6th Circ. Ruling Paves Path Out Of Loper Bright 'Twilight Zone'

By **Stephen Obermeier, Joel Nolette and Leah Deskins** (March 12, 2025)

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On June 28, 2024, in Loper Bright Enterprises v. Raimondo, the U.S. Supreme Court overruled the 40-year-old Chevron doctrine, which was based on the premise that ambiguities in statutes administered by federal agencies were "implicit delegations" of interpretive discretion.

Chevron had held that courts should defer to an agency's adoption of a reasonable interpretation of a statute, even if not the best interpretation of the law.[1]

Loper Bright rejected that premise and held instead that courts generally may not defer to an agency's interpretation, even of an ambiguous statute, but rather must exercise "independent judgment" in interpreting the law and must adopt the "best reading" of statutes, whether or not the agency agrees with that reading.[2]

Loper Bright recognized, however, that sometimes the best reading of a statute is that it affirmatively "delegates discretionary authority" to the administering agency to interpret the law.[3]

And while such delegations are express in some statutes, in other statutes such delegations may be found in provisions that according to the Loper Bright ruling, "empower an agency to prescribe rules to 'fill up the details' of a statutory scheme" or even "to regulate subject to the limits imposed by a term or phrase that 'leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.'"[4]

Regardless, when Congress delegates such discretionary authority, a reviewing court's task after Loper Bright sounds very similar to its task under Chevron — ensure that "the agency has engaged in reasoned decisionmaking" within the boundaries of its delegated authority.[5]

Thus, Loper Bright contains within itself an apparent tension. On the one hand, "implicit delegations" of interpretive authority à la Chevron, based on mere statutory ambiguity, are no more. But on the other hand, deference to an agency's interpretation still may be triggered by something less than a pellucid grant of interpretive discretion to the agency.

In other words, Loper Bright created a twilight zone — between express delegations that clearly trigger deference and implicit ones that clearly do not — in which a delegation of interpretive authority may be found, depending on how the reviewing court reads the less-than-explicit statutory language at issue.[6]

Invariably, courts in cases formerly governed by Chevron but now governed by Loper Bright — generally a meaningful percentage of cases on federal court dockets around the country — will have to enter this twilight zone and decide how to resolve the threshold question of whether the agency's interpretation is entitled to deference under this carveout from Loper Bright.

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Illustrating this, the U.S. Court of Appeals for the Sixth Circuit on Dec. 23 addressed this issue and construed Loper Bright narrowly, essentially adopting a clear-statement rule for twilight zone cases by holding that deference is not triggered unless the statute contains both broad statutory terms and some kind of judgment-conferring language empowering the agency to interpret those terms.

In Moctezuma-Reyes v. Garland, a Mexican citizen, Miguel Angel Moctezuma-Reyes, who had illegally entered and remained in the U.S., sought cancellation of removal from the country.[7] To do so, Moctezuma-Reyes invoked the Immigration and Nationality Act's provision empowering the attorney general to cancel removal when, among other things, "the alien 'establishes that removal would result in exceptional and extremely unusual hardship'" to certain family members.[8]

The Board of Immigration Appeals — acting on behalf of the attorney general — concluded that Moctezuma-Reyes had not satisfied this criterion, and thus denied his request.[9] Moctezuma-Reyes then petitioned the Sixth Circuit to reverse that denial.[10]

The Sixth Circuit began its analysis by considering what "exceptional and extremely unusual hardship" in the INA means.[11] But before construing that language, the court addressed the apparent elephant in the room — whether the court should defer to the Board of Immigration Appeals on the meaning of the INA because of Loper Bright's recognition that an agency still has interpretive discretion when Congress empowers it to "regulate in accordance with broad, flexible standards."[12]

The court held that deference was not warranted.[13] According to it, to trigger deference after Loper Bright, the underlying statute must not only have broad language — like "appropriate" or "reasonable," per Loper Bright; or "exceptional and extremely unusual hardship," in the INA — but also must "pair that language with words that expressly empower the agency to exercise judgment" as to the meaning of such language.[14]

Permitting "broad language alone" to trigger deference, the Sixth Circuit reasoned, would "unwittingly return" courts to the Chevron framework of implicit delegations that Loper Bright explicitly overruled.[15] And because the INA did not contain such judgment-conferring language giving the agency interpretive discretion concerning the phrase "exceptional and extremely unusual hardship," deference was not triggered.[16]

The Moctezuma-Reyes case thus crafted a two-part test for resolving cases within Loper Bright's twilight zone — unless the statute contains both broad language and judgment-conferring language, interpretive authority is not conveyed, and no deference is given. And the court envisioned this test as a clear-statement rule, observing that while "there are rare circumstances where a court may have to defer to an agency" post-Loper Bright, "the actual delegation of authority to the agency must be clear" to trigger deference, and "imprecise wording alone won't cut it."[17]

As more courts address this issue head-on in the wake of Loper Bright, time will tell whether the Sixth Circuit's two-part test will gain a wider following. And even if it does, other courts may agree in principle but disagree in application.

For instance, when is statutory language sufficiently broad enough to raise the possibility of deference? Are inescapably vague standards terms, like "appropriate" or "reasonable," alone sufficient, or can more concrete terms with slighter definitional leeway suffice?[18] And how specific must the judgment-conferring language be? Can a general grant of rulemaking

authority that encompasses the broad language, among other statutory subjects, suffice, or must the rulemaking authority be conveyed specifically to interpret and flesh out the broad language?[19]

Courts that are still sympathetic to the now-defunct Chevron framework may be inclined to "give succor to Chevron resurrectionists" by deciding cases in Loper Bright's twilight zone with an eye to deference rather than de novo review, as U.S. Circuit Judge Carlos Bea of the U.S. Court of Appeals for the Ninth Circuit accused the panel majority of doing in his dissent in December's China Unicom (Americas) Operations Ltd. v. Federal Communications Commission.[20]

Given the variety of language in federal statutes that agencies may invoke under Loper Bright to seek continued deference to their statutory interpretations, it seems inevitable that more twilight zone cases will emerge. As lower courts continue working out the precise contours of the administrative law landscape post-Loper Bright, parties in such cases must be mindful of how lower courts are deciding these questions post-Loper Bright and tailor their arguments accordingly, as the difference between deferential and de novo review frequently may be outcome-determinative.[21]

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[1] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 399 (2024); see also Chevron U.S.A. Inc. v. Nat. Res. Def. Council Inc., 467 U.S. 837, 843-44 (1984).

[2] Loper Bright Enters., 603 U.S. at 394-95, 399, 412.

[3] Id. at 394-95.

[4] Id. (citations omitted).

[5] Id. at 395 (cleaned up); Chevron, 467 U.S. at 844 (explaining that the reviewing court's role when faced with a statutory ambiguity was limited to ensuring that the agency had adopted a "reasonable interpretation" of the ambiguity); see also Thomas W. Merrill, Comment, The Demise of Deference — and the Rise of Delegation to Interpret?, 138 Harv. L. Rev. 227, 265 (2024) ("The agency's exercise of such delegated authority [under Loper Bright] would seem to be equivalent to an agency's decision reviewed under step two of Chevron.").

[6] See Mila Sohoni, Chevron's Legacy, 138 Harv. L. Rev. F. 66, 70 (2025) ("It is true that mere ambiguity is no longer sufficient to show that Congress has 'delegate[d] discretionary authority to an agency.' But a crystalline statement of the magic-words kind is not necessary either." (quoting Loper Bright Enters., 603 U.S. at 395)).

[7] See Moctezuma-Reyes v. Garland, 124 F.4th 416, 419 (6th Cir. 2024).

[8] Id. at 420 (quoting 8 U.S.C. §1229b(b)(1)).

[9] Id.

[10] Id. at 419.

[11] Id. at 420.

[12] Id. Neither party "raised," "briefed[,] or argued" precisely this question, id. at 424 (Stranch, J., concurring in the judgment), but the government did ask the court to "defer to the agency's interpretation," id. at 422 (majority opinion).

[13] Id. at 420 (citation omitted).

[14] Id. at 420-21 (noting that the statutes that Loper Bright "cited as examples of delegations that may call for deference" do not "only have broad language" but also contain "words that expressly empower the agency to exercise judgment").

[15] Id. at 420.

[16] Id. (citation omitted).

[17] Id. at 421 (alterations omitted).

[18] See id. at 420. Compare Ventura Coastal LLC v. United States, 736 F. Supp. 3d 1342, 1357 (CIT 2024) (concluding that the undefined term "partners" in 19 U.S.C. §1677(33)(C) was not the sort of "open-ended term[] that would give flexibility to the agency" under Loper Bright), with Alaris Health at Boulevard E. v. NLRB, 123 F.4th 107, 118, 120-21 (3d Cir. 2024) (suggesting, without deciding, that the NLRB's determination of what constituted "terms and conditions of employment" under the NLRA was still entitled to deference post-Loper Bright).

[19] Compare Ventura Coastal, 736 F. Supp. 3d at 1357-58 (reasoning that an agency's general statutory "authority to issue regulations to implement the statute" in question did not vest the agency with "authority to give meaning to statutory terms"), with Lyman v. QuinStreet Inc., No. 23-cv-5056-PCP, 2024 WL 3406992, at *4 (N.D. Cal. July 12, 2024) (observing that the FCC's rulemaking authority in 47 U.S.C. §227(c) "expressly conferred discretionary authority on the agency to flesh out" the Telephone Consumer Protection Act and then suggesting that this conferral "delegat[ed]" authority to the agency to interpret the statutory term "residential telephone" (cleaned up)).

[20] See China Unicom (Ams.) Ops. Ltd. v. FCC, 124 F.4th 1128, 1165 n.11 (9th Cir. 2024) (Bea, J., dissenting); see also Merrill, supra note 6, at 265 ("What remains highly uncertain is just how broad or narrow the Court will tailor the category of delegations to agencies to interpret.....If the Court tailors the category broadly, it would give agencies significant flexibility, restoring a large part of the discretionary authority taken away with the overruling of Chevron.").

[21] See, e.g., In re: MCP No. 185, 124 F.4th 993, 997, 999-1000 (6th Cir. 2025) (reviewing de novo the FCC's Biden-era net neutrality rules under Loper Bright and invalidating them, even though a prior iteration of those rules had been upheld under Chevron).