

No. 26-0236

IN THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

A.C.R., on behalf of themselves and all others similar situated, J.G.V., on behalf of themselves and all others similar situated, E.A.R., on behalf of themselves and all others similar situated, C.V.R., on behalf of themselves and all others similar situated, Y.A.M., on behalf of themselves and all others similar situated, B.R.C., on behalf of themselves and all others similar situated, J.C.B., on behalf of themselves and all others similar situated, L.M.R., on behalf of themselves and all others similar situated, S.M.M., on behalf of themselves and all others similar situated, CENTRAL AMERICAN REFUGEE CENTER, (CARECEN-NY), CENTRO LEGAL DE LA RAZA,

Plaintiffs–Appellants,

v.

MARKWAYNE MULLIN, Secretary, U.S. Department of Homeland Security (official capacity), UNITED STATES DEPARTMENT OF HOMELAND SECURITY, JOSEPH EDLOW, Director, United States Citizenship and Immigration Services (official capacity), UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ROSE KENDRICK, Acting Director, United States Citizenship and Immigration Services National Benefits Center (official capacity),

Defendants–Appellees.

(For Appearances See Next Page)

On Appeal from the United States District Court
for the Eastern District of New York

BRIEF FOR DEFENDANTS-APPELLEES

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PRELIMINARY STATEMENT

Plaintiffs request the Court to step into the policymaking shoes of the Executive Branch and dictate how the Executive Branch should exercise its discretion. They challenge U.S. Citizenship and Immigration Services’ (“USCIS”) decision to rescind a process whereby USCIS automatically considered aliens classified as Special Immigrant Juveniles (“SIJs”) for Deferred Action (“DA”)—a discretionary and temporary deferral of immigration enforcement. Under this SIJ-Deferred Action policy (“SIJ-DA policy”), USCIS weighed the previous Administration’s immigration-enforcement priorities, which have since been rescinded. Plaintiffs sought a preliminary injunction requiring USCIS to re-institute the SIJ-DA policy and thereby bind USCIS to the policy choices of the previous Administration.

The district court granted Plaintiffs’ motion for a preliminary injunction in part, staying USCIS’s June 6, 2025 policy memorandum that rescinded the 2022 Policy Alert that had created the SIJ-DA policy (the “2025 Rescission”). The stay requires USCIS to continue to automatically consider SIJs for DA. Plaintiffs moved for reconsideration, however, because the district court did not require USCIS to follow its former Policy Manual update, which advised adjudicators to weigh SIJ classification as a “strong factor” in favor of granting DA. The district court denied Plaintiffs’ motion, ruling that Plaintiffs had failed to show that USCIS’s Policy

Manual change, unlike its decision to end the SIJ-DA policy entirely, violated the Administrative Procedure Act (“APA”). Plaintiffs appealed.

Plaintiffs’ appeal is now moot because USCIS has revisited and replaced the agency action stayed by the district court—the 2025 Rescission. Additionally, the appeal is moot because the individual Plaintiffs have received all the relief available to them: they all either have SIJ-DA for the foreseeable future or are no longer eligible for it. Even if not moot, this Court should dismiss the appeal, because the district court did not abuse its discretion in denying the motion for reconsideration. The district court fashioned the §705 stay to address the claims where Plaintiffs had demonstrated a likelihood of success on the merits. Plaintiffs’ attempt to incorporate former guidance from the Policy Manual and compel USCIS to apply the “strong factor” consideration is not supported by law, and the district court did not abuse its discretion in denying such relief.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this case under 28 U.S.C. § 1331. On November 19, 2025, the district court granted plaintiffs’ motion for a preliminary injunction in part. Plaintiffs moved for clarification or reconsideration, which the district court denied on January 5, 2026. On February 2, 2026, plaintiffs timely appealed from the district court’s orders granting the motion for a preliminary injunction and denying the motion for reconsideration. This Court had jurisdiction

under 28 U.S.C. § 1292. This appeal is now moot, however, because USCIS has rescinded the agency action challenged by Plaintiffs.

STATEMENT OF THE ISSUES

1. Should the Court dismiss this appeal as moot where USCIS issued a superseding 2026 Rescission that revokes the agency action that Plaintiffs challenge and replaces it with an entirely new agency action?
2. Should the Court dismiss this appeal as moot where the only named Plaintiffs impacted by the district court's preliminary injunction have received deferred action—the ultimate relief sought in their complaint—or their alleged harms are too remote to be redressable by preliminary injunctive relief?
3. Did the district court abuse its discretion in declining to enjoin USCIS to restore discretionary guidance for adjudicating SIJ-DA, where that guidance appeared only in an internal, non-binding policy manual and plaintiffs had not demonstrated entitlement to that relief?
4. Did the district court abuse its discretion in declining to extend the change-in-position doctrine to USCIS's decision to rescind guidance in an internal policy manual, where that guidance did not create any rights or obligations, and Plaintiffs had not demonstrated sufficient reliance interests based on the guidance?

STATEMENT OF THE CASE

I. The SIJ Classification

SIJ classification¹ is available to aliens under the age of 21 who have been declared dependent on a juvenile court, or legally committed to or placed into the custody of an entity or individual, and whose reunification with at least one parent is not viable. 8 U.S.C. § 1101(a)(27)(J).

SIJ classification is a pathway to lawful status: if the SIJ petition is approved, the alien may apply to adjust his status to that of a lawful permanent resident (LPR) once an immigrant visa is available. 8 U.S.C. § 1255(a), (h); 8 C.F.R. § 245.2(a)(2)(i)(A). Congress, however, limited the number of immigrant visas annually available to aliens in the employment-based fourth preference category (EB4), which includes SIJs. 8 U.S.C. § 1153(b)(4). Consequently, because there are more SIJs than available immigrant visas, SIJs must wait for years before an immigrant visa is available, which is determined by the SIJ's priority date (i.e., the date when USCIS received their SIJ petition). *See* Dept' of State, Visa Bulletin for August 2026, Employment Based Preferences (Fourth) (available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa->

¹ Although 8 U.S.C. § 1101(a)(27)(J) refers to SIJ classification as SIJ "status," it does not provide immigration status. Rather, it provides a pathway to lawful permanent residence. Like individuals classified as immediate relatives of U.S. citizens, approval of the Form I-130 (for SIJs, Form I-360) allows the alien to apply for permanent residence once a visa becomes available.

bulletin-for-august-2026.html.) As of August 2026, the priority date is October 15, 2022, which means that anyone who filed an SIJ petition on or before October 15, 2022 may now apply for LPR status. *Id.* Despite these several-year waiting periods for immigrant visas, Congress has not changed the adjustment-of-status process for SIJs or provided them any interim benefits.

Thus, while SIJs may eventually apply to adjust status to that of an LPR, many are still subject to arrest, detention, and removal from the United States until their priority date is current. *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (“SIJ designation does not strip the U.S. government of all removal powers.”). SIJs may also apply for employment-authorization documents (“EADs”) when they apply for adjustment of status. 8 C.F.R. § 274a.12(c)(9). No statute, regulation, or other authority requires USCIS to consider SIJs for DA or EADs.

II. The SIJ-DA Policy Background

Consideration for DA has *always* been available to all SIJs, but, until March 2022, SIJs had to affirmatively apply for it by submitting Form G-325A along with a signed request and supporting evidence. *See* USCIS, Policy Manual, Vol. 1, Pt. H, Ch. 2, <https://www.uscis.gov/policy-manual/volume-1-part-h-chapter-2#footnote-28>. If USCIS approved the DA request, the SIJ could apply for an EAD under 8

C.F.R. § 274a.12(c)(14). USCIS considered SIJs for DA on a case-by-case basis, weighing all positive and negative factors. *Id.*

In March 2022, USCIS issued a policy alert announcing that it would begin automatically conducting DA determinations for SIJs who could not apply for adjustment of status solely because an immigrant-visa number was not immediately available. *See* A-258 (Special Immigrant Juvenile Classification and Deferred Action, PA-2022-10, issued March 7, 2022). The policy alert further stated that these SIJs would not need to file separate applications for DA, and that SIJs who received DA would be eligible to apply for EADs. *Id.* USCIS also explained that, consistent with its general DA process, USCIS would assess SIJs for DA on a case-by-case basis to determine whether a favorable exercise of discretion was warranted. *Id.* USCIS explained that it was issuing an “internal policy clarification” that was based on its “interpretation” of its regulations and the Immigration and Nationality Act (INA) that did not require a “Federal Register notice[] requesting public comment.” *Id.* It also explained that SIJs are “unlikely to be enforcement priorities” under the then-existing Immigration and Customs Enforcement (ICE) Directive 11005.3, which absent exceptional circumstances deferred immigration enforcement against SIJs.² *Id.*

² This directive has been rescinded. ICE, Interim Guidance, on Civil Immigration Enforcement Actions Involving Current or Potential Beneficiaries of Victim-Based Immigration Benefits, <https://www.ice.gov/doclib/foia/policy/11005.4.pdf>.

On May 6, 2022, USCIS updated its Policy Manual to reflect the implementation of SIJ-DA set forth in the March 2022 policy alert. According to the Policy Manual, USCIS considered SIJs for DA on a “case-by-case basis,” based on the “totality of the evidence,” which includes “all relevant positive and negative factors,” in determining whether the SIJ warrants DA as a “favorable exercise of [USCIS’s] discretion.” A-265. Additionally, the Policy Manual stated that having an approved SIJ petition (Form I-360) and being eligible for adjustment of status as soon as an immigrant visa number becomes available is “one particularly strong positive factor.” *See id.* USCIS also considered the eligibility criteria for SIJ classification as “generally strong positive factors.” *Id.* USCIS reiterated that DA is “an act of *prosecutorial discretion* that defers proceedings to remove an alien from the United States for a certain period of time” and “reserve[d] the right to terminate the grant of DA and revoke the related employment authorization at any time as a matter of discretion.” *Id.* (emphasis added). Thus, the SIJ-DA Policy was not a new “program” that conferred a new type of benefit, but a new process for considering DA based on then-existing enforcement priorities.

On April 4, 2025, then-Secretary of Homeland Security Kristi Noem issued a memorandum explaining that DA is an “extraordinary” exercise of discretion that should only be granted on a case-by-case basis. *See* DktEntry 63.1, Ex. A, Guidance on Deferred Action Memorandum. According to Plaintiffs’ complaint, SIJs who

received approval notices for SIJ classification on or after Monday, April 7, 2025 were not automatically considered for DA. *See* Compl. ¶ 2.

On June 6, 2025, USCIS formally and publicly rescinded the March 2022 Policy by issuing the 2025 Rescission. *See* A-269 (Special Immigrant Juvenile Classification and Deferred Action, PA-2025-07 issued June 6, 2025) (the “2025 Rescission”). In the Policy Alert, USCIS announced that it would no longer “automatically consider” SIJs for DA. *Id.* The announcement acknowledged that Congress likely did not envision that SIJs would have to wait years before becoming eligible to apply for LPR status, but that Congress also did not provide any interim legal status or DA for SIJs despite this wait. It also explained that the change “is necessary to more closely align agency policies and procedures with statutory requirements and authorities.” *Id.*

III. District Court Proceedings

On July 17, 2025, Plaintiffs filed a lawsuit challenging the 2025 Rescission *See* A-20; A-279. Their complaint seeks three broad categories of relief. First, Plaintiffs seek a stay of the 2025 Rescission under Section 705 of the APA. A-280. Second, Plaintiffs seek an injunction requiring USCIS, among other things, to conduct SIJ-DA determinations and EAD adjudications within specific timeframes. *See* A-280-281. Third, Plaintiffs seek an order under the All Writs Act barring the USCIS from removing the Individual Plaintiffs from the continental United States

during the pendency of this litigation. A-281. Plaintiffs also allege that USCIS's actions in April 2025 violate the APA by being contrary to the *Accardi* doctrine. *See* Complaint ¶¶ 138–44. Plaintiffs also moved for a preliminary injunction and for class certification. A-279-282.

On November 19, 2025, the Court granted Plaintiffs' motion for a preliminary injunction in part and denied it in part. A-271. After ruling that the 2025 Rescission was reviewable under the APA, the district court found that Plaintiffs are likely to succeed on the merits because: (1) the 2025 Rescission was likely arbitrary and capricious because USCIS failed to consider reliance interests and alternatives; (2) USCIS's decision to stop accepting new applications for employment authorization from SIJs likely violated the notice-and-comment provision of the APA; and (3) USCIS likely violated the *Accardi* doctrine by pausing SIJ-DA from April 2025 to June 2025. *See* A-294–310.

Under 5 U.S.C. § 705, the district court stayed the 2025 Rescission. *See* A-314-316. The district court cited *Haitian Evangelical Clergy Ass'n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025) for the standard for the § 705 stay, which would return the parties to the “last peaceable uncontested status existing between the parties *before* the dispute developed.” A-315. Consequently, the district court instructed USCIS to “conduct deferred-action and employment-authorization adjudications pursuant to the 2022 Policy Alert, pending promulgation of a valid

rescission policy or further order from this Court.” *See id.* In an accompanying footnote (“Footnote 24”), the district court clarified that its decision “should not be read to suggest that USCIS remains bound by the [] Policy Manual or any prior *presumption* in favor of granting deferred action to SIJ[] recipients.” A-315 n.24 (emphasis in the original).

On December 3, 2025, Plaintiffs filed a “Motion for Clarification or Reconsideration” of Footnote 24. A-320; ECF No. 61. Plaintiffs asserted that the district court should “revisit” Footnote 24 because Plaintiffs understand the March 2022 SIJ-DA Policy to encompass both the March 2022 Policy Alert and the Policy Manual update explaining how USCIS will weigh positive and negative factors when exercising its discretion. *See id.* at 7–8. Plaintiffs argued that returning to the *status quo ante* as it existed on April 6, 2025, required that USCIS provide DA adjudications to all SIJs whose petitions were approved after April 6, 2025, based on “the SIJS Deferred Action Policy as set forth in the USCIS Policy Manual in effect at that time, including the factors USCIS was required to consider in conducting such adjudications.” *See id.* at 5. According to Plaintiffs, “The SIJS Deferred Action Policy consisted of both the 2022 Policy Alert and the updates to the USCIS Policy Manual, issued contemporaneously with the Alert, that set forth the Policy that USCIS adjudicators would be implementing.” *Id.*

On December 5, 2025, the district court ordered Plaintiffs to “identify the specific language in the USCIS Policy Manual that they believe should govern during the duration of the stay.” *See* A-29; ECF No. 64. Additionally, the district court noted that “USCIS’s policy manual currently states that it ‘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.’” *See id.* (quoting USCIS, “About the Policy Manual,” available at <https://www.uscis.gov/policy-manual>). Thus, the district court ordered the parties to address “what significance, if any, the quoted language may have in connection with Plaintiffs’ motion for reconsideration.” *See id.*

On January 5, 2026, the district court denied Plaintiffs’ motion for clarification or reconsideration. A-30; ECF No. 72. On January 14, 2026, the district court issued an opinion, explaining that while USCIS must abide by the 2022 Policy Alert during the pendency of district-court litigation, USCIS “is not bound by those portions of the prior Policy Manual that go further, including the requirement that adjudicating officers treat SIJ [classification] as a ‘strong factor that weighs heavily in favor of granting deferred action.’” A-322-331; SPA-50. However, as to the *Accardi* subclass who was not considered for DA before USCIS announced its 2025 rescission, the district court held that USCIS must consider these SIJs for DA under the previous version of the Policy Manual. *Id.* It reasoned that this subclass of

Plaintiffs had demonstrated a likelihood of success on the merits because USCIS did not dispute that it stopped automatically considering SIJs for deferred action during this period, contrary to its own internal procedures. A-310.

The district court ruled that Plaintiffs had “fail[ed] to identify any controlling decisions or data that the Court overlooked.” A-322-331. Specifically, the district court noted that while Plaintiffs’ motion for clarification “focused on the need to restore the SIJ[]-DA adjudication process to its form prior to the rescission in order to preserve the *status quo ante*,” their motion “did little to explain why USCIS’s changes to its internal Policy Manual—as opposed to its decision to rescind the SIJ[]-DA program entirely—violated the APA in the first place.” A-326. The district court noted that it had highlighted this shortcoming in its December 5, 2025 order, but that “Plaintiffs’ response [did] not merit any change.” *Id.*

Addressing the USCIS Policy Manual, the district court noted that “[c]ourts have generally held that internal policy manuals like the one at issue here have no legal force,” citing the rulings of several cases to that effect. *Id.* Specifically, it cited *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141 (D.C. 2006), which involved a similar attempt to compel compliance with Department of Justice Guidelines, but the D.C. Circuit held that the guidelines did not provide enforceable rights. The district court recognized that the relevant Policy Manual provisions

served the same purpose, “the exercise of prosecutorial discretion,” and are “therefore unlikely to create enforceable rights for SIJ[] petitioners.” A-327.

The district court noted the potential tension between the cases it cited, suggesting that the Policy Manual (which includes the agency’s procedures) did not have the force of law, with the *Accardi* line of cases that Plaintiffs had cited in their letter-brief, and concluded that the *Accardi* doctrine is not directly applicable in this case. A-327. While recognizing that the *Accardi* doctrine requires “agencies to follow their own procedures” where “the rights of individuals are affected” (quoting *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991)), the district court reasoned that the “primary thrust” of the doctrine is “that agencies cannot depart *sub silentio* from their operative policies, not that they can never *change* those policies.” *Id.* Accordingly, the district court noted its ruling in the preliminary injunction order that “USCIS had likely violated the *Accardi* doctrine as to the subset of SIJ[] recipients whose petitions were granted between April and June 2025” when it departed *sub silentio* from its operative procedures. A-328 n.7. For that reason, the district court’s order requires USCIS to apply the “Prior Policy Manual” when considering the *Accardi* subclass member for DA. *Id.* But for SIJs whose petitions were granted *after* the 2025 USCIS Rescission, the district court concluded that that the change-in-position doctrine was more relevant. A-328-329.

The change-in-position doctrine, the district court recognized, “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.’” A-329. (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016)). But the district court noted that Plaintiffs had not cited (and the court could not find) any cases where the change-in-position doctrine was applied to revisions to an agency’s internal-policy manual. *Id.* The district court distinguished *Yale-New Haven Hospital v. Leavitt*, 470 F.3d 71 (2d Cir. 2006), which had upheld vacatur of a Medicare policy manual provision based on the change-in-position doctrine, because the fiscal intermediaries involved in that case were contractually bound to follow the policy manual. *Id.* Additionally, the district court found it relevant that the policy manual at issue in *Leavitt* did not include the disclaimer language that is present in the USCIS Policy Manual. *Id.* Lastly, the district court noted that even if the change-in-policy doctrine could be applied to limit “an agency’s ability to change its own internal manual,” the doctrine would have limited applicability to this case given the lack of reasonable reliance. A-330. Specifically, given the express disclaimer in the Policy Manual that it did not create any legally enforceable substantive or procedural rights, the district court concluded that “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 SIJ[]-DA policy writ large.” A-322-331.

Because Plaintiffs had failed to identify any controlling decisions that contradicted the preliminary-injunction order, the district court denied Plaintiffs’ motion for reconsideration. A-330-331. The district court ruled that “[e]xcept 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.’” *Id.*

IV. 2026 Rescission Memo

On April 10, 2026, after looking at the issue afresh and attempting to address any serious reliance interests, USCIS issued a new rescission memo that terminated the SIJ-DA policy. *See* DktEntry 63.1, Ex. B, Special Immigrant Juvenile Classification and Deferred Action, PM-602-0198, issued April 10, 2026 (“2026 Rescission”). USCIS took the district court’s invitation from the preliminary-injunction order to implement a “valid rescission” of the SIJ-DA policy by revisiting its decision and considering reliance interests and reasonably obvious alternatives. A-315.

The 2026 Rescission instructs USCIS officers to only grant DA to an alien when it is clearly authorized by statute or regulation. *See* DktEntry 63.1, Ex. B. It

also clarifies that even after the rescission of SIJ-DA, SIJs may still apply for DA using the procedures available to all aliens by filing Form G-325A. *Id.* at 6-7. The 2026 Rescission further clarifies that SIJs who have DA will retain their EADs. *Id.* at 5, 7. Further, in consideration of reliance interests of SIJ petitioners, the 2026 Rescission provided thirty (30) days advance notice before taking effect on May 10, 2026. *Id.* at 9. Aliens with an SIJ petition that was submitted or approved before the effective date will be subject to the earlier SIJ-DA policy. *Id.* at 7. Additionally, the 2026 Rescission provides that DA will generally expire under the current grant (four years after the deferred-action grant), with USCIS retaining discretion to terminate DA on a case-by-case basis at any time. *Id.*

SUMMARY OF THE ARGUMENT

This appeal should be dismissed for lack of subject-matter jurisdiction because no live controversy remains. The challenged agency action—the 2025 Rescission—has been fully superseded by the 2026 Rescission, which constitutes new agency action addressing the matter afresh. The district court’s stay applied only pending issuance of a valid rescission policy, and that condition has now occurred. As a result, the appeal is moot under well-established precedent. Federal courts routinely dismiss challenges to rescinded policies, and the Supreme Court’s decision in *Biden v. Texas* underscores that new agency action renders prior-policy litigation nonjusticiable.

Additionally, no named plaintiff retains a cognizable injury or a claim capable of judicial redress. Several plaintiffs have already received DA, others possess DA valid through 2029, and the remaining plaintiffs have current priority dates and pending adjustment applications. Any suggestion of future harm is speculative. Plaintiffs' reliance on mootness exceptions fails because they cannot demonstrate structural inevitability of recurrence or evasion of review. Their claims do not meet the requirements of the inherently transitory or capable-of-repetition-yet-evading-review exceptions. Likewise, the organizational plaintiffs cannot preserve jurisdiction because the district court made no factual findings establishing their injuries.

Even if this Court does not dismiss this appeal as moot, it should dismiss this appeal because the district court did not abuse its discretion in tailoring the preliminary injunction and denying the motion for reconsideration. The court properly tailored equitable relief under §705 of the APA to the claims where plaintiffs showed a likelihood of success—specifically concerning arbitrary-and-capricious reasoning, notice-and-comment defects, and a *sub silentio Accardi* departure. However, the district court correctly declined to impose mandatory use of the Policy Manual's strong-factors framework. Plaintiffs never argued entitlement to that relief, and the Policy Manual is an internal guidance document without binding

legal force. Courts have repeatedly held that internal manuals do not create enforceable rights, particularly where discretion is expressly preserved.

The district court also appropriately avoided intruding on matters committed to agency discretion in tailoring the §705 stay. USCIS's determinations regarding DA are inherently discretionary, and courts must avoid judicial policymaking under the guise of enforcing internal guidance. The district court's refusal to compel application of the strong-factors consideration reflects proper respect for agency authority.

Finally, Plaintiffs' invocation of the change-in-position doctrine is misplaced because the doctrine's application to nonbinding policy documents is an open question, and even if applicable, SIJs lack the serious reliance interests necessary to trigger heightened APA obligations. The Policy Manual contains explicit disclaimer language stating it creates no enforceable rights, and the strong-factor consideration existed for only a brief period—far short of the decades-long reliance that courts have recognized as significant.

For these reasons, the Court should dismiss the appeal as moot, or alternatively, affirm the district court's well-reasoned and properly constrained exercise of discretion.

STANDARD OF REVIEW

This Court reviews the district court’s denial of Plaintiffs’ motion for reconsideration under the abuse-of-discretion standard. *Van Buskirk v. United Grp. of Companies, Inc.*, 935 F.3d 49, 542 (2d Cir. 2019) (“Denials of motions for reconsideration are reviewed only for abuse of discretion”) (citation omitted). “The standard for granting such a motion is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked — matters, in other words, that might reasonably be expected to alter the conclusion reached by the court.” *Id.* at 54 (citation omitted).

Similarly, this Court reviews the district court’s “decision to grant a preliminary injunction for abuse of discretion, examining the legal conclusions underpinning the decision *de novo* and the factual conclusions for clear error. *New York v. United States Dep't of Homeland Sec.*, 969 F.3d 42, 58 (2d Cir. 2020) (citation omitted). “The scope of the injunctive relief ordered by the district court is evaluated for abuse of discretion.” *Id.*

ARGUMENT

I. The Court should dismiss this appeal for lack of subject matter jurisdiction

The 2026 Rescission fully superseded and displaced the 2025 Rescission—the agency action that Plaintiffs challenge in this case. USCIS asked this Court to dismiss this appeal as moot on that basis. *See* DktEntry 63.1. On July 22, 2026, the

Clerk of the Court referred this motion to the merits panel. Order, DktEntry 74.1. USCIS hereby incorporates its arguments from its briefs (DktEntries 63.1, 66.1) and summarizes those arguments below.

A. This Appeal Is Moot Because the 2026 Rescission Supersedes the 2025 Rescission

Plaintiffs’ appeal is moot because the challenged action—the 2025 Rescission—no longer exists. The district court’s stay remains in effect only “pending promulgation of a valid rescission policy or further order from [the district court].” SPA-45. Once USCIS issued the 2026 Rescission, that new agency action superseded the 2025 rescission in full, rendering this appeal moot.

A case becomes moot when the issues presented are no longer “live” or when the parties “lack a legally cognizable interest in the outcome.” *Murphy v. Hunt*, 455 U.S. 478, 481 (1982). A matter may become moot at any point during litigation, including appeal. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). When a civil appeal becomes moot, the proper disposition is dismissal, with the lower court judgment vacated and remanded. *Deakins v. Monaghan*, 484 U.S. 193, 200 (1988) (citation omitted).

The Supreme Court’s decision in *Biden v. Texas*, 597 U.S. 785, 811 (2022), where the Court held that a memorandum issued to replace a prior memorandum constituted new agency action, as the government “‘deal[t] with the problem afresh’

by taking new agency action,” is precisely what occurred here: USCIS revisited the 2025 Rescission and issued a new, superseding policy. Thus, the 2026 Rescission is the new final agency action that controls here.

Federal courts routinely dismiss challenges to rescinded or replaced policies and regulations as moot. *See, e.g., Citizens for Responsibility & Ethics in Wash. v. Wheeler*, 352 F. Supp. 3d 1, 11 (D.D.C. 2019) (“The promulgation of a superseding policy or program can have the power to moot a challenge to the old one”); *see also Akiachak Native Cmty. v. U.S. Dep’t of the Interior*, 827 F.3d 100, 113–14 (D.C. Cir. 2016) (It is a “perfectly uncontroversial and well-settled principle of law [that] when an agency has rescinded and replaced a challenged regulation, litigation over the legality of the original regulation becomes moot”). This Court should do the same and dismiss this appeal as moot.

B. This Court should dismiss this appeal as moot because it cannot provide meaningful relief to the Plaintiffs in this lawsuit

None of the nine individual plaintiffs retain a live claim capable of redress. DktEntry 66.1, 7-10. Four have already received SIJ-DA. who hold SIJ-DA through January 2029, making any alleged future harm speculative. The remaining three all have current priority dates and pending adjustment-of-status applications, making visas available and rendering them ineligible for SIJ-DA.

Plaintiffs invoke two mootness exceptions, the inherently transitory exception and the capable-of-repetition-yet-evading-review exception, but neither applies. DktEntry 70.1, 13-25. Each requires more than theoretical future harm: Plaintiffs must show structural characteristics of the challenged action that make recurrence probable and evasion of review inevitable. They cannot meet either requirement on this record.

The inherently transitory exception applies only where (1) it is uncertain that any individual plaintiff's claim will remain live long enough for class certification, and (2) a constant class of persons will inevitably be subjected to the same deprivation. *Salazar v. King*, 822 F.3d 61, 73 (2d Cir. 2016) (citation modified). Plaintiffs cannot satisfy either prong.

First, the district court had ample opportunity to certify a class but expressly declined to do so, finding that certification was unnecessary for APA purposes. SPA-48. This confirms that the claims were not so fleeting as to evade certification; rather, Plaintiffs' claims were fully litigated and preserved without any threat of dismissal for lack of time.

Second, Plaintiffs provide no evidence that SIJ-DA adjudications occur within fixed, mandatory timelines that would make evasion of review inevitable. The record establishes the opposite: USCIS is not required to adjudicate DA or employment authorization within any specified timeframe. A-316; *Norton v. S. Utah Wilderness*

All., 542 U.S. 55, 65 (2004). Because the agency retains discretion over timing, Plaintiffs face none of the structural constraints present in *Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993), which involved mandatory deadlines that guaranteed evasion of review. Thus, Plaintiffs’ reliance on *Robidoux* is inapposite. Additionally, any delay in resolving Plaintiffs’ claims stems not from agency processes but from Plaintiffs’ own litigation choices—including their decision to redefine the scope of a now-rescinded policy on appeal. Moreover, any SIJ petitioner who filed after the effective date of the 2026 Rescission would not be able to obtain automatic consideration of SIJ-DA, so there are other individuals who could serve as plaintiffs to challenge the new rescission without their claims potentially mooted out. Nothing in the record supports the conclusion that the challenged conduct is “inherently transitory.”

Similarly, Plaintiffs’ reliance on the capable-of-repetition-yet-evading-review exception is misplaced. This exception applies only where (1) the challenged action is too short to be fully litigated before cessation, and (2) the same plaintiff is reasonably certain to face the same alleged injury again. *See Doe v. McDonald*, 128 F.4th 379, 387 (2d Cir. 2025). Plaintiffs’ argument rests entirely on the possibility of future visa retrogression. But mere speculation cannot satisfy the requirement of a “reasonable expectation” of recurrence. *Dennin v. Connecticut Interscholastic Athletic Conf.*, 94 F.3d 96, 101 (2d Cir. 1996). Even if severe retrogression were to

re-occur, none of the individual, named plaintiffs would suffer harm. As noted previously, four already received DA, and two have DA through 2029, making harm speculative and contingent on multiple future events. Additionally, three plaintiffs have pending adjustments and current priority dates, meaning visas are already available. Thus, no individual plaintiff faces an imminent or repeat injury. The exception cannot apply where the alleged harm is neither imminent nor capable of recurring for the same parties.

Finally, Plaintiffs' arguments on organizational standing falls short. *See* DktEntry 70.1, 25-27. The organizational plaintiffs cannot preserve this appeal because the district court made no factual findings establishing their injuries and this Court should not determine standing in the first instance. *See Alliance for Environmental Renewal, Inc. v. Pyramid Crossgates Co.*, 436 F.3d 82, 88 (2d Cir. 2006) (holding that the District Court must first resolve the subject matter jurisdictional issue on which the Plaintiffs' Article III standing depends before awarding either side a judgment).

The appeal is moot because the 2025 Rescission has been superseded, no plaintiff retains a live claim, and no mootness exception applies.

II. The district court did not abuse its discretion by declining to include the “strong factor” consideration in the §705 stay for SIJs who received classification after the 2025 Rescission

A. The district court appropriately tailored the relief to the claims where Plaintiffs had established a likelihood of success on the merits

The district court did not abuse its discretion in entering the §705 stay because it tailored the relief to the specific grounds on which it found that Plaintiffs had demonstrated a likelihood of success on the merits. Section 705 authorizes “a 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. “The standard for a stay under 5 U.S.C. § 705 is the same as or similar to the standard for a preliminary injunction.” *See Haitian Evangelical Clergy*, 789 F. Supp. 3d 255, 274 (E.D.N.Y. 2025) (citation omitted). “Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 582 U.S. 571, 579–80 (2017) (citations omitted). “The purpose of such interim equitable relief is not to conclusively determine the rights of the parties, but to balance the equities as the litigation moves forward . . . a court need not grant the total relief sought by

the applicant but may mold its decree to meet the exigencies of the particular case.”

Id. (citation omitted).

Here, the district court molded its preliminary injunction to exigencies of this particular case by staying those aspects of the 2025 Rescission where Plaintiffs had demonstrated a likelihood of success on the merits. Specifically, the district court found that Plaintiffs were likely to succeed on the merits that: (1) the 2025 Rescission was arbitrary and capricious because USCIS failed to consider reliance interests and alternatives; (2) that USCIS’s alleged decision to stop accepting new applications for employment authorization from SIJs violated the notice and comment provision of the APA; and (3) that USCIS violated the *Accardi* doctrine by pausing SIJ-DA from April 2025 to June 2025. *See* A-294-310. Accordingly, the district court instructed USCIS to “conduct deferred-action and employment-authorization adjudications pursuant to the 2022 Policy Alert, pending promulgation of a valid rescission policy or further order from this Court.” A-315. The district court did not mold the §705 stay to require USCIS to comply with the Policy Manual “or any prior *presumption* in favor of granting deferred action to SIJ[] recipients.” A-315 n.24 (emphasis in the original). The district court did not find that extending the relief necessary to Plaintiffs based on the grounds where Plaintiffs had established a likelihood of success warranted such relief, and that determination was not an abuse of discretion. *See New York*, 969 F.3d at 58. Likewise, on Plaintiffs’

motion for reconsideration, the district court found that Plaintiffs had failed to point to “any controlling decisions or data that the court overlooked,” in declining to extend the §705 stay to changes in the Policy Manual. A-326. On appeal, Plaintiffs go to great lengths to explain why the Policy Manual is binding on USCIS on grounds that they did not raise either in their motion for a preliminary injunction or on reconsideration. Accordingly, the district court did not abuse its discretion in tailoring the §705 stay and preliminary injunction based on the record before it and the claims Plaintiffs had raised at that time.

B. Plaintiffs did not demonstrate that they were entitled to have the strong factors consideration

The district court did not abuse its discretion in declining to compel USCIS to apply the strong factors consideration in the §705 stay because Plaintiffs failed to demonstrate that they were entitled to that relief to restore the *status quo ante*. As the district court recognized, their preliminary-injunction motion focused on the need to restore the SIJ-DA policy to its form before the 2025 Rescission. ECF No. 76 at 5. Plaintiffs’ motion for a preliminary injunction, however, did not address the need to restore the strong factors consideration—which was contained in the Policy Manual only, not the 2022 Policy Alert—to provide them preliminary relief. Rather, Plaintiffs’ motion focused on the need to enjoin the 2025 Rescission so that they could be *considered* for SIJ-DA and employment authorization. Specifically,

Plaintiffs argued that 2025 Rescission was arbitrary and capricious on four grounds: (1) USCIS did not adequately explain the basis for changing the policy of automatically considering SIJ recipients for DA; (2) USCIS's categorical exclusion of SIJ recipients required, but failed to comply with, notice-and-comment rulemaking procedures; (3) the 2025 Rescission that prevented SIJ recipients from receiving employment authorization violated notice-and-comment rulemaking procedures; and (4) USCIS violated the *Accardi* doctrine by departing from the SIJ-DA policy before the 2025 Rescission. *See* A-21; ECF No. 6. As the district court correctly ruled, these arguments did not explain why the court was bound to compel USCIS to apply any particular standard in considering SIJ recipients for DA, much less based on guidelines for prosecutorial discretion contained only in the Policy Manual.

Plaintiffs argue that it is not uncommon for agencies to promulgate multiple documents for a single policy. DktEntry 42.1 at 15. That may be so. But that does not excuse a plaintiff from identifying the specific agency actions that they are challenging. An APA plaintiff must identify and challenge a “circumscribed, discrete agency action[.]” *Norton v. So. Utah Wilderness All.*, 542 U.S. 55, 62 (2004); *Wild Fish Conservancy v. Jewell*, 730 F.3d 791, 801 (9th Cir. 2013). An “entire ‘program’—consisting principally of the many individual actions referenced in the complaint, and presumably actions yet to be taken as well—cannot be laid

before the courts for wholesale correction under the APA.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 892–93 (1990). Numerous courts have held plaintiffs cannot amalgamate disagreements with overarching immigration policies or different agency actions and challenge them all in “one fell swoop” but must instead “identify a particular action ... to challenge under the APA.” *See Whitewater Draw Nat. Res. Conservation Dist. v. Mayorkas*, 5 F.4th 997, 1011–12 (9th Cir. 2021). To the extent otherwise reviewable, each agency action must be evaluated independently.

Here, Plaintiffs challenged the 2025 Rescission on several grounds, but did not argue that they were entitled to a particular standard for USCIS’s discretionary, case-by-case consideration for DA. Nevertheless, before ruling on their reconsideration motion, the district court gave Plaintiffs the opportunity to explain why USCIS’s changes to the Policy Manual violated the APA, but “Plaintiffs did little to explain” what the court overlooked or where it erred. A-31; ECF No. 76. On appeal, Plaintiffs attempt to reconstruct a full-throated argument for this standard that was simply absent from the proceedings in the district court. Accordingly, the district court did not abuse its discretion in declining to compel USCIS to apply the strong factors consideration in the §705 stay.

C. The district court did not abuse its discretion by declining to extend the §705 stay to USCIS’s non-binding internal guidance on exercising prosecutorial discretion

The district court did not abuse its discretion in ruling that the Policy Manual has “no legal force” and that it could not compel USCIS to apply any particular standard in exercising its discretionary authority over SIJ-DA determinations. The district court cited *In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141 (D.C. 2006), where the D.C. Circuit rejected plaintiff’s attempt to compel compliance with DOJ enforcement guidelines, holding that the guidelines did not create enforceable rights. Recognizing that the relevant Policy Manual provisions similarly provided guidance for “the exercise of prosecutorial discretion,” the district court found that they are therefore unlikely to create enforceable rights. A-327. Likewise, in the APA context, it is well-settled that general statements of internal policy are not binding on agencies and have no legal effect. *See, e.g., Gonnella v. United States Sec. & Exch. Comm’n*, 954 F.3d 536, 546–47 (2d Cir. 2020) (distinguishing between policy statements that impact agency behavior from rules that change the existing rights of others outside the agency) (citing *Noel v. Chapman*, 508 F.2d 1023, 1030 (2d Cir. 1975) (“A distinctive characteristic of the general policy statement was indicated by Judge Friendly when he stated in his Holmes Lectures that ‘one of the values of the policy statement (is) the education of agency members in the agency's work.’”)); *see also The Wilderness Soc. v. Norton*, 434 F.3d 584, 595 (D.C. Cir. 2006). This is true

both in cases where a plaintiff challenges an agency’s authority to enforce a policy, as in *Gonnella* and *Chapman*, as well as in cases where a plaintiff seeks to compel an agency to follow its own internal guidelines, as in *Norton* (and here).

Courts determining whether an agency has issued a rule that is enforceable against an agency, or merely a non-binding statement of policy, generally follow two lines of inquiry. *See Norton*, 434 F.3d at 595. “One line of analysis focuses on the effects of the agency action,” while the other “focuses on the agency’s expressed intentions.” *Id.* Under both inquiries, the Policy Manual’s chapter on DA falls squarely within the latter category of policy statements that are not binding on an agency under the APA. Accordingly, the district court did not abuse its discretion when it declined to compel USCIS to apply the strong factor consideration as part of the preliminary injunction.

1. The Policy Manual does not impose any rights or obligations and leaves adjudicators free to exercise discretion

Turning first to the effects of the agency action, courts consider whether the agency has “(1) impose[d] any rights and obligations, or (2) genuinely [left] the agency and its decisionmakers free to exercise discretion.” *Norton*, 434 F.3d at 595. “[T]he language actually used by the agency” is often central to making such determinations. *Id.* (citation omitted). In *Norton*, the D.C. Circuit held that the policies provided only internal guidance and were thus not enforceable against the NPS. *Id.* at 595. Specifically, the court noted that while the policies “on occasion

use[] mandatory language, such as ‘will’ and ‘must,’ the document as a whole does not read as a set of rules. It lacks precision in its directives, and there is no indication of how the enunciated policies are to be prioritized.” *Id.*

Similarly, in *Gonnella*, this Court distinguished policy statements, which “generally impact agency behavior,” from legislative rules that “change the ‘existing rights’ of others outside the agency.” *Id.* (citing *Chapman* at 508 F.2d at 1030). This Court recognized that only the latter category of legislative rules, which must go through the notice and comment process, have “legal effect.” 954 F.3d at 546. Reviewing the language of the policy, this Court noted that it set forth an “analytical framework” for cooperation agreements to “maximize the Commission’s law enforcement interests,” but that it was “highly discretionary, non-binding, and [did] not impose any legal requirements on cooperating parties or the Commission.” *Id.* Accordingly, this Court held that the policy was a “quintessential policy document” that did not require the notice and comment procedures. *Id.*

Likewise here, the Policy Manual, which contained USCIS’s policy guidance to agency adjudicators on how to handle consideration of SIJ-DA, is a policy statement that is not binding on the agency: it does not impose any rights or obligations on regulated parties, and while it provides guidance to USCIS adjudicators on how to weigh certain factors, it leaves them free to exercise discretion on a case-by-case basis. The preamble makes this clear, stating that “The

Policy Manual is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions.” About the Policy Manual, Policy Manual, U.S. Citizenship and Immigration Services, (last visited August 7, 2026) <https://www.uscis.gov/policy-manual>. Further, like the Court found in *Norton* and *Gonnella*, the document is not a set of rules, but rather explains the then-current policy of how the agency considered applications for DA.

Specifically, turning to the text, the language of Part G., “Deferred Action” in the Policy Manual, explains that an SIJ is statutorily eligible to apply for adjustment of status when an immigrant visa is available. *See* Vol. 6, Part G, Ch. 4. A-263-267. If, however, the SIJ “cannot apply for adjustment of status solely because an immigrant visa number is not immediately available,” the Policy Manual explains that USCIS’s policy—at that time—was to automatically consider the SIJ for DA. A-265. The Policy Manual discusses how, “as in all deferred action determinations, USCIS considers on a case-by-case basis, based on the totality of the evidence,” whether the SIJ “warrants a favorable exercise of discretion.” *Id.* The agency “weighs all relevant positive and negative factors,” and “may generally grant deferred action if, based on the totality of the facts and circumstances of the case, the positive factors outweigh the negative factors.” *Id.* The Policy Manual notes that having an approved Form I-360 and the fact that the SIJ “will be eligible to apply

for adjustment of status as soon as an immigrant visa number becomes available is a “particularly strong positive factor that weighs heavily in favor of granting deferred action.” *Id.* Additionally, the Policy Manual states that eligibility criteria for SIJ classification should be considered as “generally strong positive factors,” in considering when to grant DA. *Id.* The Policy Manual, however, does not require USCIS adjudicators to grant DA under any circumstances, or otherwise compel any particular result as part of the case-by-case consideration that applies to all DA determinations.

Additionally, the Policy Manual also does not impose any rights or obligations on SIJs. SIJs do not have any rights—statutory or otherwise—to receive a grant of DA: the Secretary retains the sole discretion over that determination. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 487 (1999) (challenge to government’s decision to “commence proceedings” falls squarely within statute barring judicial review under 8 U.S.C. § 1252(g)). The Policy Manual explains that USCIS will consider certain SIJs for DA, and it discusses the process by which they will be considered, but it does not require anything of SIJs. In *Chapman*, this Court refused to place an Immigration and Naturalization Service policy that provided the district director with the sole discretion to authorize extensions of time for voluntary departure within the category of rules that required formal rulemaking. 508 F.2d at 1030. This Court noted that the policy did not change plaintiffs’ existing rights

because they retained the ability to seek deferred voluntary departure on the basis of hardship. *Id.* Likewise here, USCIS’s policy changes have not impacted SIJs rights to receive DA, because that decision remains within USCIS’s discretion.

In a recent decision, the Fifth Circuit rejected a plaintiff’s reliance on a provision in USCIS’s Affirmative Asylum Procedures Manual (“AAPM”) to argue that their case was final for APA review purposes. *See Kewayfati v. Bondi*, 165 F.4th 342, 353 (5th Cir. 2026). The Fifth Circuit was clear that “the USCIS manual is not law: it creates no rights, imposes no obligations, and cannot expand federal jurisdiction where Congress has not. At most, internal manuals are nonbinding guidance for agency personnel rather than a source of judicially enforceable standards.” *Id.* While the AAPM is a different USCIS policy manual than the one at issue here, the analysis is the same. It is also noteworthy that although the AAPM uses mandatory language including “must” to describe certain actions required by USCIS adjudicators, the Fifth Circuit nevertheless found that it constituted nonbinding guidance rather than judicially enforceable rules.

Plaintiffs’ reliance on *Bennett v. Spear*, 520 U.S. 154 (1997) to argue that the district court erred in ruling that the Policy Manual has no legal force is misplaced. DktEntry 42.1 at 19. In *Bennett*, plaintiffs argued that the Interior Secretary had made decisions about critical habitat under the Endangered Species Act without complying with statutory mandates. 520 U.S. at 172. The government responded that

judicial review was unavailable because the Secretary's decision was discretionary. *Id.* The Supreme Court rejected that argument, holding that while the Secretary's ultimate decision was discretionary, the statute required the Secretary to follow certain decision-making procedures. *Id.* Additionally, the statute authorized a private right of action. *Id.* Accordingly, the Court held that plaintiffs' claims were reviewable. *Id.* Here, in contrast, USCIS has no statutory or regulatory duty to follow any specific decision-making process in considering SIJs for DA. Additionally, no statute specifically authorizes SIJs to sue based on those determinations. The Policy Manual explains "strong factors" that are to be considered in making case-by-case determinations based on USCIS's policy priorities at that time—which the agency is free to change—but that is a far cry from the mandatory procedures required in *Bennett*.

This case is more akin to *Arizona v. Biden*, 40 F.4th 375 (6th Cir. 2022), where the Sixth Circuit held that DHS's guidance on enforcement priorities and policies for detention and removal of noncitizens was likely not reviewable, because they allowed officials to retain discretion and did not evoke binding legal effects. Considering the legal consequences prong under *Bennett*, which Plaintiffs rely upon here, the Sixth Circuit held that, consistent with its label, the "guidance" couched its instructions on conditional language that preserved the discretion of officials. *Id.* at 388. The Sixth Circuit noted that the document contained a non-exhaustive list of

factors for officials to consider, while allowing them to make decisions “depending on the facts.” Additionally, even where the guidance used the word “requires,” the Sixth Circuit noted that it did so in the context of “an assessment of the individual and the totality of the facts and circumstances.” *Id.* As in *Arizona*, the Policy Manual here provides guidance to adjudicators, but they retain discretion over DA decisions. Like the Sixth Circuit, this Court should hold that the Policy Manual does not meet the legal consequence prong under *Bennett*, and thus it is not reviewable under the APA.

Plaintiffs’ reliance on *Texas v. Equal Emp. Opportunity Comm’n*, 933 F.3d 433 (5th Cir. 2019), to argue the Policy Manual satisfies the second *Bennett* prong, is similarly misplaced. There, the State of Texas sued the EEOC challenging its guidance on employers’ use of criminal records in hiring, alleging that the agency had promulgated a substantive rule without following notice-and-comment rulemaking. *Id.* at 437. The question for the Fifth Circuit was whether “rights or obligations have been determined” by the guidance, or whether “legal consequences will flow” from it. *Id.* The Fifth Circuit recognized that the distinction between a substantive rule and a general statement of policy “turns on whether an agency intends to bind *itself* to a particular legal position.” *Id.* at 442. The court noted that the agency’s intent may be discerned through the use of mandatory language, how the agency applies the guidance, if the guidance “denies the [agency] discretion in

the area of its coverage[,]” or the document “creates safe harbors protecting private parties from adverse action.” *Id.* The EEOC, however, did not dispute that its guidance was binding, but instead argued that legal consequences did not flow from the guidance but flowed only from the statute. *Id.* 444-46. Rejecting this argument, the Fifth Circuit held that the guidance satisfied the second *Bennett* prong because it “ha[d] the effect of committing the agency itself to a view of the law that, in turn, force[d] the plaintiff either to alter its conduct, or expose itself to potential liability,” and thus legal consequences flowed from the guidance “and it determine[d] rights and obligations.” *Id.* at 446. Plaintiffs here, however, cannot plausibly argue that USCIS’s guidance committed the agency to a position where it was legally obligated to provide DA on any specific criteria, such that Plaintiffs were compelled to change their conduct to avoid exposing themselves to potential liability. Thus, *Texas* does not suggest that the Policy Manual is reviewable under the second prong of *Bennett*.

Plaintiffs cite several additional cases, none of which support their argument that changes to the Policy Manual are reviewable under the APA. Plaintiffs cite *Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 981 F.3d 1360 (Fed. Cir. 2020) (“NOVA 2020”) for the proposition that an interpretive rule contained in a manual was final agency action because it was binding on “front-line” adjudicators. DktEntry 42.1 at 38. In NOVA 2022, the Court resolved the jurisdictional question left open by NOVA 2020 and held that the Knee Replacement Guidance—not the

Knee Replacement Manual Provision—constitutes the final agency action subject to review under §502. *See Nat'l Org. of Veterans' Advocs., Inc. v. Sec'y of Veterans Affs.*, 48 F.4th 1307, 1312 (Fed. Cir. 2022). The Court reiterated its previous conclusion, “as we explained in *NOVA 2020*: “Manual provisions that merely republish prior agency interpretations or restate existing law ... are not reviewable under section § 502.” *Id.* at 1382.

Plaintiffs also cite *6801 Realty Co. v. U.S. Citizenship & Immigr. Servs.*, 719 F. App'x 58, 60 (2d Cir. 2018) (quoting *Salazar*, 822 F.3d at 82), for the language that “the core question is whether the result of [the agency’s decisionmaking] process is one that will directly affect the parties.” Yet in *6801 Realty Co.*, the Second Circuit did not meaningfully address this aspect of finality, because the visa denial at issue was clearly non-final when USCIS reopened its decision. 719 F. App'x at 60. Likewise, in *Salazar*, the agency’s action clearly affected the parties. There, the Department of Education’s decision—allegedly in violation of statutory and regulatory provisions—to not suspend collection of their student loans, had a direct impact on plaintiffs’ legal obligations to make payments, which resulted in wage garnishments and tax refund offsets. 822 F.3d at 71-72. Thus, in neither case was the issue of APA reviewability similar to those raised by the Policy Manual.

Because the Policy Manual does not impose any rights or obligations and leaves adjudicators free to exercise discretion, changes to the manual are not reviewable under the APA.

2. USCIS did not intend to create a binding norm for the adjudication of DA for SIJs

USCIS did not intend to create a binding norm because the Policy Manual language evidences that the agency created it to serve as internal guidance for its adjudicators, not to create binding rights on others. “The second line of analysis focuses on the agency's expressed intentions.” *Norton*, 434 F.3d at 595 (quotation omitted). The analysis under this line of cases “look[s] to three factors: (1) the [a]gency’s own characterization of the action; (2) whether the action was published in the Federal Register or the Code of Federal Regulations; and (3) whether the action has binding effects on private parties or on the agency.” *Norton*, 434 F.3d at 595 (citing *Molycorp, Inc. v. EPA*, 197 F.3d 543, 545 (D.C.Cir.1999)). In *Norton*, the D.C. Circuit found it “particularly noteworthy” that the NPS never published the Management Policies in the Code of Federal Regulations. *Id.* at 595-96. Additionally, the D.C. Circuit noted that in introduction to the Management Policies the NPS makes clear that it “retained unfettered discretion to act as it sees fit with respect to the actions outlined in the POLICIES.” *Id.* at 596. The introduction stated, “Adherence to policy is mandatory unless specifically waived or modified in writing

. . . ” which the D.C. Circuit found did “not evidence an intent on the part of the agency to limit its discretion and create enforceable rights.” *Id.* Accordingly, the D.C. Circuit held that the Management Policies were non-binding, internal agency manuals intended to guide agency staff. *Id.* Putting a finer point on its holding, the Court stated, “to hold otherwise on this record would not only be contrary to our case law, but it would chill efforts by top agency officials to gain control over their bureaucratic charges through internal directives.” *Id.*

Plaintiffs’ reliance on the agency’s intent in *Padula* is inapposite. *See* Dkt. 42.1 at 29. Plaintiffs overlook the Court’s analysis of when agency statements amount to binding norms, and the role agency discretion plays in that determination. *See Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) (“We also examine whether the agency’s statements leave the agency free to exercise its discretion. Pronouncements that impose no significant restraints on the agency’s discretion are not regarded as binding norms.”).

The ICE directive in *Abdi* is likewise distinct from the Policy Manual here. In *Abdi*, the Court determined that “[t]he ICE Directive does not simply guide the discretion of immigration officials in making parole determinations.” *Abdi v. Duke*, 280 F. Supp. 3d 373, 389 (W.D.N.Y. 2017) *vacated in part sub nom. Abdi v. McAleenan*, 405 F. Supp. 3d 467 (W.D.N.Y. 2019). Instead, it set forth procedural

rights for asylum-seekers in connection with the parole process, such as a written notification as to the reason for denial. *See Abdi*, 280 F. Supp. 3d at 389.

Lastly, Plaintiffs overlook the effects of the Parole Directive in *Damus* and how it differs from the Policy Manual. *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018). In determining whether the *Accardi* doctrine could apply to the ICE directive, the court concluded that ICE's systematic departure from the Parole Directive was unlawful and actionable under the APA. *Id.* The court compared the ICE directive to the BIA manual in *Morton* and the DOJ guidelines in *Miller* and concluded that the ICE Directive falls clearly on the side of *Morton* rather than *Miller* because of the nature of the guidelines themselves and the functions they govern. *Id.* at 378. The ICE Directive was intended . . . to benefit asylum-seekers navigating the parole process, whereas the Policy Manual, much like the DOJ guidelines in *Miller*, governs the exercise of prosecutorial discretion and does not create any enforceable rights. *See In re Grand Jury Subpoena, Judith Miller*, 438 F.3d 1141, 1153 (D.C. Cir. 2006) (DOJ guidelines "provide no enforceable rights").

Here, the preamble of the Policy Manual makes clear that USCIS did not intend to limit its discretion by creating and publishing its policies. The Policy Manual states that it "contains the official policies of USCIS and assists immigration officers in rendering decisions," and that it "is to be followed by all USCIS officers in the performance of their duties *but it does not remove their discretion in making*

adjudicatory decisions.” About the Policy Manual, Policy Manual, U.S. Citizenship and Immigration Services, (last visited August 7, 2026) <https://www.uscis.gov/policy-manual> (emphasis added). The Policy Manual’s preamble also makes clear that USCIS did not intend to create any enforceable rights, specifically stating it “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.” *Id.* Additionally, USCIS has not published the Policy Manual in either the Federal Register or the Code of Federal Regulations. Thus, as in *Norton*, the evidence shows that USCIS intended the Policy Manual as non-binding, internal manual to guide staff, and holding otherwise would temper the ability of the agency’s top officials to “to gain control over their bureaucratic charges through internal directives.” 434 F.3d at 596.

Because USCIS’s Policy Manual does not remove adjudicators’ discretion in considering SIJs for DA, and does not create any rights for—or place any obligations on—SIJs, and because USCIS did not express an intention to create a binding norm, the Policy Manual is non-binding statement of policy. Accordingly, the district court did not abuse its discretion by declining to include the Strong Factor review in the §705 stay.

D. The district court wisely avoided wading into matters committed to agency discretion in molding the §705 Stay

The district court did not abuse its discretion by only requiring automatic consideration of SIJs for DA—without the strong factors consideration—because going beyond that requirement would have the district court potentially wading into matters “committed to agency discretion.” *See* 5 U.S.C. § 701(a)(2). In *DHS v. Regents of the Univ. of Cal.*, the Supreme Court implicitly understood the importance of avoiding intrusion on agency discretion. 591 U.S. 1 (2020). In *Regents*, the plaintiffs challenged DHS’ rescission of the Deferred Action for Childhood Arrivals (“DACA”) policy, which created a process for DHS to grant DA and work authorization to a certain group of aliens. *See id.* Though the Supreme Court found that the DACA policy was more than a non-enforcement policy such that the APA’s “agency discretion” bar to review did not apply, the Supreme Court also avoided telling DHS exactly how to “appreciate the scope of its [DHS’] discretion” or about what a “reasonable” manner of exercising its discretion looks like. *See DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 35-36 (2020). Thus, the Supreme Court instead found it best to remand DHS’ rescission decision back to

DHS to permit the agency to make those decisions about how to exercise its discretion reasonably. *See id.*

The court also avoided dictating to DHS how to exercise its discretion in *Haitian Evangelicals Clergy Ass’n v. Trump*, 789 F. Supp. 3d 255 (E.D.N.Y. 2025). In *Haitian Evangelicals Clergy Ass’n*, the plaintiffs challenged the DHS Secretary’s “partial vacatur” of her predecessor’s Temporary Protected Status determination for Haiti. *See id.* at 263–64. In rejecting DHS’ argument that the plaintiffs were challenging a decision committed to agency discretion, the court distinguished between challenging the DHS Secretary’s national security determination (which the Court acknowledged “may” be a decision committed to agency discretion) and challenging whether the “partial vacatur” exceeded her authority (which was not committed to agency discretion). *See id.* at 275. At any rate, the Court made clear that the DHS Secretary “remain[ed] free to terminate TPS status for any country pursuant to the statutorily prescribed procedures Congress has enacted.” *See id.* at 276.

In both decisions, the courts were careful to avoid wading into the waters of judicial policymaking by implicitly making policy judgments and imposing those policy preferences under the guise of having an agency follow a process. *See Regents*, 591 U.S. at 35 (denying that the Supreme Court was deciding “whether DACA or its rescission are sound policies” because “‘the wisdom’ of those

decisions” was ““none of [its] concern”” (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 207 (1947)); *Haitian Evangelical Clergy Ass’n*, 789 F. Supp. 3d at 275 (noting that in evaluating the lawfulness of the DHS Secretary’s partial vacatur, the Court was not required to “adjudicate the wisdom of the [Secretary’s] foreign policy and national security decisions” (quoting *J.A.V. v. Trump*, 781 F. Supp. 3d 535, 552 (S.D. Tex. 2025))).

In this case, in trying to tuck the heavy weighing of SIJ classification into part of the process for considering SIJs for DA under the March 2022 policy, Plaintiffs are in reality asking this Court to compel that the district court dictate how USCIS should apply its discretion or what constitutes a reasonable exercise of discretion. In declining to take that step and instead emphasizing that USCIS was not bound by the Policy Manual or to any presumption in favor of granting SIJs DA, the district court, like the Supreme Court in *Regents* and the court in *Haitians Evangelical Clergy Ass’n*, wisely avoided judicial policymaking or any appearance thereof and respected USCIS’s prerogative to determine how it will exercise its discretion to grant or deny DA.

Because Plaintiffs have failed to show that the district court abused its discretion in declining to compel USCIS to apply the strong factors consideration from the Policy Manual, this Court should dismiss the appeal.

E. The district court did not abuse its discretion in extending strong factors consideration only to the *Accardi* “subclass”

The district court did not abuse its discretion in limiting the strong factor consideration from the Policy Manual to only the *Accardi* subclass³ as part of the §705 stay, and not to SIJs who received classification after the June 2025 Rescission, because that review was part of the SIJ-DA adjudication process only until the 2025 rescission, but not afterwards. The purpose of a stay under §705 of the APA is to “preserve status or rights pending conclusion” of the court’s review of the challenged agency action. 5 U.S.C. § 705. Thus, to restore the “*status quo ante*” the stay must restore the parties to “the last peaceable uncontested status existing between the parties *before* the dispute developed.” See *Haitian Evangelical Clergy*, 789 F. Supp. 3d 255, 274 (E.D.N.Y. 2025). But the dispute did not develop at the same time for the *Accardi* subclass and the SIJs who received classification later, so the district court did not abuse its discretion in treating the two groups differently under the stay.

In the preliminary injunction order, the district court ruled that Plaintiffs were likely to succeed on the merits of their claim that USCIS’s rescission of the SIJ-DA

³ The district court did not certify any of Plaintiffs’ proposed classes. It referred to the *Accardi* sub-class in its order granting a preliminary injunction, in part, and implementing the 705 stay, to distinguish this group of putative class members based on where they were in SIJ-DA adjudication process when USCIS implemented the rescission memos that Plaintiffs challenge in this lawsuit. Defendants refer to this group as the *Accardi* “sub-class” for clarity in this discussion, not to suggest that they are members of a certified class.

policy violated the APA in two⁴ pertinent ways. First, the district court ruled that the evidence at the preliminary injunction stage suggested that USCIS had engaged in a *sub silentio* rescission of the SIJ-DA policy when it withheld consideration of SIJ recipients for DA between April 7, 2025 and June 6, 2025. A-308. Second, the district court ruled that the evidence at the preliminary injunction stage suggested that the 2025 Rescission was likely arbitrary and capricious. A-294. The district court credited USCIS for providing a reasonable explanation for the rescission, but found that the agency had not shown that it considered the reliance interests of SIJs or reasonable alternatives to rescinding the policy. As a remedy, the district court stayed the 2025 Rescission “pending promulgation of a valid rescission policy or further order from [the] Court.” A 314-315. The stay required USCIS to “conduct deferred-action and employment-authorization adjudications pursuant to the 2022 Policy Alert.” The district court, however, included an important caveat that is the crux of this appeal: the district court stated that “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.” (emphasis in original) A 315, n.24 (“Footnote 24”).

⁴ The district court also ruled that Plaintiffs were likely to succeed on the merits, in part, on a third claim that USCIS had violated the notice and comment requirements of the APA. A-308. That claim, however, is not raised in the present appeal.

Plaintiffs promptly filed a motion seeking clarification or reconsideration of Footnote 24, arguing that returning to the *status quo ante* as it existed on April 6, 2025, before USCIS’s alleged *sub silentio* 2025 SIJS-DA rescission, required that USCIS conduct DA reviews for all SIJ petitions approved after April 6, 2025, based on “the SIJS Deferred Action Policy as set forth in the USCIS Policy Manual in effect at that time, including the factors USCIS was required to consider in conducting such adjudications.” A-320. The district court ordered the parties to address several issues relating to Plaintiffs’ motion, and after briefing was complete, denied the motion. A-322-331. The district court ruled that while Plaintiffs’ motion for clarification “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*,” the motion “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.” *Id.* The district court also noted the temporal difference between the alleged injuries of the *Accardi* subclass, whose SIJs petitions had been granted between April and June 2025, when USCIS had allegedly departed *sub silentio* from its adjudication procedures, from the alleged injuries of other SIJ recipients, whose petitions were (or would be) granted after the 2025 Rescission. A-322-331. For the *Accardi* subclass, the district court reasoned that the “primary thrust” of the doctrine is “that agencies cannot depart *sub silentio* from their operative policies, not that

they can never *change* those policies.” A-328. Thus, for the *Accardi* subclass, the issue wasn’t whether the USCIS Policy Manual itself was binding; the issue was that the agency must follow whatever its operative policies were before the “unlawful” rescission. But for SIJ recipients whose petitions were granted *after* the 2025 Rescission, the pertinent question was whether the change-in-position doctrine required USCIS to better explain its policy change, or whether, as internal guidance, it was binding on USCIS at all. A-328-330.

In its order on the motion for reconsideration, the district court ordered USCIS to apply both the 2022 Policy Alert and USCIS Policy Manual applicable during the April-June 2025 period when USCIS allegedly withheld considering SIJs for DA for members of the *Accardi* subclass. A-330-331. Because the applicable policy at the time provided that USCIS would automatically consider an SIJ recipient for DA, and because the applicable provision of the USCIS Policy Manual provided the strong positive consideration guidance to adjudicators, the district court reasoned that returning the *Accardi* subclass to the *status quo ante* required application of both the 2022 Policy Alert and the version of the manual before the *sub silentio* rescission.

For all other SIJ recipients, the district court ruled that USCIS must only abide by the 2022 Policy Alert under the §705 stay, and not by the provisions in the Policy Manual in place immediately before the 2025 Rescission. *Id.* The district court noted

that “[c]ourts have generally held that internal policy manuals like the one at issue here have no legal force.” A-326.

Because the “dispute” for the *Accardi* subclass occurred when USCIS allegedly sub silentio revoked the SIJ-DA policy in April 2025, but did not exist for other SIJs—if at all—until the 2025 Rescission, the district court did not abuse its discretion by treating the two groups differently under the §705 stay.

III. The Change-In-Position doctrine does not require a different result

The district court did not abuse its discretion in declining to apply the change-in-position doctrine to USCIS’s removal of the strong factors consideration as part of the 2025 Rescission. First, it is an open question whether (and if so, how) the doctrine applies to non-binding policy documents like the Policy Manual. *See Food & Drug Admin. v. Wages & White Lion Invs., LLC*, 604 U.S. 542, 570 n.5 (2025). In *White Lion*, the Supreme Court acknowledged that it had “applied the doctrine when an agency altered a position first stated in a policy statement” in *Regents*, but that it had done so because “the policy statement instituted a standardized review process that effectively resembled adjudication.” *Id.* Otherwise, the Supreme Court considers the applicability of the doctrine to non-binding policy documents an open question. The policy statement in *Regents* also differs significantly from the Policy Manual’s provisions on DA for SIJs. In *Regents*, the policy statement directed USCIS to establish a process for identifying potential DACA recipients, then the

agency solicited applications from eligible aliens, instituted a standardized review process, and sent formal notices indicating whether the alien would receive the two-year forbearance. *Regents*, 591 U.S. at 18. For these reasons, the Supreme Court recognized that the DACA was a “program” and its proceedings were effectively adjudications under the APA. *Id.* As discussed previously, the Policy Manual’s provisions provided an overview for how the adjudicators should consider SIJs for DA on a case-by-case basis, and how certain factors should be weighed, while making clear that adjudicators maintained discretion on whether to grant DA. This falls well short of a “program for conferring affirmative immigration relief” that the Supreme Court addressed in *Regents*.

In supplemental briefing before the district court, USCIS acknowledged cases where courts have held that an agency’s interpretative guidance was subject to APA review. Both cases, however, dealt with parties that had to comply with regulatory or contractual obligations. Specifically, in *Perez v. Mortgage Bankers Assoc.*, the Supreme Court faced a situation where, over a 10-year-period, the Department of Labor issued several letter opinions changing the Department’s views on whether mortgage loan officers qualified for an administrative exemption to overtime pay requirements under the Fair Labor Standards Act of 1938. 575 U.S. 92, 97-99 (2015). An association representing affected banking institutions sued, arguing that the Department’s interpretation of the exception was arbitrary and capricious under the

APA. *Id.* at 99. The Supreme Court recognized that APA review is available in such circumstances, so that an agency could not skirt the more stringent requirements of notice-and-comment rulemaking by issuing an interpretive rule, rather than a legislative rule. *Id.* at 106. Similarly, in *Yale-New Haven Hosp. v. Leavitt*, this Court found that plaintiffs challenging an interpretative rule articulated in an “informal” policy manual could do so on the grounds that the interpretative rule was arbitrary and capricious. *See* 470 F.3d 71, 82-83 (2d Cir. 2006). As the district court recognized, however, the manual at issue in *Leavitt* was issued to fiscal intermediaries who were contractually bound to follow it. *Id.* at 74, 80. Here, in contrast, SIJs had no legal rights or obligations under USCIS’s former policy for considering DA. Accordingly, neither *Perez* nor *Leavitt* suggest that it would be appropriate to apply the change-in-position doctrine to the Policy Manual in this case.

In its order denying Plaintiffs’ motion for reconsideration, the district court noted that “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.” A-329. Plaintiffs argue that they cited several cases on point, but none addresses whether the doctrine applies when an agency changes its internal guidance to its own employees. DktEntry 42.1 at 40. For example, Plaintiffs cite *R.F.M. v. Nielsen*, 365 F. Supp. 3d

350 (S.D.N.Y. 2019), but that case does not even mention the doctrine. Instead, *R.F.M.* addressed an alleged policy change, whereby USCIS stopped recognizing New York Family Courts as “juvenile courts” under the INA, for purposes of consideration for SIJ classification. USCIS, however, argued that the change had resulted from the centralization of processing SIJ petitions into one location, and not from a policy change. *Id.* at 373-74. Additionally, the change was not added to the USICS Policy Manual. The court disagreed, however, that there had not been a policy change. But the core legal issue wasn’t whether USCIS was free to depart from the Policy Manual, but rather whether the agency had exceeded its authority under the pertinent statute and whether it had provided adequate notice of the change. *Id.* at 383.

Likewise, Plaintiffs cite *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 645 (D.C. Cir. 2020), which dealt with an alleged change to a long-standing policy that allowed grantee to serve on scientific advisory committees. The policy change at issue resulted from an agency directive, however, not from an attempt to revise an internal policy manual. Thus, *Wheeler* does not squarely address the issue here, which is whether changing a handbook intended as guidance to adjudicators implicates the doctrine.

Lastly, Plaintiffs' other cases are factually distinct and do not adequately support their proposition that the change-in-position doctrine should apply to

internal policy manuals. *Ctr. for Taxpayer Rts. v. Internal Revenue Serv.*, 815 F. Supp. 3d 1, 19 (D.D.C. 2025) (finding IRS's Address-Sharing Policy and sharing of taxpayer information unlawful under the APA without analyzing or discussing departures from the IRS Policy Manual); *Nat. Res. Def. Council, Inc. v. U.S. Env't Prot. Agency*, 438 F. Supp. 3d 220, 232 (S.D.N.Y. 2020) (finding the EPA Directive banning grant receipts an unlawful departure from prior policy without discussing changes to the EPA Peer Review Handbook); *Make the Rd. New York v. Pompeo*, 475 F. Supp. 3d 232, 264 (S.D.N.Y. 2020) (finding that Defendants offered no explanation whatsoever for their decision to implement the 2018 Foreign Affairs Manual (FAM) Revisions and that the public charge provisions of the FAM extend beyond providing general guidance to consular officers in exercising their discretionary authority).

Thus, Plaintiffs fail to demonstrate that the district court abused its discretion, because it is not clearly established that the change-in-position doctrine applies to internal guidance like the Policy Manual.

Even if the doctrine applied to internal manuals generally, the district court did not abuse its discretion in ruling that USCIS's revisions to the Policy Manual did not violate the change-in-position doctrine because SIJ recipients did not have serious reliance interests in a provision of an internal policy manual—which addresses *discretionary authority* and contains express disclaimers that it does not

create any rights—and had only been operational for a few years before USCIS changed the provision. It is well-established that “[a]gencies are free to change their existing policies.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). The agency need only “display awareness that it is changing position and show that there are good reasons for the new policy.” *Id.* Only where there are “serious reliance interests” engendered by “longstanding policies” must an agency go further to provide “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Id.* at 221–22. Whether USCIS was required to do so or not to amend the Policy Manual, the district court ruled that USCIS had provided a good reason for the 2025 Rescission, which was the impetus for the agency’s change to its internal manual. A-295-298. Thus, the first aspect of the doctrine is not at issue. The only question is whether the district court erred as a matter of law in ruling SIJ recipients did not have the type of “serious reliance interests” that required USCIS to provide a more “reasoned explanation” of its policy change. For at least two reasons, the district court did not err.

First, the district court ruled that because the Policy Manual expressly disclaimed the creation of “any substantive or procedural right or benefit that is legally enforceable . . . [,] 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 SIJ-DA policy writ large.” A-330. The USCIS Policy Manual includes this disclaimer:

The Policy Manual contains the official policies of USCIS and assists immigration officers in rendering decisions. The Policy Manual is to be followed by all USCIS officers in the performance of their duties, but it does not remove their discretion in making adjudicatory decisions. 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.

See About the Policy Manual, Policy Manual, U.S. Citizenship and Immigration Services, (last visited August 7, 2026), <https://www.uscis.gov/policy-manual>.

The district court recognized that that the 2022 Policy Alert also includes language that its content is only “internal policy clarifications,” but found that limiting language “is not the same as a disclaimer expressly denying that a policy carries any legal weight.” A-330.

Plaintiffs argue that they cited at least three cases where district courts required officials to follow ICE directives in making parole decisions even though the directives included disclaimer language similar to the language in the USCIS Policy Manual. DktEntry 42.1 at 45; *See Abdi v. Duke*, 280 F. Supp. 3d 373, 388–89 (W.D.N.Y. 2017) (ICE directive setting forth specific procedural rights for asylum-seekers in connection with the parole process instead of simply guiding the discretion of immigration officials); *see also Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 152 (D.D.C. 2018) (finding DHS’s deterrence policy does not align with the

binding Morton Directive and the parole decision factors); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (ICE’s systematic departure from the Parole Directive was unlawful and actionable under the APA). The cases cited by Plaintiffs are factually distinct, relate to departures from mandatory binding guidance and lack the requisite discretionary decision-making that is present in this case.

Plaintiffs’ reliance on the disclaimer language in *State of Tennessee v. Dep’t of Educ.*, 104 F.4th 577 (6th Cir. 2024) is similarly misplaced. The Sixth Circuit was tasked with determining whether the three distinct Department of Education documents, viewed as one agency action, had binding legal effect. Without placing a heavy emphasis on the disclaimer language, the Court determined that the documents having an immediate impact on the states were not simply enforcement priorities and instead told the States how to avoid liability and were intended as a basis for the states to order and arrange their affairs. 104 F.4th at 600-601. The states were effectively forced to either alter their conduct or expose themselves to potential liability. *Id.*

Thus, Plaintiffs have failed to demonstrate that the district court abused its discretion by considering the strong disclaimer language in the Policy Manual when considering Plaintiffs’ reliance interests under the change-in-position doctrine.

Second, Plaintiffs’ alleged reliance interests are not the type of “serious reliance interests” engendered by “longstanding policies.” *See, e.g., Encino*

Motorcars, LLC v. Navarro, 579 U.S. 211, 221-222 (2016) (finding agency’s “summary discussion” of reliance interests insufficient given “decades of industry reliance on the [agency’s] prior policy”; noting that “industry had relied *since* 1978 on the [agency’s prior] position” (emphasis added)). Unlike in *Encino*, which involved reliance interests generated by a multi-decade policy, or DACA, which had been adopted eight years before the Supreme Court’s decision in *Regents*, the strong factor consideration was only in effect approximately three years. Plaintiffs’ generalized assertions of reliance simply do not rise to the level of ongoing and serious reliance interests necessary to trigger a duty for USCIS to provide a more detailed explanation.

Lastly, Plaintiffs argue that the district court erred by applying the change-in-position doctrine to the 2025 Rescission of the 2022 Policy Alert, which is also sub-regulatory guidance, while refusing to apply it to USCIS’s removal of the strong factors consideration from the Policy Manual. The 2025 Rescission, however, could have been interpreted to eliminate not only *automatic* consideration of SIJs for DA, but also to entirely preclude SIJs from being considered for DA and employment authorization. A-284-285. Because that would have required regulatory changes, the district court ruled it was likely arbitrary and capricious and violated required notice and comment procedures. The Policy Manual, however, is non-binding guidance, and removing the strong factors consideration would not require any regulatory

changes. Accordingly, the district court did not abuse its discretion in its application of the change-in-position doctrine to the Policy Manual.

CONCLUSION

Because this Court lacks jurisdiction to consider this appeal, it should dismiss it. If the Court holds that it has jurisdiction, it should dismiss this appeal because the district court did not abuse its discretion in declining to extend the stay under 5 U.S.C. § 705 pending disposition of this matter on the merits.

Dated: August 7, 2026

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Dated: August 7, 2026