

Congress of the United States
Washington, DC 20515

July 10, 2024

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Secretary Mayorkas:

We write to call to your attention *Loper Bright Enterprises v. Raimondo*, a recent Supreme Court decision that precludes courts from deferring to agency interpretations of the statutes they administer.¹ In its decision, the Court overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which had allowed courts to defer to agency interpretations of ambiguous statutes. By allowing such deference, the Court in *Chevron* upset the founders' careful separation of powers, permitting courts to abdicate the judicial role granted exclusively to them through Article III of the Constitution and enabling the Executive to usurp the legislative authority granted exclusively to Congress through Article I. Unsurprisingly, *Chevron* unleashed decades of successively broader, more costly and more invasive assertions of agency power over citizens' lives, liberty and property, as agencies adopted expansive interpretations of assertedly ambiguous statutes, demanding courts defer to them.

Perhaps no administration has gone as far as President Biden's to found sweeping and intrusive agency dictates on such questionable assertions of agency authority. The Biden administration has promulgated far more major rules, imposing far more costs and paperwork burdens, than either of its recent predecessor administrations.² Many of these rules—such as those promulgated to impose President Biden's climate, energy and Environment, Social and Governance (ESG) agendas—have been based on aggressive interpretations of statutes enacted by Congress years and even decades ago, before many issues against which the Biden administration has sought to deploy them were even imagined.

The expansive administrative state *Chevron* deference encouraged has undermined our system of government, overburdening our citizenry and threatening to overwhelm the founders' system of checks and balances. Thankfully, the Court in *Loper Bright* has now corrected its *Chevron* error, reaffirming that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”³ This long-needed reversal should stem the vast tide of federal agencies' overreach. Given the Biden administration's track record, however, we are

¹ *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024).

² See, e.g., *Burdensome Regulations: Examining the Biden Administration's Failure to Consider Small Businesses: Hearing Before the H. Comm. on Small Business*, 118th Cong. (May 22, 2024) (statement of Dan Goldbeck, Director of Regulatory Policy, American Action Forum), available at <https://www.americanactionforum.org/testimony/burdensome-regulations-examining-the-biden-administrations-failure-to-consider-small-businesses>.

³ *Loper Bright Enterprises v. Raimondo*, 603 U.S. at ____ (slip op. at 7-8) (quoting *Marbury v. Madison*, 1 Cranch 137, 177 (1803)).

compelled to underscore the implications of *Loper Bright* and remind you of the limitations it has set on your authority.

As the committees of jurisdiction overseeing the Department of Homeland Security (Department) and its component agencies, we assure you that we will exercise our robust investigative and legislative powers not only to reassert forcefully our Article I responsibilities, but to ensure the Biden administration respects the limits placed on its authority by the Court's *Loper Bright* decision. Accordingly, to assist in this effort, please provide the following documents and information as soon as possible, but no later than 5:00 p.m. on July 24, 2024:

1. The following lists concerning agency legislative rules proposed or promulgated since January 20, 2021, identifying in each relevant listing the rule or rulemaking and agency statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency rules that may be impacted by the Court's *Loper Bright* decision;
 - b. A list of all final agency rules not yet challenged in court that may be impacted by the Court's *Loper Bright* decision if they are so challenged; and
 - c. A list of all pending agency rulemakings in which the agency is relying on an agency interpretation of statutory authority that might have been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*.
2. The following lists concerning agency adjudications initiated or completed since January 20, 2021, identifying in each relevant listing the adjudication and agency statutory interpretation concerned:
 - a. A list of all pending judicial challenges to final agency adjudications that may be impacted by the Court's *Loper Bright* decision;
 - b. A list of all final agency adjudications not yet challenged in court that may be impacted by the Court's *Loper Bright* decision if they are so challenged; and
 - c. A list of all pending agency adjudications in which the agency is relying on an agency interpretation of statutory authority that might have been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*.
3. The following lists concerning enforcement actions brought by the agency in court since January 20, 2021, identifying in each relevant listing the agency statutory interpretation sought to be enforced:
 - a. A list of all pending enforcement actions in which the agency is relying on an agency interpretation of statutory authority that might have been eligible for *Chevron* deference prior to the Court's decision in *Loper Bright*, and

- b. A list of all concluded enforcement actions in which the court deferred under *Chevron* to an agency interpretation of statutory authority as a basis for its judgment against a non-agency party.
4. The following list and documents concerning agency interpretive rules proposed or issued since January 20, 2021, identifying in each relevant listing the statutory authority the rule interprets and the agency statutory interpretation set forth in the rule:
 - a. A list of all proposed or final agency guidance documents or other documents or statements of the agency containing interpretive rules likely to lead to—
 - i. an annual effect on the economy of \$100,000,000 or more;
 - ii. a major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or
 - iii. significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.
5. A list of all judicial decisions in cases to which the Department and its component agencies have been a party since the Supreme Court issued its *Chevron* decision in 1984, not ultimately overturned by a higher court in which the court deferred under *Chevron* to the agency's interpretation of a statute, to include in each relevant listing the statutory authority the agency interpreted and the agency statutory interpretation upheld.

Please contact the Committee on Homeland Security Majority staff at (202) 226-8417 and Committee on Oversight and Accountability Majority staff at (202) 225-5074 with any questions about this request. Attached are instructions for producing documents and information to the Committees.

Per Rule X of the U.S House of Representatives, the Committee on Homeland Security is the principal committee of jurisdiction for overall homeland security policy, and has special oversight functions of “all Government activities relating to homeland security, including the interaction of all departments and agencies with the Department of Homeland Security.” The Committee on Oversight and Accountability is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X.

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Thank you for your prompt attention to this important matter.

Sincerely,



MARK E. GREEN, M.D.
Chairman
Committee on Homeland Security



JAMES COMER
Chairman
Committee on Oversight and
Accountability

Encl.

cc: The Honorable Bennie Thompson, Ranking Member
Committee on Homeland Security

The Honorable Jamie Raskin, Ranking Member
Committee on Oversight and Accountability