

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED FOOD AND
COMMERCIAL WORKERS UNION,
LOCAL No. 663, *et al.*,

Case No. 0:19-cv-02660-JNE-TNL

**PLAINTIFFS' NOTICE OF
SUPPLEMENTAL AUTHORITY**

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE,

Defendant.

Plaintiffs hereby notify the Court of supplemental authority in support of their opposition to Defendant USDA's motion to stay summary-judgment proceedings and for voluntary remand (ECF 40). In *Department of Homeland Security v. Regents of the University of California*, U.S. No. 18-587, 2020 WL 3271746 (June 18, 2020) (*DHS*), the Supreme Court reiterated the "foundational principle of administrative law that judicial review of agency action is limited to the grounds that the agency invoked when it took the action." *Id.* at *9 (citation omitted). Accordingly, where the grounds an agency invoked at the time of an action are inadequate, the agency has two options. "First, the agency can offer 'a fuller explanation of the agency's reasoning *at the time of the agency action.*'" *Id.* at *9 (quoting *Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 654 (1990)). If the

agency chooses this approach, it may “elaborate” on the reasons set forth at the time of action “but may not provide new ones.” *Id.* “Alternatively, the agency can ‘deal with the problem afresh’ by taking *new* agency action. An agency taking this route is not limited to its prior reasons but must comply with the procedural requirements for new agency action.” *Id.* (quoting *SEC v. Chenery*, 332 U.S. 194, 201 (1947)).

Here, USDA requests a remand so that it may provide a new reason for the October 2019 rule challenged in this case. *See* ECF 49 at 13–17. Under *DHS*, however, USDA may not rely on a new reason without “comply[ing] with the procedural requirements for new agency action,” including a new notice-and-comment process. Because the Court would not be able to consider any new reason offered by the agency to explain its October 2019 action, and USDA has explicitly disavowed any intent to reconsider the agency action at issue, *see, e.g.*, ECF 42 at 17, the remand and stay requested by the agency would be futile. Accordingly, the Court should deny USDA’s motion.

Dated: June 18, 2020

Respectfully submitted,

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