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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
 YUOK TRIBE, CHEROKEE NATION, FACING
 FOSTER CARE IN ALASKA, ARK OF
 FREEDOM ALLIANCE, RUTH ELLIS CENTER,
 and TRUE COLORS, INC.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
 Secretary of Health and Human Services,
 JOOYEUN CHANG, in her official capacity as
 Acting Assistant Secretary for the Administration for
 Children and Families, U.S. DEPARTMENT OF
 HEALTH AND HUMAN SERVICES, and
 ADMINISTRATION FOR CHILDREN AND
 FAMILIES,

Defendants.

Case No. 20-cv-6018 (MMC)

**[PROPOSED] ORDER GRANTING
 PLAINTIFFS' MOTION FOR
 SUMMARY JUDGMENT**

I. INTRODUCTION

Before the Court is Plaintiffs’ Motion for Summary Judgment against Defendants Xavier Becerra, in his official capacity as Secretary of Health and Human Services; Jooyeun Chang, in her official capacity as Acting Assistant Secretary for the Administration for Children and Families; the U.S. Department of Health and Human Services; and the Administration for Children and Families (collectively, “Defendants”). Plaintiffs have moved for summary judgment on Count I of their Complaint against Defendants under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), for issuing a rulemaking that is contrary to their statutory obligations under the Social Security Act, 42 U.S.C. § 679(c)(3), and for failing to provide adequate reasoned analysis; properly balance costs and benefits; consider and respond to comments; consider all relevant statutory factors; acknowledge that no underlying facts had changed since 2016; explain inconsistencies between their position and the full record of research and policy findings before it; and acknowledge or justify their changes in position.

II. STANDARD OF REVIEW

Summary judgment is appropriate where the moving party “shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Where the questions are purely legal in nature, a court can resolve a challenge to a federal agency’s action on a motion for summary judgment. *See Fence Creek Cattle Co. v. U.S. Forest Serv.*, 602 F.3d 1125, 1131 (9th Cir. 2010). “Generally, judicial review of agency action is limited to review of the record on which the administrative decision was based.” *Zieroth v. Azar*, No. 20-cv-172, 2020 WL 5642614, at *1 (N.D. Cal. Sept. 22, 2020) (quoting *Thompson v. U.S. Dep’t of Labor*, 885 F.2d 551, 555 (9th Cir. 1989)). “A reviewing court can, however, ‘go outside the administrative record . . . for the limited purpose of background information.’” *Id.*

III. DISCUSSION

Under the APA, “[t]he reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). *See also East Bay Sanctuary Covenant v. Biden*, 933 F.3d 640, 681 (9th Cir. 2021) (“[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated[.]” (internal quotation omitted)).

Here, Defendants’ issuance of the 2020 Final Rule on the Adoption and Foster Care Analysis and Reporting System, 85 Fed. Reg. 28,410 (May 12, 2020), is not in accordance with law because Defendants refused to collect demographic data regarding sexual orientation, as required by the Social Security Act. 42 U.S.C. § 679(c)(3) (requiring Defendants to collect “comprehensive national information with respect to . . . the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents”); Pls.’ Mot. for Summ. J. at 20.

The 2020 Final Rule is also arbitrary and capricious. To begin, Defendants failed to consider an important aspect of a problem, offered explanations for the rule that are contrary to the evidence, and provided rationales that were so implausible that they could not be ascribed to a difference in view or be the product of agency expertise. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *see* Pls.’ Mot. for Summ. J. at 23-28. Further, Defendants reversed their prior position without “display[ing] awareness that [they were] changing position,” “show[ing] that there are good reasons for the new policy,” and providing “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (quoting *FCC v. Fox Tele. Stations, Inc.*, 556 U.S. 502, 515-16 (2009)); *see* Pls.’ Mot. for Summ.

1 J. at 22-23, 26-30. Finally, Defendants failed to “consider and respond to significant comments.”
2 *Perez v. Mortg. Bankers Ass’n*, 575 U.S. 92, 96 (2015); Pls.’ Mot. for Summ. J. at 23-24, 27, 30.

3 Accordingly, summary judgment is appropriate for Plaintiffs and the 2020 Final Rule
4 should be vacated.

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6 **IV. CONCLUSION**

7 For the foregoing reasons, the Court’s ruling is as follows:

8 Plaintiffs’ motion for summary judgment against Defendants on Count I of Plaintiffs’
9 Complaint is GRANTED; and it is further

10 DECLARED that the 2020 Final Rule violates the Administrative Procedure Act and the
11 Social Security Act; and

12 ORDERED that the 2020 Final Rule is vacated.

13 **IT IS SO ORDERED.**

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15 DATED: _____

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18 HONORABLE MAXINE M. CHESNEY
19 United States District Judge
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