notice-and-

comment rulemaking after observing that “[h]edging a concrete application of a policy within a disclaimer about hypothetical future contingencies does not insulate regulated entities from the binding nature of the obligations and similarly cannot serve to inoculate the agency from judicial review”); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000) (setting aside EPA guidance document for lack of notice-and-comment rulemaking after discounting agency disclaimer that guidance could not be “relied upon to create any rights enforceable by any party”). None of these courts rested their decisions about reviewability on whether the policy change was silent or express or whether the challenge arose under *Accardi* or another APA cause of action.¹⁵

The district court cited *Miller*, 438 F.3d 1141, to support the proposition that the USCIS Manual is “unlikely to create enforceable rights for SIJS petitioners.” Slip op. at 6, ECF No. 76. As noted above, *supra* Point III.B., *Miller* is not an APA case, but an appeal of contempt proceedings in which the court relied on a disclaimer

¹⁵ See also *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 779 F. Supp. 3d 584, 610, 613 (D. Md. 2025) (reviewing Department of Education letter that directed colleges and schools not to consider race in any aspect of educational programming or decision-making and observing “this Court need not credit that boilerplate language [denying direct legal consequences or effect on individual rights], particularly where the text of the letter ‘commands,’ ‘requires,’ ‘orders,’ and ‘dictates’”) (citation omitted); *Philip Morris USA Inc. v. FDA*, 202 F. Supp. 3d 31, 46 (D.D.C. 2016) (holding that “boilerplate language” disclaiming any effect on individual rights “cannot dictate whether [FDA guidance on what constitutes a ‘new tobacco product’] is a final agency action fit for review”).

to hold that the purpose of the relevant DOJ guidelines was not “to confer substantive or procedural benefits upon individual media personnel.” 438 F.3d at 1153. The district courts dealing with APA cases involving disclaimers in the immigration context, including one in the D.C. Circuit, where *Miller* was decided, have distinguished it on the ground that the relevant policy was in fact intended, at least in part, to benefit noncitizens. *Damus*, 313 F. Supp. 3d at 338; *Abdi*, 280 F. Supp. 3d at 388–89; *Aracely, R.*, 319 F. Supp. 3d at 152–53. Likewise, the Strong Factors Standard was intended not only to guide the discretion of USCIS adjudicators in considering deferred action for SIJS beneficiaries, but also to confer benefits on these young people. *Supra* Point II.B.1. Accordingly, the Policy Manual’s boilerplate disclaimer does not insulate it from review.

B. A Disclaimer Does Not Extinguish Reliance.

The district court further concluded that the Policy Manual’s disclaimer defeats any reasonable expectation that Plaintiffs could rely on the Policy Manual to enforce “any substantive or procedural right or benefit.” SPA-52, 58 (quoting USCIS Policy Manual, *About the Policy Manual*, <https://www.uscis.gov/policy-manual>). But the Supreme Court has already rejected this argument. In *Regents*, the Court considered whether beneficiaries’ reliance interests in the Deferred Action for Childhood Arrivals (DACA) program survived despite a disclaimer in the memorandum establishing the program, which stated that it “conferred no

substantive rights” on DACA beneficiaries. 591 U.S. at 31. The Court noted the absence of “any legal authority ... that such features [i.e., boilerplate disclaimers] automatically preclude reliance interests[.]” *Id.*

Likewise in this case. The general disclaimer in the USCIS Policy Manual may deprive SIJS beneficiaries of a private right of action to enforce its terms in their individual cases, but they are entitled to rely on officers’ good faith adherence to these terms until such time as USCIS provides an explanation, adequate under the APA, for changing these terms, which is precisely what the agency has failed to do. *Cf. R.F.M.*, 365 F. Supp. at 373 (drawing distinction between “review of [USCIS’s] individual decisions” to revoke SIJS, which may be barred, and APA review of “the agency policy” on which such decisions rest).

V. The District Court Erred as a Matter of Law in Failing to Reinstitute the Strong Factors Standard for All SIJS Beneficiaries.

Because the Rescission Policy’s elimination of the Strong Factors Standard is subject to APA review, and likely fails such review, the district court’s stay of the Rescission Policy should have reinstated this Standard along with automatic consideration of deferred action for all SIJS beneficiaries: in other words, the district court should have restored *both* the prior Policy Manual and the prior Policy Alert. The district court’s ruling that the Rescission Policy is likely to be held arbitrary and capricious, Dist. Ct. Op. at 29–34, ECF No. 60, applies no less to the agency’s abandonment of the Strong Factors Standard than to its announcement that it would

no longer automatically consider beneficiaries for deferred action based on SIJS. Just as in rescinding automatic consideration for deferred action, so in eliminating the Strong Factors Standard, USCIS failed to take reliance interests into account and to assess alternatives to this drastic policy change. The APA does not tolerate these failures. *Regents*, 591 U.S. at 30–31.

The remedy at this stage of the litigation is to stay the Rescission Policy and thereby reinstate the SIJS Deferred Action Policy in full, including the Strong Factors Standard. The district court recognized that this was the appropriate remedy for those whose SIJS petitions were approved without deferred action adjudications between April 7 and June 5, inclusive, before USCIS had announced any change in policy. A-328, n.7. Because Plaintiffs showed a likelihood that this sub silentio cessation of deferred action adjudications violated the APA, A-308–310, the district court concluded that “USCIS should consider that subclass of plaintiffs for deferred action pursuant to the Prior Policy Manual during the stay,” A-328, n.7.

In a sharp turnaround, however, the district court rejected this remedy as to those whose SIJS petitions were approved or who seek to renew their deferred action on or after June 6, 2025, when USCIS announced the rescission of the SIJS Deferred Action Policy. These beneficiaries, the court reasoned, were subject to the “change-in-position doctrine,” rather than the *Accardi* doctrine, and were not entitled to the same remedy. A-329.

This holding is wrong as a matter of law for at least two reasons. *First*, nothing in the APA justifies applying different remedies based on different violations of the same APA provision. Plaintiffs pleaded, and the district court decided, both the *Accardi* claim and the change-in-position claim under the section of the APA that provides: “The reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law[.]” 5 U.S.C. § 706(2)(A). Having found a likelihood of success on the merits of *both* claims, the district court issued a stay in accordance with the section of the APA authorizing “the reviewing court ... [to] issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.” 5 U.S.C. § 705. These provisions neither state nor imply that a reviewing court may order wholly different remedies based on which arbitrary and capricious action an agency has taken. SIJS beneficiaries who were denied adjudications of deferred action because of USCIS’s express but inadequately justified decision to rescind the SIJS Deferred Action Policy have no less claim to full reinstatement of that Policy while the litigation proceeds than those who were denied adjudications of deferred action with no explanation at all.

Second, the case law amply justifies applying the same stay to all beneficiaries subject to the agency’s likely unlawful actions. It is true, as the district court noted,

A-327–328, that many of the cases in which courts enforce mandates that derive from manuals and other sub-regulatory statements of policy fall into the *Accardi* line of cases, *see, e.g., Morton*, 415 U.S. at 235.

But the Supreme Court, this Court, and other courts have applied the change-in-position doctrine to bind an agency to a prior sub-regulatory policy statement after the agency had repudiated such policy statement in violation of the APA. In *Encino Motorcars, LLC*, for example, the Supreme Court considered a 2011 Department of Labor regulation that required overtime pay for certain employees involved in car sales who had previously been treated as exempt from receiving overtime pay. 579 U.S. at 211, 215–16. The prior “decades-old practice” of denying overtime pay had been embodied in a 1978 “opinion letter” and a 1987 Field Operations Handbook. *Id.* at 217–18. Concluding that the “lack of reasoned explication” for the change in position “results in a rule that cannot carry the force of law,” the Court remanded for interpretation of the statutory exemption “without placing controlling weight on the Department’s 2011 regulation.” *Id.* at 224. At no point did the Supreme Court so much as suggest that restoration of a longstanding but informal agency practice was not authorized under the change-in-position doctrine the court applied in this case.

In an even more straightforward application of the change-in-position doctrine, this Court held in *Yale-New Haven Hosp. v. Leavitt* that the Health Care Financing Administration had violated the APA when it revised the 1986 Medicare

Reimbursement Manual to preclude reimbursement for certain experimental devices that had not been finally approved by the FDA. 470 F.3d 71 (2d Cir. 2006). This Court concluded that the agency had acted arbitrarily and capriciously by failing adequately to explain the change and set aside the manual provision, thereby reinstating the prior policy, which was contained in a 1977 “intermediary letter.” *Id.* at 83–87.

The district court distinguished *Yale-New Haven Hospital* on the ground that the 1986 Medicare Reimbursement Manual was contractually binding on intermediaries while the USCIS Manual is purportedly not similarly binding. A-329–330. But the district court made the wrong comparison. In *Leavitt*, the document that was reinstated to bind the agency was the 1977 *intermediary letter* that lacked all regulatory formalities, not the Medicare Manual, whose *per se* exclusion of coverage was in fact vacated. Far from focusing on whether the intermediary letter was legally binding, this Court simply observed that the letter had established an “historical practice,” and this practice had to be restored unless lawfully changed under the APA. *Leavitt*, 470 F.3d at 79. Same here.

Again, in *New York v. U.S. Dep’t of Homeland Sec.*, this Court relied on the change-in-position doctrine to vacate as arbitrary and capricious a 2019 regulation that redefined and expanded the “public charge” ground for disqualifying noncitizens from becoming lawful permanent residents, reinstating prior interim

guidance. 969 F.3d at 82–83. Although the interim guidance was never codified as a rule, *id.* at 53 & n.7, it reflected the agency’s prior consistent interpretation of “public charge,” and that was enough, *id.* at 71.

The D.C. Circuit has explained why it is appropriate to restore a prior informal policy after finding a new policy inadequately justified under the APA. In *Grace v. Barr*, the court invalidated USCIS guidance requiring asylum officers conducting credible-fear interviews¹⁶ to apply the law of the circuit where the noncitizen was physically located at the time of the interview. 965 F.3d 883, 890, 900–03 (D.C. Cir. 2020). The prior policy, which appeared in a USCIS lesson plan, instructed officers to apply the law of the circuit most favorable to the applicant. *Id.* at 901. The court held that USCIS had failed to acknowledge or adequately explain its divergence from the prior policy. *Id.* The government argued that “it had no obligation to acknowledge the change because the old policy appeared only in the USCIS Lesson Plan.” *Id.* at 902. The court rejected this argument: “Although the formality of a policy may be relevant in cases where the policy’s existence or content is disputed, this is not such a case. The government acknowledges that the Lesson Plan reflected USCIS’s ‘consistent practice,’ which under our caselaw ‘sets the baseline from which future departures must be explained.’” *Id.* at 902 (citations omitted).

¹⁶ A credible-fear interview determines whether a noncitizen will be subject to expedited removal or allowed to appear before an immigration court to prove an asylum claim. 8 C.F.R. § 208.30(d)–(e).

Contrary to the district court's suggestion, A-329, therefore, Plaintiffs have cited several cases, including controlling cases, in which courts have restored historical agency practices based on non-formal policy statements when the agency's efforts to change those practices failed to comply with the APA. Indeed, the USCIS Policy Manual is an even more formal statement of policy than some of the internal handbooks, letters, and practices to which the courts have required agencies to revert. Like the opinion letter and handbook in *Encino*, the intermediary letter in *Leavitt*, the interim guidance in *New York v. Dep't of Homeland Sec.*, and the lesson plan in *Grace*, the Policy Manual established the agency's consistent prior practice. This practice must govern unless it is displaced by one adopted in conformity with the APA.

All individuals granted SIJS since April 7, 2025, and all who seek to renew their deferred action should benefit from this same remedy. In the *Accardi* context, courts invalidate agency departures from preexisting policies and require compliance with those policies even when embodied in sub-regulatory statements. Similarly, in the change-in-position context, courts invalidate inadequately justified policy changes and restore preexisting policies even when embodied in sub-regulatory statements. The underlying violation is the same—the agency acted arbitrarily and capriciously by failing to offer any explanation, or any reasoned explanation, for the departure—and the remedy should be the same as well.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

Respectfully submitted,

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April 17, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. 32(e) and Local Rule 32.1(4)(a) because this brief contains 13,495 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using the 2025 version of Microsoft Word in 14-point Times New Roman font.

/s/ John Magliery

Dated: April 17, 2026

SPECIAL APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

A.C.R. et al.,

Plaintiffs,

MEMORANDUM & ORDER
25-CV-3962 (EK) (TAM)

-against-

KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; et
al.,

Defendants.

-----x

ERIC KOMITEE, United States District Judge:

In June 2025, U.S. Citizenship and Immigration Services rescinded a deferred-action program for young persons with Special Immigrant Juvenile Status (known as "SIJS-DA"). The named plaintiffs in this case contend that the rescission violated the Administrative Procedure Act because, among other things, (1) the action was arbitrary and capricious; (2) certain aspects of the rescission amounted to legislative rulemaking and were therefore subject to the APA's notice-and-comment requirement; and (3) USCIS violated the *Accardi* doctrine by failing to follow its own procedures from April to June 2025.

Plaintiffs seek an immediate stay, and eventual vacatur, of the SIJS-DA rescission, as well as certain injunctive relief. Plaintiffs also seek certification of two

classes, each with its own subclass, under the Federal Rules of Civil Procedure.

For the following reasons, Plaintiffs' motion for a stay of the SIJS-DA rescission is granted. The Court also grants some – but not all – of the injunctive relief sought by the individual named plaintiffs. All other preliminary injunctive relief is denied. The Court reserves judgment on the motion for class certification.

I. Background

The Court draws the following facts from the complaint, the agency documents appended thereto, and the parties' supplemental declarations. See *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 276 n.3 (2d Cir. 2021) (court may consider declarations at preliminary-injunction stage); *Richardson v. N.Y.C. Bd. of Educ.*, 711 F. App'x 11, 14 (2d Cir. 2017) (court may judicially notice documents "promulgated by or binding on a government agency, and not subject to reasonable dispute").¹ All facts discussed herein are undisputed unless otherwise noted. See *Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998) (party seeking preliminary injunction "is not entitled to have the court accept its untested representations as true if they are disputed").

¹ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

A. SIJS Classification

Congress created the SIJS classification in 1990. The classification provides “immigration relief for foreign-born children living in the United States who have been abused, neglected, abandoned, or similarly mistreated by a parent” and for whom a state or administrative court has determined it would not be in their best interest to be returned to their home country or prior country of residence. Compl. ¶ 34; see 8 U.S.C. § 1101(a) (27) (J).

To qualify for SIJS, a noncitizen must be (1) under 21, (2) unmarried, and (3) present in the United States. 8 C.F.R. § 204.11(b). A state court must also declare the petitioner a ward of the court or commit the petitioner to the custody of “an agency or department of a State, or an individual or entity appointed by a State or juvenile court.” *Id.* § 204.11(c); see also 8 U.S.C. § 1101(a) (27) (J). The state-court order must be predicated on two findings: (1) that the petitioner cannot return to his home country because of familial abuse, neglect, or abandonment; and (2) that it would not be in the petitioner’s best interest to return to his or her home country or prior country of residence. 8 C.F.R. § 204.11(c). The petitioner must send this state-court order to USCIS as part of his or her petition for SIJS. Compl. ¶ 40.

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B. SIJS Eligibility for Adjustment of Status

The Immigration and Nationality Act (as subsequently amended) renders SIJS recipients eligible for lawful permanent resident status. 8 U.S.C. § 1153(b)(4). But they can only apply for adjustment of status if an immigrant visa is “immediately available” at the time of filing. *Id.* § 1255(a). The relevant visa here is the employment-based fourth preference special immigrant category visa (“EB-4 visa”). *Id.* § 1153(b)(4). So, if no EB-4 visa is available when a person receives SIJS approval, that person cannot (yet) apply for adjustment of status.

C. 2022 Policy Alert

In December 2022, the State Department declared a global backlog in EB-4 visas. *Compl.* ¶ 51. As of March 2025, Plaintiffs estimate that more than 150,000 SIJS recipients are currently in this backlog. *Id.* ¶ 52. That means more than 150,000 individuals have received SIJS classification but cannot apply for adjustment of status.

In response to the backlog, USCIS announced a deferred-action program for individuals with SIJS. *Id.* ¶ 59. Deferred action is “an act of administrative convenience to the government that gives some cases lower priority.” 8 C.F.R. § 274a.12(c)(14); *see also* 8 C.F.R. § 236.21(c)(1) (defining deferred action as “a form of enforcement discretion not to

pursue the removal of certain aliens for a limited period in the interest of ordering enforcement priorities in light of limitations on available resources, taking into account humanitarian considerations and administrative convenience"). Receiving deferred action would also allow SIJS beneficiaries to apply for employment authorization. See 2022 Policy Alert 3, ECF No. 1-1.

USCIS justified the SIJS-DA policy on several grounds. Specifically, the agency found that:

- The policy "further[ed] congressional intent to provide humanitarian protection" for SIJS recipients, because Congress "likely did not envision that [SIJS] petitioners would have to wait years before a visa became available" and thereby be left "in limbo." *Id.* at 2.²
- The policy would "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 4. This was because, in the agency's view, SIJS recipients were "unlikely to be enforcement priorities." *Id.* at 3.
- The policy would "provide[] significant benefits to the U.S. labor pool and the economy in general," outweighing any additional costs imposed on the states for "schools, services, or driver's licenses." *Id.* at 4.
- The policy would vindicate the reliance interests of SIJS recipients, who had expected to remain in the United States and be able to

² Page numbers in citations to record documents other than briefs refer to ECF pagination.

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apply for employment authorization after SIJS approval. *Id.*

D. SIJS-DA Program

Under the SIJS-DA program, USCIS automatically considered whether an SIJS petitioner should receive deferred action. 2022 Policy Alert 3. SIJS-DA did not guarantee that an applicant would receive deferred action but rather that they would be considered for it. Under SIJS-DA, USCIS hearing officers would grant deferred action if the “totality of the facts and circumstances” supported doing so. Compl. ¶ 66; see also 2024 USCIS Policy Manual 5, ECF No. 9-26 (hereinafter “2024 Policy Manual”). One “strong positive” factor in favor of approval was whether the applicant had received a court order declaring him eligible for the SIJS program. Compl. ¶ 66; see also 2024 Policy Manual 5. In other words, SIJS created a presumption in favor of deferred action.

Hearing officers “could” also conduct background checks including a request for biometric information and / or in-person interviews. Compl. ¶ 67. But USCIS determined in a July 2025 report that “[o]nly 28% of approved SIJ petitioners had a biometrics collection by USCIS.”³

³ See USCIS, *Criminality, Gangs, and Program Integrity Concerns in Special Immigrant Juvenile Petitions 18* (2025), https://www.uscis.gov/sites/default/files/document/reports/DO_SIJ_Report.pdf.

A successful applicant would benefit from deferred action for four years and could apply for renewal within 150 days of expiration. *Id.* ¶ 69. SIJS-DA recipients could also apply for work authorization pursuant to 8 C.F.R. § 274a.12(c)(14), which permits any deferred action recipient to apply for a work permit upon a showing of “economic necessity.” Given the age of SIJS recipients, economic necessity would be presumed. Compl. ¶ 68.

Plaintiffs estimate, based on public data, that approximately 200,000 people ultimately received deferred action under SIJS-DA. Compl. ¶¶ 71-72.

E. USCIS’s *Sub Silentio* Rescission of SIJS-DA

Prior to April 2025, the vast majority of SIJS approvals came with a grant of deferred action. *See, e.g.,* Wilkes Aff. ¶¶ 6-7, ECF No. 9-23 (immigration attorney observing a grant rate of 100% as to her clients). Starting in April 2025, however, USCIS began issuing SIJS approvals *without* corresponding deferred-action approvals. Compl. ¶ 74. Unlike the pre-April 2025 notices, “close to zero” post-April SIJS approval notices concurrently granted deferred action. *Id.*; *see, e.g.,* Wilkes Aff. ¶¶ 11-12 (SIJS approvals for clients of New Mexico Immigrant Law Center did not mention deferred action after April 2025); McGrorty Aff. ¶¶ 9-11, ECF No. 9-19 (same for clients of Catholic Charities Legal Services in Miami). The

government has not disputed that, between April and June 2025, it did not consider SIJS recipients for deferred action.

Despite this shift, USCIS announced no official change in its policies or procedures until June 2025.

F. 2025 Policy Alert

On June 6, 2025, USCIS publicly issued a new policy statement that rescinded SIJS-DA. Compl. ¶ 81; Compl. Ex. B (“2025 Policy Alert”). The 2025 Policy Alert said USCIS was “eliminat[ing] automatic consideration of deferred action (and related employment authorization)” for SIJS beneficiaries who could not apply for adjustment of status because a visa was not available. 2025 Policy Alert 2. More generally, USCIS would no longer “conduct deferred action determinations for [SIJS beneficiaries] who cannot apply for adjustment of status solely because an immigrant visa is not immediately available.” *Id.* at 3. Nor would it accept employment authorization requests from SIJS-DA recipients. *Id.* SIJS beneficiaries with existing deferred action or employment authorization could retain those benefits until they expired but would not be permitted to renew them. *Id.*

On the same day that it released the 2025 Policy Alert, USCIS circulated an internal memo to its chief counsel and the associate directors of Field Operations and Fraud Detection and National Security. USCIS Internal Memorandum

dated June 6, 2025, ECF No. 42-5 ("USCIS Internal Memo"). Taken together, the USCIS Internal Memo and the 2025 Policy Alert offered four reasons for rescinding the SIJS-DA policy:

- Congress "did not expressly permit" the program, which was not "supported by any existing statute or regulation." 2025 Policy Alert 2.
- Rescinding the policy would permit hearing officers to consider all "potentially relevant information" about SIJS applicants⁴ and would thereby align agency priorities with Executive Order 14161, which broadly requires strict vetting for noncitizens entering the country. *Id.* at 2-3 & n.4.
- "SIJS classification [had] been exploited by dangerous criminal aliens, including members of gangs and transnational criminal organizations." USCIS Internal Memo 6.
- The policy caused "program integrity issues" by triggering an increase in SIJS petitions. *Id.* at 7.

Neither the 2025 Policy Alert nor the USCIS Internal Memo made any mention of potential reliance interests or alternatives to rescinding SIJS-DA outright.

G. The Instant Action

Plaintiffs are nine SIJS recipients (the "Individual Plaintiffs") and two organizations that provide legal services to immigrant youth (the "Organizational Plaintiffs"). They filed the instant action on July 17, 2025. Plaintiffs seek

⁴ This would include biometric information, which was not required under the 2022 Policy Alert. USCIS Internal Memo 2.

certification of the following injunctive classes and subclasses under Federal Rule of Civil Procedure 23(b)(2). Compl. ¶ 113.

- **Deferred Action Class:** All individuals whose SIJS petitions were or will be approved on or after April 7, 2025, and who will no longer be considered for deferred action based on SIJS because of Defendants' 2025 Rescission Policy.
 - **Accardi Subclass:**⁵ All individuals whose SIJS petitions were approved on or after April 7, 2025, and on or before June 5, 2025, and who were not considered for SIJS-DA because of Defendants' *sub silentio* rescission of the 2022 Policy.
- **Renewal Class:** All individuals who were previously granted deferred action based on SIJS but who are no longer eligible to renew their deferred action.
 - **EAD Subclass:** All members of the Renewal Class who have applied for or are eligible to apply for an Employment Authorization Document under 8 C.F.R. § 274a.12(c)(14) ("(c)(14) EAD"), but whose applications for a (c)(14) EAD have not been or will not be adjudicated pursuant to the Defendants' June 6, 2025 Policy Alert.

Plaintiffs seek three broad categories of relief.

First, they seek a stay of the SIJS-DA rescission under Section 705 of the Administrative Procedure Act ("APA"), and eventual vacatur under Section 706.⁶ **Second**, they seek a preliminary (and ultimately permanent) injunction requiring USCIS to:

⁵ This class does not appear in the original complaint, but Plaintiffs later proposed it in their reply brief. Pls.' Reply in Supp. of Class Cert. 8, ECF No. 45. The government has not objected to this approach.

⁶ The complaint also requests that the Court "declare" the SIJS-DA rescission arbitrary and capricious. Compl. 49-50. But Plaintiffs have

- conduct deferred-action determinations for all members of the Deferred Action Class within ninety days and furnish the grounds for any denial within fourteen days of adjudication;
- conduct deferred-action determinations for A.C.R., J.G.V., E.A.R., and C.V.R. within thirty days and furnish the grounds for any denial within ten days of adjudication;
- resume “timely” employment-authorization determinations for members of the EAD Sub-Class within thirty days;
- conduct an employment-authorization determination for L.M.R. within thirty days;⁷
- reinstitute a “clear renewal process for SIJS deferred action and associated work authorization”; and
- refrain from any “retaliatory action” against the Individual Plaintiffs.

Third, they seek an order under the All Writs Act barring the government from removing the Individual Plaintiffs from the continental United States during the pendency of this litigation.

II. Motion for a Preliminary Injunction

A plaintiff seeking a preliminary injunction must establish (1) a likelihood of success on the merits; (2) a

since made clear that they are not seeking “preliminary declaratory relief.” Pls.’ Reply Br. in Supp. of Prelim. Injunction (“Pls.’ PI Reply”) 3 n.4, ECF No. 44.

⁷ Plaintiffs initially sought a similar determination for S.M.M. but later notified the Court that the government had granted S.M.M.’s application for work authorization while the instant motion was pending. ECF No. 59. Plaintiffs therefore concede that their request for expedited adjudication of S.M.M.’s work-authorization application is moot. *Id.*

likelihood of irreparable harm absent relief; (3) that the balance of equities supports an injunction; and (4) that the public interest favors an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). When the government is a party to a lawsuit, the final two factors merge. *New York v. U.S. Dep't of Homeland Sec.*, 969 F.3d 42, 58-59 (2d Cir. 2020).

The same standard applies to a motion to stay under Section 705 of the APA. *Nat Res. Def. Council v. U.S. Dep't of Energy*, 362 F. Supp. 3d 126, 149 (S.D.N.Y. 2019); accord *E. Air Lines, Inc. v. Civ. Aeronautics Bd.*, 261 F.2d 830, 830 (2d Cir. 1958) (per curiam). Before applying this standard, however, the Court must first assess its subject-matter jurisdiction.

A. The Court Has Subject-Matter Jurisdiction

The government argues that the Court lacks subject-matter jurisdiction because (1) Plaintiffs lack standing; (2) the SIJS-DA rescission is unreviewable under Section 701(a)(2) of the APA;⁸ (3) review is barred under Section 1252(g) of the Immigration and Nationality Act ("INA"); and (4) review is barred under Section 1252(f) of the INA. The Court disagrees as to all but Section 1252(f), which bars certain of Plaintiffs' requested relief.

⁸ See, e.g., *Balt. Gas & Elec. Co. v. FERC*, 252 F.3d 456, 458 (D.C. Cir. 2001) ("The ban on judicial review of actions committed to agency discretion by law is jurisdictional.").

1. The Individual Plaintiffs Have Standing

The “irreducible constitutional minimum of standing contains three elements”: (1) injury in fact; (2) causation; and (3) redressability. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). To establish standing at the preliminary-injunction stage, a plaintiff “cannot rest on mere allegations, but must set forth by affidavit or other evidence specific facts that establish the three familiar elements of standing.” *New York*, 969 F.3d at 59.

The government argues that the Individual Plaintiffs have not established any of the three prerequisites for standing.⁹ As to injury in fact, the government argues that the Individual Plaintiffs have no “legally protected interest in *obtaining*” deferred action or employment authorization and have “fail[ed] to show that their removal or detention are imminent.” Gov’t Br. in Opp’n to Prelim. Injunction 12-14 (“Gov’t PI Opp’n”), ECF No. 42 (emphasis added). As to causation, the government argues that the Individual Plaintiffs’ eventual removal or unemployment stems from their unlawful presence in the United States, rather than from their lack of deferred action or employment authorization. *Id.* at 14-15. Finally, as to redressability, the government argues that even if the SIJS-

⁹ We defer ruling on whether the Organizational Plaintiffs have standing, as it has no bearing on the relief ordered herein.

DA program were reinstated, the Individual Plaintiffs would still be at risk of removal because deferred action “remains a discretionary decision.” *Id.* at 15.

These arguments miss the mark. First, the government mischaracterizes the Individual Plaintiffs’ alleged injury. The Individual Plaintiffs argue that the SIJS-DA rescission has deprived them of the *opportunity to pursue* deferred action and / or work authorization, not that it has deprived them of those benefits themselves. The loss of opportunity to pursue an immigration benefit is a cognizable injury in fact, even when the government retains ultimate discretion to deny that benefit. *See Mantena v. Johnson*, 809 F.3d 721, 731 (2d Cir. 2015) (loss of opportunity to pursue green card was injury in fact, even if plaintiff did not ultimately receive one); *Patel v. U.S. Citizenship & Immigr. Servs.*, 732 F.3d 633, 638 (6th Cir. 2013) (loss of opportunity to pursue immigrant visa was injury in fact).¹⁰

Here, under the plain terms of the 2025 Policy Alert, USCIS will not consider SIJS recipients for deferred action, or at least will not consider SIJS recipients for deferred action

¹⁰ *Cf. Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639, 658 (2008) (lost opportunity to obtain valuable liens was injury for purposes of RICO standing); *N.E. Fla. Chapter of the Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993) (“[I]n the context of a challenge to a set-aside program, the ‘injury in fact’ is the inability to compete on an equal footing in the bidding process, not the loss of a contract.”).

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based solely on their SIJS. Nor will USCIS consider SIJS recipients for employment authorization. See 2025 Policy Alert 3. To the extent those refusals are traceable to a violation of the Administrative Procedure Act, the Individual Plaintiffs will have established a loss-of-opportunity injury. *Mantena*, 809 F.3d at 731.

The government is also incorrect to suggest that the Individual Plaintiffs cannot rely on heightened fear of deportation or removal to establish injury-in-fact. To be sure, a threatened injury may not be “conjectural” or “hypothetical” Gov’t PI Opp’n 12 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), as revised (May 24, 2016)). “This does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness.” *Spokeo*, 578 U.S. at 341.

In this case, the risk of harm is real, and it does not depend on a “chain of contingencies.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013). The Individual Plaintiffs have no legal status and are therefore removable. And USCIS indicated candidly that it rescinded SIJS-DA in part so that it could remove more SIJS recipients without lawful status. See USCIS Internal Memo 8 (indicating one reason for rescission was to comply with an Executive Order mandating that DHS “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"). Because they face an increased and imminent risk of removal, the Individual Plaintiffs have alleged an injury in fact.

The Individual Plaintiffs' lost opportunities to pursue deferred action and work authorization plainly flow from the 2025 Policy Alert, as do their heightened risk of deportation and removal. And these injuries would clearly be redressed by a decision vacating the SIJS-DA rescission. See, e.g., *Mantena*, 809 F.3d at 731 (effectively collapsing the injury-in-fact and redressability inquiries where the alleged injury was the lost opportunity to pursue a green card).

2. The APA Does Not Bar Review

The APA establishes a "basic presumption of judicial review for one suffering legal wrong because of agency action." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16-17 (2020) (hereinafter "*Regents*"). There are, however, exceptions to this rule. As relevant here, a court may not review agency action that is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2). This principle implicates deferred action, as the "decision not to prosecute or enforce" a statutory or regulatory violation is one that is "generally committed to an agency's absolute discretion." *Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

The government argues that the SIJS-DA policy is simply a nonenforcement policy under *Chaney*. Gov't PI Opp'n 19. On this view, the Biden Administration simply abstained from enforcing the immigration laws against a particular subset of aliens (*i.e.*, SIJS recipients). And because that abstention was an unreviewable exercise of prosecutorial discretion, it follows (according to the government) that the current administration's more vigorous enforcement approach is equally unreviewable.

Regents forecloses this argument. That case involved the Deferred Action for Childhood Arrivals ("DACA") program, which granted deferred action to certain noncitizens who arrived in the United States as children. 591 U.S. at 9. To be eligible for DACA relief, a noncitizen had to meet certain criteria, such as continuously residing in the United States since 2007. *Id.* at 10. As part of the program, USCIS "instituted a standardized review process" and "sent formal notices indicating whether the alien would receive the two-year forbearance" that DACA offered. *Id.* at 18. Deferred action also rendered recipients able to "request work authorization" and "eligible for Social Security and Medicare." *Id.* at 18-19. In other words, the agency in *Regents* did not simply "refuse to institute proceedings" against a class of noncitizens. *Id.* Instead, it constructed an adjudicatory process that could end in an "affirmative act of approval" – "the very opposite of a

refusal to act.” *Id.* at 18 (“These proceedings are effectively adjudications.”).

The same logic applies here. USCIS solicited petitions for SIJS, which it also treated as applications for deferred action. The applicants had to meet enumerated criteria, as discussed above and below. 8 C.F.R. § 204.11(b). USCIS then established a standardized process for reviewing those applications, which would – if successful – result in deferred action for a defined period and the ability to seek work authorization. 2022 Policy Alert 2-3. Thus, much like DACA, SIJS-DA was “more than a non-enforcement policy” – it was a “program for conferring affirmative immigration relief.” *Regents*, 591 U.S. at 18-19.

The government’s effort to distinguish *Regents* is unpersuasive. First, the government argues that “no such enumerated criteria were required to qualify for [deferred action]” under SIJS-DA. Gov’t PI Opp’n 20. This is incorrect. SIJS-DA applicants *did* have to meet certain enumerated criteria, such as being under twenty-one and obtaining a state-court order committing them to the guardianship of a public or private entity. 8 C.F.R. § 204.11(b)-(c). Second, the government argues that DACA *automatically* conferred additional benefits (such as work authorization) that SIJS-DA did not. It is not clear why this distinction is legally relevant. Even if SIJS-DA

did not provide automatic work authorization, it was nevertheless a "program for conferring affirmative immigration relief," namely, deferred action. See *Regents*, 591 U.S. at 18. In any event, DACA recipients, like SIJS-DA recipients, must apply for work authorization. 8 C.F.R. § 274a.12(c)(33); see also *Regents*, 591 U.S. at 18 (DACA recipients "may request work authorization" (emphasis added)).

Regents controls. The APA does not bar review.

3. Section 1252(g) of the INA Does Not Bar Review

Next, the government argues that the Court lacks subject-matter jurisdiction due to the operation of 8 U.S.C. § 1252(g). That provision states in relevant part:

[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Under *Regents*, Section 1252(g) plainly does not apply. The Court held there that the revocation of a "deferred action program with associated benefits[] is not a decision to commence proceedings, much less to adjudicate a case or execute a removal order." *Regents*, 591 U.S. at 19. The government does not cite *Regents* in the section of its brief discussing Section 1252(g), let alone attempt to distinguish it, and we see no basis for that distinction.

4. Section 1252(f) of the INA Does Bar Some of the Relief Sought

Finally, the government argues that the Court lacks jurisdiction to issue a preliminary injunction granting class-wide relief under Section 1252(f) of the INA. That provision states, in relevant part:

Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1).

Section 1252(f)(1) “prohibits lower courts from entering [class-wide] injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out” the statutory provisions in Part IV of the relevant subchapter. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). Those INA provisions – found at 8 U.S.C. §§ 1221-1231 – govern the “inspection, apprehension, examination, and removal of aliens.” *Id.* at 549-50. In the government’s view, Plaintiffs’ requested relief runs afoul of Section 1252(f), because it would “interfere with the Government’s efforts to arrest, detain, and remove [SIJS recipients] under its current priorities.” Gov’t PI Opp’n 9.

- a. Section 1252(f) Does Not Bar a Stay and Eventual Vacatur Under the APA

A stay and eventual vacatur of the SIJS-DA rescission would not run afoul of Section 1252(f). That provision only applies to injunctive relief, *Aleman Gonzalez*, 596 U.S. at 550, and an injunction is different from vacatur. See *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165-66 (2010) (describing an injunction as a “drastic and extraordinary remedy” compared to the “less drastic” remedy of partial or complete vacatur). Accordingly, lower courts have consistently held that Section 1252(f) does not apply to actions brought under Sections 705 and 706 of the APA. See, e.g., *Texas v. United States*, 40 F.4th 205, 219-20 (5th Cir. 2022) (per curiam); *Coal. for Humane Immigrant Rts. v. Noem*, --- F. Supp. 3d ---, 2025 WL 2192986, at *13 & n.16 (D.D.C. Aug. 1, 2025) (collecting cases); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, --- F. Supp. 3d ---, 2025 WL 1825431, at *19 (D.D.C. July 2, 2025); *Haitian Evangelical Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255, 271-72 (E.D.N.Y. 2025).

- b. Section 1252(f) Bars Much of the Injunctive Relief Sought

The remaining question is whether Plaintiffs’ additional requested injunctive relief would violate Section 1252(f). Much – though not all – of the requested relief is superfluous given the Court’s decision (below) to stay the SIJS-

DA rescission under APA Section 705, or is otherwise inappropriate. And the Supreme Court has cautioned against granting injunctions that would have no “meaningful practical effect independent of . . . vacatur.” *Monsanto*, 561 U.S. at 165. But even if the Court was not denying the requested relief for other reasons, Section 1252(f) would bar the issuance of an injunction requiring USCIS to conduct new deferred-action determinations, except as to E.A.R. and C.V.R., and would likewise bar an injunction requiring USCIS to reinstate a process for SIJS-DA renewal.¹¹

Here, like in *Aleman Gonzalez*, Plaintiffs seek an injunction that would “interfere with . . . efforts” that “in the Government’s view” are necessary to effectuate its inspection, apprehension, examination, and removal powers. 596 U.S. at 549-51. The plaintiffs in *Aleman Gonzalez* were detained pending removal pursuant to 8 U.S.C. § 1231(a)(6) and sought an injunction preventing their continued detention for more than six months without a bond hearing, which the district court granted. *Id.* at 546-47. The Supreme Court held that requiring bond hearings when – in the government’s view – Section 1231(a)(6) allowed officials to continue detaining plaintiffs

¹¹ The government does not argue, nor does the Court conclude, that Section 1252(f) bars an injunction requiring DHS to resume making “timely” employment-authorization determinations for SIJS-DA recipients. But that relief is denied for other reasons, discussed below.

without them, ran afoul of Section 1252(f). *Id.* at 551. In other words, mandating consideration of bail interfered with the government's power of detention. So too, mandating consideration of deferred action interferes with the government's power of removal.

Plaintiffs' attempts to distinguish *Aleman Gonzalez* are unavailing. They argue that Section 1252(f) is inapplicable because none of the covered provisions of the INA discuss deferred action. Pls.' PI Reply 3. That argument misunderstands the relevant inquiry. The question is whether requiring the government to consider (or reconsider) SIJS petitioners for deferred action – and to do so within a certain timeframe, as Plaintiffs have requested – constrains its ability to act under INA provisions that are covered by Section 1252(f), *i.e.*, those provisions related to “inspection, apprehension, examination, and removal of aliens.” *Aleman Gonzalez*, 596 U.S. at 549–50. And requiring USCIS to consider certain removable aliens¹² for deferred action clearly has more than a “collateral effect,” Pls.' PI Reply 4, on the ability to remove those aliens.

Section 1252(f) bars the issuance of an injunction requiring USCIS to conduct new deferred-action determinations

¹² See 2022 Policy Alert 1 (“SIJ classification . . . does not confer lawful status”); 2025 Policy Alert 1 (same).

for members of the Deferred Action Class and reinstate a process for SIJS-DA renewal. However, it does not bar injunctive relief as to E.A.R. and C.V.R., against whom the government has initiated removal proceedings. See 8 U.S.C. § 1252(f)(1) (exempting injunctive relief as “to an individual alien against whom proceedings . . . have been initiated”); Compl. ¶¶ 97-98.

B. Plaintiffs Are Likely to Succeed on the Merits

Moving to the merits, Plaintiffs’ claims boil down to three arguments. They argue that (1) the government failed to adequately consider and explain the SIJS-DA rescission; (2) certain elements of the SIJS-DA rescission violated the APA’s notice-and-comment requirement; and (3) USCIS impermissibly departed from SIJS-DA before formally changing agency policy, thereby violating the *Accardi* doctrine. Plaintiffs are likely to prevail, at least in part, on each front.

1. The SIJS-DA Rescission Was Likely Arbitrary and Capricious Under the APA

A court shall “hold unlawful and set aside” agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706. An agency action is arbitrary and capricious if the agency does not articulate a “rational connection between the facts found and the choice made.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

When, as here, an agency breaks from a prior policy, it need not offer “reasons for the new policy [that] are *better* than the reasons for the old one.” *Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 570 (2025). It must, however, show “awareness that it is changing position,” offer “good reasons for the new policy,” and explain the justifications for “disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Encino*, 579 U.S. at 221–22.¹³ This also means the agency must consider “serious reliance interests” generated by the prior policy. *White Lion*, 604 U.S. at 570; *Regents*, 591 U.S. at 30.

- a. USCIS Offered a Reasonable Explanation for Its Decision to Rescind SIJS-DA

To assess USCIS’s explanation for rescinding SIJS-DA, we look at the reasons it provided in two sources. One of these, the 2025 Policy Alert, was publicly disseminated; the other, the USCIS Internal Memo, was not. Judicial review of an agency’s decision “is to be based on the *full* administrative record that was before the [agency] at the time [of its]

¹³ The Supreme Court has left open whether the change-in-position doctrine applies to agency decision-making that occurs outside the notice-and-comment process. *White Lion*, 604 U.S. at 570 n.5. Here, however, the parties agree that it does. See Pls.’ Suppl. Br. 13, ECF No. 57; Gov’t Suppl. Br. 8, ECF No. 56. The Court will therefore apply the doctrine. The fact that *Regents* applied the change-in-position doctrine to a policy statement much like the one at issue here buttresses the Court’s approach. *Regents*, 591 U.S. at 30; see also *White Lion*, 604 U.S. at 570 n.5 (arguing it was appropriate to apply the change of position doctrine in *Regents* because “the policy statement instituted a standardized review process that effectively resembled adjudication”).

decision.” *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971) (emphasis added). Courts must not consider “post hoc rationalizations,” *Regents*, 591 U.S. at 23, but the USCIS Internal Memo is not one: it was issued contemporaneously with the 2025 Policy Alert. Plaintiffs marshal several authorities in support of their argument that courts should ignore internal explanations because they do not serve the APA’s purposes of transparency and public accountability. Pls.’ Suppl. Br. 15-16. But absent a clear rule to the contrary, the Court deems it appropriate to consider all contemporary evidence of USCIS’s reasoning, particularly given that the USCIS Internal Memo expounds on the reasons provided in the (public) 2025 Policy Alert.

One of USCIS’s principal reasons for rescinding SIJS-DA was that the program was not “supported by any existing statute or regulation.” 2025 Policy Alert 2. The Internal USCIS Memo elaborates: “[t]he INA simply does not contain a provision to permit” SIJS-DA. Internal USCIS Memo 7. Put succinctly, USCIS stated its belief that SIJS-DA exceeded its authority. That is, in itself, a good reason for rescinding the policy.¹⁴ See *Regents*, 591 U.S. at 40 (Thomas, J., concurring in the judgment and dissenting in part) (“The decision to

¹⁴ If there were evidence that the agency’s explanation was pretextual, that might be different. See *Dep’t of Com. v. New York*, 588 U.S. 752, 785 (2019). But Plaintiffs have not pointed to any such evidence.

countermand an unlawful agency action is clearly reasonable.”); *Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.*, 894 F.3d 95, 108 (2d Cir. 2018) (“It is well settled that an agency may only act within the authority granted to it by statute.”); see generally *La. Pub. Serv. Comm’n v. FCC*, 476 U.S. 355, 374 (1986) (stating the oft-quoted refrain that “an agency literally has no power to act . . . unless and until Congress confers power upon it”).

Plaintiffs counter that an *incorrect* legal conclusion cannot support agency action. Pls.’ Br. in Supp. of Prelim. Injunction 18, ECF No. 6. This is surely true, but Plaintiffs are unlikely to establish that USCIS’s conclusion regarding SIJS-DA’s illegality was unreasonable. Indeed, there is a fundamental contradiction at the heart of Plaintiffs’ argument. On the one hand, they argue that SIJS-DA is *not* “a non-enforcement policy exempt from [judicial] review” because it, like DACA, “confers access to affirmative immigration benefits.” Pls.’ PI Reply 7 (explaining why APA Section 701 does not foreclose judicial review). On the other hand, Plaintiffs contend that USCIS needed no express statutory authorization to create SIJS-DA because it was purely an exercise of the agency’s “inherent prosecutorial discretion.” Pls.’ Br. in Supp. of Prelim. Injunction 16. SIJS-DA cannot be an exercise of

prosecutorial or enforcement discretion for the sake of one argument and not for the other.¹⁵

As discussed above, we agree with Plaintiffs that *Regents* controls on the question of APA reviewability. See Section II.A.2, *supra*. But if SIJS-DA is “more than a non-enforcement policy,” 591 U.S. at 19, then it needs some sort of statutory basis. See *Hikvision USA, Inc. v. FCC*, 97 F.4th 938, 944 (D.C. Cir. 2024) (“In the absence of statutory authorization for its act, an agency’s action is plainly contrary to law and cannot stand.”). Although the Supreme Court did not reach the question of DACA’s legality in *Regents*, the Fifth Circuit since has, and it concluded – easily and persuasively – that the program exceeded DHS’s statutory authority. *Texas*, 50 F.4th at 524-28. Plaintiffs have offered no persuasive reason why SIJS-DA should fare differently.

SIJS-DA is no more a creature of statute than DACA. Plaintiffs argue that unlike DACA, SIJS-DA “furthers” an existing statutory scheme by providing “a bridge from SIJ status to LPR status while youth wait for a visa to become available.” Pls.’ Suppl. Br. 16-17. But if Congress had intended SIJS classification to confer lawful status, it could have passed a

¹⁵ As noted above, Plaintiffs’ briefing underscores this conundrum by citing *Heckler v. Chaney* – the classic case regarding APA nonreviewability – in support of their argument that SIJS-DA did not require statutory authorization. Pls.’ Br. in Supp. of Prelim. Injunction 25.

law saying so. Instead, Congress permitted SIJS beneficiaries to apply for adjustment of status only “when an immigrant visa is immediately available.” Compl. ¶ 5. Accordingly, Plaintiffs are unlikely to succeed on the merits of their claim that USCIS failed to articulate an adequate reason for rescinding SIJS-DA.

Because we conclude that SIJS-DA’s questionable legality was likely reason enough for USCIS to seek to rescind the policy, the Court need not consider the agency’s additional rationales. See *BDPCS, Inc. v. FCC*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) (“When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.”).

b. USCIS’s Failure to Consider Reliance Interests and Reasonable Alternatives to Rescission Likely Renders Its Decision Arbitrary and Capricious

When rescinding a policy, an agency must consider both “serious reliance interests” engendered by that policy, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009), and “reasonably obvious alternatives.” *Yale-New Haven Hosp. v. Leavitt*, 470 F.3d 71, 80 (2d Cir. 2006). This is true even when the agency’s basis for rescinding the policy is its illegality. *Regents*, 591 U.S. at 30-33. USCIS failed to consider reliance

interests and reasonably obvious alternatives here, likely rendering its decision to rescind SIJS-DA arbitrary and capricious.

The government offers two arguments for why USCIS was not required to consider reliance interests: (1) the requirement to consider reliance interests does not apply when an agency “credibly believes that the prior policy is a violation of the separation of powers doctrine,” Gov’t Suppl. Br. 6; and (2) the reliance interests here were not serious. Gov’t PI Opp’n 25. Both arguments fall short.

First, an agency must always consider serious reliance interests, even when it concludes an earlier policy was unlawful. The government acknowledges that it “cannot find any binding caselaw” to support its contrary position. Gov’t Suppl. Br. 6. This acknowledgment is not surprising, given that *Regents* rejected that position. There, the Court noted that “DACA was rescinded because of the Attorney General’s illegality determination.” 591 U.S. at 33. But “nothing about that determination foreclosed or even addressed the option[] of . . . accommodating particular reliance interests.” *Id.* That DHS did not consider reliance interests in DACA before rescinding it rendered that decision arbitrary and capricious. *Id.*

The same is true here. While USCIS may ultimately conclude that “reliance interests in benefits that it views as unlawful are entitled to no or diminished weight,” *id.* at 32, it must still consider them. And it failed to consider reliance on SIJA-DA.

Second, Plaintiffs have identified reliance interests that USCIS made no attempt to contend with. Indeed, like the noncitizens in *Regents*, Plaintiffs aver that they have “enrolled in degree programs [and] embarked on careers” in reliance on the SIJS-DA program. *Id.* at 31; see also Pls.’ Mem. in Supp. of Prelim. Injunction 23-24 (collecting affidavits). And just as in *Regents*, Plaintiffs note that the “consequences of the [deferred-action program] rescission . . . would radiate outward” to their families, schools, and employers. 591 U.S. at 31.¹⁶ Per Plaintiffs, even state governments would feel the effects of the rescission, because SIJS recipients would become “much more dependent on . . . child welfare agenc[ies], putting both a financial and administrative strain on the agencies.” Mandelbaum Aff. ¶ 28.

¹⁶ For example, absent deferred action and work authorization, Y.A.M. would not be able to support her three-year-old son. Y.A.M. Aff. ¶ 20, ECF No. 9-8. Employers would lose employees into whom they had invested time and money. *Id.* ¶ 18; B.R.C. Aff. ¶¶ 9, 18, ECF No. 9-1; J.C.B. Decl. ¶ 10, ECF No. 9-4. And schools would lose tuition-paying students. B.R.C. Aff. ¶¶ 9, 18; Mandelbaum Aff. ¶ 25, ECF No. 9-21.

The government does not claim that it considered these – or any other – reliance interests. See Gov't PI Opp'n 24-25. It argues only that it did not have to. *Id.* In the government's view, any reliance interests were *per se* unreasonable because SIJS-DA had only existed for three years, was temporary, and was subject to a change in executive priorities. *Id.* Once more, *Regents* forecloses this argument. In that case, DACA was only five years old. 591 U.S. at 9. But the Court still held that the government's failure to consider the reliance interests engendered by that policy was arbitrary and capricious. *Id.* at 30. And it squarely rejected the argument that these interests were somehow illegitimate because DACA relief was, among other things, temporary and subject to discretionary revocation. *Id.* at 30-31.

Furthermore, the government points to no part of the administrative record to support its argument about petitioners' reliance interests. Nowhere in either of the USCIS memos does the agency say there are no serious reliance interests at stake. Indeed, the word "reliance" never appears in the two USCIS documents. And a court "cannot affirm based on a *post hoc* litigation rationalization pressed by agency counsel." *Gulf Restoration Network v. Haaland*, 47 F.4th 795, 804 (D.C. Cir. 2022); *cf. Regents*, 591 U.S. at 21 (courts should not consider an agency's *post hoc* rationalization for its decision). USCIS's

failure to consider serious reliance interests was likely arbitrary and capricious.

USCIS's omission to consider *alternatives* to rescinding the 2022 Policy Alert in its entirety was also likely arbitrary and capricious under *Regents*. Plaintiffs raised this argument in their opening brief, Pls.' Br. in Supp. of Prelim. Injunction 25, and the government failed to respond, meaning the issue has likely been conceded. See *Zhang v. Gonzales*, 426 F.3d 540, 541 n.1 (2d Cir. 2005). For example, Plaintiffs question why USCIS could not have addressed its security concerns by "implementing supplemental vetting or screening procedures." Pls.' Br. in Supp. of Prelim. Injunction 25. This would not, of course, resolve USCIS's concerns about SIJS-DA's legality, and it may not be a viable alternative. But if that is the case, it was incumbent on the agency, under settled administrative law principles, to consider this type of question. The government's argument here "does not establish that [USCIS] considered" alternatives "or that such consideration was unnecessary." *Regents*, 591 U.S. at 29.

"[I]n rescinding a prior action, an agency cannot simply brand it illegal and move on." *Louisiana v. U.S. Dep't of Energy*, 90 F.4th 461, 475 (5th Cir. 2024). Rather, it first must consider reliance interests and alternatives. *Id.* (interpreting *Regents* to impose this requirement). Because

USCIS failed to do so, its rescission of SIJS-DA was likely arbitrary and capricious.

2. The SIJS-DA Rescission Likely Violated the APA's Notice-and-Comment Requirement

Plaintiffs argue that two elements of the SIJS-DA rescission violated the notice-and-comment provisions of the APA: 5 U.S.C. § 553(b)-(e).

The notice-and-comment provisions of the APA apply only to legislative rules. See 5 U.S.C. § 553(b); *Time Warner Cable Inc. v. FCC*, 729 F.3d 137, 168 (2d Cir. 2013). A legislative rule is one that "grants rights, imposes obligations, or produces other significant effects on private interests." *Fisher v. Aetna Life Ins. Co.*, 32 F.4th 124, 141 (2d Cir. 2022). By contrast, an interpretive rule is an agency's "intended course of action, its tentative view of the meaning of a particular statutory term, or [an] internal house-keeping measure[] organizing agency activities." *Id.* Interpretive rules do not require notice and comment. *Time Warner*, 729 F.3d at 168; see also 5 U.S.C. § 553(b)(4)(A).

Plaintiffs do not argue that the 2022 Policy Alert was a legislative rule.¹⁷ They therefore do not (and cannot) argue that USCIS had to proceed through notice-and-comment before

¹⁷ That Alert expressly disclaimed any such status. See 2022 Policy Alert 4 ("USCIS will not publish Federal Register notices requesting public comment because public notice is not required for internal policy clarifications.").

rescinding the SIJS-DA program. See *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 101 (2015) (“Because an agency is not required to use notice-and-comment procedures to issue an initial interpretive rule, it is also not required to use those procedures when it amends or repeals that interpretive rule.”). But Plaintiffs argue that the 2025 Policy Alert did more than just rescind the 2022 Policy Alert. In their view, it also imposed two new policies that amounted to legislative rules, and therefore implicated the APA’s notice-and-comment requirement. As to the first of these – halting consideration of SIJS recipients for deferred action – plaintiffs are not likely to succeed on the merits. As to the second – stopping considering SIJS recipients for employment authorization – they are.

a. USCIS’s Decision to Cease Considering SIJS Recipients for Deferred Action on a Case-By-Case Basis Did Not Require Notice and Comment

Plaintiffs challenge the announcement in the 2025 Policy Alert that USCIS would “no longer consider granting deferred action on a case-by-case basis to aliens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas.” 2025 Policy Alert 3.¹⁸ In

¹⁸ Plaintiffs also challenge this policy as arbitrary and capricious. See Pls.’ Br. in Supp. of Prelim. Injunction 26. Since the Court concludes that USCIS’s decision to stop automatically considering SIJS petitioners for deferred action was likely arbitrary and capricious, see Section II.B.1, *supra*, we need not decide at this stage whether it was arbitrary and capricious for USCIS to stop considering SIJS petitioners for deferred action at all.

their view, the 2025 Policy Alert does not just deny SIJS petitioners *automatic* consideration for deferred action. Depending on how one interprets the policy, it either bars SIJS recipients from seeking (1) deferred action based on their SIJ status, or (2) deferred action for any reason. Compare Gov't PI Opp'n 23-24 (stating that the first interpretation is correct), with Pls.' Br. in Supp. of Prelim. Injunction 27 (suggesting the second interpretation is "most consistent" with the text of the 2025 Policy Alert). Plaintiffs are unlikely to succeed on their notice-and-comment claim either way.

A policy or rule about who may be considered for deferred action is not legislative in nature. Deferred action is a creature of "administrative discretion," *Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 484 (1999), or "administrative convenience," 8 C.F.R. § 274a.12(c)(14), whereby the government "gives some [enforcement] cases lower priority." *Id.* It does not confer "individual rights and obligations." *Morton v. Ruiz*, 415 U.S. 199, 232 (1974); see also, e.g., 2024 Policy Manual 5 ("Deferred action does not provide lawful status."); 8 C.F.R. § 236.21(c)(1) (Deferred action under the DACA program is a "temporary forbearance from removal [that] does not confer any right or entitlement to remain in or reenter

the United States.”).¹⁹ The statement about who will be considered for deferred action concerns an “intended course of action,” *see Fisher*, 32 F.4th at 141, and did not require the notice-and-comment process.

b. USCIS’s Decision to Stop Accepting Employment Authorization Applications from SIJS Recipients Who Have Received Deferred Action Was Subject to Notice-and-Comment Requirements

Plaintiffs also challenge USCIS’s announcement that it will no longer accept employment-authorization applications from SIJS recipients who have received deferred action. 2025 Policy Alert 3. Plaintiffs correctly point out (and the government never disputes) that this pronouncement directly conflicts with an existing federal regulation – one that permits *any noncitizen* who has been granted deferred action to apply for work authorization upon a showing of “economic necessity.” 8 C.F.R. § 274a.12(c)(14); *see also Regents*, 591 U.S. at 10. In essence, the 2025 Policy Alert purports to amend – without notice-and-comment rulemaking – a portion of a true legislative rule. But

¹⁹ At this first-blush stage of the case, deferred action appears to be even *more* a mere product of administrative discretion, convenience, or forbearance than other familiar exercises of prosecutorial discretion. It is not clearly the basis of a contractual right, like a non-prosecution agreement entered into by a U.S. Attorney’s Office. *See generally United States v. Pelletier*, 898 F.2d 297, 301 (2d Cir. 1990). And unlike the immunity conferred under 18 U.S.C. § 6002, it is not a creature of statute. No one would seriously suggest that changes in Department of Justice policy regarding non-prosecution or deferred prosecution agreements requires notice and comment. Notwithstanding the meaningful differences between the criminal and regulatory arenas, it remains entirely unclear why the revision of a USCIS memorandum on the analogous subject *would* so require.

"[o]nce an agency issues a substantive rule through notice and comment, it can amend that rule only by following the same notice-and-comment procedures." *Kisor v. Wilkie*, 588 U.S. 558, 608 (2019) (Gorsuch, J., concurring in the judgment) (citing *Perez*, 575 U.S. at 101). Because the 2025 Policy Alert did not follow notice-and-comment procedures before amending a legislative rule, that aspect of it likely violated the APA.²⁰

3. The Government Likely Violated the *Accardi* Doctrine

Finally, Plaintiffs argue that the government's *sub silentio* departure from the SIJS-DA policy between April and June 2025 violated the *Accardi* doctrine. Again, the government has never challenged this argument and therefore has likely conceded it. *Zhang*, 426 F.3d at 541 n.1. In any event, the claim is likely to succeed on the merits.

The *Accardi* doctrine states that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures," even when those procedures are "possibly more rigorous than otherwise would be required." *Ruiz*, 415 U.S. at 235; see also *Vera Punin v. Garland*, 108 F.4th 114, 129 (2d Cir. 2024) ("Had the Attorney General promulgated

²⁰ The government represents in its opposition papers that it is still accepting work-authorization applications from SIJS recipients. Gov't PI Opp'n 28. But the 2025 Policy Alert plainly states that USCIS will not accept such applications. 2025 Policy Alert 3. And when the text is clear, the Court cannot alter its review of the legality of an agency action based on "post-enactment practice." *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017).

rules delimiting his own authority, he could not later sidestep those limitations.”). The doctrine’s “ambit is not limited to rules attaining the status of formal regulations.” *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). And it is particularly applicable where the procedure or regulation at issue affects “the rights or interests of the objecting party.” *Id.*; see also *Lopez v. FAA*, 318 F.3d 242, 247 (D.C. Cir. 2003) (key question is whether the regulation in question establishes “procedural rules benefitting [a] party otherwise left unprotected” from unfettered agency discretion).

Here, the 2022 Policy Alert benefitted SIJS recipients by providing expressly that they would be “automatically” considered for deferred action. 2022 Policy Alert 3 (USCIS will “automatically conduct deferred action determinations for noncitizens with SIJ classification who cannot apply for adjustment of status solely because an immigrant visa number is not immediately available”); see, e.g., *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (*Accardi* applied to ICE policy directive guaranteeing asylum applicants right to individualized review); *Torres v. U.S. Dep’t of Homeland Sec.*, No. 17-CV-1840, 2017 WL 4340385, at *5-6 (S.D. Cal. Sep. 29, 2017) (*Accardi* applied to DACA Standard Operating Procedures). And Plaintiffs present evidence that USCIS ceased automatically considering SIJS recipients for deferred action in April 2025, or two months

before it promulgated the 2025 Policy Alert. See, e.g., Wilkes Aff. ¶¶ 11-12; McGrorty Aff. ¶¶ 9-11.²¹ Again, the government has not challenged this evidence.

Thus, the government does not dispute that, for at least a two-month period, it did not follow its own internal procedures concerning deferred action for SIJS recipients. In other words, it does not dispute that it acted unlawfully. *Ruiz*, 415 U.S. at 235; cf. *Fox Television, Inc.*, 556 U.S. at 515 (“An agency may not . . . depart from a prior policy *sub silentio* or simply disregard rules that are still on the books.”). So, Plaintiffs are likely to prevail on the merits of their *Accardi* claims.

C. The Individual Plaintiffs Likely Face Irreparable Harm²²

To demonstrate irreparable harm, a plaintiff must show 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*,

²¹ One could argue (though the government does not) that just because SIJS petitioners stopped receiving deferred action alongside their approval notices, that does not mean USCIS was never going to consider them for deferred action. After all, the 2022 Policy Alert did not specify a timeline on which deferred action need be considered. However, USCIS’s internal policy manual provided that SIJS was a “particularly strong positive factor that weigh[ed] heavily in favor of granting deferred action.” 2024 Policy Manual 5. That USCIS stopped granting SIJS petitions and deferred action simultaneously suggests it had stopped considering SIJS petitioners for deferred action. Therefore, USCIS was likely violating the *Accardi* doctrine.

²² Again, we forgo addressing the question whether the Organizational Plaintiffs are likely to suffer irreparable harm, given that it has no bearing on the relief ordered herein.

Ltd. v. Pryor, 481 F.3d 60, 66 (2d Cir. 2007). The plaintiff must also show that there is a “continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation.” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (per curiam). Here, the Individual Plaintiffs have shown a risk of irreparable harm.

The Individual Plaintiffs who received SIJS without being considered for deferred action face a looming risk of deportation. Indeed, at least two Individual Plaintiffs are *already* in removal proceedings. See Compl. ¶¶ 97-98. And even those Individual Plaintiffs who are not currently in removal proceedings face the imminent risk that such proceedings will be commenced against them, as described in Section II.A.1, above.²³

The government’s arguments to the contrary are unavailing. **First**, the government argues that the Individual Plaintiffs have not made a strong showing of irreparable harm because “they had no entitlement to a favorable exercise of discretion or a deferred-action process” and, in any case, have not demonstrated that their detention or removal is imminent. Gov’t PI Opp’n 26-28. The Court already addressed and rejected

²³ Even if the Individual Plaintiffs who are currently in removal proceedings were the only plaintiffs able to establish irreparable harm, it would make no difference. The relief awarded here – a stay under the APA – would be the same even if E.A.R. and C.V.R. were the only plaintiffs.

those arguments in the context of its standing inquiry. See Section II.A.1, *supra*.

Second, the government argues that SIJS recipients can still apply for deferred action using Form G-325A. *Id.* at 27. But that assertion remains hotly disputed. See Pls.' PI Reply 13 (citing 90 Fed. Reg. 22752 (May 29, 2025)).

Third, the government relies on *NAACP v. Trump*, 321 F. Supp. 3d 143, 148-49 (D.D.C. 2018), in which the court said that plaintiffs who never applied for DACA had not been irreparably harmed by its rescission. Gov't PI Opp'n 27. But this case is distinguishable. Unlike in *NAACP*, the Individual Plaintiffs here *have* effectively applied for SIJS-DA under the 2022 policy (by submitting SIJS petitions at a time when doing so meant being automatically considered for deferred action). They face the irreparable harm of removal because the government refuses to consider those applications.

The Individual Plaintiffs who previously received deferred action have also alleged irreparable harm because they will face detention and deportation once their deferred action expires. See *Velesaca v. Decker*, 458 F. Supp. 3d 224, 240-41 (S.D.N.Y. 2020) (collecting cases for the straightforward proposition that "deprivation of [a noncitizen's] liberty is, in and of itself, irreparable harm"). To be sure, the earliest that any Individual Plaintiff's deferred action will expire is

May 2026, approximately six months from now. See Compl. ¶¶ 20, 22. And “[i]f a trial on the merits can be conducted before the injury would occur there is no need for a preliminary injunction.” 11A *Wright & Miller’s Federal Practice & Procedure* § 2948.1 (3d ed.); see also *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 235 (2d Cir. 1999) (no preliminary injunction where injury would not occur for another eight months). Here, however, there is reason to believe that this injury could occur before resolution of this case on the merits. The Court has not yet received a full administrative record. The parties have not submitted dispositive motions or proposed a schedule for briefing them. And the government has twice requested that the Court adjourn briefing deadlines, suggesting that future litigation may last longer than anticipated. Moreover, the Court maintains a busy calendar of cases previously scheduled to begin trial between now and May. Accordingly, the Court concludes that the risk of irreparable harm in six months is “sufficiently imminent to weight this factor in favor of the [plaintiffs].” See *Georgia v. Pruitt*, 326 F. Supp. 3d 1356, 1369 (S.D. Ga. 2018) (applying similar logic to find irreparable injury despite a nineteen-month gap).

D. The Balance of Equities and Public Interest Favor Relief

When the government is a party, the balance-of-equities and public-interest factors merge. *New York*, 969 F.3d

at 86. As already discussed, Plaintiffs face considerable harm if the SIJS-DA rescission is permitted to proceed. On the other side of the ledger, the government argues that an injunction will hamper immigration enforcement efforts and undermine public safety. Gov't PI Opp'n 29-30.

The government's arguments are weighty, but in this instance not as weighty as Plaintiffs' interests, combined with the public interest in preventing unlawful agency action. While public safety is a legitimate concern, requiring USCIS to *consider* SIJS recipients for deferred action does not prevent USCIS from requesting additional biometric information or ultimately declining to grant deferred action. Moreover, "[t]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). The balance of equities therefore favors relief.

E. Remedy

For the foregoing reasons, the SIJS-DA rescission will be stayed pursuant to Section 705 of the APA. The government must therefore conduct deferred-action and employment-

authorization adjudications pursuant to the 2022 Policy Alert,²⁴ pending promulgation of a valid rescission policy or further order from this Court. See 5 U.S.C. § 705 (court may “postpone the effective date of an agency action” and / or act to “preserve status or rights pending conclusion” of review); *Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 274 (stay under Section 705 restores “last peaceable uncontested status existing between the parties *before* the dispute developed”).

Plaintiffs make four requests for injunctive relief that go beyond their request for a stay and eventual vacatur: (1) an injunction ordering USCIS to conduct deferred-action determinations for A.C.R., J.G.V., E.A.R., and C.V.R. within 30 days and for all members of the Deferred Action Class within 90 days; (2) an injunction ordering USCIS to conduct an employment-authorization determination for L.M.R. within thirty days and for all members of the EAD Subclass on a “timely” basis; (3) an order under the All Writs Act barring the government from removing the Individual Plaintiffs from the continental United States during the pendency of this litigation; and (4) an injunction barring government retaliation against the Individual Plaintiffs.

²⁴ For the avoidance of doubt, this order 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.

The Court declines to issue injunctions ordering USCIS to conduct deferred-action and employment-authorization determinations within specified timeframes. As discussed above, an injunction ordering USCIS to conduct deferred-action determinations on *any* timeframe is barred under INA Section 1252(f) as to the putative classes. See Section II.A.4, *supra*. And an injunction requiring USCIS to conduct employment-authorization determinations within a particular timeframe would exceed the scope of this Court's authority under the APA. "[T]he only agency action that can be compelled under the APA is action legally *required*." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63 (2004). While USCIS may be required to follow the 2022 Policy Alert unless and until it issues a proper rescission, nothing in that Alert or in the 2024 Policy Manual required USCIS to conduct deferred-action or employment-authorization determinations on a particular schedule. Nor do Plaintiffs cite any other authority for the proposition that their requested timeframes are legally required. Plaintiffs' request to impose specific deadlines on USCIS is therefore denied.

Next, Plaintiffs request an injunction under the All Writs Act prohibiting the government from removing the Individual Plaintiffs from the continental United States during the pendency of this litigation. 28 U.S.C. § 1651. This

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request is granted, at least until further order of this Court. See *Ozturk v. Hyde*, 136 F.4th 382, 394-95 (2d Cir. 2025) (court may issue order under All Writs Act to “protect its proceedings” and to afford complete relief); *Du v. U.S. Dep't of Homeland Sec.*, No. 25-CV-644, 2025 WL 1317944, at *1 (D. Conn. Apr. 24, 2025) (collecting cases staying individual removals pending completion of litigation).

Finally, Plaintiffs’ request for an injunction barring government retaliation against the Individual Plaintiffs is denied. There is no evidence of any such retaliation in the record. And more importantly, the requested injunction amounts to little more than a “command that the defendant obey the law.” *S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 240 (2d Cir. 2001). Such injunctions are disfavored. *Id.*; see also *Rucano v. Venettozzi*, No. 18-CV-218, 2019 WL 1306073, at *3 (N.D.N.Y. Mar. 22, 2019) (denying request for general anti-retaliation injunction as “no more than an obey-the-law injunction that is not favored”).

Plaintiffs’ other requested injunctive relief – for example, ordering USCIS to reinstitute a clear renewal process – is largely superfluous given the APA stay. And the Supreme Court has cautioned against granting injunctions that would have no “meaningful practical effect independent of . . . vacatur.” *Monsanto*, 561 U.S. at 165. Nor is additional relief necessary

for A.C.R., J.G.V., E.A.R., C.V.R., whose SIJS petitions were subject to USCIS's *sub silentio* change in policy. The 2022 Policy Memo does not specify a timeframe within which SIJS recipients must be considered for deferred action, so the automatic-consideration policy is still applicable to A.C.R., J.G.V., E.A.R., and C.V.R.

III. Motion for Class Certification

Plaintiffs also move to certify two classes (and two subclasses) pursuant to Rule 23(b)(2). Class certification is unnecessary for purposes of seeking a stay and eventual vacatur under APA Sections 705 and 706,²⁵ and the Court declines to grant preliminary class-wide injunctive relief for the reasons stated above. Accordingly, the Court need not address the motion at this time.

IV. Conclusion

Plaintiffs' motion for a preliminary injunction is granted in part and denied in part. The rescission of the 2022 Policy Alert is stayed pending further judicial review. The government is also enjoined under the All Writs Act from removing the Individual Plaintiffs from the continental United States during the pendency of this litigation. All further

²⁵ *Trump v. CASA* expressly left open the possibility that plaintiffs could obtain universal injunctive relief by seeking vacatur under the APA. 606 U.S. 831, 847 n.10 (2025); see also *id.* at 869 (Kavanaugh, J., concurring) (litigants can still seek nationwide relief under the APA).

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preliminary injunctive relief is denied. The Court reserves judgment on Plaintiffs' motion for class certification, pending further progress in this case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: November 19, 2025
Brooklyn, New York

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

A.C.R. et al.,

Plaintiffs,

MEMORANDUM & ORDER
25-CV-3962 (EK) (TAM)

-against-

KRISTI NOEM, Secretary, U.S.
Department of Homeland Security; et
al.,

Defendants.

-----x

ERIC KOMITEE, United States District Judge:

This case concerns the plaintiffs' effort to overturn an administrative action taken in 2025 by United States Citizenship and Immigration Services ("USCIS"). Specifically, USCIS rescinded a policy the agency had announced in 2022, during a prior presidential administration, that conferred substantial benefits on young people with Special Immigrant Juvenile Status. See generally Compl., ECF No. 1. At the outset of this litigation, Plaintiffs sought an immediate stay, and eventual vacatur, of the 2025 rescission, as well as certain injunctive relief. Mot. for O.S.C. 2-4, ECF No. 5.¹

On November 19, the Court granted the plaintiffs relief under the Administrative Procedure Act, staying certain aspects of the 2025 rescission pending further judicial review

¹ Page numbers in citations to record documents other than briefs refer to ECF pagination.

(and granting, in certain minor aspects, additional injunctive relief). See Order on Mot. for Prelim. Inj. 48, ECF. No. 60. At the same time, the Court's order contained a footnote indicating that, while the stay would restore the effectiveness of the 2022 *Policy Alert* that the agency had publicly issued, the order should not be read to require USCIS to restore certain changes to its internal *Policy Manual*. *Id.* at 45 n.24; see also Apr. 18, 2025 *Policy Manual* (the "Prior *Policy Manual*"), ECF No. 9-26.²

The factual and procedural background are recited in the Court's prior order and need not be repeated here in detail. In brief: the 2022 *Policy Manual* changes went further than those contained in the *Policy Alert* itself. The *Alert* provided simply that Special Immigrant Juveniles ("SIJs") who were ineligible for adjustment to lawful-permanent-resident status due to visa unavailability would be considered for deferred action. See *generally* 2022 *Policy Alert*, ECF No. 1-1. The *Alert* said little

² The Court's November 19 order erroneously referred to this document as the 2024 *Policy Manual*, see ECF No. 60, at 6, by which it meant the version of the manual in place prior to the 2025 rescission of SIJS-DA. In actuality, the parties provided archived versions of the *Policy Manual* from May 2022 and April 2025. Compare ECF Nos. 68-1, and 68-2, with ECF No. 9-26. As between the May 2022 and April 2025 versions of the *Policy Manual*, the only difference is the April 2025 *Policy Manual*'s deletion of a reference to a Biden-era ICE Directive. See Letter-Br. in Further Supp. of Mot. for Recons. ("Reply Letter-Br.") 1 n.2, ECF No. 71. That difference is irrelevant to the analysis in this Order. This Order refers principally to the April 2025 version of the *Policy Manual*, since that is the version the plaintiffs argue should be restored. See *id.* However, we cite the 2022 version of certain sections of the *Policy Manual* because that was the only version of those sections provided.

about the *substance* of that consideration – only that USCIS would endeavor “on a case-by-case basis to determine whether” deferred action was warranted. *Id.* at 3.

The Policy Manual changes went further, putting a heavy thumb on the scale in favor of deferred action. As amended, the 2022 Manual provided that:

One particularly strong positive factor that weighs heavily in favor of granting deferred action is that the person [under consideration] 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 No. 68-1, at 5. As is common in agencies’ internal policy manuals, however, USCIS’s Policy Manual included (and continues to include) a disclaimer counseling against reliance: it stated that it did not “create any substantive or procedural right or benefit that is legally enforceable.” May 2022 Policy Manual 2, ECF No. 68-2; *see also, e.g.,* U.S. Dep’t of Just., Just. Manual § 1-1.000³; DHS Off. of Intel. & Analysis Pol’y Manual 5 (2025).⁴

On December 3, Plaintiffs moved for “clarification or reconsideration” – really, reconsideration – of footnote 24 of the November 19 order. Mem. of L. in Supp. of Pls.’ Mot. for

³ <https://perma.cc/QJJ8-HZGJ>.

⁴ <https://perma.cc/9SVF-AYKC>.

Clarification or Recons. ("Recons. Mot."), ECF No. 61-1. Plaintiffs argue that USCIS must be required to follow the Prior Policy Manual in adjudicating SIJS-DA applications during the stay in order to restore the *status quo ante*. *Id.* at 1-2. The Court denied this motion on January 5, indicating that a reasoned opinion would follow. We set out the reasons why the motion for reconsideration must be denied below.

I. Legal Standard

"A motion for reconsideration should be granted only when the [moving party] identifies an intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Kolel Beth Yechiel Mechil of Tartikov, Inc. v. YLL Irrevocable Tr.*, 729 F.3d 99, 104 (2d Cir. 2013).⁵ "[R]econsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked." *Van Buskirk v. United Grp. of Cos.*, 935 F.3d 49, 54 (2d Cir. 2019); see also Local Civ. Rule 6.3 (requiring party moving for reconsideration to identify "the matters or controlling decisions which the moving party believes the court has overlooked").

⁵ Unless otherwise noted, when quoting judicial decisions this order accepts all alterations and omits all citations, footnotes, and internal quotation marks.

II. Discussion

Plaintiffs fail to identify any controlling decisions or data that the Court overlooked. Their initial motion focused on the need to restore the SIJS-DA adjudication process to its form prior to the rescission in order to preserve the *status quo ante*. See Recons. Mot. 8. But Plaintiffs did little to explain why USCIS's changes to its internal Policy Manual – as opposed to its decision to rescind the SIJS-DA program entirely – violated the APA in the first place. The Court raised this question and, relatedly, the significance of the USCIS Policy Manual's disclaimer language, in a December 5 order. See ECF No. 65. Plaintiffs' response does not merit any change.

Courts have generally held that internal policy manuals like the one at issue here have no legal force. See, e.g., *Schweiker v. Hansen*, 450 U.S. 785, 789 (1981) (SSA Claims Manual “has no legal force”); *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1153 (D.C. Cir. 2006) (DOJ guidelines “provide no enforceable rights”); cf. *Thevarajah v. McElroy*, No. 1-CV-3009, 2022 WL 923914, at *5 n.3 (E.D.N.Y. 2002) (INS memorandum was “an internal document and as such does not grant petitioner any rights”); but see *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (requiring Bureau of Indian Affairs to follow procedures in its own internal manual). The *Miller* court relied in large part on the “function [the DOJ guidelines] govern,”

i.e. “the exercise of prosecutorial discretion.” *Miller*, 438 F.3d at 1153; *see also United States v. Cooks*, 589 F.3d 173, 184 (5th Cir. 2009) (collecting circuit decisions holding that the DOJ guidelines “do not create enforceable rights for criminal defendants”).⁶ So too here, the relevant USCIS guidelines govern the exercise of prosecutorial discretion and are therefore unlikely to create enforceable rights for SIJS petitioners.

These cases may appear, at first blush, to be in tension with the *Accardi* line of cases that Plaintiffs rely on in their reply letter-brief. *See, e.g., Ruiz*, 415 U.S. at 235 (“[I]t is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.”). However, *Accardi* is not directly applicable in this context.

The *Accardi* doctrine requires “agencies to follow their own procedures” where “the rights of individuals are affected.” Reply Letter-Br. 2 (quoting *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)); *see generally United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). But the

⁶ The DOJ has also regularly altered its internal guidance regarding corporate criminal enforcement. *See, e.g.,* Memorandum from the Deputy Att’y Gen. to All Component Heads & U.S. Att’ys re Bringing Criminal Charges Against Corporations (June 16, 1999); Memorandum from the Deputy Att’y Gen. to Heads of Dep’t Components & U.S. Att’s re Principles of Federal Prosecution of Business Organizations (Jan. 20, 2003); Memorandum from the Deputy Att’y Gen. to Heads of Dep’t Components & U.S. Att’s re Principles of Federal Prosecution of Business Organizations (Dec. 12, 2006). To the Court’s knowledge, no court has ever suggested that those internal policy changes are governed by the change-in-position doctrine.

primary thrust of *Accardi* is that agencies cannot depart *sub silentio* from their operative policies, not that they can never change those policies. The cases Plaintiffs cite for the proposition that “a boilerplate disclaimer will not insulate the government from judicial review,” Reply Letter-Br. 2, illustrate this point: all applied *Accardi* to invalidate a *sub silentio* departure from a still-current policy. See *Abdi v. Duke*, 280 F. Supp. 3d 373, 381 (W.D.N.Y. 2017); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 326 (D.D.C. 2018); *Aracely v. Nielsen*, 319 F. Supp. 3d 110, 120 (D.D.C. 2018). Here, by contrast, Plaintiffs agree that USCIS officially changed its SIJS-DA policy (and edited its policy manual accordingly) on June 6, 2025. Compl. ¶ 3.⁷

Moreover, even if the USCIS Policy Manual’s disclaimer language is properly interpreted – as Plaintiffs suggest – to merely deny them a private right of action, their attempt to preserve the Prior Policy Manual would still fail under the APA. More relevant than *Accardi* here is the change-in-position

⁷ Plaintiffs do contend, however, that USCIS ceased following the 2022 Policy Alert and the Prior Policy Manual *sub silentio* in April 2025. See Compl. ¶¶ 138-44. In our prior order, the Court found that USCIS had likely violated the *Accardi* doctrine as to the subset of SIJS recipients whose petitions were granted between April and June 2025. ECF No. 60, at 38-40. USCIS should consider that subclass of plaintiffs for deferred action pursuant to the Prior Policy Manual during the stay. See *Ruiz*, 415 U.S. at 235 (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”). We reach a different conclusion as to that period because it is controlled by *Accardi* itself rather than the change-in-position doctrine.

doctrine, which requires an agency revising a policy to show “awareness that it is changing position,” offer “good reasons for the new policy,” and explain the justifications for “disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016). But Plaintiffs cite no case – let alone a controlling case – in which a court has applied the *change-in-position doctrine* to revisions to an agency’s internal policy manual, nor has the Court been able to identify such a case.⁸

Plaintiffs cite *Yale-New Haven Hospital v. Leavitt*, 470 F.3d 71 (2d Cir. 2006), as “upholding [the] vacatur of [a] Medicare policy manual provision adopted in violation of [the] change of position doctrine.” Reply Letter-Br. 2. But that case involved a very different kind of manual: one issued to “fiscal intermediaries” who were contractually bound to follow it. *Leavitt*, 470 F.3d at 74, 80;⁹ see also *Yale-New Haven Hosp., Inc. v. Thompson*, 162 F. Supp. 2d 54, 57-58 (D. Conn. 2001)

⁸ The Supreme Court recently left open the question of whether the change-in-position doctrine applies to agency decisions that are not subject to notice and comment. See *Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 570 n.5 (2025); but cf. *Encino*, 579 U.S. at 222-23 (applying *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009) to policy originally enshrined in opinion letter and field operations handbook but altered via notice-and-comment rulemaking).

⁹ *Leavitt* noted that, by regulation, “fiscal intermediaries must only pay claims for services that are covered by Medicare, see 42 C.F.R. § 421.100(a); this responsibility includes the contractual obligation (to Medicare) to make coverage determinations in accordance with . . . less-formal agency instructions such as instructional manuals and intermediary letters.” 470 F.3d at 73.

(same). And the record here reveals no indication that the policy manual at issue in that case contained a disclaimer like that in the USCIS Policy Manual. Because Plaintiffs have cited no binding case that contradicts this Court's prior order, their motion for reconsideration motion must be denied. *Van Buskirk*, 935 F.3d at 54.

Finally, even if there are limits on an agency's ability to change its own internal manual, one of the most important considerations undergirding the change-in-position doctrine – reliance – is of limited applicability here. As discussed, the USCIS Policy Manual expressly disclaimed the creation of “any substantive or procedural right or benefit that is legally enforceable.” See May 6, 2022 Policy Manual 2. Therefore, Plaintiffs could not have reasonably relied on the procedures laid out in the Prior Policy Manual in the same manner that they may have relied on the SIJS-DA policy writ large. While the government notes that the 2022 Policy Alert also stated that it contained “internal policy clarifications,” Opp'n to Mot. for Recons. 5, ECF No. 68, that is not the same as a disclaimer expressly denying that a policy carries any legal weight.

III. Conclusion

Plaintiffs' motion for reconsideration is denied. During the pendency of this litigation, USCIS must abide by the

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2022 Policy Alert. Except as to the *Accardi* subclass, USCIS is not bound by those portions of the Prior Policy Manual that go further, including the requirement that adjudicating officers treat SIJ status as a “strong factor that weighs heavily in favor of granting deferred action.”

SO ORDERED.

 /s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: January 14, 2025
Brooklyn, New York