

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-RODRIGUEZ, *et al.*,

Plaintiffs,

V.

Civil Action No.:
8:25-cv-00738 (AJB/DJS)

UNITED STATES DEPARTMENT OF
EDUCATION, *et al.*,

Defendants.

**PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT
AND OPPOSITION TO DEFENDANTS'
CROSS-MOTION FOR SUMMARY JUDGMENT**

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Dated: March 11, 2026

TABLE OF CONTENTS

	Page
INTRODUCTION	6
ARGUMENT	7
I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE NEW POLICY	7
A. As Jay Treaty students, plaintiffs’ standing is self-evident	7
B. Plaintiffs’ injuries are not self-inflicted.....	10
C. Plaintiffs’ injuries are not caused by their schools	12
II. THE DEPARTMENT’S NEW POLICY IS CONTRARY TO LAW	13
A. The policy exceeds the Department’s authority under the Higher Education Act	13
B. The policy conflicts with the Immigration and Nationality Act.....	16
III. THE DEPARTMENT’S NEW POLICY IS PROCEDURALLY DEFECTIVE.....	17
A. The new policy is an invalid legislative rule issued without notice and comment.....	17
B. Alternatively, the new policy is an invalid interpretive rule that provides no rationale for its deviation from past practice.....	19
CONCLUSION.....	20

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Air India v. Brien</i> , 261 F. Supp. 2d 134 (E.D.N.Y. 2003).....	17
<i>Akins v Saxbe</i> , 380 F.Supp. 1210 (D. Me. 1974).....	16
<i>Am. Wild Horse Pres. Campaign v. Perdue</i> , 873 F.3d 914 (D.C. Cir. 2017).....	19
<i>American Hosp. Ass’n v. Bowen</i> , 834 F.2d 1037 (D.C. Cir. 1987).....	17
<i>Antonyuk v. James</i> , 120 F.4th 941 (2d Cir. 2024).....	11
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	12
<i>Chauffeur’s Training School, Inc. v. Riley</i> , 967 F.Supp. 719 (N.D.N.Y. 1997)	15
<i>Cherokee Nation v. Bernhardt</i> , 936 F.3d 1142 (10th Cir. 2019).....	16
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016)	19, 20
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2008)	19
<i>Federal Election Comm. v. Cruz</i> , 599 U.S. 289 (2022)	10
<i>Fish v. Schwab</i> , 957 F.3d 1105 (10th Cir. 2020).....	11
<i>Heldman v. Sobol</i> , 962 F.2d 148 (2d Cir. 1992).....	13
<i>Holtz v. Rockefeller & Co., Inc.</i> , 258 F.3d 62 (2d Cir. 2001).....	8
<i>Homaidan v. Sallie Mae, Inc.</i> , 3 F.4th 595 (2d Cir. 2021).....	14

<i>Iglesias v. United States</i> , 848 F.2d 362 (2d Cir. 1988)	14
<i>Just Bagels Mfg., Inc. v. Mayorkas</i> , 900 F. Supp. 2d 363 (S.D.N.Y. 2012)	7, 8
<i>Lewis-Mota v. Secretary of Labor</i> , 469 F.2d 478 (2d Cir. 1972)	18
<i>Make the Road New York v. Pompeo</i> , 475 F. Supp. 3d 232 (S.D.N.Y. 2020)	18
<i>Nat. Res. Def. Council v. Nat’l Highway Traffic Safety Admin.</i> , 894 F.3d 95 (2d Cir. 2018)	19
<i>NRDC v. FDA</i> , 710 F.3d 71 (2d Cir. 2013)	10
<i>ScotlandShop USA, Inc. v. U.S.C.I.S.</i> , 2024 WL 5137558 (N.D.N.Y. 2024)	8
<i>Sierra Club v. E.P.A.</i> , 292 F.3d 895 (D.C. Cir. 2002)	9
<i>Town of Babylon v. Federal Housing Finance Agency</i> , 699 F.3d 221 (2d Cir. 2012)	10
<i>Utility Air Regulatory Group v. E.P.A.</i> , 573 U.S. 302 (2014)	14
<i>Matter of Yellowquill</i> , 16 I. & N. Dec. 576 (1978)	16
Statutes	
8 U.S.C. § 1359	16
20 U.S.C. § 1091(a)(5)	13
Administrative Procedure Act	8
Higher Education Act	13, 14, 17
Immigration and Naturalization Act, INA, and INA [Immigration and Naturalization Act]	6, 16, 18
Other Authorities	
34 C.F.R. §§ 668.33(a), 668.130	14
Fed. R. Civ. P. 56	8

Local Rule 56.1 7, 8

Plaintiffs respectfully submit this combined reply in support of their motion for summary judgment and opposition to defendants' cross-motion for summary judgment.

INTRODUCTION

Defendants – the United States Department of Education and its Secretary Ms. Linda McMahon (collectively, the “Department”) – misstate both the issue before this Court and Plaintiffs’ position on it. The Department contends that “Plaintiffs’ position is that they are noncitizen permanent residents because the Jay Treaty made them so, and no further documentary evidence may ever be required.” Defs. Mtn., ECF # 36-1, at 1. But plaintiffs do not dispute that the Department can require Jay Treaty students to provide evidence that they qualify as such and so are eligible for federal student aid. Indeed, the Department has done so for many years. Each of the plaintiffs has previously qualified for federal student aid by providing satisfactory evidence (tribal documents) that he or she is a Jay Treaty student. Instead, the issue presented here is whether the Department can reverse its longstanding policy about what evidence must be provided by Jay Treaty students and mandate that only evidence from the Department of Homeland Security (“DHS”) will suffice.

There are two basic reasons why the Department cannot do so: (1) Congress has not authorized the Department to restrict federal student aid to only those permanent residents who document their status via DHS; and (2) Congress has exempted Jay Treaty Indians from the requirements of the Immigration and Naturalization Act, which includes the Green Card requirement that the Department is now trying to impose on them. Further, the Department’s abrupt change in policy is fatally flawed as a procedural matter. It is either a new legislative rule that was improperly promulgated without the requisite public notice and comment, or else it is a new interpretive rule that was issued without any supporting rationale.

The Department argues that it “is obligated to ensure Plaintiffs are in fact eligible, and the only way to do that is through documentation *from* DHS—the only Government entity capable of verifying an individual’s immigration status.” (Defs. Mtn. at 2) (emphasis in original). In other words, it contends that it has no alternative but to utilize documentation from DHS. But this is patently untrue. For the past 30 years, the Department has ensured the eligibility of Jay Treaty students through documentation from other sources: (i) a "band card" issued by the Band Council of a Canadian Reserve, or by the Department of Indian Affairs in Ottawa; (ii) a birth or baptismal record; (iii) an affidavit from a tribal official or other person knowledgeable about the applicant's or recipient's family history; or (iv) identification from a recognized Native American provincial or territorial organization. There has been no change in the law that authorizes the Department’s restrictive new policy; it is merely a bureaucratic fiat issued by DHS and followed by the Department. The new policy is unlawful and must be set aside.

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO CHALLENGE THE NEW POLICY

Because the Department has no sound argument to defend the merits of its new policy, it attacks plaintiffs’ standing to challenge the policy. However, it is self-evident that plaintiffs have standing because there is no dispute that they are all Jay Treaty students who are subject to the new policy.

A. As Jay Treaty students, plaintiffs’ standing is self-evident

Preliminarily, the Department contends that plaintiffs’ motion should be denied because they did not file a statement of material facts in support of it pursuant to Local Rule 56.1. But such a statement is superfluous in an APA case. “When a party seeks review of agency action under the APA, the ‘entire case on review is a question of law’” *Just Bagels Mfg., Inc. v.*

Mayorkas, 900 F. Supp. 2d 363, 372 (S.D.N.Y. 2012) (citation omitted). “[A]lthough summary judgment is the appropriate procedure through which to decide an APA-review case, the usual standards and rules under Fed. R. Civ. P. 56 do not apply; and instead, the district court should base its decision on a review of the administrative record compiled by the agency when it made its decision.” *ScotlandShop USA, Inc. v. U.S.C.I.S.*, 2024 WL 5137558, at *1 (N.D.N.Y. 2024). Statements of material facts “are not necessary as the case on review presents only a question of law.” *Just Bagels*, 900 F. Supp. 2d at 372 n.7. “Indeed, an exception to ... Local Rule 56.1 for summary judgment motions concerning claims challenging administrative actions under the Administrative Procedure Act, as is provided in other Districts, would be appropriate.” *Id.*

Moreover, “[t]he purpose of Local Rule 56.1 is to streamline the consideration of summary judgment motions by freeing district courts from the need to hunt through voluminous records without guidance from the parties.” *Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 74 (2d Cir. 2001). That purpose has been fully served in this case because plaintiffs’ motion for summary judgment carefully canvassed the relevant facts with citations to, and quotations from, the administrative record.

The Department argues that a statement of material facts was necessary to establish plaintiffs’ standing to bring their claims. However, it is undisputed that plaintiffs are Jay Treaty students and so are subject to the Department’s new policy.¹ Accordingly, no additional evidence outside the administrative record is necessary to establish their standing to challenge that policy. As the D.C. Circuit has explained:

In many if not most cases the petitioner’s standing to seek review of administrative action is self-evident; no evidence outside the administrative

¹ Ms. Rourke-Rodriguez and Mr. Swamp previously filed declarations establishing that they qualify in conjunction with the initial complaint (ECF # 1-1 & 1-2) and the Department admitted that they qualify. See ECF # 12-2 at ¶¶ 17, 19. It now admits that Ms. Thompson qualifies as well. See ECF # 36-3 at ¶ 33.

record is necessary for the court to be sure of it. In particular, if the complainant is “an object of the action (or forgone action) at issue” — as is the case usually in review of a rulemaking and nearly always in review of an adjudication — there should be “little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.”

Sierra Club v. E.P.A., 292 F.3d 895, 899-900 (D.C. Cir. 2002) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)) (emphasis added). Only “[w]hen the petitioner’s standing is not self-evident, ... must [the petitioner] supplement the record to the extent necessary to explain and substantiate its entitlement to judicial review.” *Id.* at 900.

The Department asserts that plaintiffs nonetheless should have supplemented the administrative record in this case because it previously challenged their standing and plaintiffs should have anticipated that it would do so again. However, there is no requirement that plaintiffs anticipate the Department’s arguments (especially frivolous ones) in their motion. Because their standing is self-evident, plaintiffs focused on the merits in their motion.

Since the Department insists on putting plaintiffs to their proof regarding standing, plaintiffs submit herewith a brief statement of material facts confirming their standing. The injury each has suffered as a result of the Department’s new policy is obvious. All three plaintiffs previously qualified for and/or received federal student aid but, since the advent of the new policy, none of them continue to receive aid. As detailed in the statement of material facts and supporting declarations: (1) Ms. Rourke-Rodriguez is taking only one course a semester, rather than a full course load, as a result of the Department’s new policy (*see* Supplemental Declaration of Mercedes Rourke-Rodriguez filed herewith (“Supplemental Rourke-Rodriguez Decl.”)); (2) Mr. Swamp is not attending school at all as a result of the new policy (*see* Supplemental Declaration of Ariwii Swamp filed herewith); and (3) Ms. Thompson has been

forced to obtain other sources of funding in order to attend school, including \$3,000 in funds contributed by her mother and grandmother (*see* Declaration of Jayla Thompson filed herewith).

The Second Circuit has recognized that standing to assert an APA claim can be based on either procedural or substantive injury. Procedural injury occurs where, for example, an agency fails to follow the notice and comment requirements of the APA, while arbitrary and capricious agency action constitutes substantive injury. *See Town of Babylon v. Federal Housing Finance Agency*, 699 F.3d 221, 228-29 (2d Cir. 2012). In this case, as explained in their motion for summary judgment, plaintiffs have suffered both procedural and substantive injury.

Ultimately, the Department falls back to the argument that its new policy is not the cause of plaintiffs' injuries. It claims, alternatively, that the plaintiff's injuries are self-inflicted due to their choice not to comply with the new policy, or else their injuries are attributable to the schools they attend (or seek to attend) because those schools did not exempt them from the new documentation requirement. Neither of these arguments withstands the slightest scrutiny.

B. Plaintiffs' injuries are not self-inflicted

The notion that plaintiffs' injuries are self-inflicted because they chose not to comply with the new policy is preposterous. While a plaintiff may not establish injury for standing purposes based on a "self-inflicted" injury, "[a]n injury is self-inflicted so as to defeat the causation necessary to establish standing, however, 'only if the injury is so completely due to the plaintiff's own fault as to break the causal chain.' " *NRDC v. FDA*, 710 F.3d 71, 81 (2d Cir. 2013) (quoting *St. Pierre v. Dyer*, 208 F.3d 394, 402 (2d Cir. 2000)). And the Supreme Court has held that plaintiffs are not required to subject themselves to the very framework they claim is unlawful to establish their standing to challenge it. *See Federal Election Comm. v. Cruz*, 599 U.S. 289, 298 (2022). Thus, plaintiffs' injuries are not self-inflicted simply because they chose to challenge the

policy rather than comply with it.

The Tenth Circuit recently addressed a comparable situation in which a university student challenged a Kansas law requiring documentary proof of citizenship when registering to vote, contending that this requirement violated a federal statute and the Constitution. Although the student possessed the requisite documentary proof, he did not bring it when he attempted to register to vote because he did not agree with the state law. The state argued that the student's injury was self-inflicted, but the court disagreed. It ruled that the source of plaintiff's injury was the state's allegedly unlawful regime, not his decision not to comply with it. The court "rejected the notion that the source of an injury is a litigant's decision not to comply with an allegedly unlawful state regime, rather than *the regime itself*." *Fish v. Schwab*, 957 F.3d 1105, 1120 (10th Cir. 2020) (emphasis in the original) (citation omitted; cleaned up). It added that, "[w]ere this notion to apply in a case like this one, a court could never enjoin enforcement of an unlawful statute if the plaintiffs could have complied with the statute but elected not to; this hypothetical scenario borders on the absurd." *Id.* (internal quote marks and citation omitted).

The Second Circuit, likewise, bluntly rejected the argument that "the only way a plaintiff can challenge an application process is to do exactly what the plaintiff claims that he may not be required to do." *Antonyuk v. James*, 120 F.4th 941, 980 (2d Cir. 2024). This argument "contravenes common sense." *Id.* The court ruled that "[a]n applicant who challenges an application itself is not required to first comply with the objected-to component before bringing suit." *Id.* Thus, a plaintiff has standing even where his "injury stems from his own unwillingness to comply with the challenged requirements." *Id.* at 977.

Therefore, plaintiffs were not required to comply with the Department's new policy when they applied for federal student aid, either by obtaining documentation of their status from DHS

or by seeking an exemption from their school. Instead, they have standing to challenge the requirement as unlawful rather than comply with it.

Furthermore, the facts do not support the contention that Ms. Rourke-Rodriguez refused to comply with the new policy. When she was advised by her school that she would now need a Green Card to establish her eligibility for aid as a Jay Treaty student, she chose to apply for a U.S. passport in order to establish her eligibility for aid as a U.S. citizen rather than as a Jay Treaty student. The delays in that process have prevented her from obtaining federal student aid for this school year. *See* Supplemental Rourke-Rodriguez Decl. ¶ 9. Thus, she has been harmed by the Department’s new policy although she has tried to comply with it.

C. Plaintiffs’ injuries are not caused by their schools

Alternatively, the Department argues that plaintiffs’ injuries are caused by plaintiffs’ schools because they declined to exempt plaintiffs from the new documentation requirement.² However, the Department cannot absolve itself from responsibility for plaintiffs’ injuries by pointing its finger at the schools that administer the exemption process it created.

Standing requires that “there be a causal connection between the injury and the conduct complained of—the injury must be fairly traceable to the challenged action of the defendant, and not the result of *the independent action of some third party* not before the court.” *Bennett v. Spear*, 520 U.S. 154, 167 (1997) (emphasis added). The Department “wrongly equates injury ‘fairly traceable’ to the defendant with injury as to which the defendant’s actions are the very last step in the chain of causation.” *Id.* at 168–69. The Second Circuit long ago rejected the

² Under the new policy, Jay Treaty students already receiving aid can be exempted from the DHS documentation requirement if their college “elect[s]” to do so, provided that “the documents [previously] used to establish that eligibility have not expired, and where the institution does not have reason to believe that the student’s claim of citizenship or immigration status is incorrect.” (Administrative Record 1, at USA000003).

argument that the Department makes here. It held that, “[a]lthough a third party not before the court—Minisink [Board of Education]—played a role in [plaintiff’s] alleged injury, Minisink’s actions were the direct result of the [challenged] regulations and do not constitute ‘independent action.’” *Heldman v. Sobol*, 962 F.2d 148, 156 (2d Cir. 1992). Likewise, here, the schools’ role in the exemption process is the direct result of the Department’s new policy and does not constitute independent action that absolves the Department of responsibility for plaintiffs’ injuries.

II. THE DEPARTMENT’S NEW POLICY IS CONTRARY TO LAW

A. The policy exceeds the Department’s authority under the Higher Education Act

The Department argues that, in administering the Higher Education Act, it must ensure that only eligible persons receive student aid and that it can impose documentation requirements toward this end. So far, so good. The issue presented here, however, is whether the Department can impose a restrictive documentation requirement that forces all permanent residents to obtain documentation from DHS, and from no other source, in order to obtain student aid. This restrictive requirement is inconsistent with the terms of the Higher Education Act, which provides that:

In order to receive any grant, loan, or work assistance under this subchapter, a student must—

* * *

[1] be a citizen or national of the United States, [2] a permanent resident of the United States, or [3] able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

20 U.S.C. § 1091(a)(5) (numbering added).

In this provision, Congress mandated that students who are *neither* a citizen *nor* a permanent resident of the U.S. must establish their eligibility for aid by providing documentation from INS/DHS. But Congress imposed no such requirement on U.S. citizens and permanent residents. This distinction was deliberate. “[W]hen Congress ‘includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.’” *Homaidan v. Sallie Mae, Inc.*, 3 F.4th 595, 602 (2d Cir. 2021) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

Although Congress grouped permanent residents together with U.S. citizens and required only the third category of students to obtain INS documentation, the Department reversed this approach in its regulations. *See* 34 C.F.R. §§ 668.33(a), 668.130. It grouped permanent residents together with the third category and required both to obtain INS documentation, thereby effectively rewriting the statute in the guise of “implementing” it. “A regulation may not serve to amend a statute, or to add to the statute ‘something which is not there.’” *Iglesias v. United States*, 848 F.2d 362, 366 (2d Cir. 1988) (citations omitted). “An agency has no power to ‘tailor’ legislation to bureaucratic policy goals by rewriting unambiguous statutory terms.” *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 325-26 (2014).

Under the Department’s reasoning, it could also have imposed a comparable regulatory requirement on U.S. citizens. Clearly, its authority to implement the Higher Education Act does not extend so far. Instead, it can only impose reasonable documentation requirements that are consistent with the statute. Thus, the Department could provide that documentation from DHS is

one way in which permanent residents can establish their eligibility for federal student aid.³ But what the Department cannot do, consistent with the statute, is to provide that documentation from DHS is the *exclusive* method through which a permanent resident can establish eligibility for student aid.⁴ The Department's regulations exceed its authority and are invalid insofar as they require permanent residents to establish eligibility exclusively through documentation from DHS. *See Chauffeur's Training School, Inc. v. Riley*, 967 F.Supp. 719, 726-27 (N.D.N.Y. 1997) (vacating Department action that exceeded its statutory authority). Accordingly, the Department cannot rely on those regulations to justify its new policy regarding Jay Treaty students.

Notably, for the past 25 years, the Department took the position that these same regulations did not allow it to require that Jay Treaty students obtain documentation from DHS. The administrative record does not contain any legal rationale for the Department's change of position. And the Department's brief merely asserts, in conclusory terms, that its new policy "aligns with the best reading of the controlling statutory and regulatory framework," without explaining why this is so. Defs. Mtn. at 21. This omission is all the more glaring because the controlling statutory and regulatory framework remains unchanged. In sum, the Department contends that its new policy is authorized by its regulations because it now says so, notwithstanding that for the past 25 years it took the contrary position under the same regulations. But the Department's *ipse dixit* is not a legal justification for its challenged policy.

³ As plaintiffs acknowledged in their opening brief, most students who are permanent residents will have gone through the Green Card process and so producing an INS document is the logical way for them to confirm their status.

⁴ The Department argues that, "[i]f Plaintiffs truly qualify as Canadian-born American Indians, they should be able to obtain evidence from DHS of their status" Defs. Mtn. at 20. That is beside the point. The issue is not whether plaintiffs can obtain documentation from DHS but whether the Department can require them to do so.

B. The policy conflicts with the Immigration and Nationality Act

Moreover, the Department’s new policy conflicts with the Immigration and Nationality Act (“INA”), which exempts Jay Treaty Indians from all immigration restrictions imposed by the INA, including the Green Card requirements. Section 289 of the INA provides that “[n]othing in this subchapter [*i.e.* the INA] shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race.” 8 U.S.C. § 1359. “[T]he intent of Congress in enacting Section 1359 was ... to exempt Canadian-born Indians from all immigration restrictions imposed on aliens by the Immigration and Nationality Act.” *Akins v Saxbe*, 380 F.Supp. 1210, 1219 (D. Me. 1974). The statutory construction in *Akins* is definitive. The Solicitor General declined to authorize a Government appeal of the decision, and the INS subsequently advised the Board of Immigration Appeals that it considered *Akins* correct. *See Matter of Yellowquill*, 16 I. & N. Dec. 576 (1978).

The Department’s new policy patently contravenes this INA statutory provision. The Department sputters that “*Akins* is nonbinding district court authority from *over 50 years ago*,” and attempts to distinguish *Akins* on its facts. Defs. Mtn. at 24 (emphasis in the original). But the age of sound precedent is immaterial. Nor can the holding in *Akins* be distinguished; it explicitly concluded that Congress intended to exempt Canadian-born Indians from *all* immigration restrictions imposed by the INA. This means that Jay Treaty students are exempted from Green Card requirements, which derive from the INA.

Because the Department’s new policy conflicts with the congressional exemption of Jay Treaty Indians from the requirements of the INA, it is contrary to law and must be set aside pursuant to the APA. *See Cherokee Nation v. Bernhardt*, 936 F.3d 1142, 1156 (10th Cir. 2019).

III. THE DEPARTMENT’S NEW POLICY IS PROCEDURALLY DEFECTIVE

A. The new policy is an invalid legislative rule issued without notice and comment

Since the Department’s new policy was issued without public notice and comment, it is invalid if it constitutes a legislative rule. The Department, predictably, denies that the policy is a legislative rule and contends that it is merely an interpretive rule. But its argument does not pass muster.

An agency rule that establishes eligibility requirements not contained in the statute, itself, is “the classic example” of a legislative rule. *American Hosp. Ass’n v. Bowen*, 834 F.2d 1037, 1046 (D.C. Cir. 1987). It is undisputed that the Higher Education Act, itself, does not establish any documentation requirement for U.S. citizens or permanent residents. Thus, any documentation requirement that the Department imposes on permanent residents to establish their eligibility for student aid is a legislative rule. That is why, when the Department originally promulgated a documentation requirement in 1987, it did so through notice-and-comment rulemaking. *See also Air India v. Brien*, 261 F. Supp. 2d 134, 141 (E.D.N.Y. 2003) (INS regulation that required lawful permanent resident aliens who were returning from abroad to present certain reentry documents was a legislative rule).

The Department argues, however, that because its new policy is merely an interpretive rule because it is consistent with the regulations and simply “notified the public of a change in the Department’s previous (but erroneous) interpretation of existing law and regulations.” Defs. Mtn. at 28. The Department asks the Court, in effect, to disregard its previous, longstanding position that Jay Treaty students were exempt from the DHS documentation requirement in the regulations. But reality cannot be blinked.

As a matter of law, *any* documentation requirement that the Department imposes on Jay Treaty students to establish their eligibility for student aid as permanent residents is a legislative rule. When the Department first explicitly addressed Jay Treaty students through the 1998 “Dear Colleague” Letter, and exempted them from the DHS documentation requirement in the regulations, that was a legislative rule. That rule then persisted for approximately 25 years until it was supplanted by the new policy, which constitutes a new legislative rule because it changed the existing documentation obligations for Jay Treaty students.⁵ See *Lewis-Mota v. Secretary of Labor*, 469 F.2d 478, 482 (2d Cir. 1972) (agency directive was a legislative rule because it changed existing rights and obligations by requiring aspiring permanent residents to submit proof of specific job offers as well as a statement of their qualifications).

This case is directly akin to *Make the Road New York v. Pompeo*, 475 F. Supp. 3d 232 (S.D.N.Y. 2020), where the court concluded that revisions made to an agency manual constituted a legislative rule because they “effectively amended a prior legislative rule—the public charge framework memorialized in the Field Guidance and the [agency manual] prior to January 3, 2018.” *Id.* at 263-64. Although the prior rule had not been issued through notice-and-comment rulemaking either, the court explained that both were legislative rules because they “established a substantive set of rules governing public charge determinations beyond the minimum requirements set forth in the INA [Immigration and Naturalization Act].” *Id.* at 264. Here,

⁵ The Department argues that “Plaintiffs do not suggest that those prior versions of the FSA Handbook were procedurally invalid.” Defs. Mtn. at 29. To the contrary, plaintiffs pointed out that the Department had chosen to take a procedurally invalid shortcut in issuing its original policy on Jay Treaty students but that “[n]o one complained about this procedural shortcut because it relieved the affected parties – the Jay Treaty students – of an unlawful obligation and provided a practical solution.” Pls. Memo at 19.

likewise, the both the old and the new provision in the FSA Handbook governing the documentation requirements for Jay Treaty students constitute a legislative rule.

Because the Department's new policy is a legislative rule issued without the requisite public notice and comment, it is invalid and must be set aside. *See Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 115-16 (2d Cir. 2018).

B. Alternatively, the new policy is an invalid interpretive rule that provides no rationale for its deviation from past practice

Even were the Department correct that the new policy is an interpretive rule, it still is defective and must be set aside. Where an agency changes prior policy, it must “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2008); *see Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) (agencies must “offer a reasoned explanation for” deviations from past agency practice). “Where the agency has failed to provide even [a] minimal level of analysis, its action is arbitrary and capricious.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

In *Encino*, the Supreme Court set aside a change in longstanding Department of Labor policy because, “when it came to explaining the ‘good reasons for the new policy,’ the Department said almost nothing.” *Id.* at 223 (citation omitted). Here, the Department said nothing at all. It did not provide any rationale whatsoever for changing the documentation requirement for Jay Treaty students.

The Department insists that it offered a reasoned explanation of its new rule by announcing that it was issued “after consultation” with DHS to identify “acceptable documentation for confirming the Title IV eligibility of American Indians born in Canada.” Defs. Mtn. at 30. It denies that this announcement was “perfunctory” and devoid of any “reasoned explanation.” *Id.* at 29. This is nothing more than an effort to “brazen it out.” It is undeniable

that the Department’s announcement contains “not even a minimal level of analysis,” nor any “reasoned explanation” for changing the documentation requirement. Accordingly, its action is arbitrary and capricious and must be set aside pursuant to the APA. *See Encino*, 579 U.S. at 221.

CONCLUSION

For the reasons stated herein, the Department’s new documentation requirement for Jay Treaty students is contrary to law and so must be set aside. Accordingly, plaintiffs respectfully request that the Court grant their Motion for Summary Judgment and deny defendants’ Cross-Motion for Summary Judgment.

Dated: New York, New York
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