

# **The Change-in-Position Doctrine**

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**Issue Brief**

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# I. INTRODUCTION

The Trump administration has threatened to accelerate its deregulatory efforts in the coming months and years, which will no doubt entail changes in federal agencies' positions on a host of legal, factual, and policy issues.<sup>1</sup> These may range from subtle shifts to major reversals, like with respect to whether tailpipe greenhouse gas emissions contribute to dangerous air pollution.<sup>2</sup> Whether they engage in regulation or deregulation, agencies are generally subject to the Administrative Procedure Act's requirement that they engage in reasoned, rather than arbitrary, decisionmaking.<sup>3</sup> This familiar standard, however, applies in a somewhat unique way to agency actions that represent a change in position.

Although it has percolated in administrative law for decades, including at the Supreme Court,<sup>4</sup> the Court formally coined the term “change-in-position doctrine” in its 2024 decision in *Food and Drug Administration v. Wages & White Lion Investments*.<sup>5</sup> “Under that doctrine, agencies are free to change their existing policies as long as they provide a reasoned explanation for the change, display awareness that they are changing position, and consider serious reliance interests.”<sup>6</sup> And while an agency generally need not “provide a more detailed justification than what would suffice for a new policy created on a blank slate,” it nonetheless “must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.”<sup>7</sup> A more detailed justification is also required when an agency’s “new policy rests upon factual findings that contradict those which underlay its prior policy.”<sup>8</sup>

This Issue Brief explains how litigants might utilize the change-in-position doctrine in challenging agency actions, with particular focus on deregulatory efforts. First, this Issue Brief outlines how litigants might identify when an agency has arguably

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<sup>1</sup> Office of Management and Budget Memo M-25-36, “Streamlining the Review of Deregulatory Actions,” (Oct. 21, 2025), <http://archive.today/g4tlG>; see Coral Davenport, *Inside Trump’s Plan to Halt Hundreds of Regulations*, New York Times (Jan. 9, 2025), <https://www.nytimes.com/2025/04/15/us/politics/trump-doge-regulations.html>.

<sup>2</sup> Environmental Protection Agency, Reconsideration of 2009 Endangerment Finding and Greenhouse Gas Vehicle Standards, 90 Fed. Reg. 36288 (Aug. 1, 2025).

<sup>3</sup> See GFI, *Arbitrary-and-Capricious Review* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Arbitrary-and-Capricious-Challenges.pdf>.

<sup>4</sup> See, e.g., *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016); *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>5</sup> 604 U.S. 542, 566 (2025).

<sup>6</sup> *Id.* at 568 (quotations omitted).

<sup>7</sup> *Id.* at 570 (quotations omitted).

<sup>8</sup> *Fox*, 556 U.S. at 515.

changed its position. Second, this Issue Brief explains the various requirements an agency must fulfill to sufficiently justify any such change.

## II. IDENTIFYING A CHANGE IN POSITION

As its name suggests, the change-in-position doctrine is triggered when an agency changes its position on a given issue. This “occurs when an agency acts inconsistently with an earlier position, performs a reversal of its former views as to the proper course, or disavows prior inconsistent agency action as no longer good law.”<sup>9</sup>

In the context of the Trump administration’s deregulatory agenda, litigants might not have much trouble identifying a change in position. A change is evident, for example, where an agency “rescind[s] a prior regulation”<sup>10</sup> or reverses an adjudicatory precedent.<sup>11</sup> Even where an agency is not reversing a settled or crystallized position, it may be required to explain how it reconciles its decision with its prior actions.<sup>12</sup> Courts have recognized changes in position in such contexts, including where agencies “abandon [a] decades-old practice.”<sup>13</sup> Such shifts, which are perhaps more subtle than an outright rescission of a prior rule, may include:

**Changing the scope of enforcement activity or altering safe harbors.** In *Fox Television* — another key recent precedent — the Supreme Court acknowledged that the Federal Communications Commission (FCC) changed its position when it “expand[ed] the scope of its enforcement activity” by penalizing broadcasters for fleeting expletives after previously maintaining a safe harbor for such content.<sup>14</sup> Similarly, the D.C. Circuit identified a change where the Environmental Protection Agency issued a rule that eliminated a lead paint regulation’s exemption for houses without pregnant women or young children.<sup>15</sup> Perhaps more relevant in the current

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<sup>9</sup> *Wages & White Lion*, 604 U.S. at 569-70 (quotations omitted).

<sup>10</sup> *Id.* at 570 (citing *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 41-42 (1983)).

<sup>11</sup> See, e.g., *O.C.V. v. Bondi*, 153 F.4th 974, 984–85 (10th Cir. 2025).

<sup>12</sup> *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 647 (D.C. Cir. 2020).

<sup>13</sup> *Encino Motorcars*, 579 U.S. at 218.

<sup>14</sup> 556 U.S. at 517.

<sup>15</sup> *Nat’l Ass’n of Home Builders v. E.P.A.*, 682 F.3d 1032, 1034–35 (D.C. Cir. 2012).

context is that this logic applies equally to changes in enforcement practices that result in *less* enforcement activity, including by creating or expanding safe harbors.<sup>16</sup>

**Changing administrative procedures.** Courts have also found changes where agencies alter longstanding procedural practices. For example, the Fifth Circuit identified a change in position where the Food and Drug Administration decided in 2021 to issue only one round of deficiency letters to tobacco product manufacturers before deciding on a product approval, departing from its prior practice of offering multiple.<sup>17</sup> The D.C. Circuit similarly found a change where an agency disregarded its “unwavering” practice of deferring to an administrative law judge’s credibility determinations in adjudications.<sup>18</sup>

**Changing the agency’s interpretation of binding law.** An agency effectuates a change in position where it adopts a new interpretation of a statute, regulation, or court case that contradicts its prior interpretation. For example, a district court vacated a Department of Education letter that “purport[ed] to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance” under various laws, but that, according to the court, actually represented a significant change in the Department’s understanding of those laws.<sup>19</sup> Agencies in the Trump administration are likely to continue changing their statutory interpretations, including where they determine that the best interpretation of an underlying statute is that a regulation is unlawful and therefore must be rescinded.<sup>20</sup>

In contrast to these examples, the D.C. Circuit has noted that an agency’s transition from a tentative to a definitive position on a policy issue — for example, announcing an interest in gathering information, soliciting input, and then taking a final view — “seems to describe a single, natural course of rational agency decision-making” rather than a change in position that triggers the doctrine.<sup>21</sup> Additionally, an agency adjudication that adequately distinguishes adverse adjudicatory precedent does not

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<sup>16</sup> See, e.g., *N. Indiana Pub. Serv. Co. v. FERC*, 782 F.2d 730, 746 (7th Cir. 1986).

<sup>17</sup> *Shenzhen Youme Info. Tech. Co., Ltd. v. Food & Drug Admin.*, 147 F.4th 502, 513 (5th Cir. 2025).

<sup>18</sup> *Dillmon v. National Transportation Safety Board*, 588 F.3d 1085, 1090 (D.C. Cir. 2009); see, e.g., *Nat’l TPS All. v. Noem*, 798 F. Supp. 3d 1008, 1031 (N.D. Cal. 2025), *appeal pending*, No. 25-4901 (9th Cir.) (agency failed to explain “how a 60-day transition period [for a Temporary Protected Status termination] is consistent with the agency’s twenty-two year practice of providing at least a 6 month transition period”); see also *Judicial Review of Agency Change*, 127 Harv. L. Rev. 2070, 2074 n. 35 (May 2024), [https://harvardlawreview.org/wp-content/uploads/2014/05/vol127\\_judicial\\_review\\_of\\_agency\\_change.pdf](https://harvardlawreview.org/wp-content/uploads/2014/05/vol127_judicial_review_of_agency_change.pdf).

<sup>19</sup> *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 779 F. Supp. 3d 584, 599, 610 (D. Md. 2025). The government has since dropped its appeal to the Fourth Circuit of the District Court stay of the enforcement of the. No. 25-2228 (order granting the motion to voluntarily dismiss the case) (4th Cir. Jan. 22, 2026).

<sup>20</sup> See Office of Management and Budget, *supra* note 1.

<sup>21</sup> *Cboe Glob. Markets, Inc. v. Sec. & Exch. Comm’n*, No. 24-1350, 2025 WL 2908059, at \*7 (D.C. Cir. Oct. 14, 2025).

qualify as a change.<sup>22</sup> Litigants might therefore comb the administrative record and regulatory history to consider whether the agency’s attempt to distinguish adverse precedent is weak, conclusory, or otherwise fails to grapple with a prior, definitive approach.

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Litigants might note, however, that the Supreme Court has recently called into question the extent to which the change-in-position doctrine applies to subregulatory actions, like changes to nonbinding guidance documents or established agency practices. In *Wages and White Lion*, the Supreme Court expressly reserved the question whether “the change-in-position doctrine applies to an agency’s divergence from a position articulated in nonbinding guidance documents.”<sup>23</sup> These questions are likely to resurface, particularly given that President Trump has broadly directed agencies to rescind guidance documents issued by prior administrations.<sup>24</sup>

Litigants challenging subregulatory changes might respond in several ways. Litigants might begin by explaining why the doctrine should apply in such circumstances: the change-in-position doctrine is rooted in the APA’s arbitrary-and-capricious standard, which applies to all “agency action, findings, and conclusions,” regardless of the form that they take.<sup>25</sup> Next, litigants might highlight cases where the Court applied the doctrine in similar contexts, including where the prior position was set forth in guidance<sup>26</sup> or agency practice.<sup>27</sup> Finally, in appropriate cases litigants might be able to emphasize that the agency’s prior position, albeit set forth in guidance, had markers of formality or was treated as “binding” by the agency or the public.<sup>28</sup>

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<sup>22</sup> See *Gray Television, Inc. v. Fed. Commc’ns Comm’n*, 130 F.4th 1201, 1222 (11th Cir. 2025); see also *Judicial Review of Agency Change*, 127 Harv. L. Rev. 2070, 2075-77 (May 2024), [https://harvardlawreview.org/wp-content/uploads/2014/05/vol127\\_judicial\\_review\\_of\\_agency\\_change.pdf](https://harvardlawreview.org/wp-content/uploads/2014/05/vol127_judicial_review_of_agency_change.pdf).

<sup>23</sup> 604 U.S. at 569 n.5.

<sup>24</sup> See Executive Order 14192, “Unleashing Prosperity Through Deregulation,” 90 Fed. Reg. 9065 (Jan. 31, 2025).

<sup>25</sup> 5 U.S.C. § 706(2)(A). See also GFI, *Final Agency Action* (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Final-Agency-Action.pdf>.

<sup>26</sup> See *Wages & White Lion*, 604 U.S. at 56 n.5 citing *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*, 556 U.S. 502, 517 (2009), but noting that the policy statement there “instituted a standardized review process that effectively resembled adjudication” (quotations omitted); see also *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 223 (2016).

<sup>27</sup> *Fox*, 556 U.S. 502 (enforcement policy).

<sup>28</sup> *Wages & White Lion*, 604 U.S. at 569 n.5.

## III. CHALLENGING A CHANGE IN POSITION

Once a change in position has been identified, the doctrine requires agencies to satisfy several requirements. Agencies often meet the first two requirements – that the agency display awareness of, and provide good reasons for, its change. But agencies sometimes fail to provide a more detailed justification for their changes where those changes implicate serious reliance interests or rest on changed factual findings, and so litigants might focus on those two points.

### A. Displaying awareness

An agency cannot “deviate from a prior policy *sub silentio* or simply disregard” what it had previously said.<sup>29</sup> The agency therefore must acknowledge the existence of the prior policy and its departure from that policy, which ensures that changes are intentional and reasoned, not inadvertent. Where the agency expressly rescinds a prior regulation or guidance document, this requirement is often easily met.<sup>30</sup>

While the agency must “display awareness that it is changing position,”<sup>31</sup> there is no “magic words” requirement.<sup>32</sup> An agency might acknowledge its departure from a prior rule by examining the relevant regulatory history and then announcing its new rule.<sup>33</sup> It can even be enough for an agency to “consider[] and reject[] an alternative position, even without expressly acknowledging that the position was once the agency’s own[.]”<sup>34</sup> In such a case, litigants might seek to distinguish between the agency’s prior position and the alternatives considered in the challenged action to argue that the agency did not truly display its awareness of the policy change.

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<sup>29</sup> *Fox*, 556 U.S. at 515.

<sup>30</sup> See, e.g., Consumer Financial Protection Bureau, Withdrawal of Joint Statement on the Equal Credit Opportunity Act and Noncitizen Borrowers, 91 Fed. Reg. 1138 (Jan. 12, 2026).

<sup>31</sup> *Wages & White Lion*, 604 U.S. at 570 (quotation omitted).

<sup>32</sup> *Cboe Glob. Markets, Inc.*, 155 F.4th at 719.

<sup>33</sup> *Mozilla Corp. v. Fed. Commc'ns Comm'n*, 940 F.3d 1, 54-56 (D.C. Cir. 2019).

<sup>34</sup> *CBOE Glob. Markets, Inc.*, 155 F.4th at 719.

## B. Offering “good reasons”

An agency must also offer “good reasons” for its new approach.<sup>35</sup> However, an agency “need not demonstrate to a court’s satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better, which the conscious change of course adequately indicates.”<sup>36</sup> But “good reasons” is not a meaningless standard—rather, the usual arbitrary-and-capricious requirements apply to changes in position, including scrutiny for pretextual justifications.<sup>37</sup>

Among other things, courts have found inadequate reasoning where agencies left affected parties “guessing” as to the rationale for the policy change,<sup>38</sup> or if the path from the prior policy to the new one cannot be “reasonably ... discerned.”<sup>39</sup> Additionally, an agency’s reasons “cannot be inconsistent with the purpose of the requirement being implemented.”<sup>40</sup> For example, the Ninth Circuit found that prioritizing administrative efficiency over public participation in its streamlining of oil and gas leasing decisions was contrary to the purposes of the National Environmental Policy Act.<sup>41</sup> To that end, in some circumstances, litigants might assert that an agency’s change in position is inconsistent with the purpose of the underlying statutory scheme.

## C. When a “more detailed justification” is necessary

An agency changing position “need not *always* provide a more detailed justification than what would suffice for a new policy created on a blank slate.”<sup>42</sup> It “must” do so, though, in at least two situations: when the prior policy “engendered serious reliance

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<sup>35</sup> *Fox*, 556 U.S. at 515.

<sup>36</sup> *Fox*, 556 U.S. at 515.

<sup>37</sup> See GFI, Arbitrary-and-Capricious Review (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Arbitrary-and-Capricious-Challenges.pdf>; GFI, Challenging Agency Action Based on Pretextual Reasons (May 2025), <https://governingforimpact.org/wp-content/uploads/2025/05/Challenging-Agency-Action-Based-on-Pretextual-Reasons.pdf>.

<sup>38</sup> *Thakur v. Trump*, 148 F.4th 1096, 1106-07 (9th Cir. 2025), *rev’d* on other grounds by *Thakur v. Trump*, No. 25-4249, 2025 WL 3760650 (9th Cir. Dec. 23, 2025).

<sup>39</sup> *Jimenez-Cedillo v. Sessions*, 885 F.3d 292, 299–300 (4th Cir. 2018) (internal quotation omitted).

<sup>40</sup> *Montana Wildlife Fed’n v. Haaland*, 127 F.4th 1, 39 (9th Cir. 2025).

<sup>41</sup> *Id.*

<sup>42</sup> *Fox*, 556 U.S. at 515 (emphasis added).

interests” and when the agency’s “new policy rests upon factual findings that contradict those which underlay its prior policy.”<sup>43</sup>

## 1. Reliance interests

In changing a position upon which parties may have relied, an agency must perform three tasks: “assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns.”<sup>44</sup> The Supreme Court recently emphasized the importance of this requirement in *Department of Homeland Security v. Regents of the University of California*, where it reversed the Department of Homeland Security’s (DHS’s) termination of the Deferred Action for Childhood Arrivals (DACA) program.<sup>45</sup> The Court faulted the agency for failing to consider how the rescission might affect DACA recipients, their families, and their communities.<sup>46</sup>

To identify potential reliance interests that the agency may have failed to adequately consider, litigants might peruse the cost-benefit analyses published with the prior rule or any public comments posted to the administrative record. They might emphasize how individuals, organizations, communities, and state and local governments took action oriented around the agency’s status quo<sup>47</sup> and how a change could be disruptive,<sup>48</sup> financially or otherwise.<sup>49</sup> For example, the Court in *Regents* noted that the “consequences of the [DACA] rescission ... would radiate outward to DACA recipients’ families, ... to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them.”<sup>50</sup> The Court also acknowledged the impact that the rescission of DACA might have on economic activity and local, state, and federal tax revenues.<sup>51</sup> Thus, the

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<sup>43</sup> *Id.*

<sup>44</sup> *Regents*, 591 U.S. at 33.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 31-32.

<sup>47</sup> See, e.g., *Encino Motorcars*, 579 U.S. at 222-23 (explaining how “[d]ealerships and service advisors negotiated and structured their compensation plans against” the prior agency position); see also, e.g., *New York v. Trump*, No. 25-CV-11221-PBS, 2025 WL 3514301, at \*14 (D. Mass. Dec. 8, 2025) (agency failed to consider how states’ energy policies might have relied on the agency’s prior policy of adjudicating wind power permit applications).

<sup>48</sup> See, e.g., *Regents*, 591 U.S. at 31-32.

<sup>49</sup> *Am. Pub. Health Ass’n v. Nat’l Institutes of Health*, 145 F.4th 39, 54 (1st Cir. 2025) (noting that the agency failed to consider “non-financial interests staked on the grant awards, including years of research and millions of hours of work”).

<sup>50</sup> *Id.* at 31 (internal quotation omitted).

<sup>51</sup> *Id.*

agency was required to acknowledge the existence of these potential reliance interests.

In demonstrating that an agency failed to adequately treat various reliance interests as “serious,” litigants might explain how the interests have “built up” over “decades,”<sup>52</sup> were created by statute,<sup>53</sup> or were otherwise “justifiable.”<sup>54</sup> That a given policy was nominally temporary or “conferred no substantive rights,” as in *Regents*, does not allow an agency to disregard reliance thereupon; instead, the temporary nature is but one factor that the agency might consider in assessing the strength of the reliance interests.<sup>55</sup> In addition to the longevity of the prior policy, the size of the impact on a reliant party can weigh in favor of an interest being serious,<sup>56</sup> as can the fact that the government had explicitly acknowledged the creation of such interests in a prior contract-like device.<sup>57</sup> Lower courts have found serious reliance interests in a wide range of circumstances, including in some instances where a supposedly reliant party failed to show that it took any actions in reliance on the prior policy.<sup>58</sup>

In contrast, a reliance interest might be unreasonable (and therefore not “serious”) where parties relied on positions taken during internal agency deliberations<sup>59</sup> or where they had notice of a potential change. For an example of the latter: the D.C. Circuit agreed with the Federal Communication Commission that parties’ reliance on the agency’s new net neutrality rules was not reasonable because of the agency’s long, contrary regulatory history and the extensive legal challenges that the new policy faced.<sup>60</sup> Due to these factors, the net neutrality order “could reasonably have been viewed as a regulatory step that might soon be reversed.”<sup>61</sup>

Once an agency has identified a serious reliance interest, the agency must justify its decision to override that interest. Agencies have discretion to decide how reliance interests stack up against their policy priorities,<sup>62</sup> but litigants might nonetheless identify instances where an agency has failed to explicitly make those determinations or where an agency has not offered reasons that are “tailored” to the

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<sup>52</sup> *Wages & White Lion*, 604 U.S. at 585; *Mozilla Corp.*, 940 F.3d at 64.

<sup>53</sup> *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 992 (9th Cir. 2025); *Int’l Org. of Masters, Mates & Pilots, ILA, AFL-CIO v. Nat’l Lab. Rels. Bd.*, 61 F.4th 169, 179 (D.C. Cir. 2023) (noting that employees could lose coverage under labor laws as a result of the change in position).

<sup>54</sup> *Shenzhen Youme Info. Tech. Co.*, 147 F.4th at 513.

<sup>55</sup> *Regents*, 591 U.S. at 30.

<sup>56</sup> *Am. Hosp. Ass’n v. Kennedy*, No. 25-2236, 2026 WL 49499, at \*3 (1st Cir. Jan. 7, 2026).

<sup>57</sup> See Haiyun Damon-Feng, *Administrative Reliance*, 73 Duke L.J. 1743, 1798-1805 (2024), citing *Texas v. Biden*, 20 F.4th 928, 990 (5th Cir. 2021).

<sup>58</sup> *Id.*

<sup>59</sup> *Logic Tech. Dev. LLC v. United States Food & Drug Admin.*, 84 F.4th 537, 552 (3d Cir. 2023).

<sup>60</sup> *Mozilla Corp.*, 940 F.3d at 64.

<sup>61</sup> *Id.*

<sup>62</sup> *Noem*, 152 F.4th at 291; see *In re FCC 11-161*, 753 F.3d 1015, 1143 (10th Cir. 2014).

reliance interests the agency is overriding.<sup>63</sup> Courts generally require a more substantial explanation for overriding reliance interests where they have built up over long periods of time.<sup>64</sup>

A recent Ninth Circuit case concerning DHS’s decision to terminate a parole program for certain migrants helps to illustrate these principles. In upholding DHS’s decision, the court concluded that the agency’s consideration of reliance interests was sufficient, explaining “[t]he Plaintiffs, of course, disagree with the Secretary’s reasoning and the weight that she gave to [the parolees’ and their supporters’] significant reliance interests,” but the agency’s explicit consideration of those interests was all the “deferential arbitrary and capricious standard” demanded, not any particular policy outcome.<sup>65</sup> In that case, the policy announcement at issue included a four-page summary of the relevant reliance interests and their significance relative to the agency’s policy objectives.<sup>66</sup>

The Ninth Circuit contrasted the policy announcement with that in *Regents*, “where the Secretary did not address the reliance interests of [DACA] beneficiaries in terminating the policy.”<sup>67</sup> The *Regents* Court explained that adequately considering reliance interests might have included expressly considering alternatives in its policy design, such as a more gradual wind-down of the DACA program or at least one that took into account recipients’ ongoing commitments like schooling or military service, and comparing those alternatives to the agency’s policy aims.<sup>68</sup> Similarly, the Court in *Encino Motorcars* found the agency’s consideration of reliance interests lacking where the agency “offered barely any explanation” for its changed interpretation of a particular statutory provision.<sup>69</sup> The Court criticized the agency’s conclusory statements about the statutory language and the reasonableness of its interpretation in light of the fact that various parties had “negotiated and structured their compensation plans against” the prior policy.<sup>70</sup>

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<sup>63</sup> *Am. Fuel & Petrochemical Manufacturers v. Env’t Prot. Agency*, 937 F.3d 559, 578 (D.C. Cir. 2019) (noting that the agency explicitly determined that the “marginal benefit” of the prior policy to parties relying on it was “outweighed” by its costs).

<sup>64</sup> *MediNatura, Inc. v. Food & Drug Admin.*, 998 F.3d 931, 942 (D.C. Cir. 2021).

<sup>65</sup> *Noem*, 152 F.4th at 290-91.

<sup>66</sup> See Department of Homeland Security, Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13617-20 (Mar. 25, 2025). However, an explanation need not be wordy; for example, including a pecuniary reliance interest in a rule’s cost-benefit analysis might be sufficient. *Guedes v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 920 F.3d 1, 34 (D.C. Cir.), judgment entered, 762 F. App’x 7 (D.C. Cir. 2019).

<sup>67</sup> *Noem*, 152 F.4th at 290.

<sup>68</sup> *Regents*, 591 U.S. at 31-32.

<sup>69</sup> 579 U.S. at 222.

<sup>70</sup> *Id.*

Reliance interests may be particularly relevant in the context of the Trump administration's deregulatory efforts. If those efforts are as far-reaching as the administration has signaled,<sup>71</sup> and if rulemaking documents continue to be as sparsely written and reasoned as they have been so far,<sup>72</sup> it is likely that the administration's actions will often disrupt regulatory schemes upon which individuals and entities have relied, without sufficient justification.

## 2. Changed factual findings

An agency must also supply a "more detailed justification" for a new policy when it relies on factual findings contrary to those underlying the agency's prior policy.<sup>73</sup> To trigger this requirement, "a challenger must be able to identify 'new findings' that contradict prior findings on which the agency relied."<sup>74</sup> Sometimes new, contradictory findings will be obvious: perhaps the agency previously concluded that a concentration of 10 parts per million was unsafe, and now it does not. But more subtle shifts can also count, like an agency's assessment of a particular risk level or other kinds of scientific or economic findings.<sup>75</sup> For instance, the Ninth Circuit found arbitrary a Forest Service decision that determined an environmental plan "pose[d] only minor risks to roadless values" when the agency's earlier determination had found the same plan "posed a high risk" to those values.<sup>76</sup> The agency's reversal on this factual predicate without adequate explanation rendered the new policy arbitrary and capricious.

In contrast, the D.C. Circuit upheld an FCC rule that forthrightly acknowledged its previous determinations as to the necessity of a particular rule that regulated conduct, and then determined that a similar level of compliance could be achieved through other measures, including transparency requirements and consumer protection and antitrust enforcement.<sup>77</sup> "Rather than ignoring its prior findings, the Commission changed its balancing of the relevant incentives," and did so reasonably.<sup>78</sup>

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<sup>71</sup> Davenport, *supra* note 1.

<sup>72</sup> See Bridget Pals & Max Sarinsky, Recissions Without Reasons, Institute for Policy Integrity (June 2025), [https://policyintegrity.org/files/publications/Barebones\\_Rescissions\\_Brief\\_vF.pdf](https://policyintegrity.org/files/publications/Barebones_Rescissions_Brief_vF.pdf).

<sup>73</sup> *Fox*, 556 U.S. at 515.

<sup>74</sup> *Ctr. for Biological Diversity v. U.S. Fish & Wildlife Serv.*, 698 F. Supp. 3d 39, 74 (D.D.C. 2023), *aff'd sub nom. Ctr. for Biological Diversity v. United States Fish & Wildlife Serv.*, 146 F.4th 1144 (D.C. Cir. 2025) (quoting *Nat'l Ass'n of Home Builders v. EPA*, 682 F.3d 1032, 1037-38 (D.C. Cir. 2012)).

<sup>75</sup> See, e.g., *Nat'l Ass'n of Manufacturers v. SEC*, 105 F.4th 802, 811 (5th Cir. 2024).

<sup>76</sup> *Organized Vill. of Kake v. U.S. Dep't of Agric.*, 795 F.3d 956, 968 (9th Cir. 2015).

<sup>77</sup> *Mozilla Corp.*, 940 F.3d at 55-56.

<sup>78</sup> *Id.* at 56.

As with the arbitrary-and-capricious standard generally, when a more detailed explanation is required, it must be reasonable.<sup>79</sup> The agency must do more than say “[t]hat was then — this is now,”<sup>80</sup> and it cannot offer mere speculation.<sup>81</sup> But it need not create *new* factual findings.<sup>82</sup> Rather, it must offer a “reasoned explanation” for reassessing the same facts, show that circumstances have changed sufficiently, or explain how and why the agency is reprioritizing its policy considerations.<sup>83</sup> In other words, the agency’s prior factual finding is “relevant data,” and as it generally must, the agency must “articulate a satisfactory explanation” with respect to its departure, and describe a “rational connection between the facts found and the choice made.”<sup>84</sup> Just as an agency may not “ignore inconvenient facts when it writes on a blank slate,” it also cannot “simply disregard contrary or inconvenient factual determinations that it made in the past.”<sup>85</sup>

This requirement might be especially demanding in the context of the Trump administration’s deregulatory agenda, where agencies are likely to change course on longstanding regulations that were issued based on detailed analyses and that, in some cases, rest on an “identical factual record” as the new policy.<sup>86</sup> Litigants might therefore inspect the cost-benefit analyses undergirding the prior agency policies to identify past factual findings reached and considered by the agency and argue that, in the agency’s new action, it has failed to justify disregarding those risks. Among other things, litigants might also look to rule preambles, agency press statements, and replies to public comments to identify an agency’s prior scientific or economic findings.

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<sup>79</sup> *Humane Soc. of U.S. v. Locke*, 626 F.3d 1040, 1050-51 (9th Cir. 2010).

<sup>80</sup> *Nat’l Ass’n of Manufacturers*, 105 F.4th at 812. (quotation omitted).

<sup>81</sup> *California by & through Becerra v. Azar*, 950 F.3d 1067, 1114 (9th Cir. 2020).

<sup>82</sup> *United States Sugar Corp. v. Env’t Prot. Agency*, 830 F.3d 579, 626 (D.C. Cir.), *on reh’g en banc*, 671 F. App’x 822 (D.C. Cir. 2016), *and on reh’g en banc in part*, 671 F. App’x 824 (D.C. Cir. 2016).

<sup>83</sup> *Solar Energy Indus. Ass’n v. FERC*, 80 F.4th 956, 980 (9th Cir. 2023).

<sup>84</sup> *Humane Soc.*, 626 F.3d at 1048 (quoting *State Farm*, 463 U.S. at 43); see Cong. Res. Serv., Agency Rescissions of Legislative Rules 20 (Feb. 2021), <https://www.congress.gov/crs-product/R46673> (“Where an agency is changing a prior rule, that prior rule constitutes an additional factor that the agency must consider as part of its reasoned decisionmaking”).

<sup>85</sup> *Fox*, 556 U.S. at 537 (Kennedy, J., concurring in part and concurring in the judgment).

<sup>86</sup> *Kake*, 795 F.3d at 959 (9th Cir. 2015).

## IV. CONCLUSION

The Supreme Court's formalization of the change-in-position doctrine in *Wages & White Lion* provides a valuable framework for challenging the Trump administration's policy reversals. While the doctrine does not require agencies to justify why their new policies are better than their old policies, it does impose meaningful requirements designed to ensure that policy changes result from reasoned decisionmaking, rather than arbitrary shifts.

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