



NO DRAMATIC CHANGES IN IMMIGRATION CASES AFTER LOPER BRIGHT? SOME BRIGHT SPOTS EMERGE

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In its June 28, 2024 decision in [Loper Bright Enterprises v. Raimondo](#), the Supreme Court abolished the long-standing Chevron doctrine. Under this doctrine, courts were required to defer to the government agency's interpretation of an ambiguous statute. Chief Justice John Roberts, writing for the majority, stated that "*Chevron* is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires", but made clear that prior cases decided under the *Chevron* framework are not automatically overruled.

Loper Bright is already reshaping how federal courts handle immigration cases under the INA, but the change is more incremental and nuanced than revolutionary so far. Courts are repeating *Loper Bright's* core rule that courts must exercise independent judgment on statutory meaning and may not defer to the BIA or DHS simply because the statute is ambiguous. At the same time, courts are invoking *Loper Bright's* statutory stare decisis language to preserve pre-2024 *Chevron*-era immigration precedents, rather than discarding them wholesale. Courts are also using their own independent judgment by analyzing the INA provision but are reaching the same outcome.

However, there are bright spots too. In a recent district court decision, a district court invoked *Loper Bright* to overturn the denial of an employment-based first preference extraordinary ability case. Courts have also not paid deference to the Board of Immigration Appeal's reinterpretation of INA 235(2)(A) and INA 236 holding that noncitizens who entered without inspection (EWI) are not eligible for bond.

Below is a summary of selected cases regarding how courts are using *Loper Bright* in immigration-related decisions:

Ineffective Assistance Counsel under Matter of Lozada

In an Eleventh Circuit case on ineffective assistance in removal proceedings, [Gutierrez-Mikan v. Attorney General](#) (11th Cir. 2026), the petitioner argued that *Loper Bright* undermined *Matter of Lozada* and circuit precedent enforcing *Lozada*-style requirements such as filing a bar complaint against the prior attorney against whom ineffective assistance was alleged. The Court rejected that argument and explained that *Loper Bright* stops “unthinking” Chevron deference to agency interpretations of ambiguous statutes, but *Lozada* did not rest on a statutory interpretation of the INA; it was an exercise of the BIA’s authority to regulate practice before the immigration courts, which the circuit had already adopted as binding precedent.

The Court reasoned that *Lozada* did not interpret an unambiguous provision under the INA but was part of the Board’s broad discretion in considering motions to reopen deportation orders

The Court then expressly invoked *Loper Bright*’s stare decisis passage in a footnote:

Loper Bright “did ‘not call into question prior cases that relied on the Chevron framework. The holdings of those cases that specific agency actions are lawful ... are still subject to statutory stare decisis despite change in interpretive methodology.’”

“Mere reliance on Chevron cannot constitute a special justification for overruling such a holding... That is not enough to justify overruling a statutory precedent.”

In ineffective-assistance litigation, *Loper Bright* is *not* being treated as a ticket to unwind established *Lozada*-based requirements. Courts are instead using *Loper Bright* to reaffirm that *Chevron* is dead going forward, but *Chevron*-era INA precedents still bind under statutory stare decisis. In *Gutierrez-Mikan* the Court also noted that *Loper Bright* was not applicable as *Lozada* was not interpreting an ambiguous statutory provision.

Crime involving moral turpitude

In [Solis-Flores v. Bondi](#) (4th Cir. 2025), the Fourth Circuit held that a Virginia conviction for receipt of stolen property (VA Code § 18.2-108) is a crime

involving moral turpitude (CIMT). The court determined that knowingly possessing stolen goods with dishonest intent is inherently base and constitutes a CIMT.

Even after the Supreme Court's 2024 ruling in *Loper Bright* eliminating *Chevron* deference, the Fourth Circuit found that the statute, which requires knowledge that the property was stolen, aligns with their established, independent definition of a CIMT. The Court reconsidered the question without *Chevron* deference and again independently concluded that the prior conviction (receipt of stolen property) was a CIMT, reaching the same result as under pre-*Loper Bright*. It expressly stated that *Loper Bright* "changes the analysis but does not alter the result."

Even where the Supreme Court has told circuits to reconsider immigration rulings in light of *Loper Bright*, courts often reaffirm the same outcomes using their own interpretation of the INA, rather than deferring to the BIA.

In another Fourth Circuit case, [Chavez v. Bondi](#) (4th Cir. 2025) the petitioner Chavez contended that petit larceny under a Virginia penal provision isn't a CIMT because it doesn't require a sufficiently culpable mental state and doesn't involve reprehensible conduct.

The Fourth Circuit explicitly reconciled *Loper Bright* with immigration case law developed by the BIA such as in [Matter of Diaz-Lizarraga](#), 26 I. & N. Dec. 847 (BIA 2016) and gave deference to its finding that a theft offense is a crime involving moral turpitude.

Similarly, in [Lopez v. Garland](#) (9th Cir. 2024) the Ninth Circuit considered whether the BIA's holding in *Matter of Diaz-Lizarraga* "constitutes a CIMT if it includes an intent to deprive either permanently or under circumstances where the owner's property rights are substantially eroded" was entitled to deference. The Court gave *Skidmore* deference to BIA's interpretation in *Matter of Diaz-Lizarraga*, finding it "thorough and well-reasoned", and consistent with judicial precedent.

Jurisdiction and defective Notice to Appear

In the defective NTA litigation (omission of time/place), the Second Circuit in [Penaranda Arevalo v. Bondi](#) (2d Cir. 2025) addressed *Loper Bright* but held that *Loper Bright* did not change its existing precedent in [Banegas Gomez v. Barr](#) (2d Cir. 2019), which had already concluded that NTA defects do not strip

immigration court jurisdiction because “no ‘statutory glue bonds the Immigration Court’s jurisdiction to § 1229(a)’s requirements.”

The Court emphasized that its jurisdictional holding was its own reading of the statute, not *Chevron* deference, so *Loper Bright* did not disturb it.

Exceptional and Extremely Unusual Hardship

In [*Moctezuma-Reyes v. Garland*](#) (6th Cir. 2024), the Sixth Circuit addressed the question of how much deference should be given to BIA’s interpretation of the meaning of “exceptional and extremely unusual hardship.” Even in light of *Loper Bright*, the Court developed a two part test - courts can still defer to agency interpretations if the statute uses broad language and makes clear that “Congress expressly and explicitly delegated discretion to the agency”.

The Court affirmed the BIA’s denial of cancellation of removal under this new standard as the petitioner did not meet the stringent “exceptional and extremely unusual hardship” standard under the two part test.

The case is widely cited as one of the first major tests of how courts handle agency interpretations following *Loper Bright*. Rather than automatically deferring to the BIA’s interpretation of “hardship,” the Sixth Circuit conducted its own statutory analysis. It concluded that while courts must now use their own judgment to interpret laws, they can still find agency interpretations “informative” and “persuasive” if they align with the statute’s text.

When Does a Child Stop Being a Child for Cancellation Hardship

Several federal courts have now cited *Loper Bright* in cases analyzing when a child “ages out” as a qualifying relative for cancellation of removal under INA § 240A(b)(1)(D), 8 USC 1229b(b)(1)(D). The main issues are:

At what time the child must meet the INA § 101(b)(1) “under 21” definition (filing date, IJ merits hearing, or date of final decision),

*How Loper Bright affects deference to the BIA decision in [*Matter of Isidro-Zamorano*](#), which that the held that a qualifying child who turns 21 before the adjudication of her parent’s application for cancellation of removal does not remain a qualifying relative under the hardship requirement of § 1229b(b)(1)(D), and*

Whether Loper Bright allows courts to adopt a more noncitizen-favorable

age-fixing rule (e.g., at application filing), especially where agency delay caused aging out.

In the decisions discussed below, courts uniformly acknowledge that *Chevron* is gone, but most still adopt the final decision/ continuing-application approach, either because the text is “unambiguous” or because the BIA’s reading remains the most persuasive under a non-deferential review.

In [Diaz-Arellano v. U.S. Att’y Gen](#) (11th Cir. 2025), the Eleventh Circuit addressed when a child must be under 21 to qualify for cancellation of removal under § 1229b(b)(1)(D). The Court noted that *Loper Bright* “formally overruled *Chevron* deference.” It stated that, with *Chevron* “out of the picture,” the court must exercise its “independent judgment” when reviewing the BIA’s decision and “exercise that interpretive authority whether or not the governing statute is ambiguous.”

The panel then held that the text of § 1229b(b)(1)(D) unambiguously requires a qualifying relative at the time the immigration court finalizes its decision on the application. It explained that, if an applicant proceeds based on hardship to a child, “there must be a child—an unmarried person under the age of twenty-one—when the final decision on cancellation of removal is made.”

The Court explicitly cited *Loper Bright* to reject *Chevron* deference and to justify its own textual reading of § 1229b(b)(1)(D).

Despite that, it ended up in line with the BIA’s “continuing application” concept, effectively confirming that age is tested at the final IJ decision (or final agency decision), not at filing.

In [Yupangui v. Bondi](#) (2d Cir. 2025) the petitioner sought cancellation based on hardship to his U.S.-citizen daughter who turned 21 while his case was pending. He argued that the statute is ambiguous on “aging out” and that, under *Loper Bright*, no deference is owed to the BIA’s continuing-application reading. He urged the Court to fix his daughter’s age as of the date he filed the cancellation application, or the date of the individual hearing, or the date when the hardship evidence was presented. The panel recognized that *Loper Bright* overruled the *Chevron* framework and that the petitioner was asking the court to choose a different, non-deferential interpretation of § 1229b(b)(1)(D).

The government argued that even without *Chevron*, the BIA’s reading remains

the best interpretation: cancellation is a “continuing application,” so a qualifying child’s age is “properly considered at the time an application for cancellation of removal is decided,” citing *Matter of Isidro-Zamorano*.

The Second Circuit ultimately agreed that a qualifying child must still be under 21 when the application is finally decided. It found that by the time the BIA ruled on the motion to reopen, the daughter had aged out, so “there will be no exceptional hardship to a qualifying relative” going forward. The Court explicitly aligned itself with the Tenth and Eleventh Circuits as the “only other courts of appeals to have considered this issue since *Loper Bright*,” citing *Rangel-Fuentes v. Bondi* (10th Cir. 2025) and *Diaz-Arellano*.

Yupangui squarely addressed the hardship prong—the Court held that because the daughter is no longer a qualifying child at the time of the final decision, the “exceptional and extremely unusual hardship” element cannot be satisfied, regardless of earlier hardship.

In [Perez-Perez v. Bondi](#) (6th Cir. 2025), the Sixth Circuit addressed when to measure qualifying-child status under § 1229b(b)(1)(D).

The BIA denied cancellation solely because the petitioner’s daughter turned 21 while the case was on appeal, i.e., before the BIA decision, and thus was no longer a qualifying child. The Court recognized that, after *Loper Bright*, it is “no longer obligated to defer to the BIA’s interpretation of the INA,” but also notes the general principle that issues not addressed by the BIA should be remanded. The Court held that the child’s age is determined when the Immigration Court finalizes the decision. The dissenting opinion held that the child’s age is fixed at the time of the BIA decision rather than the IJ makes the decision.

Bright Spots

Final Merits Determination in Extraordinary Ability Cases

In [Anahita Mukherji v. Loren K. Miller, et al](#) the district court in Nebraska, set aside the USCIS’s denial of an extraordinary ability petition under the person of extraordinary ability category pursuant to INA 203(b)(1)(A). The Court found that the two tier system - where the person who meets three out of ten regulatory criteria under 8 CFR 204.5(h)(3) is also subject to a broad and amorphous “final merits” determination - not deserving of deference after *Loper Bright*. This is indeed a bright spot post *Loper Bright*. The USCIS had seized on the words “final merits determination” in [Kazarian v. USCIS](#) (9th Cir.

2010) to create a two system without going through notice and comment or providing good reasons for the new policy. The Court held that all questions of law will be determined by the Court, and found that the two tier final merits analysis was not valid at its inception. The Court need not have relied on *Loper Bright* to reach this outcome as the final merits analysis could have been discarded for a number of other reasons, but it got the nudge from *Loper Bright*.

Disregarding the *Yajure Hurtado* Decision in Detention without Bond Cases

On September 5, 2025, the BIA held in [Matter of Yajure Hurtado](#), 29 I&N Dec. 216 (BIA 2025), that a noncitizen respondent who entered the US without inspection and was placed in removal proceedings is not eligible for bond under INA 235(b)(2)(A) despite allowing bond since the passage of the Immigration Act of 1996.

After almost three decades, the BIA found that the language in INA 235(b)(2)(A) is clear, but completely disregarded INA 236(a), which provides for the release on bond of a noncitizen who is not ineligible under the categories prescribed in INA 236(c), which do not make reference to respondents who have entered without inspection. The BIA addressed this discrepancy but stating that “nothing in the statutory text of section 236(c), including the text of the amendments made by the Laken Riley Act, purports to alter or undermine the provisions of section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), requiring that aliens who fall within the definition of the statute ‘shall be detained for a proceeding under section 240’”.

The BIA knew that a federal court would not give deference to its interpretation of the ambiguity posed by two competing statutory provisions, INA 235(b)(2)(A) and INA 236(c), and so preemptively invoked *Loper Bright* to conclude that the language under INA 235(b)(1)(2) is clear and explicit without regard to the contradiction posed in neighboring INA 236(c). The BIA in *Yajure Hurtado* invoked *Loper Bright*, stating: “the statutory text of the INA is not ‘doubtful and ambiguous’ but is instead clear and explicit in requiring mandatory detention of all aliens who are applicants for admission, without regard to how many years the alien has been residing in the United States without lawful status. See INA § 235(b)(1), (2), 8 U.S.C. § 1225(b)(1), (2).”

Recent district court decisions have all used *Loper Bright* to challenge or

disregard *Matter of Yajure Hurtado*'s "no bond for EWIs" theory. These courts rely on *Loper Bright* to insist on independent judicial interpretation of §§ 1225 and 1226, with no automatic deference to the BIA's reading. They use *Loper Bright*'s endorsement of longstanding government practice as an interpretive aid to favor § 236(a) detention—and thus bond hearings—for EWIs arrested inside the country. They conclude that DHS's new no-bond position conflicts with 30 years of practice and lacks statutory support, thereby preserving bond eligibility for these EWIs. See e.g. [Barco Mercado v. Francis](#), [Guerrero Orellana v. Moniz](#); [Pizarro Reys v. ICE](#).

The Fifth Circuit very recently in [Buenrostro-Mendez v. Bondi](#) (5th Cir. 2026) agreed with *Yajure Hurtado* although district courts outside the Fifth Circuit have not been persuaded and continue to rule in favor of releasing the citizen using their own independent interpretation of the INA under *Loper Bright*. Even in the Fifth Circuit *Buenrostro-Mendez* also does not preclude release [based on constitutional grounds](#).

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