No. 24-564

IN THE SUPREME COURT OF THE UNITED STATES

QYK BRANDS LLC, DBA GLOWYY,
Petitioner,
v.
FEDERAL TRADE COMMISSION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY TO FTC'S OPPOSITION

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In *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), this Court overturned the *Chevron* doctrine.[1] This petition presents for review a summary judgment decision issued by a federal district judge pre-*Loper Bright* in favor of the FTC against two individuals (husband Rakesh Tammabattula and wife Jacqueline Nguyen) and their company QYK Brands LLC., a mom-and-pop company selling imported hand sanitizer during the height of the COVID-19 pandemic. The FTC sought and the district judge granted without trial a lifetime injunction against all three defendants based on supposed misrepresentations made to consumers as to when the hand sanitizer would be delivered.

The United States Court of Appeals for the Ninth Circuit partially reversed. In a decision issued before *Loper Bright*, the 9th Circuit held the lifetime ban against the husband Tammabattula to be too onerous, but upheld the lifetime ban against the wife Nguyen and the company QYK. Defendant Wife Nguyen is not participating in the proceedings in this Court. Defendant Husband Tammabattula is also not joining in this petition, satisfied with the 9th Circuit reversal of the lifetime injunction against him.

Appearing before this Court as petitioner is solely the company QYK. It seeks a GVR order directing the district court that issued the summary judgment lifetime ban and the Ninth Circuit that upheld the ban to reconsider their decisions based on *Loper Bright*. The husband solely operated QYK. The

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[1] The *Chevron* doctrine, a foundational principle of U.S. administrative law, was established in the 1984 U.S. Supreme Court case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984).

lifetime ban against the company is essentially a ban against him. This lifetime ban was summarily and automatically imposed on QYK because of the common enterprise doctrine—even though only the actions of Nguyen (not the husband) were used to justify the lifetime ban. The fact that there may be joint liability is not the same as imposing equal punishment, but in giving automatic deference to the FTC, this is exactly what the court did.

1. **The FTC argues:** "Petitioner acknowledges (Pet. 15-16) that the court of appeals correctly articulated the legal standard that governs issuance of a permanent injunction. Petitioner suggest (*ibid.*), however, that the court misapplied that standard by declining to vacate the injunction against it, even as it vacated a permanent injunction against one of its owners, Tammabattula. That argument lacks merit.

The court of appeals correctly explained that the injunction against the corporate defendants, including petitioner, was based on the undisputed actions of another owner, Nguyen, including her past suspension for serious misconduct and her misrepresentations during the pandemic. Pet. App. 10a-11a. Because the parties agreed that the corporate defendants were liable for Nguyen's actions, 'any injunctive relief that is appropriate to Nguyen would properly also extend" to petitioner.' *Id.* at 11a n.1. The court found, however, that 'in contrast to the corporate Defendants, there was no agreement below that Nguyen and Tammabattula were fully liable for each other's conduct, such that any injunction against Nguyen could automatically be extended, in every respect, to Tammabattula." *Id.*

at 12a. The court thus adequately explained its decision to treat Tammabattula differently from the other defendants."

Petitioner's Response: The court of appeals imputed the actions of defendant wife on the company, but not the actions of defendant husband, based on a legal technicality. In two discursive footnotes, the 9th Circuit opinion explained:

> "1. In the district court, the parties agreed that the various corporate Defendants all 'operated as a common enterprise' and that each corporate Defendant 'is liable for the acts and practices alleged' in the operative complaint. Because Nguyen acted through one or more of these corporate Defendants, who are in turn each concededly fully responsible for each other, any injunctive relief that is appropriate as to Nguyen would properly also extend to all of the corporate Defendants.'
>
> "2. The FTC contends that Defendants failed to object to the district court's inclusion of Tammabattula in the injunction below. But even assuming arguendo that our review is only for plain error, Draper v. Rosario, 836 F.3d 1072, 1084–85 (9th Cir. 2016), we conclude that the plain-error standard is met here. For the reasons we explain, the district court's decision to subject Tammabattula to the same injunction as Nguyen **and the corporate Defendants** was an obvious error that should be corrected in order to prevent a miscarriage of justice. Id." (Pet. 11a-12a)(emphasis added).

The Ninth Circuit used a stipulation made by the parties at the district court level to punish QYK. However, this was not the basis for the district court's decision to impose a capital punishment-like injunction on the company. As we discuss in our brief, the FTC's motion for summary judgment stated that "a permanent injunction is necessary to protect consumers because Defendants clearly violated MITOR as well as the FTC Act and there is 'some cognizable danger of recurrent violation.'" (citation omitted). Rather than scrutinizing this statement, the district court simply deferred to the FTC's blanket assertion that a lifetime ban was "necessary" on all protective goods and services, even an item as small as a band-aid, and the Ninth Circuit affirmed for lack of abuse of discretion.

2. **The FTC argues:** "Rather than emphasizing its request for plenary review, petitioner principally asks (Pet. i-ii, 7-12, 22) this Court to GVR in light of *Loper Bright*. In general, a GVR is "potentially appropriate" only if "intervening developments * * * reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam). This case does not satisfy that standard.

In *Loper Bright*, this Court concluded that the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, 701 *et seq.*, requires federal courts to exercise "independent judgment in deciding whether an agency has acted within its statutory authority." 603 U.S. at 412. The Court overruled its earlier decision

in *Chevron*, in which it had held that a court owes deference to an agency's reasonable interpretation of an ambiguous statute that the agency administers. *See id.* at 412-413.

Loper Bright has no bearing on the decision below. As petitioner acknowledges (Pet. 9), the courts below neither cited nor relied on *Chevron*. That is because this case does not involve a disputed question of statutory interpretation, let alone a request for judicial deference to the agency's interpretation of an ambiguous statutory provision. The FTC accordingly did not invoke *Chevron* in litigating the case below, and petitioner did not raise any argument related to *Chevron*, even in its petition for rehearing filed on May 24, 2024 – months after *Loper Bright* had been fully briefed and argued. See C.A. Petition for Reh'g 12-17.

Petitioner's Response: This case is eligible for GVR review because the district judge gave deference to FTC in its interpretation of its own rule, MITOR. The 9th Circuit then gave deference to the district judge's holding based on abuse of discretion. There was no need for either court to explicitly cite the Chevron Doctrine or to use the Chevron deference rule. Until overturned by this Court in *Loper Bright*, the Chevron doctrine existed for 40 years (1984-2024), and no one questioned it.

3. **The FTC argues:** "Petitioner nevertheless contends (Pet. 9-10) that *Chevron*'s influence 'permeates the entire record of the case,' suggesting that the courts below "accepted the FTC's arguments and interpretations without the same scrutiny given

to the defendant's assertions.' That characterization of the proceedings below is incorrect. Consistent with the ordinary standard at summary judgment, the district court reviewed legal arguments de novo and construed the **factual record** in favor of the non-moving party, drawing 'all reasonable inferences in the light most favorable to" petitioner, Pet. App. 23a" (emphasis added)

Petitioner's Response: Here, the "factual record" that the trial judge relied on to issue a lifetime injunction against the company and thereby brand it with the tag of a likely repeat offender was not based on a trial on the merits, but rather conclusory assertions made by the FTC in its declarations that the company would be a repeat offender -- and the district court deferred to the FTC's declarations. The "factual record" that the FTC refers to in the above quote has *no facts* to support the conclusion that the company is a likely repeat offender. Rather, the only way that the court was able to each this result was to impute defendant Nguyen's acts to the company. But the company's actions were exactly the same as the husband's. If a lifetime injunction is not warranted against the husband, surely it is not warranted against the company.

CONCLUSION

The decisions below are paradigm examples of the overwhelming power of the administrative state, crushing small mom and pop companies through legal tricks of trade given to the FTC through the now-discredited Chevron doctrine. Petitioner QYK

respectively requests that its petition for grant of certiorari be granted.

Respectfully submitted,

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