

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

NATIONAL CONFERENCE OF JEWISH
WOMEN,
GREATER NEW ORLEANS SECTION,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES, et al.,

Defendants.

No. 8:25-cv-03675-ABA

LEAGUE OF WOMEN VOTERS OF
THE UNITED STATES, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES, *et al.*,

Defendants.

No. 8:25-cv-03777-ABA

DEFENDANTS' REPLY IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS

INTRODUCTION

Defendants established in their opening brief in support of their motion that both Plaintiffs' complaints challenging the U.S. Citizenship and Immigration Service's (USCIS') decision not to seek the assistance of non-governmental organizations (NGOs) to distribute voter information at administrative naturalization ceremonies should be dismissed in their entirety. This modest internal policy change does not harm new citizens' access to information about registering to vote, as registration applications and information continue to be provided by state or local election officials or USCIS staff at the end of administrative naturalization ceremonies. Defendants remain in compliance with their statutory responsibilities.

First, Plaintiffs lack standing for their claims because their participation in administrative naturalization ceremonies is not protected by the First Amendment and they have not sustained any actual injury. In order for Plaintiffs to have sustained a First Amendment injury, they must have a First Amendment protected right to participate in administrative naturalization ceremonies in the first place. They do not. Neither Plaintiff has an unlimited First Amendment right to express their views when and wherever they desire. Nor does the First Amendment protect Plaintiffs' expression in a nonpublic forum, even if that forum is the one they would most prefer. Plaintiffs also cannot demonstrate any actual injury because they are not prevented from expressing their views, nor do they claim to be "chilled" from expressing their views, in any forum other than the limited nonpublic forum at issue here. The fact that Plaintiffs have many alternatives for putting forth their message—to include *judicial* naturalization ceremonies, where they may engage directly with newly naturalized citizens—is dispositive on the issue of actual injury. Plaintiffs have not plausibly alleged an actual injury based upon their exclusion from the USCIS's nonpublic forum and they therefore lack standing on that basis as well.

Plaintiffs also have not sustained an injury-in-fact based upon their general interest in seeing

that newly naturalized citizens are provided with voting information. This generalized grievance, common to all members of the public, cannot support Article III standing. Plaintiffs argue that their complaints are not a generalized grievance because the policy change “targets” nonpartisan, nonprofit organizations and their injury is highly particularized. Neither is true. USCIS’s policy prohibits *all* NGOs regardless of their views from participating in administrative naturalization ceremonies. And the views that Plaintiffs seek to express through their participation—that new citizens should vote—is one that is so broadly shared among the general public that it cannot serve as the basis of a particularized injury.

Plaintiffs’ allegation that they have had to expend resources to find other ways to reach new citizens also does not confer standing. Neither Plaintiff can show that the policy change materially impaired their organizations’ missions. The League of Women Voters (LWV) Plaintiff alleges that they have necessarily had to divert resources to reach new citizens in other ways, but this is not a cognizable basis for standing. The National Council of Jewish Women, Greater New Orleans Section (NCJW-NO) Plaintiff does not claim standing based on a diversion of resources theory, only that their core mission has been impaired. The Supreme Court has recently made clear in *Food and Drug Administration (FDA) v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024), that organizations do not establish standing to sue simply by asserting that an agency action impaired their ability to provide services or frustrated their mission. In any event, Defendants dispute, and the NCJW-NO Plaintiff fails to demonstrate, that they have suffered grave impairment of their mission. Even accepting NCJW-NO’s complaint as true, their organization’s ability to provide voter information to newly naturalized citizens and advocate their view that voting is important is not gravely impaired by USCIS’s policy change, given the variety of other forums available to them.

The NCJW-NO Plaintiff also lacks standing to raise their Fifth Amendment claim, either on behalf of newly naturalized citizens or on their own behalf. NCJW-NO’s claim that the policy change constitutes discrimination against naturalized citizens is properly raised by the naturalized citizens

themselves, to the extent they can demonstrate Article III standing, unless extremely limited circumstances exist for allowing NCJW-NO to assert them on their behalf. Those circumstances do not exist. NCJW-NO does not maintain a close relationship with the naturalized citizens they might engage with at administrative naturalization ceremonies and nothing would hinder a naturalized citizen from raising a claim that USCIS's policy change unconstitutionally impairs their ability to vote. NCJW-NO asserts that they can challenge the policy change based on injuries to naturalized citizens. This is wrong for two reasons. First, they fail to plausibly allege that any naturalized citizen's ability to vote has or will be impaired by the policy change. Second, NCJW-NO has not demonstrated a personal stake in naturalized citizens' ability to vote. Here, NCJW-NO maintains no personal stake in an individual naturalized citizen's exercise of the franchise.

The NCJW-NO Plaintiff also lacks associational standing. To establish associational standing, NCJW-NO must specifically identify its members who have suffered an injury-in-fact. Without knowing the identity of their members and the specific features of their injuries, Plaintiffs' allegations are inherently speculative. Even if they had, those injuries would be insufficient to establish standing for the same reasons that NCJW-NO's alleged organizational injuries fail to confer standing.

Finally, the court lacks jurisdiction over Plaintiffs' Administrative Procedure Act (APA) claims because the policy change at issue is committed to agency discretion by law. The management of administrative naturalization ceremonies is the type of agency responsibility that would typically fall within an agency's discretion and there is no meaningful standard by which this Court could assess whether the policy change is an appropriate exercise of the authority delegated to the USCIS. Accordingly, the decision deserves the broadest deference.

Both Plaintiffs have also failed to adequately plead their claims under Rule 12(b)(6). In their separate complaints, the LWV and the NCJW-NO fail to state claims under the First Amendment because administrative naturalization ceremonies are nonpublic forums and USCIS can place a content-

neutral restriction on NGO participation in those ceremonies. The policy change enacted by USCIS was not based on the content of Plaintiffs' expressive conduct or political views because USCIS, in some cases with the assistance of state and local election officials, is continuing to provide information about voter registration to newly naturalized citizens at administrative voter registration ceremonies. Plaintiffs argue that the policy change completely cuts off their ability to provide voter information to new citizens and encourage them to vote. Plaintiffs admit, however, that they retain the ability to participate in judicial naturalization ceremonies and to distribute voter information to new citizens and express their views in a multitude of other forums. Nothing in the Constitution requires the government to grant unfettered access to government property nor to provide a forum for Plaintiffs' expressive conduct simply because they believe it is the most efficient means for delivering their message.

The NCJW-NO Plaintiffs' Fifth Amendment claims fail to state an equal protection or a substantive due process cause of action and should also be dismissed. As to their equal protection claim, NCJW-NO has failed to establish either that the policy change had a racially discriminatory motive or that it has had or is having a racially disproportionate impact. Nor could they, since voter registration information is still being distributed to newly naturalized citizens at administrative naturalization ceremonies. NCJW-NO's allegation that USCIS has eliminated voter registration assistance to naturalized citizens is plainly false and, as such, fatal to their equal protection claim. Further, they have not shown that any newly naturalized citizen has been unable to, or discouraged from, voting or registering to vote as a result of the policy change. NCJW-NO's substantive due process claim also fails to demonstrate that the policy change meets the extremely demanding standard required for such a claim—that the government's decision is so egregious that it shocks the contemporary conscience. NCJW-NO invites this court to simply infer that the policy change was enacted based on a discriminatory motive and that motive alone is sufficient to sustain their claim. This disregards both USCIS's stated reasoning for the change as well as the fact that no newly naturalized citizen has actually

been deprived of any fundamental right.

For these reasons, and as explained further below, both Plaintiffs' complaints should be dismissed in their entirety.

ARGUMENT

I. Plaintiffs lack Article III standing.

A. Plaintiffs have no First Amendment protected right to participate in administrative naturalization ceremonies and have suffered no First Amendment injury-in-fact.

As established in Defendants' opening brief, Plaintiffs lack standing to bring their First Amendment claims because they do not have a constitutionally protected interest in engaging in speech at administrative naturalization ceremonies. Defs.' Motion to Dismiss ("MTD"), at 13, ECF No. 33-1 (citing *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981)). Plaintiffs also have no First Amendment protected right to a nonpublic forum simply because it may be the most efficient forum for delivering their message. *Id.* at 26-27 (citing *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 799 (1985)).

The LWV Plaintiffs misapprehend Defendants' argument. Defendants do contest that the Alert bars Plaintiffs from engaging in *protected* speech and expression. *See* LWV Opp'n to Defs.' Motion to Dismiss ("LWV Resp."), at 10, ECF No. 35. The First Amendment offers no protection in a nonpublic forum. Plaintiffs concede that administrative naturalization ceremonies are non-public forums. LWV Resp. at 21; NCJW-NO Opp'n to Defs.' Motion to Dismiss ("NCJW-NO Resp."), at 21-22, ECF No. 36. Moreover, Plaintiffs' speech has not actually been unconstitutionally restricted. Plaintiffs have only been barred from their most preferred forum—which is a nonpublic forum—and are not afforded an unqualified right to speech and association therein.

The LWV Plaintiffs argue that they do have a First Amendment protected right to choose the most effective forum for advocating their cause, citing *Meyer v. Grant*, 486 U.S. 414 (1988). *See* LWV Resp. at 10-11. This is both incorrect and misapplies *Meyer*. In *Meyer*, the Supreme Court held that a

Colorado state law prohibiting proponents of state ballot initiatives from paying people to circulate petitions violated the First Amendment. *See generally Meyer*, 486 U.S. 414. The case thus concerned political discourse in the broadest of *public* forums in the context of a state government-created right to legislate by petition. *See id.* at 421-24, 428. Plaintiffs here are not advocating for a particular political candidate or ballot initiative and the forum within which their speech has been allegedly restricted is not public. Their First Amendment rights are therefore not comparably at their “zenith.” *See id.* at 425 (“Here, by contrast, the speech at issue is ‘at the core of our electoral process and of the First Amendment freedoms,’ . . . an area of public policy where protection of robust discussion is at its zenith.” (citation omitted)). To the contrary, Plaintiffs’ lack a First Amendment protected right to select a particular nonpublic forum for their expressive conduct simply because, in their assessment, it may be the most efficient.

The NCJW-NO Plaintiff argues that Defendants misunderstand their argument such that they are not claiming a right to speak anywhere and at any time, but rather USCIS has restricted their speech for discriminatory reasons and *any* restriction on their speech would confer standing. NCJW-NO Resp. at 15. Neither is the case. With respect to discriminatory motive, two aspects of USCIS’s decision disprove NCJW-NO’s argument: (1) the 2025 Alert prohibits all non-governmental organizations from participating and is thus non-discriminatory, and (2) USCIS ensures that information on voting is distributed to newly naturalized citizens at administrative naturalization ceremonies, so the 2025 Alert provides no indication that the USCIS disagrees with NCJW-NO’s message and has discriminated against them as a result. With respect to Plaintiffs’ standing to challenge any restriction, this is not the law. As explained above, Plaintiffs cannot demonstrate any actual First Amendment injury where the government imposes a content-neutral restriction on speech in a nonpublic forum it controls, as it has here.

B. Plaintiffs' complaints amount to generalized grievances, not particularized injuries.

The Article III standing requirement of an injury-in-fact cannot be established through a generalized interest in the proper application of the law or other interest that could be common to all members of the public. As such, neither Plaintiff is conferred standing for harm to their organizational interest in seeing that naturalized citizens are provided information or encouraged to vote at administrative naturalization ceremonies.

The LWV Plaintiffs argue that their injury is not a generalized grievance because the 2025 Alert “targets the speech and expressive conduct of only one type of group: nonpartisan, nonprofit organizations.” LWV Resp. at 12. The NCJW-NO Plaintiff makes similar arguments to evade the generalized grievance characterization. NCJW-NO Resp. at 10. For the reasons stated above and in Defendants’ opening brief, Plaintiffs do not have standing on the basis of their exclusion from administrative naturalization ceremonies by a USCIS policy excluding *all* non-governmental organizations. Plaintiffs do, however, claim injury on grounds that naturalized citizens are being deprived of their particular organizations’ messages. *See* LWV Compl., ¶¶ 116, 118, ECF No. 2; NCJW-NO Am. Compl., ¶¶ 105, 109, ECF No. 17. That complaint—i.e., that naturalized citizens are not being encouraged to register to vote and to vote—is a generalized grievance that cannot confer standing.

C. Plaintiffs' cannot spend their way into standing by diverting organizational resources elsewhere.

The Supreme Court has made clear an organization cannot maintain standing by diverting its resources in response to a defendant’s actions. *All. for Hippocratic Med.*, 602 U.S. at 395. Otherwise, “all the organizations in America would have standing to challenge almost every federal policy that they dislike[.]” *Id.* That case, *Food and Drug Administration v. Alliance for Hippocratic Medicine*, is directly on point. In narrowing the reach of *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), which NCJW-NO cites in their brief, the Supreme Court held that the injury suffered by the Alliance for Hippocratic

Medicine in that case was not tantamount to that suffered by the appellees in *Havens* that “directly affected and interfered with [appellees’] core business activities.” *All. for Hippocratic Med.*, 602 U.S. at 395. Here, the 2025 Alert and the policy change it communicated did not directly interfere with either Plaintiff’s mission. Like *Alliance for Hippocratic Medicine*, the injury alleged here is one that, in Plaintiffs’ telling, makes their mission to provide naturalized citizens information about voting more difficult. Controlling Supreme Court precedent holds this does not amount to an injury in fact. That USCIS has allegedly “impaired” Plaintiffs “ability to provide services and achieve their organizational missions . . . does not work to demonstrate standing.” *Id.* at 394.

D. NCJW-NO lacks standing for their Fifth Amendment claims.

The NCJW-NO Plaintiff also lacks standing to raise their Fifth Amendment claims, either on behalf of newly naturalized citizens or their organization. If raised on the naturalized citizens’ behalf, NCJW-NO does not have a close relationship with the naturalized citizens they might engage with at administrative naturalization ceremonies and nothing would hinder a naturalized citizen from raising a claim that USCIS’s policy change unconstitutionally discriminates against them.

NCJW-NO, however, claims that it is not raising its Fifth Amendment claims on behalf of naturalized citizens, but rather on their own behalf on the theory that a third party can challenge an allegedly discriminatory government decision that harms the individuals an organization aims to serve. *See* NCJW-NO Resp. at 12. As a threshold matter, it is unlikely that the policy change announced in the 2025 Alert has actually injured any naturalized citizen, as voting information is still being provided at administrative naturalization ceremonies.¹ Furthermore, NCJW-NO has not demonstrated a personal stake in naturalized citizens’ ability to vote. *Cf. Scott v. Greenville Cnty.*, 716 F.2d 1409, 1412 (4th Cir. 1983) (wherein a real estate developer was found to have standing to challenge the denial of a building permit for discriminatory reasons that would prevent his construction of a multi-family housing

¹ If a naturalized citizen has been so injured, neither Plaintiff has identified them.

complex).² Here, NCJW-NO maintains no personal stake in an individual naturalized citizen's exercise of the franchise and, even if naturalized citizens were not currently being provided voter information at naturalization ceremonies, would sustain no organizational harm as a result.

NCJW-NO also argues that they seek redress of their own injury by removing the prohibition the 2025 Alert announced. This conflicts, however, with their theory that they have standing on the basis of a discrimination-related injury to individuals their organization aims to serve. Those individuals—new citizens naturalized at administrative naturalization ceremonies—are not actually injured by the 2025 Alert, and NCJW-NO's contention that their organization is injured because naturalized citizens are not assisted by their specific organization is not a cognizable Fifth Amendment injury.

E. NCJW-NO has not demonstrated associational standing.

NCJW-NO has failed to demonstrate associational standing because the general injuries they assert are no different than the injuries alleged by NCJW-NO as an organization. Individuals naturalized at administrative naturalization ceremonies suffer no cognizable Fifth Amendment injury as a result of the 2025 Alert and *a fortiori* NCJW-NO itself suffers no cognizable Fifth Amendment injury by virtue of its exclusion from administrative naturalization ceremonies. New citizens naturalized at administrative naturalization ceremonies are provided voter information and the Fifth Amendment does not guarantee NCJW-NO the right to be the specific organization that distributes that information.

F. The decision to eliminate non-governmental organization participation is not reviewable by this Court.

In addition to the jurisdictional defects with Plaintiffs' Article III standing, the Court also lacks jurisdiction over Plaintiffs' APA claims for additional reasons. First, the policy change Plaintiffs

² NCJW-NO also cites First Circuit and Second Circuit decisions in support of their argument, neither of which is applicable nor controls. They also cite the Supreme Court's ruling in *Havens*, which, for the reasons discussed in Defendants' opening brief and herein, also does not apply here.

challenge here reflects a resource allocation decision that is not suitable for judicial review because it is “committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). The decision fits neatly among those “categories of administrative decisions that courts traditionally have regarded as ‘committed to agency discretion.’” *Lincoln v. Vigil*, 508 U.S. 182, 191-92 (1993) (citation omitted). The statute that requires USCIS to distribute information “concerning the benefits which persons may receive under this subchapter and the requirements to obtain such benefits” authorizes appropriations for this very purpose. *See* 8 U.S.C. § 1443(h). Certainly, USCIS’s decisions with respect to the expenditure of those appropriations in carrying out the public education requirement of Section 1443(h) would not be reviewable. And neither is USCIS’s decision to not seek the assistance of non-governmental organizations to carry out the same.

Second, “under § 701(a)(2), even when Congress has not affirmatively precluded judicial oversight, ‘review is not to be had if the [relevant] statute is drawn so that a court would have no meaningful standard against which to judge the agency’s exercise of discretion.’” *Webster v. Doe*, 486 U.S. 592, 599-600 (1988) (citation omitted). “In such a case, the statute (law) can be taken to have committed the decisionmaking to the agency’s judgment absolutely.” *Lincoln*, 508 U.S. at 191 (citation omitted). For the reasons stated in Defendants’ opening brief, the statutes delegating administration of naturalization ceremonies to USCIS and the statute directing their engagement with “appropriate community groups, private voluntary agencies, and other relevant organizations” provide no meaningful standard by which this Court could judge whether the 2025 Alert is an abuse of the agency’s exercise of its discretion. MTD at 4 (citing Pub. L. No. 101-649, 104 Stat. 4978, § 406 (codified at 8 U.S.C. § 1443(h))). In these matters, “the inappropriateness or even mischief involved in appraising a claim of error or of abuse of discretion, . . . leads to the conclusion that there has been withdrawn from the judicial ambit any consideration of whether the official action is ‘arbitrary’ or constitutes an abuse of discretion.” *Curran v. Laird*, 420 F.2d 122, 131 (D.C. Cir. 1969).

II. Plaintiffs have failed to adequately allege violations of the First Amendment, Fifth Amendment, and the APA.

A. Plaintiffs have failed to plausibly allege that the 2025 policy change violates the First Amendment.

Plaintiffs First Amendment claims must be dismissed because they do not plausibly establish on their face that Plaintiffs' First Amendment rights have been violated. Plaintiffs argue that they have First Amendment protected right to participate in administrative naturalization ceremonies. However, the First Amendment does not provide Plaintiffs with the right to express their views wherever and whenever they want and nonpublic forums—like USCIS-controlled administrative naturalization ceremonies—are one such forum where Plaintiffs' First Amendment rights are at their minimum. The government has more flexibility to limit speech in nonpublic forums and may implement reasonable limitations on speech in a nonpublic forum so long as those limitations do not discriminate based on viewpoint. The policy change in the 2025 Alert is a facially reasonable, content-neutral limitation on Plaintiffs' speech and, therefore, Plaintiffs cannot plausibly establish that their First Amendment rights have been violated.

Plaintiffs also argue that the policy change completely cuts off their ability to provide voter information to new citizens and encourage them to vote, but it does not. Plaintiffs retain the ability to participate in judicial naturalization ceremonies and to distribute voter information to new citizens and express their view about the importance of voting in a multitude of other public fora. Nothing in the Constitution requires the government to grant unfettered access to government property nor are Plaintiffs' entitled to their most preferred forum for delivering their message.

The LWV Plaintiff argues that the 2025 Alert and accompanying policy change unlawfully prohibit them from associating with new citizens. This alleged right to association is similarly lawfully limited by the 2025 Alert. The cases cited by Plaintiff do not control here and are inapposite. *League of Women Voters of Fla. v. Browning* and *League of Women Voters v. Hargett* ("Hargett I") concern certain state

law requirements placed on the nonprofit organizations' operation of *public* voter drives. LWV Resp. at 18-19; *see* 447 F. Supp. 2d 1314 (S.D. Fla. 2006) ("*Browning*"); 400 F. Supp. 3d 706 (M.D. Tenn. 2019) ("*Hargett I*"). In each case, state laws imposed requirements on voter registration drives held in *any* forum. Here, Plaintiffs' association with potential voters has only been limited in nonpublic forums.

Plaintiffs' argument that speech aimed at encouraging new citizens to vote falls within a category of "pure speech" that is entitled to some heightened level of scrutiny is also unavailing. LWV Resp. at 18. The Supreme Court in *Meyer* explains that the type of "core political speech" Plaintiffs claim to be engaged in "involve[s] an explanation of the nature of the proposal and why its advocates support it" and "involves the type of interactive communication concerning political change." *Meyer*, 486 U.S. at 421-22. This is not the type of speech that Plaintiffs are being proscribed from here and, even if it were, the limitation placed on Plaintiffs' speech by the 2025 Alert would still be facially constitutional on the basis of its content-neutrality and applicability to a nonpublic forum.

Finally, as to Plaintiffs' challenges to the merits of USCIS's policy change, the 2025 Alert provides a reasonable and sufficient justification for the change in policy. Nothing more is required. As explained in Defendants' brief, the government's restriction of access to a nonpublic forum need only be reasonable, not the *most* reasonable or the *only* reasonable limitation. The rationale in the 2025 Alert provides a conceivable and reasonable rationale for the policy change that meets the lenient standard for limitations on speech in nonpublic forums.

B. NCJW-NO has not plausibly alleged a Fifth Amendment violation.

NCJW-NO's Fifth Amendment claims (Counts 1 & 2) should be dismissed because they lack third-party standing to challenge the 2025 Alert on behalf of new citizens naturalized at administrative naturalization ceremonies and to challenge it on their own behalf. NCJW-NO's lack of standing fully disposes of these claims. NCJW-NO also fails to plausibly allege either an equal protection or a

substantive due process violation because their complaint does not plausibly allege that USCIS is treating NCJW-NO differently than any other NGO nor does it plausibly allege that new citizens naturalized at administrative naturalization ceremonies are harmed by the policy change at all.

NCJW-NO clarifies that their Fifth Amendment equal protection claim is asserted on their own behalf because it has been excluded from administrative naturalization ceremonies for discriminatory reasons. NCJW-NO also clarifies that the harm emanating from their discriminatorily imposed absence from administrative naturalization ceremonies is the elimination of voter registration assistance to naturalized citizens. NCJW-NO Resp. at 20-21. Neither is true. Plaintiffs have not plausibly alleged discriminatory intent for several reasons: (1) the 2025 Alert prohibits all NGO participation, not participation by certain disfavored NGOs, (2) USCIS continues to provide voter information to naturalized citizens, sometimes with the assistance of state and local election officials, and (3) the USCIS provides an explanation for the policy change that is at least equally as plausible as NCJW-NO's broad allegations of an Administration-wide opposition to new citizens' exercise of the franchise. As explained in Defendants' opening brief, NCJW-NO also fails to demonstrate how the absence of NCJW-NO at administrative naturalization ceremonies, specifically, burdens the ability of naturalized citizens to vote or obtain information about voting.

Finally, as stated in Defendants' opening brief, Plaintiffs' substantive due process claim fails at the outset as the USCIS policy change falls far short of government action that "shocks the conscience" or constitutes a pervasive denial of a fundamental right such that it clearly violates the highly circumstantial concept of substantive due process. MTD at 31 (citation omitted).

C. Plaintiffs fail to state an APA Claim because the policy change reflected in the 2025 Alert did not require notice-and-comment rulemaking.

Plaintiffs' procedural APA claims should also be dismissed because USCIS was not required to engage in notice-and-comment rulemaking before issuing the 2025 Alert. Plaintiffs' arguments turn on the characterization of the policy change in the 2025 Alert as a legislative rule. Neither the 2011 nor the

2025 policies at issue were issued through the notice-and-comment process and are not “legislative rules” for that reason. Conversely, “the APA provides that, unless another statute states otherwise, the notice-and-comment requirement ‘does not apply’ to ‘interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.’” *Children's Hosp. of the King's Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015)). As explained in Defendants’ opening brief, USCIS did not promulgate the initial 2011 policy through notice-and-comment rulemaking so, if the 2011 policy was a legislative rule, it is procedurally void. Furthermore, the new policy in the 2025 Alert does not “create rights, impose obligations, or effect a change in existing law” as a legislative rule would. *See, e.g., Hemp Indus. Ass'n v. Drug Enf't Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003). To the contrary, the 2025 Alert represents an internal policy change regarding the administration of administrative naturalization ceremonies. The policy change does not bind Plaintiffs in any way. Rather, it binds only USCIS officials in the carrying out of their statutory responsibilities.

Plaintiffs’ argument that USCIS must engage in notice-and-comment rulemaking where it changes its position is unavailing. “[T]he APA ‘makes no distinction between initial agency action and subsequent agency action undoing or revising that action.’” *Perez*, 575 U.S. at 101 (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)). The APA is therefore “correctly read . . . to mandate that agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.” *Id.* Because USCIS did not undertake notice-and-comment rulemaking for the 2011 policy, it follows that it would not be required to undertake those procedures to change that policy.

Nor does the fact that USCIS sought the assistance of NGOs prior to formalizing the practice in the 2011 policy support requiring USCIS to undertake notice-and-comment rulemaking now. That the policy noticed by the 2025 Alert reverses the 2011 policy does not automatically convert what is clearly the type of discretionary policy choice that the APA expressly exempts from notice-and-

comment into a legislative rule that does require that procedure. 5 U.S.C. § 553(b)(A) (excepting “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice” from notice-and-comment rulemaking).

CONCLUSION

For these reasons, this Court should dismiss both the LWV Plaintiffs’ Complaint and the NCJW-NO Plaintiff’s Amended Complaint in their entirety.

Dated: March 6, 2026

Respectfully submitted,

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