

RUTTER GROUP PRACTICE GUIDE

FEDERAL *NINTH CIRCUIT*

CIVIL APPELLATE PRACTICE

2025 UPDATE

This 2025 softbound Update completely replaces the 2024 Update.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail.

Cut-Off Date—February 28, 2025: Some of the new cases cited were not final as of our cut-off date and could be affected by later developments. Please be sure to check the subsequent histories before citing or relying on them.

Thank You! We encourage your comments and suggestions as we work to keep this Practice Guide on track. *Let us hear from you!* Visit our website at www.TheRutterGroup.com.

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2025 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS

Commencing Appellate Proceedings

[1:189.5-189.9] **Disclosure statement:** New Ninth Circuit Rule 26.1-1 (expanding on FRAP 26.1) requires all parties, intervenors, and amici in specified cases to file a disclosure statement. Parties must use the form “Disclosure Statement Under FRAP 26.1 and Circuit Rule 26.1-1” (Form 34) disclosing certain ownership interests. In cases opened on or after December 1, 2024, the disclosure statement must be filed as a standalone document within 14 days of the docketing of the appeal or petition. For cases opened before December 1, 2024, a disclosure statement (if required) should be included in a party’s initial motion or brief. [New Ninth Circuit Rule 26.1-1; *also discussed at* ¶6:538, 10:42, 13:257.1, 14:149, 14:468]

Securing Counsel for Appeal

[1:218] **Nonlawyers may not represent others on appeal:** See *Grizzell v. San Elijo Elementary School*, 110 F4th 1177, 1178 (9th Cir. 2024)—parent may not represent child pro se in appealing adverse judgment in civil rights action against school district.

CHAPTER 2

APPEALABILITY & JUSTICIABILITY

Final Judgments

[2:65] **Ascertaining finality—express intent of district court:** An order concluding that a deed of trust was a fraudulent transfer lacking priority over federal tax liens, and ordering a judicial sale, was not appealable because the order left the amounts to be awarded from the sale unsettled and asked for submissions from the parties on that issue; the order was not intended as the district court’s final act. [*United States v. Allahyari*, 99 F4th 486, 493-494 (9th Cir. 2024) (*also discussed at* ¶2:47.6)]

[2:83.3a] **Dismissal of claims—effect on finality:** Plaintiffs requested dismissal *without* prejudice, but the district court dismissed *with* prejudice, permitting Plaintiffs to appeal: “Plaintiffs thus never sought to employ the dismissal tactic at issue in *Microsoft*.” [*Kamal v. Eden Creamery, LLC*, 88 F4th 1268, 1276 (9th Cir. 2023)]

Injunctive Orders

[2:220.1] **Orders having practical effect of granting or denying injunction:** An order that prevented an employer from communicating with employees about wage and hour matters absent court approval was appealable as an injunction. [*Dominguez v. Better Mortg. Corp.*, 88 F4th 782, 790 (9th Cir. 2023)]

[2:254] **TRO “tantamount” to preliminary injunction:** Denial of a TRO request was tantamount to the denial of a preliminary injunction, and thus appealable, where the requested relief lasted well over 14

days and effectively resolved the case on the merits. [*Babaria v. Blinken*, 87 F4th 963, 976 (9th Cir. 2023)]

Appealability in Particular Cases

[2:319.3] **Orders denying immunity; government employees' qualified immunity:** A district court decision that allows a *Bivens* case to proceed is not tantamount to a denial of immunity and is not typically reviewable as a collateral order—although it may be reviewed along with a district court order that denies qualified immunity. [*Garraway v. Ciufo*, 113 F4th 1210, 1221 (9th Cir. 2024)—order permitting *Bivens* action not appealable]

[2:370] **Stays:** The Ninth Circuit applies the *Moses H. Cone* doctrine broadly, accepting appellate jurisdiction over many stay orders lasting roughly 18 months, “regardless whether the district court is sur-rendering jurisdiction to a state or federal court, and even when it is possible that the district court issuing the stay will resume proceedings after the stay has expired.” [*Doe 1-10 v. Fitzgerald*, 102 F4th 1089, 1096 (9th Cir. 2024); see *In re PG&E Corp. Secur. Litig.*, 100 F4th 1076, 1084 (9th Cir. 2024) (discretionary stay pending bankruptcy proceedings)]

Mootness

[2:655.2] **Civil penalties:** Because civil penalties are intended to deter, rather than compensate, a claim for civil penalties may be moot if it is “absolutely clear” the alleged violation could not reasonably be expected to recur. [*Coastal Environmental Rights Found. v. Naples Restaurant Group, LLC*, 115 F4th 1217, 1222-1223 (9th Cir. 2024)]

[2:715] **Settlement:** An appeal is *not* mooted by a settlement agreement that liquidates the damages or other relief to which the parties will become entitled depending on how the Ninth Circuit resolves the appeal. [*Cogan v. Trabucco*, 114 F4th 1054, 1061-1063 (9th Cir. 2024)—appeal not moot where settlement did not resolve underlying substantive liabilities (distinguishing *Gator.com Corp. v. L.L. Bean, Inc.*, 398 F3d 1125, 1130-1132 (9th Cir. 2005), in which settlement resolving parties' substantive rights, leaving only \$10,000 “side bet” on personal jurisdiction issue, mooted appeal)]

CHAPTER 3

NOTICE OF APPEAL & CROSS-APPEAL

Appeal Time Period Triggered by “Entry” of Judgment

[3:91] **Effect of amended judgment, order:** Where a subsequent order materially changes the substance of an earlier order, the later order can restart the time to appeal and seek review of the entire earlier order, even where appellant seeks review of aspects of the earlier order untouched by the later order. [*Dominguez v. Better Mortg. Corp.*, 88 F4th 782, 788 (9th Cir. 2023)]

Premature Notices of Appeal

[3:219] **Curing doctrine inapplicable where further nonministerial proceedings contemplated:** The curing doctrine, allowing for the “curing” of a premature notice of appeal by subsequent events, is confined

to situations where subsequent events of a ministerial nature are all that is necessary to produce finality. It does not apply where the notice of appeal is taken from a district court order that expressly defers resolution of substantive issues to a future date. [See *United States v. Allahyari*, 99 F4th 486, 492-493 (9th Cir. 2024)—premature notice of appeal not saved where taken from order foreclosing on tax liens that expressly left open amounts to be awarded from foreclosure sale and called for further briefing on issue]

Timeliness of Appeal—Tolling Motions

[3:245.3a] **Motions to alter or amend injunction order:** Parties' joint statement addressing ambiguities in the district court's prior injunction order, and requesting resolution by the court, was treated as a FRCP 59(e) motion to alter or amend the injunction order, tolling the time to appeal from that order. [*Dominguez v. Better Mortg. Corp.*, supra, 88 F4th at 789-790]

CHAPTER 4

THE RECORD AND JUDICIAL NOTICE

Reporter's Transcripts

[4:51.3] **Deadline for notice when fewer than all transcripts are ordered:** The deadline for service of appellant's notice and statement of issues on appellee has been shortened to within *seven days* of *either* the filing of the notice of appeal *or* the entry of an order disposing of the last timely postjudgment tolling motion. [Amended Ninth Circuit Rule 10-3.1(a)]

[4:52] **Appellee's response:** The deadline for appellee to serve on appellant a notice setting forth any additional transcripts that may be necessary for the appeal has been shortened to within *seven days* after service of appellant's notice. [Amended Ninth Circuit Rule 10-3.1(b)]

[4:55] **Ordering transcript:** The period for appellant to both file a transcript order form in the district court and provide a copy to the court reporter has been shortened to within *14 days* of filing the notice of appeal. [Amended Ninth Circuit Rule 10-3.1(d)]

Physical Exhibits

[4:209.2a] **Submitting physical exhibits when requested or permitted:** If duplication is possible, parties should ordinarily submit four copies of physical exhibits within seven days of the court's order. Preferred formats are specified. [See Amended Ninth Circuit Rule 27-14, Adv. Comm Note]

Correcting Omissions and Misstatements in Record

[4:217.4] **Settling disputes about record:** See *United States v. Ehmer*, 87 F4th 1073, 1091 (9th Cir. 2023)—when appellant moved during appeal to strike items from appellee's supplemental excerpts of record, appellee returned to district court and obtained order adding those items to record under FRAP 10(e)(2)(B).

Excerpts of Record

[4:254] **Pro se parties:** Although unrepresented parties are not

required to file excerpts of record, if the party elects to file excerpts, the excerpts must include a caption page and table of contents. [Amended Ninth Circuit Rule 30-1.3]

CHAPTER 7

SCOPE, WAIVER & STANDARDS OF REVIEW

Appeals from Final Judgments

[7:25.4] **Denial of leave to amend:** Where plaintiff sought dismissal without prejudice, the district court's dismissal with prejudice was appealable, and the court of appeals could review an interlocutory order denying leave to amend which had merged into the judgment. [*Kamal v. Eden Creamery, LLC*, 88 F4th 1268, 1275-1277 (9th Cir. 2023)]

[7:38.6] **Orders denying summary judgment need not dispose of entire case:** Orders denying summary judgment based on purely legal issues (i.e., without reference to disputed facts) merge into the final judgment even if the order would not have disposed of the entire case had it gone the other way. [*Cottonwood Environmental Law Ctr. v. Edwards*, 86 F4th 1255, 1261-1262 (9th Cir. 2023)]

Waiver by Failure to Raise Claim or Issue in District Court

[7:136.5] **Compare—no opportunity to file FRCP 50 motion:** In the unusual situation where a FRCP 50 motion cannot be filed in the district court, the appellate court may conclude appellant has not waived substantial evidence arguments on appeal. [*In re EPD Investment Co., LLC*, 114 F4th 1148, 1161, fn. 9 (9th Cir. 2024)—appellant did not waive substantial evidence argument despite not filing FRCP 50 motions because “[i]t is unclear whether [she] had the opportunity to file a Rule 50(a) or 50(b) motion in the trial below”]

Waiver at Appellate Level

[7:182-186.1] **Failure to raise in opening brief:** The detailed discussion of waiver by failure to raise matters in the opening brief is now addressed in chapter 7 (formerly in Chapter 8).

Clearly Erroneous Standard of Review

[7:233.6] **Inadequate factual findings compared:** For purposes of appellate review, the district court's factual findings should be explicit enough to give the appellate court a clear understanding of the basis of the trial court's decision. If the findings are not adequate, the court may remand the matter for further findings. [*Stillaguamish Tribe of Indians v. Washington*, 102 F4th 955, 961-962 (9th Cir. 2024); see ¶10:215]

Standards Applied to Particular Decisions

[7:254.1] **Agency interpretation of federal law:** The Ninth Circuit reviews all district court decisions regarding federal law de novo, including agency interpretations of federal statutes they enforce (embodied in federal regulations and other less formal pronouncements). Federal courts show no deference to such agency interpretations, even where the statute in question is ambiguous. [*Loper Bright Enterprises v.*

Raimondo, 603 US 369, 384-396, 412-413, 144 S.Ct. 2244, 2257-2263, 2273 (2024); *see detailed discussion at* ¶14:565 *ff.*]

[7:329] **Burford abstention:** A district court’s decision to apply *Burford* abstention (¶12:376) is reviewed under a modified abuse of discretion standard. Whether the requirements of the doctrine have been met is reviewed *de novo*, and the district court’s ultimate decision to abstain under the doctrine is reviewed for abuse of discretion. [*Blumenkron v. Multnomah County*, 91 F4th 1303, 1312 (9th Cir. 2024); *see Peridot Tree, Inc. v. City of Sacramento*, 94 F4th 916, 924-925 (9th Cir. 2024) (applying modified standard to *Thibodaux* variation of abstention)]

[7:340a] **Unconscionability of arbitration agreement:** Like other contract issues, the court reviews *de novo* whether an arbitration agreement is invalid because it is unconscionable. The district court’s determination whether to sever unconscionable terms of an agreement is reviewed for abuse of discretion. [*Ronderos v. USF Reddaway, Inc.*, 114 F4th 1080, 1088 (9th Cir. 2024)]

[7:387] **Jury instructions:** *See Montera v. Premier Nutrition Corp.*, 111 F4th 1018, 1027 (9th Cir. 2024)—“We review a district court’s formulation of civil jury instructions for an abuse of discretion, but we consider *de novo* whether the challenged instruction correctly states the law” (internal quotes and emphasis omitted).

[7:388.5] **Response to juror question:** A district court’s response to a juror’s question, when countered by a timely objection, is reviewed for abuse of discretion. If counsel fails to object, the appellate court reviews for plain error. [*Scanlon v. County of Los Angeles*, 92 F4th 781, 797 (9th Cir. 2024)]

[7:432.5] **District court decisions in agency cases:** A district court decision reviewing an administrative agency decision is reviewed *de novo*, meaning the appellate court views the case from the same position as the district court. The appellate court reviews the agency’s legal interpretations *de novo*, its factual findings for substantial evidence, and its application of the law to the facts under the Administrative Procedure Act’s deferential arbitrary and capricious standard. [*Grand Canyon Univ. v. Cardona*, 121 F4th 717, 723 (9th Cir. 2024)]

[7:451.4a] **Motion for new trial based on miscarriage of justice:** A district court decision to grant a new trial to rectify a miscarriage of justice is reviewed for abuse of discretion due to the district court’s closer proximity to the trial. [*Morris v. West Hayden Estates First Addition Homeowners Ass’n, Inc.*, 104 F4th 1128, 1152-1153 (9th Cir. 2024)—district court order granting new trial to avoid miscarriage of justice affirmed where jury heard great deal of prejudicial evidence that was later excluded and district court reasonably determined jury could not put evidence out of its mind, despite presumption that juries follow instructions]

CHAPTER 8

BRIEFS AND USE OF AUTHORITY

Precedential Value of Ninth Circuit Decisions

[8:158a] **Intervening Supreme Court authority:** *See Ohio House*,

LLC v. City of Costa Mesa, 122 F4th 1097, 1139 (9th Cir. 2024) (J. Forrest concur.opn.)—under *Miller v. Gammie*, 3-judge panel should apply *intervening* Supreme Court opinions rather than earlier incorrect panel decisions, but should not apply *preexisting* Supreme Court opinions that subsequent panel decisions did not address.

Briefing Format

[8:254; 8:256; 8:383] **Tables of contents or authorities:** All briefs except “letter briefs” must include a table of contents and table of authorities. Supplemental letter briefs need not include tables of contents or authorities. [Amended Ninth Circuit Rule 28-1(a)]

[8:334] **Citations to excerpts of record:** Arabic numerals should be used for numbers, rather than Roman numerals. Citations to non-consecutive pages should use the complete citation format, such as 2-ER-51, 2-ER-89. Citations to the administrative record in immigration cases should be formatted as AR-[page number]. [Amended Ninth Circuit Rule 30-1.6]

Procedural Rules

[8:415] **Amicus curiae briefs—proposed rules amendment:** The court is considering amendments to Ninth Circuit Rules 29-1 and 29-2 that would eliminate the option of consent filing by nongovernmental amici as early as June 2025. Counsel should check the current rules before trying to file by consent.

CHAPTER 10

DISPOSITION, SANCTIONS, INTEREST, AND MANDATE

Vacatur

[10:279] **Vacatur refused where mootness caused by appellant’s voluntary act:** But see *Mayes v. Biden*, 89 F4th 1186, 1188 (9th Cir. 2023)—although US government voluntarily rescinded COVID-19 vaccine mandate being challenged, appellate court vacated district court’s permanent injunction and dismissed government’s appeal as moot under *Munsingwear* rationale (i.e., mootness by happenstance), following US Supreme Court’s lead in related cases.

Issuance of Court’s Mandate

[10:531.9] **Mandate not recalled:** The Ninth Circuit refused to recall the mandate to consider a motion to stay district court proceedings pending resolution of a petition for writ of certiorari, which should have been filed before issuance of the mandate and which could be considered by the district court in any event. [*Chinaryan v. City of Los Angeles*, 122 F4th 823, 825 (9th Cir. 2024)]

CHAPTER 11

REHEARING

Overview

[11:2] **Amended FRAP 40 combines former rules:** Effective December 1, 2024, procedures for panel rehearing and en banc rehearing

(which were formerly in separate rules; see former FRAP 35 (en banc) and 40 (panel)) were combined into FRAP 40, with little substantive change, so older cases applying the now-superseded FRAP 35 should still be relevant.

Rehearing En Banc

[11:21; 11:90-91; 11:102; 11:146] **Grounds for rehearing en banc includes intercircuit conflict:** Amendments to FRAP 40(b)(2), which provides for when rehearing en banc can be ordered, includes when the Ninth circuit opinion directly conflicts with an existing opinion by another court of appeals. [See amended FRAP 40(b)(2)(C)]

Form of Petition for Rehearing

[11:144.1] **Cover:** The cover (or the first page of the petition if it doesn't have a cover) must specify whether the petition seeks panel rehearing, rehearing en banc, or both. [New Ninth Circuit Rule 40-1(a)]

CHAPTER 12

COSTS, FEES, AND POSTAPPEAL ISSUES

Rule of Mandate

[12:320.1] **New pleadings:** “Absent a mandate which explicitly directs to the contrary, a district court upon remand can permit the plaintiff to file additional pleadings.” [*Bafford v. Administrative Committee of Northrop Grumman Pension Plan*, 101 F4th 641, 649 (9th Cir. 2024) (internal quotes omitted)]

“Law of the Case” Doctrine

[12:361] **District judge considering another district judge’s ruling:** The Ninth Circuit applied the law of the case doctrine when a new district judge was assigned to a case and was asked to reconsider the decisions of a prior district judge. [*Zeyen v. Bonneville Joint Dist.*, #93, 114 F4th 1129, 1137-1138 (9th Cir. 2024) (adopting 3-part standard)] *Caution:* *Zeyen* should *not* be construed broadly to apply to other situations since, under FRCP 54(b), a district court is generally free to reconsider any earlier order before entry of judgment.

CHAPTER 13

EXTRAORDINARY WRITS

“*Bauman* Factors”

[13:65] **Absence of third factor:** The absence of the third *Bauman* factor—clear error as a matter of law—is fatal to a petition for mandamus (absent a supervisory mandamus situation). [*Creech v. United States Dist. Ct. for Dist. of Idaho*, 119 F4th 1114, 1120 (9th Cir. 2024)]

[13:68.5] **Availability of alternative relief:** Mandamus was available to review the district judge’s denial of death-sentenced habeas petitioner’s motion that the judge recuse herself because the denial order was neither final nor otherwise appealable. [*Creech v. United States Dist. Ct. for Dist. of Idaho*, *supra*, 119 F4th at 1124-1126]

[13:77.1] **Litigation costs insufficient:** To demonstrate prejudice

sufficient to warrant mandamus relief, petitioner must “demonstrate some burden . . . other than the mere cost and delay that are the regrettable, yet normal, features of our imperfect legal system.” [*Creech v. United States Dist. Ct. for Dist. of Idaho*, supra, 119 F4th at 1124-1125 (internal quotes omitted)]

[13:79.9] **“Irreparable harm”:** Petitioner demonstrated irreparable harm to both himself and the judicial system where the district judge hearing his habeas petition challenging his conviction and death sentence refused to recuse herself based on a personal friendship with the district attorney in charge of the office prosecuting his case, since the appearance of bias harmed the reputation of the judiciary and could taint the process of shaping and compiling the record for appeal. [*Creech v. United States Dist. Ct. for Dist. of Idaho*, supra, 119 F4th at 1125-1126 (also discussed at ¶13:76)]

[13:87; 13:87.10] **Clear error; clear abuse of discretion:** A clear abuse of discretion—“one in which the error is clear to all”—can amount to clear error sufficient to warrant mandamus relief. [*Creech v. United States Dist. Ct. for Dist. of Idaho*, supra, 119 F4th at 1121 (internal quotes omitted)]

Where the district judge presiding over petitioner’s habeas proceeding was personal friends with the district attorney whose office prosecuted petitioner’s case, and where petitioner’s allegations impugned the ethical and professional reputation of the district attorney, the district judge committed clear abuse of discretion in refusing to recuse herself on petitioner’s motion. [*Creech v. United States Dist. Ct. for Dist. of Idaho*, supra, 119 F4th at 1122-1124]

Class Action Issues

[13:202a] **Corrective notice orders:** See *Dominguez v. Better Mortg. Corp.*, 88 F4th 782, 795 (9th Cir. 2023)—Ninth Circuit refused to construe appeal from nonappealable order nullifying new employment and release agreements employer elicited from employees in response to wage-and-hour class action as writ petition due to failure to satisfy *Bauman* factors.

Writ Review Procedures

[13:255] **E-filing usually required unless petitioner in pro se:** See Amended Ninth Circuit Rule 21-2(b).

CHAPTER 14

REVIEW IN BANKRUPTCY, AGENCY & TAX COURT PROCEEDINGS

Appeals in Bankruptcy Cases

[14:34] **Collateral order doctrine applicable in bankruptcy:** See *In re Blixseth*, 112 F4th 837, 842-843 (9th Cir. 2024)—bankruptcy court order denying sovereign immunity to state tax department is appealable to BAP/district court and Ninth Circuit under collateral order doctrine.

Review in Agency Proceedings

Immigration cases

- [14:271.6] **Jurisdiction under *Patel*:** See *Zia v. Garland*, 112 F4th 1194, 1197-1198 (9th Cir. 2024)—*Patel* precludes jurisdiction to review good faith marriage determination; cf. *Magana-Magana v. Garland*, 124 F4th 757, 764-770 (9th Cir. 2024)—REAL ID Act and *Patel* do not preclude jurisdiction to review denial of motion to reopen removal proceedings as untimely under exceptional circumstances provision of Violence Against Women Act.
- [14:271.16] **Asylum determinations:** The BIA determination whether particular acts constitute persecution for purposes of asylum is reviewed de novo or for substantial evidence. [*Singh v. Garland*, 97 F4th 597, 602-603 (9th Cir. 2024) (citing conflicting cases)]
- [14:271.32f] **Denial of motion to reopen removal proceedings:** The court had jurisdiction to review the BIA's denial as untimely of a motion to reopen based on the Violence Against Women Act's exceptional circumstances provision where the provision's application to established facts presented a mixed question of law and fact. [*Magana-Magana v. Garland*, supra, 124 F4th at 764-770]

“Finality” requirement

- [14:353.1] **Administrative exhaustion not required for nationality claims:** See *Colin-Villavicencio v. Garland*, 108 F4th 1103, 1109 (9th Cir. 2024).

Waiver limiting scope of review

- [14:539.3] **Waiver for failure to raise issue before agency:** The court of appeals considered the employer's argument that the agency exceeded the court's mandate on remand after a prior appeal, despite the employer's failure to exhaust that argument before the agency, because the rule of mandate is jurisdictional and limits the agency's authority on remand. [*Valley Hosp. Med. Ctr., Inc. v. NLRB*, 100 F4th 994, 1000-1001 (9th Cir. 2024)]

Standard applicable to statutory interpretation

- [14:566] **Statutory interpretation, generally:** Courts must “exercise independent judgment in determining the meaning of statutory provisions” in reviewing agency actions and interpretations. [*Loper Bright Enterprises v. Raimondo*, 603 US 369, 394, 412-413, 144 S.Ct. 2244, 2262, 2273 (2024)]
Ed. Note: The discussion of statutory interpretation (§14:566 ff.) has been revised in light of the *Loper Bright* decision, which overrules *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 US 837, 104 S.Ct. 2278 (1984).
- [14:567] **No deference to agency interpretation:** Agency interpretations of statutes are *not* entitled to deference from courts, even where the statute is ambiguous. [*Loper Bright Enterprises v. Raimondo*, supra, 603 US at 392, 412-413, 144 S.Ct. at 2261, 2273 (overruling *Chevron*, supra, which had required courts to defer to agency interpretations of ambiguous statutes)]

- [14:568] **Agency interpretation may provide helpful guidance (“Skidmore deference”):** While agency interpretations of statutes are *not* entitled to deference, courts *may* (and often do) give respectful consideration to those interpretations. “And interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute’s meaning.” [*Loper Bright Enterprises v. Raimondo*, supra, 603 US at 394, 144 S.Ct. at 2262; see *Lopez v. Garland*, 116 F4th 1032, 1039 (9th Cir. 2024)—agency interpretations that previously received *Chevron* deference now, post-*Loper Bright*, receive merely “due respect” and consideration, and may be adopted only to extent they have power to persuade; *Murillo-Chavez v. Bondi*, 128 F4th 1076, 1086-1087 (9th Cir. 2025) (same)]
- [14:574] **Statutory delegation of discretionary authority to agency:** When a statute delegates discretionary authority to an agency, the agency’s interpretation will receive more deference than *Skidmore* allows, provided Congress has not transgressed constitutional limits. Courts in such cases independently interpret the statute delegating power to the agency to ensure the agency keeps within its delegated authority from Congress. [*Loper Bright Enterprises v. Raimondo*, supra, 603 US at 395, 144 S.Ct. at 2263]
- [14:576] **Prior deference-based holdings entitled to stare decisis effect:** Although the Supreme Court overruled the *Chevron* deference framework, the Court did *not* overrule the results of cases decided under the *Chevron* framework. The holdings in those cases “are still subject to statutory stare decisis despite [the] change in interpretive methodology.” [*Loper Bright Enterprises v. Raimondo*, supra, 603 US at 411-412, 144 S.Ct. at 2272-2273 (emphasis omitted); see also *Murillo-Chavez v. Bondi*, supra, 128 F4th at 1087—while prior Ninth Circuit cases interpreting statutes based on deference to agency interpretations under *Chevron* are still binding precedent, courts “are not compelled to use them as analytical building blocks in every case to determine whether” agency correctly interpreted different statute in case at hand]
- [14:578-578.2] **Application—agency interpretation of statutes:** The court rejected the Secretary of Health and Human Services’ interpretation of a provision of the Medicare statute setting reimbursement rates for hospitals based on a wage index reflecting regional wage differences without deferring to that interpretation where the Secretary impermissibly increased the reimbursement rates to hospitals in lower-income and rural communities without reflecting regional wage differences as the statute required. [*Kaweah Delta Health Care Dist. v. Becerra*, 123 F4th 939, 944 (9th Cir. 2024)]

Reviewing a challenge under the APA to the FCC’s revocation of a Chinese telecom company’s certificate to operate telecommunication lines, the court agreed with (without deferring to) the FCC’s interpretation that the Communications Act authorizes the FCC to revoke such certificates as implied in its express power to issue such certificates in the first place. [*China Unicom (Americas) Operations Ltd. v. FCC*, 124 F4th 1128, 1142-1151 (9th Cir. 2024)]

Reviewing the FCC's attempt to regulate broadband internet service providers as common carriers and impose net neutrality mandates under that rubric, the court rejected the FCC's interpretation of the Telecommunications Act and instead construed the Act as barring the FCC from regulating broadband providers as common carriers, without deferring to the FCC's statutory interpretation. [*In re MCP No. 185*, 124 F4th 993, 997-998 (6th Cir. 2025)]