THE JOURNAL RECORD

Gavel to Gavel: Recent Sixth Circuit decision tries to fill in the gaps from Loper Bright

But does it just leave more questions?

By: Gerard D'Emilio // GableGotwals // April 9, 2025

Gerard D'Emilio

After the Supreme Court overturned the 40-year-old *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo*, lower courts were left wondering when, if ever, they defer. Recall: under *Chevron*, courts defer to reasonable agency interpretations of ambiguous statutes. No more after *Loper Bright*. Now, courts give statutes their "best reading" in the first instance. One question left in *Chevron*'s wake, though, was what to do if a statute's "best reading" dictates deference—that is, delegates interpretive authority to the agency? *Loper Bright* says: apply that reading, ensuring the delegation is constitutional and the agency is acting reasonably.

But **how** *does a court know when a statute, in fact, dictates deference? The Sixth Circuit, in a recent case, tried to answer that question. Moctezuma-Reyes v. Garland involved an illegal immigrant the government was removing to Mexico. The immigrant petitioned the Circuit to cancel his removal because it would "result in exceptional and extremely unusual hardship" to his family—a statutory ground for cancellation. The Circuit was faced with the question: who interprets the statute, the agency or the court? The Circuit noted that, under Loper Bright, "occasionally" a statute's best reading will reveal an "express[] and explicit[] delegat[ion]" of discretion to the agency. But such delegation demands clear language – i.e., the law says an agency can regulate if it "finds" standards are met or its "judgment" leads it to that conclusion. Here, the statute in question contained no such language – just broad standards. But those can't trigger deference on their own; otherwise, courts would be right back to Chevron. Finding no express language of delegation, then, the Circuit held this wasn't a "rare circumstance[]" when it may have to defer to an agency interpretation. And defer it did not: the Circuit noted Loper Bright's suggestion that courts might look to longstanding agency interpretations for help was "not a mandate," and that independent statutory interpretation was simply the court's job. Doing its job, the Circuit interpreted the statutory phrase on its own and, based on that interpretation, upheld the removal decision.*

Time will tell if the Sixth Circuit's approach gains purchase. But practitioners can be certain that the fallout from Loper Bright is just beginning, and courts will continue to grapple with the myriad questions left open and undecided by that decision.

Gerard D'Emilio is an associate at GableGotwals, where his practice focuses on a wide range of litigation matters.

Gavel to Gavel: Recent Sixth Circuit decision tries to fill in the gaps from Loper Bright