



October 20, 2026

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

CC: The Honorable Todd Blanche
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Request for Comprehensive Review of the Current State of Biden-Era Litigation Positions to Ensure Consistency with Current Administration Policy

Dear President Trump,

You began your second Administration by directing the federal bureaucracy to carry out the program on which you campaigned and for which the American people voted. Executive Order No. 14,154, "Unleashing American Energy," 90 Fed. Reg. 8,353 (Jan. 29, 2025), is one example among many. Some agencies have yet to fully align their litigation positions expressly with the Administration's announced policy. Others continue to defend inherited positions that warrant review under your directives.

Inconsistent execution of your presidential authority must cease. Executive Order No. 14,215, "Ensuring Accountability for All Agencies," § 7, 90 Fed. Reg. 10,447, 10,448–49 (Feb. 24, 2025), prohibits executive-branch employees from advancing a legal interpretation as the position of the United States when it conflicts with the President's or Attorney General's opinion. The only exceptions require presidential authorization or written authorization from the Attorney General. The order expressly reaches positions advanced in litigation.

We therefore strongly encourage your Administration to undertake a comprehensive review of litigation in which the United States or its agencies are parties. This review will be particularly important to rural and small urban communities where federal regulations have threatened local economies and increased energy and health-care costs. The review should focus on regulations issued or defended during the Obama and Biden Administrations. It should determine whether positions currently defended by DOJ accord with current policy and your directives.

Perhaps the clearest example of such a review-and-reversal is *Missouri v. Biden*, No. 3:22-cv-01213-TAD-KDM (W.D. La.). On March 25, 2026, the court entered a ten-year consent decree. It bars the Surgeon General, the Centers for Disease Control and Prevention, and the Cybersecurity and Infrastructure Security Agency from coercing specified social-media platforms to suppress the plaintiffs' constitutionally protected content. The decree offers a useful model. DOJ recognized that a position inherited from the prior Administration conflicted with current policy and chose a lawful resolution tailored to the case. The same

discipline should govern other inherited matters, whether the proper course is a change of position, voluntary remand, vacatur, stipulated dismissal, settlement, or continued defense.¹

I. Environmental and Energy Cases Warrant Immediate Attention.

Environmental, energy, and climate litigation presents the clearest risk that the Department of Justice is still defending, or has failed to expressly reverse before the court, Biden-era regulatory positions that the Administration has otherwise formally disavowed.

Your Administration properly reversed course in *American Gas Association v. U.S. Department of Energy*, 157 F.4th 476 (D.C. Cir. 2025). The D.C. Circuit upheld a Biden Department of Energy conservation standard that effectively eliminated certain noncondensing furnaces and commercial water heaters. The Solicitor General later told the Supreme Court that the judgment should be vacated because the D.C. Circuit had applied an incorrect legal standard. On June 8, 2026, the Supreme Court granted the petition, vacated the judgment, and remanded the case for further consideration in light of the Solicitor General's position.²

A timely review prevented the appellate judgment from remaining in place. Other similar inherited positions should be examined before they harden into appellate judgments.

Two EPA matters deserve the Administration's prompt attention:

A. EPA Greenhouse Gas Standards for Power Plants

In May 2024, the Biden EPA finalized greenhouse-gas standards for new and existing fossil-fuel-fired power plants under Sections 111(b) and 111(d) of the Clean Air Act, 42 U.S.C. §§ 7411(b), (d). Like its predecessor rule, the Obama "Clean Power Plan" overturned in *West Virginia v. EPA*, 597 U.S. 697, 735 (2022), the rule rests in substantial part on claims of carbon-capture-and-storage technology having been adequately demonstrated and is designed to force "generation shifting" from coal and gas to wind and solar. It became the subject of consolidated challenges in *West Virginia v. EPA*, No. 24-1120 (D.C. Cir.).³

EPA obtained an abeyance of the litigation challenging the Biden rule. After proposing the latter's repeal in June 2025, in September EPA finalized a key phase of this reversal by issuing a final rule partially repealing the 2024 Carbon Pollution Standards for fossil fuel-fired power plants.⁴ The partial repeal was published on September 17, 2026, and takes effect on November 16, 2026. It leaves some requirements in place, which EPA proposes to rescind separately. The 2022 *West Virginia v. EPA* opinion's major-questions analysis and rejection of the Clean Power Plan's generation-shifting approach make it particularly important that the Administration document, with Biden-era records, the ways the 2024 rule again violates *West Virginia*.

EPA and DOJ should explain what issues remain for judicial resolution and seek the appropriate disposition. When an inherited position warrants reconsideration, courts routinely permit agencies to seek voluntary remand so that they can correct their own errors.⁵ In addition to completing the repeal process, EPA and

¹ Consent Decree, *Missouri v. Biden*, No. 3:22-cv-01213-TAD-KDM, ECF No. 478 (W.D. La. Mar. 25, 2026).

² *American Gas Ass'n v. Department of Energy*, No. 25-879, 2026 U.S. LEXIS 2453 (U.S. June 8, 2026) (mem.) (granting the petition, vacating the judgment, and remanding for further consideration in light of the Solicitor General's position).

³ New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units, 89 Fed. Reg. 39,798 (May 9, 2024) (codified at 40 C.F.R. pt. 60, subpts. TTTTa and UUUUb).

⁴ Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, 91 Fed. Reg. 58,954 (Sept. 17, 2026); at the same time EPA also issued a Federal Register Proposal to rescind remaining greenhouse gas standards under Clean Air Act Section 111.

DOJ should also, separately, confess the legal errors underlying the 2024 rule. Substantial evidence of the rule's unlawfulness exists in the public record and, we are confident, is further supported in records of which the current EPA is now the custodian.⁶ EPA and DOJ should seek remand so EPA can evaluate the evidence from outside the existing administrative record, which supports the Agency's current position, through the proper administrative process.

The remaining task is to align the litigation with EPA's completed and proposed regulatory actions.⁷ The Attorney General should direct DOJ to complement the Agency's position and place a formal confession of the Biden-era agency's error in the court record, consistent with your energy policy.

B. PFAS Litigation

DOJ continued to defend the Biden EPA's designation of PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9602, in *Chamber of Commerce v. EPA*, No. 24-1193 (D.C. Cir.). On August 18, 2026, the D.C. Circuit denied the petitions and upheld the designation after briefing and argument by current DOJ officials.⁸ EPA expressly announced on September 17, 2025, that it would retain the designation and had submitted a court filing reflecting that decision. The Administration should explain how that policy choice and DOJ's continued defense fit its broader regulatory policy.

EPA should explain its position in the drinking-water case. In *American Water Works Association v. EPA*, No. 24-1188 (D.C. Cir.), EPA is defending the PFOA and PFOS limits while proposing to rescind the limits for PFHxS, PFNA, HFPO-DA, and the Hazard Index mixture. The comment period on the rescission proposal closed July 20, 2026, and EPA has not issued a final rescission rule. The court heard oral argument on September 18, 2026. EPA's current policy distinguishes among the six categories. The Administration should state whether DOJ's selective defense reflects that policy choice.⁹

II. Health-Care Litigation Presents the Same Problem.

The 2024 CMS nursing-home staffing rule provides an example of how continued delay in correcting the Administration's position in court leads to wasted resources. The rule required every Medicare- and Medicaid-certified long-term-care facility to provide at least 3.48 hours of nursing care per resident day and to maintain a registered nurse onsite around the clock. On April 7, 2025, the district court in *American Health Care Association v. Kennedy*, No. 2:24-cv-00114 (N.D. Tex.), vacated those requirements. The court held that CMS had displaced the eight-hour registered-nurse baseline Congress enacted and ignored Congress's direction to tailor staffing to each facility's nursing needs.¹⁰

⁵ See *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993).

⁶ *Id.*; see also Chris Horner, "Trump Will Want to 'Confess Error'," *Wall Street Journal*, Nov. 17, 2024, <https://www.wsj.com/opinion/trump-will-want-to-confess-error-deregulation-agencies-06b5cb2b>.

⁷ See, e.g., Chief Justice John Roberts's concerns over precisely this outcome in the 2016 debate over staying the Clean Power Plan. Jodi Kantor, "Inside the Supreme Court's Risky New Way of Doing Business," *The New York Times*, April 18, 2026, <https://www.nytimes.com/2026/04/18/us/politics/supreme-court-shadow-docket.html>.

⁸ *Chamber of Commerce of the United States v. EPA*, No. 24-1193, 2026 U.S. App. LEXIS 24905, at *64 (D.C. Cir. Aug. 18, 2026). See also EPA, Trump EPA Announces Next Steps on Regulatory PFOA and PFOS Cleanup Efforts, Provides Update on Liability and Passive Receiver Issues (Sept. 17, 2025), <https://www.epa.gov/newsreleases/trump-epa-announces-next-steps-regulatory-pfoa-and-pfos-cleanup-efforts-provides>.

⁹ EPA, Proposed PFAS Rescission Rule (May 18, 2026); Final Brief for Respondents, *American Water Works Ass'n v. EPA*, No. 24-1188 (D.C. Cir. Mar. 6, 2026); D.C. Circuit, Oral Argument Recordings, No. 24-1188 (Sept. 18, 2026).

HHS appealed. Congress then barred CMS from implementing or enforcing the staffing requirements through September 30, 2034. Even so, the appeal remained pending until DOJ moved to dismiss it on September 18, 2025. The Fifth Circuit dismissed it the next day. HHS later repealed the requirements, explaining that they did not follow from the best interpretation of the governing statutes and did not reflect current policy.¹¹ The appeal had already generated unnecessary proceedings by the time the government corrected its position. A mandatory review at the outset would have aligned the government's litigation position with current policy sooner.

The 2024 HHS Section 504 rule presents a related coordination problem. On June 18, 2026, the Office of Legal Counsel concluded that neither Section 504 of the Rehabilitation Act nor Title II of the Americans with Disabilities Act imposes an integration mandate on States. OLC also concluded that neither statute authorizes executive agencies to impose one. Three months earlier, the Eleventh Circuit had affirmed core parts of a judgment enforcing that mandate in *United States v. Florida*, 172 F.4th 1201 (11th Cir. 2026), based on the government's earlier position. DOJ has now changed course. On August 13, 2026, the United States asked the Eleventh Circuit to vacate its opinion and remand the case because the government's legal position had changed. The Attorney General should ensure that HHS's rulemaking and public guidance, the federal defendants' position in *Texas v. Kennedy*, No. 5:24-cv-00225 (N.D. Tex.), and any further proceedings in *United States v. Florida* all reflect the Administration's announced interpretation to the extent permitted by controlling law.¹²

The Medicaid provider-tax litigation is a pending appeal that presents another opportunity to correct Biden-era regulatory overreach. In *Texas v. Oz*, No. 25-40766 (5th Cir.), CMS is defending an interpretation of Medicaid's "hold harmless" restrictions that impermissibly restricts purely private agreements among private hospitals, funding mechanisms that are essential particularly to rural and safety-net hospitals.¹³ As Defend Forgotten America explains in its amicus brief, the statute requires the State (or other governmental entity) itself to guarantee reimbursement of the tax. A private agreement among private parties simply does not satisfy that requirement.¹⁴

¹⁰ Medicare and Medicaid Programs; Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting, 89 Fed. Reg. 40,876, 40,878 (May 10, 2024); *American Health Care Ass'n v. Kennedy*, 777 F. Supp. 3d 691, 695, 701–08 (N.D. Tex. 2025).

¹¹ Order, *American Health Care Ass'n v. Kennedy*, No. 25-10700, 2025 U.S. App. LEXIS 32248, at *2 (5th Cir. Sept. 19, 2025) (dismissing the appeal on appellants' motion); Pub. L. No. 119-21, § 71111, 139 Stat. 72, 298 (2025); Medicare and Medicaid Programs; Repeal of Minimum Staffing Standards for Long-Term Care Facilities, 90 Fed. Reg. 55,687, 55,690 (Dec. 3, 2025).

¹² OLC, Application of the Rehabilitation Act and Americans with Disabilities Act to State Institutionalization of Patients with Severe Mental Illness or Disabilities, 50 Op. O.L.C. __ (June 18, 2026); 89 Fed. Reg. 40,066 (May 9, 2024); *United States v. Florida*, 172 F.4th 1201 (11th Cir. 2026); Unopposed Motion to Vacate and Remand, *United States v. Florida*, No. 23-12331 (11th Cir. Aug. 13, 2026); 91 Fed. Reg. 45,287 (July 20, 2026).

¹³ Brief of Defend Forgotten America as Amicus Curiae in Support of Appellee at 2–4, 8–11, *Texas v. Oz*, No. 25-40766 (5th Cir. June 17, 2026), ECF No. 49 [hereinafter DFA Br.]; Brief of Amici Curiae Florida Essential Healthcare Partnerships et al. in Support of Appellees at 4–10, *Texas v. Oz*, No. 25-40766 (5th Cir. June 24, 2026), ECF No. 66 [hereinafter Hospital Br.].

¹⁴ 42 U.S.C. § 1396b(w)(4)(C)(i); DFA Br. 9–14.

CMS's reasoning sweeps so broadly that it threatens ordinary provider-tax financing that Congress has expressly preserved, including as recently as in the 2025 reconciliation law.¹⁵ CMS's reading disregards the statute's saving clause and carefully defined limits. It is a vast expansion of federal authority over private contracts with billions of dollars in Medicaid funding at stake.¹⁶ And CMS reversed decades of settled practice without adequately explaining its change, addressing significant comments, or accounting for States' and hospitals' longstanding reliance on its prior position.¹⁷

CMS's response to the preliminary injunction in the Texas litigation underscores the need for nationwide corrective action. Rather than reconsider its interpretation after the district court rejected it, CMS treated the injunction's geographic limitation to Texas as an opening to press the same policy in other States. Within 72 hours of the November 2024 presidential election, CMS restarted its Florida audit, and an internal email expressly cited the court's clarification that the injunction applied "only to Texas and not nationally."¹⁸ CMS then conditioned Florida's Medicaid waiver renewal on compliance with the same wrongful interpretation rejected by the judge in the Texas litigation.¹⁹ Although the injunction did not bar enforcement outside Texas, this conduct illustrates why relief confined to one State leaves hospitals and patients elsewhere exposed to the same unlawful policy. DOJ and HHS should acknowledge these errors, abandon the challenged interpretation, and vacate the agency actions implementing it.

III. Opportunities to Rescind Rules in Litigation Should Not Be Squandered.

The same issue may arise in other cases in which DOJ represents federal agencies on positions formulated under prior Administrations. Public records or agency files may reveal legal defects, pretextual reasoning, or an assertion of authority foreclosed by the major questions doctrine. The review should identify those defects and determine whether confession of error or other corrective action is warranted. Congress has reserved the conduct of federal litigation to DOJ under the Attorney General's direction and requires the Attorney General to supervise all such litigation.²⁰ Executive Order No. 14,215 reinforces the need to ensure that executive-branch employees advance legal positions consistent with controlling interpretations. A government-wide review should therefore determine which inherited positions remain lawful and consistent with current policy.

You should order a review on a fixed timetable and require responsible officials to state their decisions in writing. We respectfully request the following steps:

1. Direct the Attorney General to complete, within 30 days, a government-wide inventory of pending cases in which the United States is defending regulations, guidance, or legal interpretations adopted

¹⁵ 42 U.S.C. § 1396b(w)(4)(A)–(D) & concluding unnumbered paragraph; Pub. L. No. 119-21, § 71115, 139 Stat. 72, 301–02 (2025); DFA Br. 12.

¹⁶ DFA Br. 15–16 (explaining the economic significance of the asserted authority and its intrusion into private commercial arrangements traditionally governed by state law); see also *West Virginia v. EPA*, 597 U.S. 697, 721–24 (2022).

¹⁷ DFA Br. 17–21; see also *FDA v. Wages & White Lion Invs., L.L.C.*, 604 U.S. 542, 569–70 (2025).

¹⁸ Hospital Br. 14–15 (citing ROA.1949, 1951 and quoting CMS's internal email).

¹⁹ Hospital Br. 15–16 & nn.7–9 (citing CMS's January 31, 2025 waiver-approval letter to Florida's Deputy Secretary for Medicaid, Special Terms and Conditions 84–88, and the February 26, 2025 congressional letter to Secretary Kennedy).

²⁰ 28 U.S.C. §§ 516, 519.

during the Obama or Biden Administrations, with particular attention to cases arising under the Administrative Procedure Act, 5 U.S.C. §§ 701–706;

2. Require the responsible agency and DOJ division to identify the current policy governing each case and recommend a case-specific disposition among options of continued defense, change of position, voluntary remand, remand with vacatur, stipulated dismissal, settlement, or confession of error where the law and the totality of the record available to the Administration support it;
3. Require written approval from the responsible agency head and appropriate DOJ official before the United States files a merits brief defending an inherited position, with certification that the position is consistent with the President's directives and the agency's current policy;
4. Require prompt notice to the relevant court whenever the government's policy or legal interpretation has changed materially, together with a request for the procedural relief needed to prevent the case from proceeding on a superseded premise; and
5. Publish a periodic report identifying completed reviews and dispositions, subject to legitimate privileges and litigation sensitivities.

These measures would carry out your executive orders addressing regulatory overreach and assertions of authority Congress never granted. For too long, rural and small urban communities across our country have felt the consequences of burdensome regulations that threaten their way of life. The American people elected this Administration in substantial part because it promised to end that overreach, especially in environmental, energy, and health-care policy. DOJ's courtroom positions should follow the law and the Administration's current policy, as determined by officials accountable to you. We respectfully request prompt action.

Sincerely,

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