Chevron's End, Congress's Call: Immigration Reform in the Post-*Loper Bright* Era

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Introduction**

In one historic sweep, the United States Supreme Court overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, dismantling the landmark two-step analysis that assesses when agency deference is appropriate.[1] For nearly four decades, the *Chevron* doctrine dictated that courts should defer to federal agencies' interpretations of ambiguous statutes, provided the agency's interpretation was reasonable.[2] This deference was grounded in the understanding that agencies possess the expertise and flexibility to navigate complex regulatory schemes and carry out congressional intent.[3] In 2024, however, the Supreme Court overruled *Chevron*, marking a fundamental shift in the judicial approach to reviewing agency actions—one with particularly significant implications for fields like immigration law, where agency interpretation has long played a central role.[4]

As the Supreme Court's decision reverberates through the legal landscape, the pressure now falls squarely on Congress to provide

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* George Mason University Antonin Scalia Law School, J.D. expected, May 2026. I would like to thank my dad, for always reminding me that I can do anything I put my mind to and teaching me that anything worth having is worth working hard for; Colin, for standing beside me through every step of law school, listening to every theory, frustration, and last-minute revelation, and making sure I never missed a meal; and Tahoe, for the early mornings, the long hours beside the computer, and always giving me a reason to step outside and see the sun.

** This paper was written prior to the inauguration of President Donald J. Trump's second term in January 2025. All references reflect the legal and political landscape as of December 2024.

1 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024) ("Chevron is overruled.").

2 *Id.* at 454 (Kagan, J., dissenting) ("If the court, after using its whole legal toolkit, concludes that 'the statute is silent or ambiguous with respect to the specific issue' in dispute . . . the court must cede the primary interpretive role.").

3 Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 Harv. L. Rev. 405, 446 (1989) ("Broad delegations of power to regulatory agencies have been allowed largely on the assumption that courts would be available to ensure agency fidelity to whatever statutory directives have been issued.").

4 *Loper Bright*, 603 U.S. at 412 ("*Chevron* is overruled.").

meaningful immigration reform. With *Chevron* no longer guiding agency interpretation, lawmakers must clarify statutory ambiguities and confront the complexities that have long characterized immigration policy. *Loper Bright* effectively vests final interpretive authority in the judiciary and heightens pressure on Congress to fulfill its legislative responsibility as mandated by the Constitution.[5]

Immigration law is notoriously complex and frequently indeterminate, and federal agencies have consequently relied on *Chevron* deference to shape the contours of immigration policy.[6] In the post-*Chevron* era, courts are likely to assume a more active role in interpreting immigration statutes, potentially exerting greater judicial control over immigration policy and reshaping the application of immigration laws.[7] This judicial shift magnifies Congress's duty to clarify statutory ambiguities and, where necessary, undertake substantive reform. Meanwhile, as President-elect Donald Trump's impending second administration is expected to prioritize stricter enforcement and narrower statutory readings, *Chevron*'s absence may further complicate the legal and humanitarian landscape of immigration law.[8]

This note argues that *Loper Bright* is not merely a shift in administrative law but a constitutional inflection point—one that forces Congress to reclaim its primary role in immigration policymaking, or risk doctrinal fragmentation and inconsistent asylum outcomes. This note examines how the fall of *Chevron* may impact immigration law, particularly through increased pressure on Congress to enact unambiguous statutes that can effectively guide agency decisions and prevent judicial overreach in policy areas traditionally managed by experts. First, this note provides the historical background of agency deference under *Chevron*. Second, this note discusses the overruling of *Chevron* through *Loper Bright Enterprises v. Raimondo*. Third, this note highlights possible ramifications this may have on immigration law, specifically asylum and refugee cases. Finally, this note explores legislative and judicial responses to *Chevron*'s demise and potential consequences for the future of immigration adjudication.

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5 *See generally* U.S. CONST. art. I, § 1 (vesting all legislative power in Congress).

6 *See Aguirre-Aguirre*, 526 U.S. at 425.

7 *Loper Bright*, 603 U.S. at 412 ("*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires.").

8 *See* Brian Bennett & Nik Popli, *What Donald Trump's Win Means for Immigration,* TIME (Nov. 6, 2024) https://time.com/7171654/donald-trump-immigration-plan-2024/.

Background

I. The *Chevron* Doctrine

Chevron centered on the fundamental question of who should interpret a statute's meaning when Congress leaves ambiguous language for the courts to address.[9] The decision aimed to provide a clear and structured framework for courts when confronted with such ambiguity, establishing a two-step process for determining whether to defer to a federal agency's interpretation of the statute.[10]

The case involved a dispute over the Environmental Protection Agency's (EPA) interpretation of certain provisions of the Clean Air Act.[11] Specifically, the question was whether the EPA had the authority to define the term "stationary source" to include groups of pollution-emitting facilities as a single "source," rather than regulating each facility individually.[12] The Court reasoned that judges, lacking specialized expertise and removed from the political branches, must reconcile competing political interests without relying on their own personal policy preferences.[13] The Court acknowledged that agencies are not directly accountable to the public but found policymaking appropriate because the Chief Executive, who oversees them, is.[14] This accountability, the Court explained, makes it suitable for agencies to resolve matters that Congress either left open or deliberately delegated.[15] As a result, the Court held that future courts must defer to agency interpretations of ambiguous terms, so long as the interpretations are reasonable.[16]

Under *Chevron*'s framework, courts apply a two-step analysis.[17] The first question is whether Congress unambiguously addressed the

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9 *See* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842-44 (1984).

10 Daniel J. Gifford, *Outlines of a Revised* Chevron *Doctrine: Congressional Intent, Judicial Judgment, and Administrative Autonomy*, 59 Admin. L. Rev. 783, 798 (2007).

11 *Chevron,* 467 U.S. at 846.

12 *Id.* at 840.

13 *Id.* at 865.

14 *Id.*

15 *Id.* at 865-66.

16 Gifford, *supra* note 10, at 797; Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 844 (1984) ("Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.").

17 *Chevron*, 467 U.S. at 842.

precise issue at hand.[18] If congressional intent is clear, "that is the end of the matter," and both the court and the agency must honor that intent.[19] If the statute is silent or ambiguous, however, the court "does not merely impose its own interpretation of the statute."[20] Instead, step two of the analysis requires the court to ask whether the agency's interpretation is reasonable.[21] If it is, the interpretation is entitled to "controlling weight."[22] The Court reasoned that where Congress has explicitly or implicitly left a gap for the agency to fill, it has delegated to the agency the authority to clarify that provision through regulation.[23]

II. *CHEVRON* IN IMMIGRATION

A. INS v. Cardoza-Fonseca

Three years after establishing the *Chevron* framework, the Supreme Court first addressed its application in the immigration context in the landmark asylum case, *INS v. Cardoza-Fonseca*.[24] The case concerned a noncitizen who applied for both asylum and withholding of removal, two forms of relief governed by different statutory standards.[25] To meet the statutory definition of a "refugee," the asylum provision requires a "well-founded fear of persecution," and the withholding provision requires a "clear probability of persecution."[26] Despite the textual differences, both the Immigration Judge and the Board of Immigration Appeals (BIA) applied the "clear probability" standard, rather than the "well-founded fear" standard required for asylum claims.[27]

Justice Stevens, who had authored the *Chevron* opinion just three years earlier, wrote the majority opinion in *Cardoza-Fonseca*.[28] The Court emphasized that Congress intentionally used broader language

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18 *Id.*

19 *Id.* at 842-43.

20 *Id.* at 843.

21 *Id.* at 844 ("Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute.").

22 *Id.*

23 Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 843-44 (1984).

24 INS v. Cardoza-Fonseca, 480 U.S. 421, 446-48 (1987) (discussing *Chevron's* application).

25 *Id.* at 424.

26 *Id.* at 430-31; 8 U.S.C. § 1101(a)(42).

27 *Cardoza-Fonseca*, 480 U.S. at 425.

28 *Id.* at 423.

to define "refugee" in the asylum statute than it had in the withholding provision, reflecting an intent to establish distinct legal standards for the two forms of relief.[29] Concluding that Congress had clearly expressed its intent regarding the statutory standard at issue, the Court rejected the application of *Chevron* deference.[30]

In doing so, the Court acknowledged that statutory ambiguities may warrant agency deference but emphasized that courts remain the "final authority" on questions of statutory construction when Congress's intent can be discerned through traditional interpretive tools.[31] Thus, although the Court declined to apply *Chevron* deference in this instance, its opinion signaled that the doctrine was generally applicable in immigration law.[32]

B. INS v. Aguirre-Aguirre

A little over a decade after *Cardoza-Fonseca*, the Supreme Court reaffirmed its confidence in *Chevron* in *INS v. Aguirre-Aguirre.*[33] *Aguirre-Aguirre* involved the interpretation of the term "serious nonpolitical crime," which plays a crucial role in determining asylum eligibility in the United States.[34] Under the Immigration and Nationality Act (INA), asylum may be denied to individuals who have been convicted of a "serious nonpolitical crime," but the statute does not define this term.[35] In *Aguirre-Aguirre*, the respondent sought withholding of removal, but the BIA denied relief, finding that he had committed a serious nonpolitical crime before entering the United States.[36] The Court of Appeals reversed and remanded, concluding that the BIA's analysis was deficient.[37] The Supreme Court, however, reinstated the BIA's decision, holding that *Chevron* deference applied to the agency's interpretation of ambiguous statutory terms. The Court reasoned that the Court of Appeals should have applied *Chevron* deference principles because the primary legal issue involved an agency's interpretation

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29 *Id.* at 432.

30 *See id.* at 446-49.

31 *Id.* 447-48.

32 *See id.* at 446-49.

33 INS v. Aguirre-Aguirre, 526 U.S. 415, 424-25 (1999).

34 *Id.* at 419-20.

35 *Id.* at 420; 8 U.S.C. § 1253(h)(2)(C).

36 *Aguirre-Aguirre*, 526 U.S. at 422-23.

37 *Id.* at 423.

of a statute.[38] By reversing the Court of Appeals, the Supreme Court underscored that courts should not impose additional requirements on the agency's decision-making process unless the interpretation is unreasonable.[39]

Writing for the majority, Justice Kennedy stated explicitly that "the principles of *Chevron* deference are applicable to [the INA's] statutory scheme."[40] Citing the INA, the Court reinforced that the Attorney General is charged with the INA's administration and enforcement, and the determinations and rulings of the Attorney General are controlling.[41] Accordingly, the Attorney General retained ultimate authority while granting the BIA the power to exercise the "discretion and authority conferred upon the Attorney General by law" in adjudicating cases before it.[42] The Court highlighted the unique importance of deference in the immigration context, where decisions often involve sensitive political considerations and foreign relations.[43]

The Court also reinforced the principle that the BIA, as the agency responsible for interpreting and applying immigration law, was better positioned than the judicial branch to determine the meaning of statutory terms in the context of asylum claims.[44] Deferring to the BIA's interpretation, the Court emphasized the importance of agency expertise in administering complex immigration laws and the need for consistent and uniform application of these laws.[45] The decision in *Aguirre-Aguirre* demonstrated the Court's continued application of *Chevron* within immigration law, affirming that judicial deference is especially appropriate in the immigration context.[46]

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38 *Id.* at 424.

39 *See id.* at 425-26.

40 *Id.* at 424.

41 *Id.*

42 INS v. Aguirre-Aguirre, 526 U.S. 415, 425 (1999).

43 *Id.*

44 *Id.* ("The Judiciary is not well positioned to shoulder primary responsibility for assessing the likelihood and importance of such diplomatic repercussions."); *see also* Sunstein, *supra* note 3, at 444 ("Because of their superior accountability, expertise, and ability to coordinate complex enactments, agencies should be given the benefit of every doubt.").

45 *See Aguirre-Aguirre*, 526 U.S. at 424-25.

46 *See id.* at 425.

C. *Limiting* Chevron *in Immigration Cases*

Over the years, the Supreme Court repeatedly applied *Chevron* deference to agency interpretations of immigration law.[47] Over time, however, support for the *Chevron* doctrine wavered.[48] The last time the Supreme Court seriously considered the application of *Chevron* in an immigration case was the 2018 case, *Pereira v. Sessions*.[49] In *Pereira*, the Court reviewed the BIA's interpretation of statutory requirements for a Notice to Appear (NTA)—the document that initiates removal proceedings.[50]

Nonpermanent residents facing removal proceedings, such as the petitioner in *Pereira*, may be eligible for a form of discretionary relief known as cancellation of removal, provided they have maintained ten years of continuous physical presence in the United States.[51] Under the "stop-time rule" established within the statute, however, this period of continuous physical presence ends when the individual is served with a valid NTA.[52] The statute requires the government to provide noncitizens in removal proceedings with a valid NTA that includes certain information, such as "[t]he time and place at which the [removal] proceedings will be held."[53] *Pereira* addressed whether an NTA that did not specify either the time or place of the removal proceedings could effectively trigger the stop-time rule.[54]

Justice Sotomayor, writing for the majority, rejected the need for *Chevron* deference in this instance, finding the statutory requirements clear.[55] Justice Sotomayor argued that the "answer [was] as obvious as it seem[ed]," and noted that the plain text, statutory context, and common sense all clearly supported the conclusion that a deficient NTA—one lacking a time or place—could not trigger the stop-time rule.[56]

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47 *See, e.g.*, Scialabba v. Cuellar de Osorio, 573 U.S. 41, 56-57 (2014).

48 *See, e.g.*, Michigan v. EPA, 576 U.S. 743, 760-64 (2015) (Thomas, J., concurring); Pereira v. Sessions, 585 U.S. 198, 219-22 (2018) (Kennedy, J., concurring).

49 *See Pereira*, 585 U.S. 198 (2018).

50 *Id.* at 205-07.

51 8 U.S.C. § 1229b(b)(1); *Pereira*, 585 U.S. at 201.

52 8 U.S.C. § 1229b(d)(1)(A); *Pereira*, 585 U.S. at 201.

53 8 U.S.C. § 1229(a)(1)(G)(i); *Pereira*, 585 U.S. at 201.

54 Pereira v. Sessions, 585 U.S. 198, 202 (2018).

55 *Id.* at 217 ("A document that fails to include such information is not a 'notice to appear under section 1229(a)' and thus does not trigger the stop-time rule.").

56 *Id.* at 215 ("Based on the plain language and statutory context discussed above, we think it obvious that the word 'under,' as used in the stop-time rule, can only mean 'in accordance with'

In a concurring opinion, Justice Kennedy expressed broader concerns about *Chevron*'s continued application.[57] Calling *Chevron* into question, Justice Kennedy suggested that the doctrine might be applied too reflexively and without sufficient consideration of the context or nature of the agency's interpretation.[58] He observed that the emerging consensus among appellate courts, that an NTA must include time and place information to trigger the stop-time rule, "abruptly dissolved" not long after the BIA found the statute ambiguous and offered its own interpretation.[59] Kennedy's concurrence further criticized the appellate courts' collective analysis as "cursory" and cautioned that such reflexive deference to agency interpretations risked undermining the judiciary's constitutional role in interpreting statutes.[60] Justice Kennedy concluded that "it seems necessary and appropriate to reconsider . . . the premises that underlie *Chevron* and how courts have implemented that decision," and he emphasized the importance of interpretive rules that align with constitutional principles of separation of powers and respect the proper role and function of the Judiciary.[61]

Justice Alito dissented, arguing that the majority's decision improperly ignored *Chevron*.[62] Justice Alito asserted that the Court's decision "implicates the status of an important, frequently invoked, once celebrated, and now increasingly maligned [*Chevron*] precedent."[63] He argued that the statutory language was ambiguous and that the majority's interpretation was overly formalistic and disconnected from the practical realities of immigration proceedings.[64] Justice Alito warned that the ruling could create unnecessary confusion in

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or 'according to,' for it connects the stop-time trigger in § 1229b(d)(1) to a 'notice to appear' that contains the enumerated time-and-place information described in § 1229(a)(1)(G)(i).").

57 *Id.* at 219-21 (Kennedy, J., concurring).

58 *Id.* at 221 ("The type of reflexive deference exhibited in some of these cases is troubling. And when deference is applied to other questions of statutory interpretation, such as an agency's interpretation of the statutory provisions that concern the scope of its own authority, it is more troubling still.").

59 *Id.* at 220.

60 Pereira v. Sessions, 585 U.S. 198, 220-21 (2018).

61 *Id.* at 221.

62 *Id.* at 222 (Alito, J., dissenting) ("I can only conclude that the Court, for whatever reason, is simply ignoring *Chevron*.").

63 *Id.* at 221.

64 *See id.* at 234-35.

immigration proceedings and disrupt long-standing practices.[65] His dissent concluded with a demand that the Court must either consistently apply *Chevron* or openly reconsider the doctrine, stating emphatically, "unless the Court has overruled *Chevron* in a secret decision that has somehow escaped my attention, it remains good law."[66]

III. OVERRULING *CHEVRON*

Chevron faced growing criticism over the years, particularly from legal scholars, judges, and policymakers, who argued that the doctrine granted excessive power to federal agencies at the expense of the Judiciary and principles of democratic accountability.[67] A central concern was that *Chevron* deference allowed agencies to interpret and implement laws in ways that contradict the original intent of Congress, or the Constitution, and that it undermined the role of the courts in safeguarding the separation of powers.[68] Critics contended that by deferring to agencies, courts abdicate their constitutional responsibility to interpret the law, instead allowing unelected individuals to shape significant areas of public policy.[69] The Supreme Court increasingly echoed these concerns.[70]

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65 *Id.* at 236 ("At most, we can hope that the Government develops a system in the coming years that allows it to determine likely dates and times before it sends out initial notices to appear. But nothing in either today's decision or the statute can guarantee such an outcome, so the Court is left crossing its fingers and hoping for the best.").

66 Pereira v. Sessions, 585 U.S. 198, 236 (2018).

67 *See* Jack Beermann, *End the Failed* Chevron *Experiment Now: How* Chevron *Has Failed and Why It Can and Should Be Overruled*, 42 CONN. L. REV. 779 (2010); Christopher J. Walker, *Attacking* Auer *and* Chevron *Deference: A Literature Review*, 16 GEO. J.L. & PUB. POL'Y 103, 110-15 (2018); *but see* Michael Kagan, Chevron*'s Asylum: Judicial Deference in Refugee Cases*, 58 HOUS. L. REV. 1119, 1155 (2021) ("While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices–resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.").

68 Sunstein, *supra* note 3, at 446 ("[T]he notion that administrators may interpret statutes that they administer is inconsistent with separation of powers principles that date back to the early days of the American republic and that retain considerable vitality today.").

69 *See id.*

70 *See, e.g.,* Michigan v. EPA, 576 U.S. 743, 761 (2015) (Thomas, J., concurring) ("*Chevron* deference precludes judges from exercising [their independent] judgment, forcing them to abandon what they believe is the 'best reading of an ambiguous statute' in favor of an agency's construction."); Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 983 (2005) ("*Chevron* teaches that a court's opinion as to the best reading of an ambiguous statute an agency

In 2024, these concerns and criticisms culminated in the landmark decision, *Loper Bright Enterprises v. Raimondo*, in which the Supreme Court declared: "*Chevron* is overruled."[71] The case marked a turning point as the Court reevaluated and ultimately rejected *Chevron*'s role in modern administrative law.[72]

Loper Bright centered on a rule promulgated by the National Marine Fisheries Service (NMFS) under the Magnuson-Stevens Fishery Conservation and Management Act.[73] The rule required commercial fishing vessel operators to pay for the cost of observer monitoring, a regulation that fishing interests challenged as outside the scope of the agency's statutory authority.[74] Specifically, the petitioners argued that the statute did not permit such a mandate and that the NMFS's interpretation was an overreach of its regulatory powers.[75]

A. *Majority Opinion:* Chevron *as Judicial Abdication*

Writing for the majority, Chief Justice Roberts agreed with the petitioners.[76] The Court emphasized that interpreting the law is strictly the Judiciary's responsibility, as outlined by § 706 of the Administrative Procedure Act (APA) and Article III of the Constitution.[77] Crucially, the Court interpreted § 706 to require *de novo* review of "all relevant questions of law," including those involving statutory ambiguity—rejecting the notion that courts should defer to agency interpretations.[78] This principle, as the Court explained, is rooted in early judicial interpretations and foundational cases such as *Marbury v. Madison*.[79]

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is charged with administering is not authoritative."); City of Arlington v. FCC, 569 U.S. 290, 327 (2013) (Roberts, C.J., dissenting) ("We do not leave it to the agency to decide when it is in charge.").

71 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

72 *See id.* at 384 ("[The Court] granted certiorari in both cases, limited to the question whether *Chevron* should be overruled or clarified.").

73 *See id.* at 380-83.

74 *Id.* at 380-82.

75 *Id.*

76 *See id.* at 412-13.

77 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 398 (2024) ("*Chevron* defies the command of the APA that 'the reviewing court'—not the agency whose action it reviews—is to 'decide all relevant questions of law' and 'interpret . . . statutory provisions.'").

78 *Id.* at 392.

79 *Id.* at 385 ("This Court embraced the Framers' understanding of the judicial function early on. In the foundational decision of *Marbury* v. *Madison*, Chief Justice Marshall famously declared that '[i]t is emphatically the province and duty of the judicial department to say what the law is.'

Although courts historically have respected executive branch interpretations, those interpretations were not controlling.[80] In the Court's view, "*Chevron* . . . triggered a marked departure from the traditional approach," by requiring courts to "*ignore*, not follow, the reading the court would have reached had it exercised its independent judgment as required" by the APA.[81]

The APA, which governs how federal agencies propose and establish regulations,[82] stipulates that courts must review agency actions to ensure they comply with statutory law.[83] Emphasizing the APA's mandate, the majority asserted that, "courts, not agencies, [must] decide '*all* relevant questions of law' arising on review of agency action . . . even those involving ambiguous laws—and set aside any such action inconsistent with the law as they interpret it."[84] Accordingly, the Court found that *Chevron* contradicted the APA by demanding that "courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time."[85]

The Court further criticized *Chevron* for introducing uncertainty into judicial review, highlighting its inconsistent application, unpredictable results, and conflict with the principles of *stare decisis*.[86] The majority noted that courts have struggled to operate effectively within *Chevron*'s framework, "leaving those attempting to plan around agency action in an eternal fog of uncertainty."[87] The Court concluded that *Chevron*'s departure from the APA and its inconsistent application by the Judiciary

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And in the following decades, the Court understood 'interpret[ing] the laws, in the last resort,' to be a 'solemn duty' of the Judiciary.").

80 *See id.* at 386 ("The views of the Executive Branch could inform the judgment of the Judiciary, but did not supersede it. Whatever respect an Executive Branch interpretation was due, a judge 'certainly would not be bound' [by that interpretation].").

81 *Id.* at 396, 398-99.

82 Vermont Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc., 435 U.S. 519, 524 (1978) (discussing the APA's rulemaking procedures).

83 5 U.S.C. § 706.

84 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 392 (2024) (emphasis in original); *see also* 5 U.S.C. § 706 (directing courts to decide all relevant questions of law and review agency action).

85 *Loper Bright*, 603 U.S. at 399 ("[*Chevron*'s] regime is the antithesis of the time honored approach the APA prescribes.") (emphasis in original).

86 *See id.* at 411 ("By its sheer breadth, *Chevron* fosters unwarranted instability in the law, leaving those attempting to plan around agency action in an eternal fog of uncertainty. *Chevron* accordingly has undermined the very 'rule of law' values that *stare decisis* exists to secure.").

87 *Id.*

warranted its overruling, despite its long-standing history and prior reliance by various entities.[88]

B. *Concurrences and the Separation of Powers*

In his concurrence, Justice Thomas supported the majority's decision to overrule *Chevron*, but wrote separately to "underscore a more fundamental problem: *Chevron* deference also violates our Constitution's separation of powers."[89] The concurrence echoed the majority by asserting that the Constitution vests the judicial power in the courts, not in executive agencies, and that it is therefore solely the responsibility of the Judiciary to interpret and apply the law.[90] Justice Thomas argued that *Chevron*'s framework improperly delegated judicial authority to administrative agencies, by compelling "judges to abdicate their Article III judicial power."[91] Concluding that *Chevron* deference was "not a harmless transfer of power," Justice Thomas maintained that overruling the doctrine reaffirmed the principles of separation of powers and safeguarded individual liberty.[92]

Similarly, Justice Gorsuch wrote a separate concurring opinion in which he agreed with the majority's decision to overrule *Chevron* but focused on what he described as "three lessons about the doctrine of *stare decisis*."[93] First, Justice Gorsuch asserted that when a precedent conflicts with the written law, the Court should be willing to correct its error.[94] Second, when evaluating the weight of precedent, judges should not rely solely on his or her own impression, but must critically assess their views in light of prior rulings, "open to the possibility that a precedent might be correct in ways not initially apparent."[95] Third, judicial opinions should not be read as statutes, and a later court

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88 *See id.* at 411-13.

89 *Id.* at 414 (Thomas, J., concurring) ("By tying a judge's hands, *Chevron* prevents the Judiciary from serving as a constitutional check on the Executive.").

90 *See id.* at 415.

91 *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 415 (2024) ("Because the judicial power requires judges to exercise their independent judgment, the deference that *Chevron* requires contravenes Article III's mandate.").

92 *Id.* at 416.

93 *Id.* at 423 (Gorsuch, J., concurring).

94 *See id.* at 424 ("Judicial decisions inconsistent with the written law do not inexorably control.").

95 *Id.* at 425-26.

reviewing a past decision must recognize that different facts or legal arguments could lead to a different conclusion.[96]

Turning directly to the question of what *stare decisis* effect *Chevron* should have, Justice Gorsuch concluded that each of the lessons seemed to strongly support the doctrine's overruling.[97] Lesson one suggested that *Chevron* deference contradicts the framework Congress established in the APA by allowing judges to relinquish a large portion of their responsibilities in favor of agency interpretation.[98] Lesson two displayed how *Chevron* deference is at odds with established principles of separation of powers, due process, and long-standing interpretive rules that uphold those constitutional values.[99] Gorsuch reasoned that this was because *Chevron* did not simply depart from court precedent; it defied it.[100] Moreover, the concurrence reasoned that examining cases discussing *Chevron*'s application demonstrated that courts have struggled to operate effectively within *Chevron*'s framework, turning "statutory interpretation into a game of bingo under blindfold."[101] Finally, lesson three showed that *Chevron*'s entire framework relied on overly broad interpretations of isolated passages and ambiguous remarks from an opinion that conveyed mixed signals from the start.[102] Gorsuch concluded by reasoning that respect for the law does not require preserving precedent at any cost; rather, the Court must be willing to reassess and overturn flawed decisions when the situation demands it.[103]

96 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 426 (2024) (Gorsuch, J., concurring).

97 *Id.* at 427.

98 *Id.* ("When applying *Chevron* deference, reviewing courts do not interpret all relevant statutory provisions and decide all relevant questions of law. Instead, judges abdicate a large measure of that responsibility in favor of agency officials. Their interpretations of 'ambiguous' laws control even when those interpretations are at odds with the fairest reading of the law an independent 'reviewing court' can muster.").

99 *See id.* at 429-31.

100 *Id.* at 432 ("[*Chevron*] represented not a continuation of a long line of decisions but a break from them. Worse, it did not merely depart from our precedents. More nearly, *Chevron* defied them.").

101 *Id.* at 438.

102 *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 448 (2024) (Gorsuch, J., concurring).

103 *Id.* at 446-48.

C. *Dissent: Judicial Overreach and the Loss of Expertise*

Justice Kagan, joined in dissent by Justices Sotomayor and Jackson, strongly criticized the majority's decision, characterizing its holding as an overreach of judicial power.[104] The dissent argued that the Court's holding reflected an audacious attempt to strip agencies of their authority, effectively consolidating power in the Judiciary at the expense of the expertise and discretion traditionally afforded to administrative agencies.[105] Justice Kagan began by defending the *Chevron* presumption and argued that Congress is aware its statutes inevitably contain gaps and ambiguities, many of which involve complex scientific or technical issues, require specialized knowledge of how regulatory systems operate, or raise questions of policy rather than strict legal interpretation.[106] The dissent asserted the Court has long relied on the idea that Congress entrusts "the agency it has put in control of a regulatory scheme to exercise the 'degree of discretion' that the statute's lack of clarity or completeness allows."[107]

Next, in response to the majority's reading of APA § 706, the dissent argued that the section's silence on the standard of review for statutory interpretation undermined the majority's reasoning.[108] The dissent pointed out that the APA explicitly specifies *de novo* review in other contexts, which suggests that the APA's lack of reference to a standard of review for interpreting statutes should not be taken as a rejection of *Chevron* deference.[109] Further, the dissent explained that the APA was intended to "restate[ ] the present law as to the scope of

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104 *See id.* at 450 (Kagan, J., dissenting) ("In one fell swoop, the majority today gives itself exclusive power over every open issue—no matter how expertise-driven or policy-laden—involving the meaning of regulatory law.").

105 *See id.* at 451 ("A longstanding precedent at the crux of administrative governance thus falls victim to a bald assertion of judicial authority. The majority disdains restraint, and grasps for power.").

106 *See id.* ("Perhaps Congress 'consciously desired' the administering agency to fill in aspects of the legislative scheme, believing that regulatory experts would be 'in a better position' than legislators to do so.").

107 *Id.* at 455.

108 *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 464 (2024) (Kagan, J., dissenting) ("Section 706's references to standards of review in other contexts only further undercut the majority's argument.").

109 *See id.* ("[W]hat is 'telling' is the absence of any standard for reviewing an agency's statutory constructions. That silence left the matter, as noted above, 'generally indeterminate': Section 706 neither mandates nor forbids *Chevron*-style deference.").

judicial review" at the time of its enactment.[110] Justice Kagan contended that, because the Supreme Court had already applied deference to agency interpretations both before and after the APA's passage, and because legal scholars at the time viewed the APA as compatible with such deference, the statute should not be read as prohibiting *Chevron* deference.[111]

The dissent then criticized what it described as the majority's erosion of the fundamental principles of *stare decisis*.[112] It argued that *Chevron* deserves a "particularly strong form" of *stare decisis* because Congress had the opportunity to overturn *Chevron* through legislation and has refused to do so.[113] Furthermore, the dissent pointed out that over 70 Supreme Court decisions and more than 18,000 lower court rulings have relied on *Chevron*, making the doctrine deeply entrenched in the legal system.[114] In the dissent's view, the majority failed to meet the rigorous standard required to overturn such well-established precedent, which demands an exceptionally compelling reason.[115]

Finally, the dissent reiterated that "[j]udges are not experts in the field, and are not part of either political branch of the Government."[116] It lamented the days when the Court "knew that as between courts and agencies, Congress would usually think agencies the better choice to resolve the ambiguities and fill the gaps" because, after all, agencies are the experts in the field.[117] In conclusion, Justice Kagan contended that "[a]t its core, *Chevron* is about respecting the allocation of responsibility" by granting primary authority over regulatory matters to agencies, rather than to courts.[118]

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110 *Id.* at 466 (internal quotation marks omitted).

111 *See id.* at 465-66 ("In the years after the APA was enacted, the Court 'never indicated that section 706 rejected the idea that courts might defer to agency interpretations of law.'").

112 *See id.* at 470.

113 *See id.* at 471, 472 ("Throughout th[e] years, Congress could have abolished *Chevron* across the board, most easily by amending the APA. Or it could have eliminated deferential review in discrete areas, by amending old laws or drafting new laws to include an anti-*Chevron* provision. Instead, Congress has 'spurned multiple opportunities' to do a comprehensive rejection of *Chevron*, and has hardly ever done a targeted one.").

114 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 472 (2024) (Kagan, J., dissenting) (citing Kent Barnett & Christopher J. Walker, Chevron *and Stare Decisis,* 31 Geo. Mason. L. Rev. 475, 477 n.11 (2024)).

115 *Id.* at 470-71.

116 *Id.* at 478.

117 *Id.*

118 *Id.*

Together, these cases frame the *Chevron* doctrine's rise, evolution, and eventual fall. Once a cornerstone of modern administrative law, *Chevron* shaped decades of judicial review, including in the complex and politically charged field of immigration. Its early application in immigration cases reflected judicial recognition of agency expertise and executive accountability. But over time, skepticism grew, both within the Court and among legal scholars, about the doctrine's compatibility with constitutional principles and judicial independence. With the Court's decision in *Loper Bright*, *Chevron* has now been definitively overruled, raising urgent questions about how courts will approach statutory interpretation in immigration law moving forward. In a system where agency flexibility once helped fill the gaps left by legislative inaction, the end of *Chevron* casts renewed attention on Congress and its long-standing failure to meaningfully reform U.S. immigration law.

ANALYSIS

The fallout from *Loper Bright* has made the statutory foundations of asylum law more important than ever. Although courts must now interpret key terms independently, many of those terms remain undefined in statute and have historically been shaped by agency interpretation.[119] As courts begin to reassert their role under *Skidmore*, the lack of clear legislative guidance threatens to destabilize the asylum system. Without *Chevron*'s interpretive buffer, the consequences of congressional inaction are no longer theoretical. The failure to modernize outdated statutory language now risks inconsistent rulings, narrowed protections, and increased barriers for those seeking refuge. As early decisions post-*Loper Bright* show, courts are already stepping into the void.[120] Whether there is any hope for a consistent and coherent immigration system will now depend less on agency discretion and far more on whether Congress is finally willing to act.

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119 *See* Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998) ("The [INA] does not define 'persecution' or specify what acts constitute persecution. We have described it, however, 'as the infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.'").

120 *See* Diaz-Arellano v. United States AG, 120 F.4th 722, 725 (11th Cir. 2024); Lopez v. Garland, 116 F.4th 1032, 1045 (9th Cir. 2024); Seldon v. Garland, 120 F.4th 527, 531 (6th Cir. 2024); Mazariegos-Rodas v. Garland, 117 F.4th 860, 877 (6th Cir. 2024).

I. ASYLUM REQUIREMENTS IN THE UNITED STATES

The United Nations High Commissioner for Refugees (UNHCR) estimates that as of May 2024, more than 120 million people have been forcibly displaced worldwide as a result of persecution, conflict, violence, or human rights violations.[121] UNHCR states, "[w]e are now witnessing the highest levels of displacement on record."[122]

For decades, the United States was considered a "world leader in refugee admissions."[123] From providing legal protection to hundreds of thousands of Europeans displaced by World War II to offering asylum to those fleeing communist regimes in Europe and Asia during the Cold War, the U.S. played a pivotal role in shaping international humanitarian law regarding refugee protection.[124] In 1980, with the passage of the Refugee Act, the U.S. shifted from an ad hoc approach to a more structured and permanent system for identifying, screening, and resettling refugees.[125] The Refugee Act further established an official definition of the term "refugee," raised the annual refugee admission limit, and granted the President the authority to admit additional refugees in times of emergency.[126] The U.S. has admitted more than three million refugees in the decades since it was enacted.[127]

In the United States, asylum provides a legal pathway for refugees and their families to live in the country and eventually pursue citizenship.[128] Successful asylum seekers are not only shielded from being forcibly returned to their home countries but are also granted the right to work in the U.S., access certain federal benefits, and petition to reunite with family members.[129] To meet the asylum requirements, an asylum seeker has the burden of proof and must satisfy the definition of

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121 *Refugee Facts*, USA FOR UNHCR, https://www.unrefugees.org/refugee-facts/statistics/ (last visited Aug. 3, 2025).

122 *Id.*

123 Diana Roy, et al., *How Does the U.S. Refugee System Work?*, COUNCIL ON FOREIGN RELS. (May 16, 2025, 12:05 PM), https://www.cfr.org/backgrounder/how-does-us-refugee-system-work-trump-biden-afghanistan.

124 *Id.*

125 *See id.*

126 *See id.*

127 *Id.*

128 *See Asylum*, U.S. CITIZENSHIP & IMMIGR. SERVS. (July 22, 2025), https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum.

129 *See id.*

"refugee" under § 101(a)(42)(A) of the INA.[130] Accordingly, to qualify as a "refugee," a noncitizen must demonstrate that they are outside their country of nationality and are either unable or unwilling to seek protection from that country because of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion.[131]

The term "persecution" is not defined in the statute, however, and thus has been created through judicial precedent and agency interpretation.[132] For example, courts have reasoned that "actions must rise above the level of mere 'harassment' to constitute persecution," and that in deciding a petition for asylum, "persecution is an extreme concept; low-level intimidation and harassment does not rise to the level of persecution."[133] In addition, the harm must be motivated by a protected ground that is fundamental to the applicant's identity or conscience and cannot be expected to change.[134] This connection between the asylum seeker's identity and the persecution establishes a "nexus," a necessary element required of a successful asylum claim.[135] Finally, the asylum seeker must prove that the government, or groups that the government is unable or unwilling to control, committed the persecution.[136] Thus, determining whether an applicant qualifies for asylum requires a distinct yet interrelated analysis: (1) whether the

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130 *See* 8 U.S.C. § 1101(a)(42)(A).

131 *Id.*

132 *See* Singh v. INS, 134 F.3d 962, 967 (9th Cir. 1998) ("The [INA] does not define 'persecution' or specify what acts constitute persecution. We have described it, however, as the 'infliction of suffering or harm upon those who differ (in race, religion or political opinion) in a way regarded as offensive.'").

133 *See* Sofinet v. INS, 196 F.3d 742, 746 (7th Cir. 1999); Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004); *see also* Calvo-Tino v. Garland, 107 F.4th 861, 865-66 (8th Cir. 2024) (reaffirming that persecution requires more than harassment).

134 *See* Matter of Acosta, 19 I. & N. Dec. 211, 233 (1985) ("The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.").

135 *See* Torres v. Mukasey, 551 F.3d 616, 629 (7th Cir. 2008) ("An applicant for asylum must demonstrate a nexus between his alleged persecution and one of five protected grounds.").

136 *Acosta*, 19 I. & N. Dec. at 222 ("[The] harm or suffering had to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control.").

harm suffered rises to the level of persecution, and (2) whether that harm was motivated by a protected ground under the INA.[137]

II. *LOPER BRIGHT* IMPLICATIONS FOR ASYLUM LAW

Of course, the most immediate consequence of overruling *Chevron* is that courts must now apply independent judgment when interpreting immigration statutes.[138] As the Supreme Court made clear in *Loper Bright Enters. v. Raimondo*, however, courts are not prohibited from consulting agency interpretations.[139] Reverting to *Skidmore* deference, the Supreme Court clarified that, although courts no longer automatically defer to agency interpretations, they may still consider the persuasiveness and expertise of agency rulings.[140] Under *Skidmore*, courts evaluate agency interpretations based on factors such as the thoroughness of the agency's reasoning, the consistency of its position, the expertise involved, and how well the interpretation aligns with the statute's purpose.[141] Thus, although agencies no longer enjoy the broad latitude granted under *Chevron*, their interpretations may still carry weight if they are well-reasoned and demonstrate a high level of expertise.[142]

Even under *Skidmore* deference, without *Chevron*, asylum seekers and advocacy groups may have a more favorable environment for challenging restrictive asylum policies and regulations.[143] As courts

137 *See Calvo-Tino*, 107 F.4th at 865-66; *Acosta*, 19 I. & N. Dec. at 233; *see also* 8 U.S.C. § 1158(b)(1)(B) ("To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.").

138 Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

139 *See id.* at 394.

140 *See id.* at 371 ("Courts exercising independent judgment in determining the meaning of statutory provisions, consistent with the APA, may—as they have from the start—seek aid from the interpretations of those responsible for implementing particular statutes."); *see also* Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (recognizing that courts may consider agency interpretations for guidance).

141 *See Skidmore*, 323 U.S. at 140.

142 *See Loper Bright*, 603 U.S. at 412-13.

143 *SCOTUS Overturning* "Chevron" *Doctrine Will Impact Immigration Cases*, AM. IMMIGR. LAWS. ASS'N (June 28, 2024), https://www.aila.org/library/aila-president-scotus-overturning-chevron-doctrine-will-impact-immigration-cases ("[The Supreme Court] overturning the longstanding *Chevron* doctrine will have a significant impact on many immigration adjudications. This now means that an agency's interpretation of the INA doesn't automatically prevail, which could level the playing field for immigrants and their families and employers.").

must now examine the legality of agency interpretations with greater skepticism, many expect fewer decisions in favor of the government.[144] For example, in a post-*Chevron* world, BIA interpretations of "persecution" or "particular social group" may now be called into question, and definitions of these terms may shift across jurisdictions. Where *Chevron* gave significant latitude to the BIA and DHS to shape such terms, courts must now determine their scope independently, guided by statutory text, legislative history, and judicial precedent.[145]

The end of *Chevron* may lead to greater judicial variation in how asylum statutes are interpreted, particularly as courts begin to develop their own definitions of ambiguous terms. Without binding agency interpretations, meanings may shift across jurisdictions, potentially resulting in an ad hoc patchwork of legal standards. While this decentralization could prompt some courts to adopt clearer or even more expansive readings, others may interpret the same terms more narrowly. The overall effect is an increase in legal uncertainty for asylum seekers, whose eligibility may now depend more heavily on the jurisdiction of adjudication. In the absence of consistent agency guidance, this fragmentation risks turning asylum eligibility into a function of geography rather than law, where similarly situated applicants may receive different outcomes depending on the circuit in which their claims are heard.

The *Loper Bright* decision thus marks a significant shift in the balance of interpretive authority in asylum and refugee law. For now, the extent of *Chevron*'s impact on asylum law remains largely a waiting game; the *Loper Bright* decision has left legal practitioners and scholars in the immigration field holding their breath.[146]

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144 *See* Thomas W. Merrill, *The Demise of Deference and the Rise of Delegation to Interpret?*, 138 HARV. L. REV. 227, 245 (2024); *see also* Suchita Mathur, *Immigrants May Benefit While Others Lost Out from the Supreme Court's Decision Overruling* Chevron, AM. IMMGR. COUNCIL (July 11, 2024), https://www.americanimmigrationcouncil.org/blog/immigrants-may-benefit-from-supreme-court-overruling-chevron/ (discussing potential effects of overturning *Chevron* in immigration adjudication).

145 *See, e.g.*, Scialabba v. Cuellar de Osorio, 573 U.S. 41, 56-58 (2014); Pereira v. Sessions, 585 U.S. 198, 207 (2018); Margos v. Gonzales, 443 F.3d 593, 596-97 (7th Cir. 2006); Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

146 *See* Merrill, *supra* note 144, at 272.

III. CONGRESSIONAL RESPONSE, OR LACK THEREOF

Recent efforts to reform U.S. immigration law have been defined by legislative gridlock, partisan division, and an increasing reliance on executive action in lieu of durable statutory change.[147] Despite numerous proposals and growing public outcry for comprehensive immigration reform, Congress has failed to pass legislation that addresses the full scope of the issue, let alone enact meaningful asylum reform.[148] As a result, the immigration system continues to operate with significant legal and procedural gaps, leaving millions of individuals in prolonged uncertainty. Although there is broad recognition across party lines that the system is outdated and ineffective, Congress consistently refuses to find common ground.[149]

A. *A Statutory Framework Frozen in Time*

The significance of Congress's failure to act becomes especially clear when placed in historical context. The last time Congress enacted comprehensive immigration reform was nearly four decades ago.[150] In 1986, Congress passed the Immigration Reform and Control Act (IRCA), a landmark piece of legislation that coupled enhanced enforcement mechanisms with a broad legalization program.[151] The Act imposed penalties on employers who knowingly hired undocumented workers, while simultaneously offering legal status to approximately

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147 *See* Maryam Stevenson, *Explaining the Comprehensive Immigration Reform Stalemate*, 73 CATH. U. L. REV. 400, 404-05 (2024); *see also* María Pabón López & Natasha Ann Lacoste, *Immigration Reform in 2013-14: An Essay on the Senate's Bipartisan Plan & the House's Standard*, 17 HARV. LATINO L. REV. 121, 123 (2014) (discussing partisan divisions and legislative challenges in immigration reform efforts).

148 *See* William Galston, *The Collapse of Bipartisan Immigration Reform: A Guide for the Perplexed*, BROOKINGS (Feb. 8, 2024), https://www.brookings.edu/articles/the-collapse-of-bipartisan-immigration-reform-a-guide-for-the-perplexed/.

149 *See* Theresa Cardinal Brown & Emerson Sprick, *Has Congress Given Up on Bipartisan Immigration Reform? A Data Driven Look at Legislation Since 2015*, BIPARTISAN POLICY CTR., (May 21, 2025), https://bipartisanpolicy.org/report/has-congress-given-up-on-bipartisan-immigration-reform-a-data-driven-look-at-legislation-since-2015/?; *Broken Borders: Will Immigration Reform Be Next?*, ABC NEWS (Mar. 19, 2010, 9:05 AM), https://abcnews.go.com/Politics/immigration-reformobama-democrats-tackle-hot-button-issue/story?id=10146578 ("While both Republicans and Democrats argue immigration reform is needed, lawmakers have made little headway in recent years.").

150 *See* Stevenson, *supra* note 147, at 424.

151 *See* Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986).

2.7 million undocumented immigrants who had been living in the United States prior to 1982.[152] The Act reflected a political moment in which bipartisan compromise still existed—built on the premise that stricter enforcement and legalization could coexist.[153]

In contrast, the politics of restriction and deterrence increasingly shaped subsequent legislative efforts in the 1990s and early 2000s.[154] Rather than expanding protections, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) enacted sweeping restrictions.[155] Passing with bipartisan support under President Bill Clinton, IIRIRA expanded grounds for deportation, introduced mandatory detention provisions, curtailed avenues for discretionary relief, and limited judicial review of immigration decisions.[156]

IIRIRA was comprehensive in its scope, impacting all facets of immigration law, from enforcement to the treatment of undocumented immigrants.[157] It marked a significant shift in U.S. immigration policy, emphasizing the prevention of illegal immigration through increased enforcement, the deterrence of overstays, and the imposition of severe penalties for unauthorized entries.[158] Unlike earlier reform efforts such as IRCA, which balanced enforcement with measures like legalization and a pathway to citizenship, IIRIRA focused almost exclusively on enforcement.[159] Although it addressed many issues related to unauthorized immigration, it did not include provisions for legalization

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152 *See* Stevenson, *supra* note 147, at 424.

153 *See id.*

154 *See* Patrisia Macías-Rojas, *Immigration and the War on Crime: Law and Order Politics and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 6 J. MIGRATION & HUM. SEC. 1, 1-2 (2018).

155 *Id.* at 1.

156 *See* Donald Kerwin, *From IIRIRA to Trump: Connecting the Dots to the Current US Immigration Policy Crisis*, 6 J. MIGRATION & HUM. SEC. 192, 193-94 (2018).

157 *See* M. Isabel Medina, *Judicial Review—A Nice Thing? Article III, Separation of Powers and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 29 CONN. L. REV. 1525, 1525, 1530 (1997); Bo Cooper, *Procedures for Expedited Removal and Asylum Screening Under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, 29 CONN. L. REV. 1501, 1501-03 (1997).

158 Kerwin, *supra* note 156, at 201 ("[T]he Act enlarged the grounds for deportation, expanded the use of 'administrative' rather than immigration court removals, eliminated benefits and certain relief from removal, increased mandatory detention, established new barriers to asylum, 'criminalized' many immigration-related offenses, restricted immigration of those with low income, barred reentry to the United States based on prior unlawful presence, and enlisted states and localities in immigration enforcement.").

159 *See id.* at 193 n.3, 201.

or the creation of pathways to citizenship for the undocumented population.[160]

In the decades following IIRIRA, Congress has failed to enact any immigration reform of similar significance.[161] As a result, the statutory language guiding today's asylum system remains largely frozen, even as global migration patterns, humanitarian crises, and executive policy priorities dramatically evolve. Terms such as "persecution," "particular social group," and "well-founded fear"—central to asylum adjudication—remain undefined in statute, left instead to be shaped by agencies, courts, and shifting presidential administrations.[162] For decades, courts used *Chevron* to defer to agency expertise in resolving these gaps. Now, post-*Loper Bright*, those same gaps must be addressed without *Chevron*'s interpretive buffer, exposing the consequences of Congress's failure to update the statutory framework.

B. *Executive Workarounds and Congressional Paralysis*

In the absence of meaningful legislative reform, presidential administrations have increasingly stepped in to shape immigration policy through executive action.[163] Congressional inaction has not only left major gaps in the immigration system but has also created space for unilateral action by the Executive Branch.[164] Over the past few decades, as immigration has become a deeply polarizing political issue, lawmakers have routinely acknowledged the need for reform but failed to reach consensus on how to achieve it.[165] In this legislative vacuum, presidents from both parties have pursued sweeping policy changes on their own, using executive orders, regulatory action, and operational directives to advance their agendas—often with significant and lasting effects on the immigration system.[166]

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160 *See id.* at 201-02.

161 *See* Stevenson, *supra* note 147, at 405.

162 *See generally* 8 U.S.C. § 1101(a)(42); 8 U.S.C. § 1158 (providing the statutory framework for asylum eligibility).

163 Ming H. Chen, *Administrator-In-Chief: The President and Executive Action in Immigration Law*, 69 ADMIN. L. REV. 347, 349 (2017) ("In the face of political division, presidents increasingly rely on executive action to advance their signature policies.").

164 *See* Hiroshi Motomura, *The President's Dilemma: Executive Authority, Enforcement, and the Rule of Law in Immigration Law*, 55 WASHBURN L.J. 1, 2-5 (2015) (discussing President Obama's use of executive action in response to prolonged congressional inaction on immigration reform).

165 *See* Stevenson, *supra* note 147, at 448-49.

166 *See* Chen, *supra* note 163, at 349.

In 2012, following a slew of failed legislative attempts, President Barack Obama established the Deferred Action for Childhood Arrivals (DACA) program.[167] The initiative provided temporary protection from deportation and work authorization to undocumented immigrants brought to the United States as children, otherwise known as "Dreamers."[168] Over a period of five years, hundreds of thousands of young undocumented immigrants were shielded from removal.[169] President Obama made clear, however, that because DACA was created through executive action rather than enacted by Congress, it was a limited, temporary, and incomplete solution reserved for a small segment of the immigrant population.[170] Obama emphasized that DACA did not provide permanent legal status or address broader policy challenges facing the immigration system, as that responsibility falls to Congress.[171]

A year later, in 2013, the "Gang of Eight," a bipartisan group of four Democratic and four Republican senators, negotiated a bipartisan Senate immigration bill.[172] Regarded as the best chance to enact comprehensive reform, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 included provisions for enhanced border security, a pathway to citizenship for undocumented immigrants, and reforms to legal immigration services.[173] The proposal passed the Senate 68 to 32 with strong bipartisan support, with fifty-two Democrats, two Independents, and fourteen Republicans voting in support.[174] The bill then faced fierce opposition in the House of

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167 Kevin R. Johnson, *Lessons About the Future of Immigration Law from the Rise and Fall of DACA,* 52 U.C. DAVIS L. REV. 343, 344 (2018).

168 *See id.* at 362-63.

169 *Id.* at 364.

170 *Id.* at 346.

171 *See id.* ("Most importantly, as President Obama emphasized, DACA did not purport to provide a path to a durable legal immigration status for the cohort of young undocumented immigrants who the program benefited. Lawful permanent resident status, which can ultimately lead to naturalization and full U.S. citizenship, is something that only Congress can bestow on noncitizens.").

172 *See* Mariela Olivares, *Unreformed: Towards Gender Equality in Immigration Law,* 18 CHAP. L. REV. 419, 430-33 (2015); *see also* Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013) (proposed immigration reform legislation in the U.S. Senate).

173 *See* Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong. (2013).

174 Olivares, *supra* note 172, 430-32; Lopez & Lacoste, *supra* note 147, at 133-34.

Representatives.[175] Then-House Speaker John Boehner stated that the "vast majority" of House Republicans intended to address immigration concerns but preferred a step-by-step approach, further noting that Republicans would not be pressured by executive deadlines.[176] As a result, the House did not bring the bill to a vote, and the effort to pass comprehensive immigration reform ultimately died.[177] The bill's failure is widely attributed to growing intra-party divisions and fears of backlash from "anti-amnesty" constituencies.[178]

Over the next ten years, as partisan polarization grew, chances for meaningful immigration reform in Congress dwindled.[179] In 2016, with immigration at the forefront of his campaign, then-candidate Donald Trump made a variety of promises to the American people regarding immigration, making immigration enforcement a centerpiece of his presidential campaign.[180] Bypassing the legislative system, the first Trump administration made changes to the immigration system through "operational policy decisions," executive orders, and regulations.[181] Critics argue that the Trump administration's combination of high-profile immigration enforcement initiatives and inflammatory, anti-immigrant rhetoric marked the unprecedented rise of immigration restrictionism to the highest levels of the Executive Branch in modern history.[182]

In 2017, the Trump administration's decision to end DACA reignited the immigration debate, sparking widespread protests and legal challenges from both sides of the political aisle.[183] In response, Democrats pushed for legislative action to permanently protect DACA recipients, while Republicans urged stronger border security measures in return for such protection.[184] One such proposal, introduced in the

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175 *See* Lopez & Lacoste, *supra* note 147, at 133.

176 *Id.* at 134.

177 *See* Stevenson, *supra* note 147, 448-50.

178 *See id.* at 449.

179 *See id.* at 445.

180 *See* Kevin R. Johnson & Rose Cuison-Villazor, *The Trump Administration and the War on Immigration Diversity,* 54 Wake Forest L. Rev. 575, 585 (2019).

181 Jaclyn Kelley-Widmer, *Unseen Policies: Trump's Little-Known Immigration Rules as Executive Power Grab,* 35 Geo. Imm. L.J. 801, 806 (2021); *see* Johnson & Cuison-Villazor, *supra* note 180, at 586-87.

182 Johnson & Cuison-Villazor, *supra* note 180, at 603.

183 *See* Johnson, *supra* note 167, at 347 (2018); Lisa Scott et al., *The Current Minefield for Immigration Practitioners: Protecting the Rights of Clients in the Trump Era,* 51 Case W. Res. J. Int'l L. 165, 166 (2019).

184 *See* Johnson, *supra* note 167, at 386-87.

House of Representatives, offered a path to citizenship for DACA recipients in exchange for border wall funding and the implementation of reductions to family-based chain migration.[185] The bill failed to gain traction, however, and garnered only 193 votes in the House—far short of the majority needed.[186] The standoff between Democrats and Republicans over DACA, border security, and immigration reform ultimately led to months of negotiations.[187] Despite several proposals, Congress was unable to pass a permanent solution.[188]

In the following years, executive action and judicial rulings continued to drive immigration reform.[189] While Congress fails to enact permanent legislation, presidents from both parties continue to take significant steps through executive orders and policy shifts.[190] On his first day in office, President Joe Biden unveiled the U.S. Citizenship Act of 2021, a proposed reform that would have granted a path to citizenship for the millions of undocumented immigrants in the United States.[191] From the beginning, this proposal was unlikely to pass; it unsurprisingly gained little traction in Congress, with both Republicans and Democrats opposing the proposal.[192]

The most recent substantial legislative proposal for immigration reform was H.R. 2, the Secure the Border Act.[193] Introduced in 2023, the comprehensive bill sought to impose stricter immigration controls, including a substantial increase in border security personnel and resources, a reshaping of the asylum system with stricter eligibility

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185 *See id.* at 383.

186 *See* Securing America's Future Act, H.R. 4760, 115th Cong. (2018), https://www.congress.gov/bill/115th-congress/house-bill/4760/all-actions.

187 *See* Johnson, *supra* note 167, at 347 ("The failure to reach agreement to provide relief to the noncitizens threatened with loss of the protection of DACA resulted in a budget impasse in Congress and a temporary shutdown of the federal government.").

188 *Id.* at 348 ("Despite years of debate over immigration reform, Congress has been unable to forge consensus on whether and how to provide legal status to the approximately eleven million undocumented immigrants living in the United States.").

189 *See* Kelley-Widmer, *supra* note 181, at 806 ("[T]hrough 'operational policy choices,' executive orders, and regulations, Trump implemented changes to the immigration system outside the bounds of legislation.").

190 *See* Stevenson, *supra* note 147, at 405-06.

191 *See* Hannah Miao, *Biden's Immigration Bill Faces an Uphill Battle in Congress, but These Parts Could Find Bipartisan Support,* CNBC (Feb. 27, 2021, 9:00 AM), https://www.cnbc.com/2021/02/27/immigration-biden-bill-faces-uphill-battle-but-these-measures-could-pass.html.

192 *See id.*

193 *See* HILLEL R. SMITH, CONG. RSCH. SERV., IF12522, THE SECURE THE BORDER ACT (H.R. 2): ASYLUM RELATED-REFORMS (2023).

criteria and faster processing times, and the authorization for the construction of more border barriers.[194] Although it passed in the Republican-controlled House, the bill faced strong opposition from Democrats and ultimately failed to advance in the Senate.[195] The failure to pass H.R. 2, coupled with ongoing debates over border security and asylum policies, signals that finding a durable, bipartisan solution to immigration reform remains a distant and elusive goal. The deepening partisan divide over immigration issues, as well as the increasingly polarized public opinion surrounding border enforcement and humanitarian protections, suggests that meaningful reform will require both significant political will and compromise.[196] In light of the current legislative environment, neither seems likely. Until a broad consensus is achieved, it appears improbable that any comprehensive immigration legislation will pass, leaving the immigration system mired in uncertainty.

Absent congressional action, *Loper Bright* leaves millions of undocumented individuals living in the United States in limbo. The absence of a clear and thoughtful congressional response to these challenges effectively hinders meaningful immigration reform, leaving a critical issue unresolved and perpetuating a cycle of uncertainty that undermines the stability of both immigrant populations and the nation as a whole. Without an appropriate congressional response, immigration policy is stalled.

IV. CASES AFTER *LOPER BRIGHT*

Lower courts have not hesitated to implement *Loper Bright*; in the months since the decision, courts have applied its holding decisively and with uniformity—signaling a swift departure from *Chevron*'s deferential framework and revealing a new era of independent judicial interpretation.[197] Although it remains to be seen how the Supreme Court's decision in *Loper Bright* will reshape the landscape of immigration law, early rulings suggest significant and immediate

194 *See id.*

195 Galston, *supra* note 148.

196 Pew Research Center, *Immigration Attitudes and the 2024 Election* (June 6, 2024), https://www.pewresearch.org/politics/2024/06/06/immigration-attitudes-and-the-2024-election/.

197 *See* Diaz-Arellano v. United States AG, 120 F.4th 722, 725 (11th Cir. 2024); Lopez v. Garland, 116 F.4th 1032, 1036 (9th Cir. 2024); Seldon v. Garland, 120 F.4th 527, 531 (6th Cir. 2024); Mazariegos-Rodas v. Garland, 117 F.4th 860, 877 (6th Cir. 2024).

doctrinal shifts. Courts are now uniformly applying *de novo* review of agency decisions and legal interpretations, consequently leading to a more rigid application of immigration statutes.[198] As courts decline agency input, the burden shifts to Congress. Legislative drafting now plays a heightened role, as courts will scrutinize and decide cases with closer attention to the precise language and intent of the statutes. Without agency flexibility to guide the application of statutes, Congress must proactively address both existing and emerging statutory gaps, ensuring that immigration law is responsive to evolving needs while minimizing inconsistent or costly court decisions. Post-*Loper Bright* case law demonstrates that courts will adhere strictly to statutory text, placing the responsibility squarely on Congress to provide clear guidance for administering immigration law.[199]

In *Diaz-Arellano v. United States AG*, the Eleventh Circuit Court of Appeals provided a clear example of this post-*Chevron* interpretive approach.[200] The case involved a petitioner seeking cancellation of removal based on the hardship his deportation would impose on his U.S. citizen children.[201] The key issue was how to interpret the statutory phrase "exceptional and extremely unusual hardship" under the INA.[202] The court explicitly exercised independent judgment in interpreting that standard as it relates to a "child," rather than deferring to the BIA's formulation.[203] The Eleventh Circuit Court of Appeals directly referenced *Loper Bright* and emphasized that, "with *Chevron* out of the picture," courts must exercise independent judgment and interpret statutory language themselves, especially when the law is arguably clear.[204] Ultimately, the court concluded that the petitioner failed to meet the heightened hardship threshold and denied relief, but it did so based on its own statutory interpretation, not deference to the agency.[205]

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198 *See Diaz-Arellano*, 120 F.4th at 725; *Lopez*, 116 F.4th at 1036; *Seldon*, 120 F.4th 527 at 531; *Mazariegos-Rodas*, 117 F.4th at 869.

199 *See, e.g.*, *Diaz-Arellano*, 120 F.4th 722 at 725; *Lopez*, 116 F.4th at 1043; *Seldon*, 120 F.4th at 531, 534; *Mazariegos-Rodas*, 117 F.4th at 877.

200 *See Diaz-Arellano*, 120 F.4th at 725.

201 *See id.* at 723-24.

202 *Id.*

203 *Id.* at 725.

204 *Id.*

205 *See id.* at 725, 727.

The Ninth Circuit Court of Appeals applied the Supreme Court's decision in *Loper Bright* and reaffirmed the end of *Chevron* in *Lopez v. Garland*, stating that "[n]ow, [the] task is to evaluate the statute independently under *Skidmore*, giving 'due respect,' but not binding deference to the agency's interpretation."[206] In *Lopez*, the court evaluated an appeal that found the petitioner removable based on crimes involving "moral turpitude."[207] Although the court acknowledged that *Skidmore* permits courts to consult agency interpretations for their persuasive value, it made clear that such interpretations are no longer controlling.[208] The court reviewed the BIA's interpretation of the statute *de novo*, noting that after *Loper Bright*, agency interpretations may guide but are not entitled to deference.[209]

Additionally, in *Seldon v. Garland*, the Sixth Circuit Court of Appeals applied *Loper Bright* principles to an asylum case in which the petitioner alleged the immigration judge failed to properly inform her of her right to apply for asylum after she expressed a "fear of persecution."[210] Although the court ultimately agreed with the BIA's conclusion—that the petitioner's statements during the hearing did not indicate a present fear of return and that counsel had not expressed an intent to file for asylum—it rejected any notion of automatic deference to the agency.[211] The court emphasized that post-*Loper Bright*, it only considers the BIA's interpretations for their persuasive power.[212] Reflecting the court's independent role under the new post-*Chevron* standard, the court emphasized its obligation to independently assess legal conclusions.[213]

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206 Lopez v. Garland, 116 F.4th 1032, 1039 (9th Cir. 2024).

207 *Id.* at 1036.

208 *Id.* at 1039.

209 *Id.* at 1036 ("Prior to the Supreme Court's decision in [*Loper Bright*], we would determine whether the agency's interpretation was due deference under [*Chevron*]. However, after *Loper Bright Enterprises*, we may look to agency interpretations for guidance, but do not defer to the agency.") (cleaned up).

210 *See* Seldon v. Garland, 120 F.4th 527, 535 (6th Cir. 2024).

211 *See id.*

212 *See id.* at 531 ("While the BIA's interpretations are 'not controlling,' they may still have 'power to persuade' based on 'the thoroughness evident in [their] consideration, the validity of [their] reasoning, [and their] consistency with earlier and later pronouncements.'").

213 *See id.* ("Prior to *Loper Bright Enterprises v. Raimondo* . . . we would give 'substantial deference' to the agency's interpretations of the INA and accompanying regulations. [Post *Loper Bright*,] [w]hile the BIA's interpretations are 'not controlling,' they may still have 'power to persuade.'") (cleaned up).

Recently, in *Mazariegos-Rodas v. Garland*, the Sixth Circuit again noted the crucial shift in the landscape of administrative law, addressing the impact of *Loper Bright* on agency adherence to judicial precedent.[214] The court pointedly asserted that under the *Loper Bright* framework, agencies no longer possess "special competence" in interpreting statutes, a responsibility that now falls squarely within the purview of the courts.[215] In this case, the court rejected the BIA's attempt to disregard its precedential decisions, affirming that agencies are bound by the judicial interpretation of law.[216] The court noted that the Supreme Court in previous cases, such as *Internet Services (Brand X)*, allowed agencies like the BIA to disagree with circuit precedents on statutory interpretation where the statute was ambiguous.[217] The court made clear that *Loper Bright* abrogated that principle, however, and the BIA is no longer authorized to ignore judicial interpretations of law.[218]

As these decisions demonstrate, the elimination of *Chevron* deference marks a profound shift in administrative and immigration law. Courts are now focused squarely on statutory text, with significantly reduced latitude to rely on agency interpretation.[219] In this new legal landscape, Congress bears increased responsibility to legislate with clarity and foresight. The absence of agency discretion to resolve statutory ambiguity highlights the urgent need for comprehensive and well-drafted immigration reform. Going forward, the effectiveness of immigration law—and its fairness, consistency, and adaptability—will depend not on agency guidance, but on Congress's willingness to lead.

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214 *See* Mazariegos-Rodas v. Garland, 117 F.4th 860, 877 (6th Cir. 2024).

215 *Id.* at 877.

216 *See id.*

217 *See id.*; *see also* Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 982 (2005) (allowing agencies to depart from prior judicial interpretations where statutes are ambiguous).

218 *Mazariegos-Rodas*, 117 F.4th at 877.

219 *See* Diaz-Arellano v. United States AG, 120 F.4th 722, 725 (11th Cir. 2024); Lopez v. Garland, 116 F.4th 1032, 1036 (9th Cir. 2024); Seldon v. Garland, 120 F.4th 527, 531 (6th Cir. 2024); *Mazariegos-Rodas*, 117 F.4th at 877.

CONCLUSION

The Supreme Court's decision in *Loper Bright* leaves substantial uncertainty and signals a new era of statutory interpretation. While this shift may promote judicial consistency, it also risks fragmented, inflexible outcomes in areas of law where statutory gaps have traditionally been filled by agency interpretation.

Responsibility for coherent immigration policy now rests squarely with Congress, not because courts are uninvolved, but because only Congress, as the constitutionally designated lawmaking body, has the power to create durable, nationwide legislative consistency. *Loper Bright* leaves no room for vague or open-ended legislation that invites interpretive discretion. Elected officials must draft clear, comprehensive statutes that address longstanding gaps, reflect current realities, and give agencies explicit guidance on how to implement complex mandates. Immigration reform can no longer be deferred to agency rulemaking or resolved through judicial workarounds.[220] *Loper Bright* demands that the legislative branch reclaim its role as the primary architect of immigration policy.

If Congress fails to act, the consequences will extend far beyond administrative inefficiency. Judicial policymaking and legislating through unilateral executive actions undermine democratic accountability and place strain on institutions ill-equipped to make nuanced, forward-looking policy choices. But if Congress embraces its constitutional responsibility by crafting laws that are both precise and responsive, it can reassert its proper role and restore coherence to the immigration system and the broader regulatory state. *Loper Bright* thus offers not just a warning but an opportunity: a chance for Congress to lead with intentionality, foresight, and legislative craftsmanship. In immigration and beyond, the durability and fairness of American regulatory governance now depend on whether Congress is willing to meet the moment by fulfilling its constitutional calling.

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220 *See* Chen, *supra* note 163, at 349.