

**SECOND CIRCUIT APPLIES *LOPER BRIGHT* IN
AN SEC ENFORCEMENT ACTION¹**

**COURTS MUST INDEPENDENTLY INTERPRET
AMBIGUOUS FEDERAL STATUTES**

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OVERVIEW

The U.S. Supreme Court’s 2024 decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) fundamentally reshaped federal administrative law by overruling the *Chevron* doctrine. The *Chevron* doctrine, established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), directed courts to defer to an agency’s reasonable interpretation of an ambiguity in a law that the agency enforces. In lieu of deference to the agency’s reasonable interpretation, *Loper Bright* provided that the resolution of congressional ambiguity should be left to the judicial branch under the weaker standard established in *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Existing rules and case law already decided under the *Chevron* deference were to remain in place notwithstanding *Loper Bright*.

In a February 24, 2026, summary order (and therefore not formally published or precedential),² the U.S. Court of Appeals for the Second Circuit provided one of the earliest—and most concrete—applications of *Loper Bright* in the context of SEC enforcement, *SEC v. Amah*, No. 22-42206-cv (2d Cir. Feb. 24, 2026).

¹ For an updated version, see Lidstone, Herrick K., *Second Circuit Applies Loper Bright in an SEC Enforcement Action*, available at <https://ssrn.com/abstract=6596978>.

² With respect to the Summary Order, the Second Circuit said: “Rulings by Summary Order Do Not Have Precedential Effect. Citation to a Summary Order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this Court’s Local Rule 32.1.1. When Citing a Summary Order in a Document Filed with This Court, a Party Must Cite Either the Federal Appendix or an Electronic Database (With the Notation “Summary Order”). A Party Citing a Summary Order Must Serve a Copy of It on Any Party Not Represented by Counsel.” <https://www.casemine.com/judgement/us/699ef34652d338fd3f6e7886>.

THE *AMAH* DECISION

The case arose from a Securities and Exchange Commission (“SEC”) enforcement action in the Southern District of New York against Evarist Amah, a *pro se* defendant accused of soliciting investments from members of his religious community through materially false and misleading statements.³ In making the accusations, the SEC accused Mr. Amah of violating the Investment Advisors Act of 1940 (the “Advisers Act”), the Securities Act of 1933 (the “Securities Act”) and the Securities Exchange Act of 1940 (the “Exchange Act”).

In September 2023, the district court granted summary judgment in favor of the SEC, finding Mr. Amah liable under all three federal laws and imposing a permanent injunction, disgorgement and civil penalties against Mr. Amah.

On appeal, the Second Circuit affirmed liability under the Exchange Act and Securities Act, concluding that the defendant’s misstatements and omissions fell squarely within well-established anti-fraud provisions. The Second Circuit reversed the judgment under the Advisers Act claim because the district court relied on the SEC’s interpretation of a perceived ambiguity in the Advisers Act.

ADVISERS ACT CLAIM: NO DEFERENCE AFTER *LOPER BRIGHT*

The Advisers Act claim required the court to resolve what it described as “a novel and important issue of statutory construction.” Liability turned on whether Mr. Amah was acting as an “investment adviser” within the meaning of the Advisers Act. That, in turn, depended on the meaning of the statutory phrase “for compensation.” Under the Advisers Act, a person is an investment advisor if the person performs advisory services “for compensation.”

In *Amah*, it was undisputed that Amah received no compensation from the investors in question for the investment advice given. The SEC nonetheless relied on its long-standing interpretation that actual receipt of compensation is not required and that once an individual qualifies as an investment adviser with respect to one client, the individual is an adviser as to all clients — even those who do not pay for advisory services.

Applying *Loper Bright*, the Second Circuit declined to defer to the SEC’s interpretation. Because the SEC and district court “treated the SEC’s prior interpretation of the Advisers Act as authoritative” and the SEC pointed to no other precedent interpreting the statutory language, the Second Circuit remanded the case to the district court for consideration of the Advisers Act definition.

³ The Second Circuit *sua sponte* raised *Loper Bright*, relying on liberal interpretations of the *pro se* defendant’s arguments. The Second Circuit even suggested that the district court consider appointing counsel — potentially signaling that the Second Circuit wants a robust record on remand regarding the proper definition of “for compensation.”

WHY *AMAH* MATTERS

Importantly, the Second Circuit did not decide that the SEC's interpretation in *Amah* was wrong, nor did it adopt a narrower construction of the Advisers Act. Instead, the court made clear that deference alone is no longer enough.

The Second Circuit held that after *Loper Bright*, when liability turns on the meaning of ambiguous statutory language:

- Courts must independently analyze the ambiguous statutory language.
- Agencies must persuade courts through text, structure, history, and purpose — not institutional authority.
- District courts must build a record reflecting independent analysis rather than relying on shorthand references to agency interpretations.
- Courts may ultimately agree with the agency, but they must support that determination through independent judicial analysis — not deference.

Also importantly, although *Amah* dealt with an interpretation of a federal statute administered by the SEC, its analysis equally applies to other federal statutes administered by other federal agencies. The decision suggests that enforcement actions may require more robust statutory grounding and more explicit engagement with textual arguments. The agency must persuade courts — and, to some extent, in connection with negotiated resolutions, respondents — that its interpretation is the best reading of the statute, not merely a reasonable one.

For defendants and potential defendants in litigation involving federal agencies and federal statutes, *Amah* is significant because it confirms that *Loper Bright* can directly shape the outcome of an enforcement proceeding.

CONCLUSION

The Second Circuit's message to the district courts as set forth in the *Amah* decision is straightforward:

Since the *Loper Bright* decision, courts can no longer treat any federal agency's reading of an ambiguous statute as controlling, but instead must exercise independent judgment in determining statutory meaning, signaling that district courts must build a record of analysis rather than relying on shorthand references to agency interpretations.

This likely will require more extensive briefing in federal courts and more detailed judicial opinions in cases involving ambiguous and disputed statutory terms under federal law.

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