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US IMMIGRATION & NATIONALITY LAW

DEFERRED ACTION FOR SPECIAL IMMIGRANT JUVENILES SURVIVES TRUMP'S ATTEMPTS TO ELIMINATE IT

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On June 6, 2025, USCIS issued a policy alert stating that it would eliminate the automatic consideration of deferred action for Special Immigrant Juveniles (SIJs) who are not yet able to apply for adjustment of status due to visa unavailability. SIJ is a classification that provides a pathway to lawful permanent residence for minors who have been abused, abandoned, or neglected by a parent, and requires a finding by a juvenile court judge that the child cannot be reunified with his or her parent(s). This policy alert represented a marked departure from previous USCIS policy, pursuant to which USCIS automatically conducted deferred action determinations for juveniles with SIJ classification who could not yet adjust status because of immigrant visa number unavailability. If USCIS determined that a noncitizen with SIJ classification warranted a favorable exercise of discretion, deferred action was granted for a period of four years. Noncitizens with SIJ classification who had been granted deferred action were also eligible to apply for work authorization for this period.

Deferred action was necessary as a stop gap -solution due to the retrogression in the employment-based fourth preference category, which prevented SIJ applicants from filing I-485 applications. Without the benefit of deferred action, SIJ applicants are subject to removal from the US even though they have approved SIJ petitions unless the priority date becomes current. Deferred action allows the executive branch to provide ameliorative relief when there are gaps that would otherwise render the noncitizen vulnerable to removal. Congress laid out a clear path to lawful permanent residency for SIJS beneficiaries, but visa backlogs cause years-long delays before they can apply

for their green cards.

Pursuant to the June 6, 2025 policy under the Trump administration, "USCIS will no longer consider granting deferred action on a case-by case basis to aliens classified as SIJs who are ineligible to apply for adjustment of status solely due to unavailable immigrant visas", though individuals who have already been granted deferred action and employment authorization based on a SIJ classification will generally retain it. As a justification for this policy change, USCIS stated that:

"While Congress likely did not envision that SIJ petitioners would have to wait years before a visa became available, Congress also did not expressly permit deferred action and related employment authorization for this population. Neither an alien having an approved Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) without an immediately available immigrant visa available nor a juvenile court determination relating to the best interest of the SIJ are sufficiently compelling reasons, supported by any existing statute or regulation, to continue to provide a deferred action process for this immigrant category."

This policy change was quickly challenged by a group of youth and legal services organizations in the U.S. District Court for the Eastern District of New York in *A.C.R. et al. v. Noem et al.*, No.1:25-cv-3962. In their complaint, these organizations argued that USCIS' abrupt recission of deferred action for noncitizens with SIJ classification was arbitrary and capricious in violation of the Administrative Procedure Act (APA) because USCIS failed to assert a reasonable explanation for its reversal of the prior policy, causing irreparable harm to juveniles with SIJ classification who are now at risk for deportation.

On November 19, 2025, the court granted a stay of the recission of SIJ deferred action. The court found that the plaintiffs are likely to succeed on the merits of their claim that the policy reversal was unlawful for several reasons, including because the government did not consider reliance interests or alternatives to rescinding the policy. The court also ruled that, absent the stay, the plaintiffs were likely to face irreparable harm because of the heightened risk of removal they would face without the protection of deferred action. The court deferred a ruling on class certification and chose not to grant relief in the form of a preliminary injunction. The court followed the logic advanced by the Supreme Court in *Department of Homeland Security v.*

Regents of the University of California, 591 U.S. 1 (2020), a case involving a challenge to DHS' 2017 termination of the Deferred Action for Childhood Arrivals (DACA) program. In *Regents*, the Court criticized the first Trump administration for not factoring in reliance interests when terminating the DACA program. In reliance on the DACA program, DACA recipients had enrolled in educational programs, started careers and businesses, purchased homes, and married and had children in the United States. In the majority opinion, Chief Justice John Roberts noted consequences of the termination would also "radiate outward" to impact DACA recipients' families, including their U.S. citizen children, and to their educational institutions and employers.

Citing *Regents*, the court in *A-C-R-*, found that "USCIS failed to consider reliance interests and reasonably obvious alternatives here, likely rendering its decision to rescind SIJS-DA arbitrary and capricious". USCIS had advanced two justifications for not taking reliance interests into consideration, first that "the requirement to consider reliance interests does not apply when an agency 'credibly believes that the prior policy is a violation of the separation of powers doctrine'", and, second, that the reliance interests implicated in SIJ deferred action were not serious. The court did not find either compelling. In response to USCIS' first justification, the court noted that "an agency must always consider serious reliance interests, even when it concludes an earlier policy was unlawful". In response to the second contention, the court noted that juveniles with SIJ classification, like DACA recipients, may have enrolled in educational programs or begun careers in reliance on the program, and that the consequences of the recission would similarly "radiate outwards" to impact families, schools, and employers. The court also noted that even state governments could be impacted by the recission, as SIJ recipients could become more reliant on state child welfare programs and benefits.

A-C-R provides some hope that deferred action programs can stay in place if the administration does not take into consideration the reliance interests of the stakeholders. In addition to DACA and SIJ deferred action, another program grants deferred action to noncitizen workers who witness or experience labor rights violations. Although the Fifth Circuit has also ruled that DACA may not have been authorized under the INA, a final decision has yet to be made on the lawfulness of DACA or other deferred action programs. Even the court in *A-C-R-* order referenced the DACA decision, and expressed openness to the government's claim that its "questionable legality was likely reason enough

for USCIS to seek to rescind the policy."

The executive branch has always been able to grant deferred action, and Congress has never explicitly precluded the grant of deferred action. It is hoped that the executive branch's ability to grant deferred action is preserved as such a remedy is vital to fill gaps under the immigration system that would otherwise leave vulnerable noncitizens subject to removal. Even if the current Trump administration is averse to deferred action, it should be preserved for more enlightened, immigrant- friendly administrations to provide ameliorative relief to vulnerable noncitizens in an imperfect immigration system.

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