CLIENT ALERTS & INSIGHTS

Post Loper Bright, Courts Differ on How to Handle Skidmore

AUGUST 6, 2025

Authors: W. Eric Baisden, Adam Primm, Chad Smith

For 40 years, courts applied the precedent set by the United States Supreme Court in Chevron U.S.A. Inc. v. National Resources Defense Council, Inc. by deferring to administrative agency interpretations of ambiguous statutes. However, in its June 28, 2024, decision in Loper Bright Enterprises v. Raimondo, the United States Supreme Court overruled Chevron by holding that "[t]he Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority."[1] In other words, courts can no longer defer to an agency's interpretation of a statute solely because it is ambiguous.

While the Court clarified in *Loper Bright* that it was overruling *Chevron*, it did not specifically address the decision's implications on *Skidmore* deference, under which courts may give persuasive weight to administrative agencies' interpretations of statutes. Not surprisingly, circuit courts across the United States, including the Fourth, Fifth, and Ninth Circuits, have wrestled with how to apply *Skidmore* in light of *Loper Bright*. While some courts have leaned on *Skidmore* heavily, others have questioned what, if any, role it continues to play.

For instance, in *Lopez v. Garland*, the Ninth Circuit noted that post *Loper Bright*, it cannot defer to an agency, but under *Skidmore*, it can look to agency interpretations for guidance by giving them their "due respect" when the interpretations are thorough and well-reasoned.[2] The *Lopez* court considered a Board of Immigration Appeals' ("BIA") decision to dismiss the plaintiff's appeal of an immigration judge's finding that he was removable due to the commission of a crime involving moral turpitude. The court relied-almost exclusively-on the BIA's "precedent decision" in an earlier case because it was "thorough and well-reasoned," "consistent with judicial precedent," and "entitled to *Skidmore* deference."[3]

Similarly, in *Nicoletti v. Bayless*, the Fourth Circuit considered the Bureau of Prisons' calculation and application of the plaintiff's time credits under the First Step Act. The court observed that "[t]he Supreme Court's decision in *Loper Bright* does not appear to impact the framework established in *Skidmore.*"[4] The court then remanded the case back to the district court to "examine the persuasiveness of the BOP's interpretation of its rule under *Skidmore* or the extent to which that persuasiveness requires deference."[5]

In contrast to the Fourth and Ninth Circuits, the Fifth Circuit has largely disclaimed the continued relevance of *Skidmore*. Indeed, in *Mayfield v. United States Department of Labor*, the Fifth Circuit considered the Department of Labor's interpretation of the White Collar Exemption as including a minimum salary threshold. In doing so, the court used "all relevant interpretative tools" to arrive at its

own conclusion on the issue and then considered the plaintiff's proposed interpretation of the statute. At the same time, the court openly questioned whether *Skidmore* deference still applies at all based on the Court's statements in *Loper Bright* that "(1) statutes have a best reading ... the reading the court would have reached if no agency were involved", and (2) "in the business of statutory interpretation, if it is not the best, it is not permissible."[6] Specifically, the Fifth Circuit noted the relative unimportance of *Skidmore* deference because under *Loper Bright*, the agency's interpretation is either the best interpretation, and it does not need deference because the court agrees with it, or the agency's interpretation is not the best, and it is not entitled to deference at all.

Since the decision in *Loper Bright*, some courts have filled the gap with *Skidmore*, continuing to defer to thorough and well-reasoned agency interpretations. Conversely, other circuits have largely disclaimed *Skidmore* altogether. With time, one of these approaches will emerge as the proper one, but for now, the future of *Skidmore* is unclear.

---

[1] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832, at Syllabus (2024) (Emphasis added).

[2] *Lopez v. Garland,* 116 F.4th 1032, 1039 (9th Cir. 2024).

[3] *Id.* at 1040. (Quotation and citation omitted).

[4] *Nicoletti v. Bayless*, No. 24-6012, 2025 WL 80294, at *2 (4th Cir. 2025).

[5] *Id.* at 2.

[6] *Mayfield v. United States Dep't of Lab.*, 117 F.4th 611, 619 (5th Cir. 2024).