CASENOTE

ADMINISTRATIVE LAW—JUDICIAL REVIEW— RESCISSION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS HELD ARBITRARY AND CAPRICIOUS UNDER THE ADMINISTRATIVE PROCEDURE ACT. *DEPARTMENT OF HOMELAND SECURITY V. REGENTS OF THE UNIVERSITY OF CALIFORNIA*, 140 S. CT. 1891 (2020).

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The Administrative Procedure Act ("APA") holds government agencies accountable by subjecting certain actions to judicial review.[1] Without judicial review, administrative action could "become a monster which rules with no practical limits on its discretion."[2] In *Department of Homeland Security v. Regents of the University of California*, the United States Supreme Court exercised its powers of judicial review, holding that the Department of Homeland Security's ("DHS") rescission of the Deferred Action for the Childhood Arrivals ("DACA") program was arbitrary and capricious in violation of the APA because the agency failed to consider and weigh reliance interests against policy justifications for rescission.[3]

During the Obama Administration, in 2012 DHS introduced the DACA program, which allowed certain unauthorized aliens residing within the United States to apply for deferred removal.[4] Under DACA, unauthorized aliens brought into the country as children could apply

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[1] *See* 5 U.S.C. § 702 ("Any person suffering legal wrong because of any agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.").

[2] Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 167 (1962) (internal quotation marks omitted) (quoting New York v. United States, 342 U.S. 882, 884 (1951) (dissenting opinion)) (explaining that administrative action must be monitored in a strict and demanding way in order to maintain balance of power).

[3] *See* Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020).

[4] *Id.* at 1901.

for a two-year forbearance of deportation if they satisfied certain eligibility criteria.[5] Because those selected for deferred action were considered to be "lawfully present" in the United States, DACA recipients were also eligible for work authorizations and various federal benefits, including Social Security and Medicare.[6]

Two years later, DHS announced an expansion of DACA and the creation of a new program that would provide the same benefits: the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA").[7] However, neither the DACA expansion nor the DAPA program went into effect because twenty-six states filed complaints in the United States District Court for the Southern District of Texas on the grounds that "DAPA and the DACA expansion violated the APA's notice and comment requirement, the Immigration and Nationality Act (INA), and the Executive's duty under the Take Care Clause of the Constitution."[8] The district court issued a preliminary injunction, which barred the implementation of both programs nationwide.[9] The judgment was affirmed by both the Fifth Circuit and the Supreme Court.[10] Therefore, both the DACA expansion and the newly proposed DAPA program were enjoined while the litigation continued in Texas.[11]

However, under the Trump Administration, DHS rescinded DAPA in 2017.[12] Shortly after, Attorney General Jeff Sessions recommended that DACA also be rescinded based on his conclusion that the program was similarly legally defective and thus unlawful.[13] The very next day, the Secretary of Homeland Security Elaine C. Duke issued a memorandum terminating DACA.[14] Three separate lawsuits were filed in response, alleging that the rescission was "arbitrary and capricious" in violation of the APA and violated the equal protection

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[5] *Id.*

[6] *Id.* at 1902.

[7] *Id.* Under DAPA, parents whose children were U.S. citizens or lawful permanent residents would be eligible for the same benefits as recipients of DACA. *Id.*

[8] *Regents*, 140 S. Ct. at 1902; *see also* Texas v. United States, 86 F. Supp. 3d 591 (S.D. Tex. 2015), *aff'd*, 809 F.3d 134 (5th Cir. 2015), *aff'd sub nom.* United States v. Texas, 579 U.S. 547 (2016) (mem.).

[9] *Regents*, 140 S. Ct. at 1902; *Texas*, 6 F. Supp. 3d at 677–78.

[10] *Regents*, 140 S. Ct. at 1902; Texas v. United States, 809 F.3d 134 (5th Cir. 2015), *aff'd sub nom.* United States v. Texas, 579 U.S. 547 (2016) (mem.) (affirming the Fifth Circuit by an equally divided vote).

[11] *Regents*, 140 S. Ct. at 1903.

[12] *Id.*

[13] *Id.*

[14] *Id.*

guarantee of the Fifth Amendment.[15] The district courts found for the plaintiffs in all three cases, although "at different stages of the proceedings."[16] Two of the district courts determined that "the plaintiffs were likely to succeed on the merits of their claims" and subsequently issued a nationwide injunction on the rescission of DACA that required DHS to "continue processing DACA renewal requests[.]"[17] The D.C. District Court, however, "deferred ruling on the equal protection challenge but granted partial summary judgment to the plaintiffs on their APA claim, holding that Acting Secretary Duke's 'conclusory statements were insufficient to explain the change in the [the agency's] view of DACA's lawfulness.'"[18] Thus, the D.C. District court stayed its order for ninety days, permitting DHS to issue a new memorandum providing a "fuller explanation" behind its decision to rescind DACA.[19]

In response, the subsequent DHS Secretary, Kirstjen Nielsen, "decline[d] to disturb the rescission" because she found Duke's previous explanation sound.[20] Nielson explained her decision in a memorandum, reasoning that Attorney General Sessions concluded that DACA was unlawful and stated that the agency had "serious doubts about [DACA's] legality, and . . . wanted to avoid legally questionable policies."[21] While Nielson acknowledged various policy and reliance interests in DACA's continuation, she concluded that these interests did not outweigh the justifications for rescinding the program.[22] However, the D.C. District Court found these reasons insufficient to explain the rationale behind the rescission.[23] The government appealed all three of these cases to the respective circuit courts and later filed petitions for certiorari while the appeals were pending.[24]

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[15] *Regents*, 140 S. Ct. at 1903. The three cases consolidated in this appeal are *Regents of the University of California v. United States, Department of Homeland Security*, 279 F. Supp. 3d 1011, 1027–28 (N.D. Cal. 2018), *NAACP v. Trump*, 298 F. Supp. 3d 209, 223 (D.C. Cir. 2018), and *Vidal v. Duke*, 279 F. Supp. 3d 401, 409 (E.D.N.Y. 2018).

[16] *Regents*, 140 S. Ct. at 1903.

[17] *Vidal*, 279 F. Supp. 3d at 409; *see Regents*, 279 F. Supp. 3d at 1048 (N.D. Cal. 2018).

[18] *Regents*, 140 S. Ct. at 1904 (quoting NAACP v. Trump, 298 F. Supp. 3d 209, 243 (2018)).

[19] *Id.* (quoting NAACP v. Trump, 298 F. Supp. 3d 209, 245 (D. C. Cir. 2018)).

[20] *Id.* (alteration in original) (internal quotation marks omitted).

[21] *Id.* (alteration in original) (citation and internal quotation marks omitted)

[22] *Id.* at 1904 (citation omitted).

[23] *Id.* at 1904–05.

[24] *Regents*, 140 S. Ct. at 1905.

The Supreme Court granted certiorari and consolidated the three cases for argument.[25] Two of the pertinent issues before the Court were "(1) whether the APA claims [were] reviewable, [and] (2) if so, whether the rescission was arbitrary and capricious in violation of the APA."[26] The Court ultimately concluded that the claims were subject to judicial review and that the agency's decision to rescind DACA was arbitrary and capricious.[27]

In reaching this conclusion, the Court first determined that DHS's decision to rescind DACA was subject to judicial review.[28] The APA permits judicial review of agency decisions where an individual "suffer[s] [a] legal wrong because of agency action"[29] unless either (1) "the statute 'preclude[s]' review"[30] or (2) the "action is committed to the agency's discretion by law."[31] Although read narrowly, the second exclusion precludes a court from reviewing an agency's decision *not* to prosecute, enforce, or otherwise act.[32] DHS relied on this second exception, arguing that the decision to rescind DACA should be viewed as a nonenforcement policy; thus, the Court, according to DHS, did not have authority to review this decision.[33] However, the Court noted that DACA, as originally enacted by the Obama Administration, instructed immigration and customs officials to create a process for determining who would receive DACA benefits and relief.[34] The Court reasoned that these proceedings were "effectively adjudicat[ions]."[35] Thus, the results of these adjudications—deferred deportation—constituted an "affirmative act of approval" rather than a "refus[al] to act" as DHS contended."[36] Therefore, the Court did not find DACA to be a

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[25] *Id.*

[26] *Id.*

[27] *Id.* at 1907, 1915.

[28] *Id.* at 1907.

[29] *Id.* at 1905 (quoting Abbott Labb'ys v. Gardner, 387 U.S. 136 (1967) (quoting 5 U.S.C. § 702).

[30] *Regents*, 140 S. Ct. at 1905 (quoting 5 U.S.C. § 701(a)(1)).

[31] *Id.* (quoting 5 U.S.C. § 702(a)(2)); *see also* Administrative Procedure Act, Pub. L. No. 79-404, § 10, 60 Stat. 237, 243 (1946) ("Except so far as (1) statutes preclude judicial review or (2) the agency action is by law committed to agency discretion . . . [a]ny person suffering legal wrong because of any agency action . . . shall be entitled to judicial review thereof.").

[32] *Regents*, 140 S. Ct. at 1905.

[33] *Id.* at 1906.

[34] *Id.*

[35] *Id.*

[36] *Id.* (alteration in original) (quoting Heckler v. Chaney, 470 U.S. 821, 831–32 (1985)).

nonenforcement policy, meaning both the creation and rescission of the program were subject to the Court's review.[37]

DHS also cited two provisions of the Immigration and Nationality Act ("INA") as jurisdictional bars to review.[38] The first cited provision, § 1252(b)(9), "bars [the] review of claims arising from actions or proceedings brought to remove an alien."[39] The Court rejected this argument, explaining that jurisdiction was proper because "§ 1252(b)(9) does not present a jurisdictional bar where those bringing suit are not asking for review of an order of removal, the decision . . . to seek removal, or the process by which . . . removability will be determined."[40] Because the parties were not challenging removal proceedings, this provision did not act as a bar.[41] The second cited provision, § 1252(g), "limits review of cases 'arising from' decisions 'to commence proceedings, adjudicate cases, or execute removal orders.'"[42] In this case, the Court noted that the agency's rescission was "not a decision to 'commence proceedings,' much less to 'adjudicate' a case or 'execute' a removal order."[43] Accordingly, the Court held that it had authority to review the agency's decision to terminate DACA and could proceed to the merits of the challenge.[44]

The Court then explained why DHS' decision to terminate DACA was arbitrary and capricious.[45] The APA mandates that "agencies engage in 'reasoned decisionmaking,' and directs that agency actions be 'set aside' if they are 'arbitrary' or 'capricious[.]'"[46] When reviewing a case to determine if there is a lack of reasoned decision-making, a court must determine (1) whether the agency considered relevant factors and (2) whether there was a "clear error of judgment[.]"[47]

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[37] *Id.* at 1906–07.

[38] *Regents*, 140 S. Ct. at 1907.

[39] *Id.* (internal quotation marks omitted) (quoting 8 U.S.C. § 1252(b)(9)). "[N]o court shall have jurisdiction . . . to review such an order or such questions of law or fact." 8 U.S.C.A. § 1252(b)(9).

[40] *Regents*, 140 S. Ct. at 1907 (internal quotation marks omitted) (citations omitted).

[41] *Id.*

[42] *Id.* (quoting 8 U.S.C. § 1252(g)). "[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this Act." 8 U.S.C. § 1252(g)).

[43] *Regents*, 140 S. Ct. at 1907.

[44] *Id.*

[45] *Id.* at 1910.

[46] *Id.* at 1905 (citation omitted) (quoting 5 U.S.C. § 706(2)(A)).

[47] *See id.* (stating that a court should "assess only whether the decision was 'based on a consideration of the relevant factors and whether there has been a clear error of judgment.'"

DHS was bound by Attorney General Session's conclusion that DACA was illegal; therefore, the Court focused its analysis on DHS' failure to consider relevant factors in its decision to rescind DACA.[48] After Attorney General Sessions declared DACA to be illegal, DHS had the responsibility to make a policy choice on how to move forward.[49] Duke made this policy choice in deciding to rescind DACA;[50] however, Duke's explanation failed to adequately provide the justification behind the decision.[51] Specifically, Duke focused on the fact that DACA, like DAPA, would enable millions of aliens to be eligible for various federal and state benefits as sufficient justification for the complete rescission of the program.[52] However, the Court noted that Duke failed to address the other, core function of the DACA program: deferred removal.[53]

The Court specifically noted that Duke did not address whether the DACA program could have continued to provide deferred removal without allowing recipients to be eligible for benefits.[54] DHS also failed to address the possibility of accommodating those who justifiably relied on the program.[55] These failures rendered DHS's DACA rescission arbitrary and capricious.[56]

More than seven decades prior to *Regents*, the Supreme Court addressed the powers of judicial review over administrative agency decisions in *SEC v. Chenery Corp.*.[57] In that case, the Court had previously remanded the Securities and Exchange Commission's ("SEC") approval of a corporation's reorganization plan because the

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(quoting Citizens to Pres. Overton Park, Inc. v. Volpe, 401 U.S. 402, 416, (1971))); *see* Administrative Procedure Act, Pub. L. No. 79-404, § 10(e), 60 Stat. 237, 243 (1946). For further analysis of the arbitrary and capricious standard, see JACOB A. STEIN & GLENN A. MITCHELL, ADMINISTRATIVE LAW § 51.03 (2021).

[48] *Regents*, 140 S. Ct. at 1910 (citing 8 U.S.C. § 1103(a)(1)) ("The same statutory provision that establishes the Secretary of Homeland Security's authority to administer and enforce immigration laws limits that authority, specifying that, with respect to 'all questions of law,' the determinations of the Attorney General "shall be controlling.").

[49] *Id.* at 1910–11 (noting that Duke's discretion "picked up where the Attorney General's left off").

[50] *Id.*

[51] *Regents*, 140 S. Ct. at 1910, 1915.

[52] *Id.* at 1911.

[53] *Id.* at 1911–13.

[54] *Id.* at 1913–14.

[55] *Id.* at 1914.

[56] *Id*. at 1914–15; *see also* Bowman Transp. Inc., v. Arkansas-Best Freight Sys., Inc., 419 U.S. 281, 284 (1974) (noting that a decision may be arbitrary and capricious where the agency's reasoning could not be discerned even where substantial evidence supported the agency's finding).

[57] SEC v. Chenery Corp., 332 U.S. 194 (1947).

grounds upon which the approval stood did not support the agency's conclusion.[58] When the Federal Water Service Corporation ("Federal") initially sought SEC approval of its plans to reorganize, the SEC denied the plan because inside officers of the corporation had "purchased a substantial amount of [the company's] preferred stock . . . [that] was to be converted into common stock of a new corporation."[59] The SEC determined that the fiduciary duties owed by directors and officers prohibited them from trading the company's securities during the reorganization period.[60] The Commission only approved of the reorganization plan when the management's stock "was to be surrendered at cost plus dividends" rather than be converted into new common stock.[61]

When addressing the SEC's initial decision to approve the modified reorganization plan, the Supreme Court explained that its role in the administrative judicial review process was to determine whether the agency's decision rests upon a justified basis, not to "propel [itself] into the domain which Congress has set aside exclusively for the administrative agency" by invoking its own judgment about what would "be a more adequate or proper basis."[62] Instead, the SEC's decision could only be judged by the standards the Commission clearly applied, and if the grounds provided by the agency "are inadequate or improper, the court is powerless to affirm the administrative action."[63] Specifically, the Court stated:

If the administrative action is to be tested by the basis upon which it purports to rest, that basis must be set forth with such clarity as to be understandable. It will not do for a court to be compelled to guess at the theory underlying the agency's action; nor can a court be expected to chisel that which must be precise from what the agency has left vague and indecisive.[64]

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[58] *Id.* at 196; *see* SEC v. Chenery Corp., 318 U.S. 80, 95, *rev'd*, 332 U.S. 194 (remanding the case to the SEC, stating that "an administrative order cannot be upheld unless the grounds upon which the agency acted in exercising its powers were those upon which its action can be sustained").

[59] *Chenery*, 332 U.S. at 197.

[60] *Id.* at 197.

[61] *Id.* at 197–98, 200 (explaining that the Court's "duty is at an end when it becomes evident that the Commission's action is based upon substantial evidence and is consistent with the authority granted by Congress").

[62] *Id.* at 196.

[63] *Id.* at 196–97 ("[A] reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the ground invoked by the agency.").

[64] *Id.* at 196–97.

In its initial decision, the SEC "failed to express itself with sufficient clarity and precision" in its approval of the Federal's reorganization plan, and thus the Court remanded the case to the SEC for further proceedings.[65] Importantly, the Court noted that the SEC's prior decision was only remanded because it was unsupported; the Commission still had the authority to make the final decision.[66]

On remand, the surviving corporation, Federal Water and Gas Corp. applied for the approval of a new plan that provided it's the stock of the reorganized company would be "distributed to Federal's management on the basis of the shares of the old preferred stock which they had acquired during the period of reorganization."[67] The SEC again denied the application, issuing an order that "expressed its reasons with a clarity and thoroughness."[68] The Court of Appeals reversed this decision, holding that the SEC was unable to deny the application because it was bound by the Court's previous remanding order.[69] The Supreme Court reversed the appellate court's judgment, explaining that its prior decision did not prohibit the SEC from initiating a new standard; instead, it merely remanded the issue back to the SEC as it found the Commission's initial denial order "unsupportable for the reasons supplied by that agency."[70]

It was argued before the Court that the SEC "could not determine by an order in this particular case that it was inconsistent with the statutory standards to permit Federal's management to realize a profit through the reorganization purchases."[71] Under this theory, the SEC's only permissible action would have been to promulgate a rule that specifically prohibited any future reorganization plans that provided profits to managers.[72] Rejecting this argument, the Court recognized that agencies are not only able to establish new laws by rule promulgation but also by deciding issues by way of piecemeal

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[65] *Chenery*, 332 U.S. at 196.

[66] *Id.* at 200.

[67] *Id.* 198–99.

[68] *Id.* at 199.

[69] *Id.* at 199–200. It was argued before the court that "in the absence of findings of conscious wrongdoing on the part of Federal's management, the Commission could not determine by an order in this particular case that it was inconsistent with the statutory standards to permit Federal's management to realize a profit through the reorganization purchases." *Id.* at 199.

[70] *Chenery*, 332 U.S. at 200 ("[W]hen the case left this Court, the problem of whether [the company's] management should be treated equally with other preferred stockholders still lacked a final and complete answer.").

[71] *Id.* at 199.

[72] *Id.* at 199–200.

adjudication.[73] Although an agency's rule-making function should be "performed, as must as possible, through [the] quasi-legislative promulgation of rules to be applied in the future," agencies must address many specialized situations to effectively operate; thus, "administrative agenc[ies] must be equipped to act either by general rule or by individual order."[74] The SEC, who had never addressed the present issue before, was not prohibited from using an order to create and apply a new standard.[75] Accordingly, the only issue before the Court was "whether the Commission's action . . . can be justified on the basis upon which it clearly rests."[76]

On remand, the SEC clearly articulated its reasoning behind denying Federal's reorganization plan.[77] Specifically, the SEC conducted a thorough examination of the issue and articulated specific findings based on its expertise and statutory standards.[78] Because the Court is only "free to disturb the Commission's conclusion only if it lacks any rational or statutory foundation," the Court could not disturb the SEC's decision.[79]

Fifty-eight years later, the Supreme Court addressed the importance of a government agency adequately explaining the logic behind its decisions in *Burlington Truck Lines, Inc. v. United States*.[80] In that case, Teamsters Union sought to unionize Nebraska Short Line Carriers, Inc. ("Nebraska Short Line"), which had consistently resisted the union's efforts.[81] Due to a "hot cargo" clause in the union's collective bargaining agreement, members of the union reserved "the right to refuse to handle goods from or to any firm or truck involved in any controversy with the union."[82] Under this clause, the union workers organized a secondary boycott against Nebraska Short Line traffic "through the larger, unionized, truck-line carriers upon whom the stockholder carriers were dependent for interchanging traffic to and from points beyond Nebraska."[83] In response, several stockholders of

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[73] *Id.* at 202.

[74] *Id.* ("[T]he choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.").

[75] *Id.* at 203.

[76] *Chenery*, 332 U.S. at 204.

[77] *Id.* at 204.

[78] *Id.* at 207.

[79] *Id.* at 207.

[80] Burlington Truck Lines, Inc. v. United States, 371 U.S. 156 (1962).

[81] *Id.* at 159.

[82] *Id.*

[83] *Id.* at 159.

Nebraska Short Line created a new corporation in order to transport products to designations outside of Nebraska and, thus, filed an application to the Interstate Commerce Commission ("ICC") to act as an interstate motor carrier.[84]

The Commission granted the application, holding that it was required by "public convenience and necessity" due to the substantial disruption in the motor carrier industry caused by the boycott.[85] The union and protesting carriers sought judicial review of the ICC's decision in district court, which affirmed the approval as "based on adequate findings[] and supported by substantial evidence."[86] On appeal, the issue before the Supreme Court was whether the ICC's decision to grant the application adequately explained the connection between its findings and conclusions and its choice of remedy.[87] Finding a lack of proper reasoning, the Court reversed the lower court's affirmation and remanded the case to the Commission for further review.[88]

Although the ICC was correct in its finding that the secondary boycott caused "serious inadequacies in the service available," the Court found that the Commission failed to adequately explain the rationale in choosing its course of remedy, i.e. that Short Line's application must be approved for "public convenience and necessity."[89] Because the disruption in the motor carrier industry was caused by the boycotts, the ICC could have issued a cease-and-desist order that would arguably have been equally effective.[90] The Court noted that the Commission had the authority to exercise its expert discretion in determining the appropriate remedy; however, under the APA, the Court could not uphold a decision where "[t]here [were] no findings and no analysis . . . to justify the choice made [and] no indication of the basis on which the Commission exercised its expert discretion."[91] Although expert discretion is the "lifeblood" of administrative procedure, the Court reasoned government does not have "unbounded discretion" in making its decisions.[92] Thus, the ICC was required to adequately disclose the basis of its decision in order for the Court to

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[84] *Id.* at 160–63.

[85] *Id.* at 161.

[86] *Burlington*, 371 U.S. at 163–64.

[87] *Id.* at 165.

[88] *Id.* at 165–68.

[89] *Id.*

[90] *Id.* at 165–67.

[91] *Id.* at 167.

[92] *Burlington*, 371 U.S. at 167.

ensure that the Commission exercised its discretion "within the bounds expressed by the standard of public convenience and necessity."[93]

The ICC's decision to grant the Short Line's application to act as an interstate motor carrier failed to meet this standard.[94] First, the Court noted that ICC's approval did not provide its findings that formed the basis of the decision.[95] Second, the ICC did not logically connect its findings to its choice to grant the application when it could also have entered a cease-and-desist order.[96] Because a "rational connection" is required to demonstrate to the Court that the decision was justified, the Court held that the agency action must be set aside until the agency gave it further review.[97]

More than two decades later, the Supreme Court again addressed the requirements of a government agency's decision in *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance*.[98] In that case, the National Highway Traffic Safety Administration ("NHTSA") issued Motor Vehicle Safety Standard 208, which "mandated the phasing in of passive restraints beginning with large cars in model year 1982 and extending to all cars by model year 1984."[99] Under this provision, manufacturers had a choice of installing either automatic seatbelts or airbags.[100] However, NHTSA rescinded the requirement in 1981, claiming "that it was no longer able to find . . . that the automatic restraint requirement would produce

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[93] *Id.* at 167–68 (internal quotation marks omitted) (citation omitted).

[94] *Id.* at 167.

[95] *Id.*

[96] *Id.* at 165, 167 (explaining that "in such a case the choice of the certification remedy may not be automatic; it must be rational and based upon conscious choice that in the circumstances the public interest in 'adequate, economical, and efficient service' outbalances whatever public interest there is in protecting existing carriers' revenues . . .").

[97] *Id.* at 174. Justice Clark further provided in his concurring opinion that an amendment to 29 U.S.C. § 158(e) raised doubts about the legality of the collective bargaining agreement provision that allowed union employees to refuse to handle goods from certain carriers; thus, there was a dispute as to whether the "substantial disruption" in service would continue. *Burlington*, 371 U.S. at 174 (Clark, J., concurring). He thus added that the ICC's decision should be remanded and reconsidered to factor in changed circumstances. *Id.*

[98] Motor Vehicle Mfrs. Ass'n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983).

[99] *Id.* at 37.

[100] *Id.* "The automatic seatbelt is a traditional safety belt, which when fastened to the interior of the door remains attached without impending entry or exit from the vehicle, and deploys automatically without any action on the part of the passenger." *Id.* at 35.

significant safety benefits" and that the requirement was no longer practicable in the agency's view.[101]

The United States District Court of Appeals for the District of Columbia Circuit held that NHTSA's decision to rescind this rule was arbitrary and capricious.[102] The United States Supreme Court granted certiorari.[103] The issues before the Court were (1) whether NHTSA's decision was subject to judicial review and (2) whether the decision was arbitrary and capricious when NHTSA did not address relevant alternatives under the provision prior to revoking it.[104] The Court held that the rescission was subject to review and that it was arbitrary and capricious for an agency to rescind an entire rule without addressing all of the appropriate alternatives.[105]

The Court first noted that it had jurisdiction to review the claim under the APA because the National Traffic and Motor Vehicle Safety Act provides that the Secretary of Transportation promulgates motor vehicle safety standards under the APA, which provides that standards may be set aside if found to be arbitrary or capricious.[106] Although the Motor Vehicle Manufacturers Association argued that the "rescission of an agency rule should be judged by the same standard a court would use to judge an agency's refusal to promulgate a rule in the first place," the Court held that revocations are not to be treated as refusals to promulgate standards and that revoking a regulation is "substantially different" than not acting in the first place.[107] Therefore, an agency's decision to revoke a rule is governed by the APA, requiring the agency to examine relevant data and supply a reasoned analysis in its revocation decision.[108]

The Court upheld the lower court's judgment that the rescission of Standard 208 was arbitrary and capricious.[109] First, the agency "apparently gave no consideration whatsoever [sic] to modifying the Standard to require that airbag technology be utilized" in lieu of passive

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[101] *Id.* at 38–39 (stating that NHTSA based its opinion on the fact that the majority of manufacturers were intending on installing automatic seatbelts instead of airbags and that the automatic seatbelts used could be easily detached from the door, rendering the Standard useless in its attempt to increase the use of passive restraints).

[102] *Id.* at 39.

[103] *State Farm*, 463 U.S. at 40.

[104] *Id.* at 40–41, 46.

[105] *Id.* at 42.

[106] *Id.* at 33, 41.

[107] *Id.*

[108] *Id.* at 42–43, 52 (noting that a sufficient explanation would generally provide "a justification for rescinding the regulation before engaging in a search for further evidence").

[109] *State Farm*, 463 U.S. at 46.

restraints.[110] Because the standard provided two options in attempting to reach vehicle safety—either an automatic seatbelt or an airbag—both alternatives had to be addressed if the standard was to be rescinded.[111] NHTSA concluded that if one of these options was unreasonable, the Standard should be rescinded entirely.[112] However, the failure to address an airbags-only requirement, "a technological alternative within the ambit of the existing standard," rendered the agency's decision arbitrary and capricious.[113]

The Court also held that the agency did not adequately address the safety benefits of automatic seatbelts.[114] Although an agency may revoke a safety standard based on uncertainties about its efficacy, the decision still must be supported by sufficient evidence and explanation.[115] Where the data does not settle an issue, an agency has the authority to exercise its judgment in making a decision;[116] however, the agency is required to explain the evidence, connect that evidence to the decision, and articulate its justifications for the rescission.[117] The explanation must be sufficient enough to allow a reviewing court to conclude that the agency engaged in reasoned decision making.[118] Concluding that NHTSA "failed to supply the requisite 'reasoned analysis'" in its decision, the Court remanded the case to NHTSA for further consideration.[119]

The cases discussed above evidence the evolution of the standard for judicial review of administrative agency decision making. In *Chenery*, the Supreme Court established that it does not have the authority to decide whether the agency action was correct, but only whether the action was justified on the grounds presented.[120] When the Court initially remanded the SEC's action for lack of explanation, the Commission still retained the ultimate decision making authority.[121] Thus, the Court set out the standard for judicial review of agency

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[110] *Id.*

[111] *Id.*

[112] *Id.* at 46–47.

[113] *Id.* at 51. ("[T]he mandatory passive-restraint rule may not be abandoned without any consideration whatsoever of an airbags-only requirement.")

[114] *Id.* at 51.

[115] *State Farm*, 463 U.S. at 51–52.

[116] *Id.* at 52.

[117] *Id.* at 52.

[118] *Id.*

[119] *Id.* at 57.

[120] *See* SEC v. Chenery Corp., 332 U.S. 194, 196 (1947); *see also* Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971) ("The court is not empowered to substitute its judgment for that of the agency.").

[121] *Chenery*, 332 U.S. at 196.

actions: the agency has the authority to make decisions based on its expertise, and the judiciary has the obligation to ensure the decision was based on proper findings and conclusions.[122]

This standard was further developed in *Burlington* when the Court required the ICC to provide explicit findings of fact and connect those findings to the decision.[123] Based on the Court's obligation to ensure the agency properly exercised its decision making authority, the ICC's decision could only be evaluated based on the reasons given by the Commission; thus, the Court required a thorough explanation of the ICC's reasoning to ensure the agency did not exercise "unbounded discretion" prohibited by the administrative process.[124] Absent this reasoning, the Court was unable to uphold the ICC's decision.[125]

This standard was followed again in *State Farm.*[126] Specifically, the Court noted that where an agency seeks to rescind a rule, the agency must first address alternatives relevant to the rule being revoked.[127] While the agency is not required "to include every alternative device and thought conceivable by the mind of man," the agency is required to address every alternative present within the existing standard.[128] In addition, this case also established that, for jurisdictional purposes, the action of rescinding a rule should not be treated the same as an agency's decision to refuse to act at all.[129]

The Supreme Court's decision in *Regents* applied the standards set out in these prior cases.[130] Specifically, the Court followed *Chenery's* judicial review standard, acknowledging that Secretary Duke had the authority to make the policy decision to rescind DACA while requiring Duke to adequately explain her rationale.[131] Without articulate explanations provided by DHS to justify its decision, the Court could not uphold its judicial obligation to ensure that the agency's decision

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[122] *Id.* at 196.

[123] *See* Burlington Truck Lines v. United States, 371 U.S. 156, 169 (1962) ("[A] simple but fundamental rule of administrative law . . . is . . . that a reviewing court, in dealing with a determination or judgment which an administrative agency alone is authorized to make, must judge the propriety of such action solely by the grounds invoked by the agency." (quoting SEC v. Chenery Corp., 332 U.S. 194, 196 (1947)).

[124] *Id.* at 167 (internal quotation marks omitted).

[125] *Id.* at 169.

[126] *See* Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29 (1983).

[127] *Id.* at 52.

[128] *Id.* at 50–51.

[129] *Id.* at 41–42.

[130] *See* Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020).

[131] *Id.* at 1898.

was appropriately made.[132] Moreover, the Court followed *Burlington* in finding that, although DHS was permitted to exercise its expert judgment, the agency was required to properly present the findings, analysis, and conclusions that support its decision.[133] Moreover, *State Farm* was also relevant in establishing that DHS had to address both advantages provided under DACA: deferred action and benefit eligibility.[134] Under the current body of case law that governs judicial review of administrative actions, government agencies must remain transparent in making the decisions that affect the general population. In *Regents*, the Supreme Court reaffirmed its commitment to guaranteeing that administrative agencies exercise their authority appropriately, maintaining boundaries around the government bodies that legislate, adjudicate, and enforce their own rules.[135]

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[132] *Id.* 1899.

[133] *Id*. at 1911 (noting that "making [the] difficult decision[s] was the agency's job, but the agency failed to do it").

[134] *Id.* at 1912.

[135] *See id.* at 1916.