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Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 26a0099p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES DEPARTMENT OF LABOR, *Plaintiff-Appellee*, *v*. AMERICARE HEALTHCARE SERVICES, INC.; DILLI ADHIKARI, *Defendants-Appellants*.	No. 25-3128

Appeal from the United States District Court for the Southern District of Ohio at Columbus.
No. 2:21-cv-05076—Edmund A. Sargus Jr., District Judge.

Argued: December 16, 2025

Decided and Filed: April 1, 2026

Before: STRANCH, BUSH, and DAVIS, Circuit Judges.

COUNSEL

ARGUED: James R. Conde, BOYDEN GRAY PLLC, Washington, D.C., for Appellants. Lindsey Rothfeder, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Appellee. **ON BRIEF:** James R. Conde, BOYDEN GRAY PLLC, Washington, D.C., Daniel McArdle Booker, MAXWELL & HIPPEL LLP, Pittsburgh, Pennsylvania, for Appellants. Lindsey Rothfeder, Amelia Bell Bryson, Rachel Goldberg, UNITED STATES DEPARTMENT OF LABOR, Washington, D.C., for Appellee.

STRANCH, J., delivered the opinion of the court in which DAVIS, J., joined in full, and BUSH, J., joined in part and in the judgment. BUSH, J. (pp. 18–28), delivered a separate opinion concurring in the judgment and joining all but Section III.A. of the majority opinion.

OPINION

JANE B. STRANCH, Circuit Judge. This is an enforcement proceeding against Americare Healthcare Services, Inc., a third-party provider of home care services, and its owner, Mr. Dilli Adhikari, for failing to compensate their employees in accordance with the Fair Labor Standards Act (FLSA) for overtime hours worked between October 2018 and October 2021. Under a regulation promulgated by the Department of Labor in 2013, third-party employers of home care workers are not permitted to claim either the "Companionship Services Exemption" or the "Live-In Exemption" to the FLSA's overtime requirements. Americare and Adhikari contend the regulation is invalid under the Administrative Procedure Act and, thus, that the FLSA's overtime requirements are not enforceable against them because they are entitled to avail themselves of either statutory exemption. The district court disagreed and granted summary judgment to the Department. Americare and Adhikari also seek to challenge a regulation that narrowed the definition of "companionship services" under the FLSA, but the district court found they lacked standing. Because we find the third-party regulation is a valid exercise of the Secretary of Labor's expressly delegated authority as to both exemptions, and that Americare and Adhikari lack standing to challenge the "companionship services" definition, we **AFFIRM**.

I. BACKGROUND

A. The FLSA and the Department's Regulation of the Home Care Industry

"The Fair Labor Standards Act, like many regulatory statutes, starts with a general rule and adds a list of exceptions after it. Here is [one] general rule: An employer must pay his employees overtime if they work more than 40 hours in a week." *Pickens v. Hamilton-Ryker IT Sols., LLC*, 133 F.4th 575, 579 (6th Cir. 2025) (citing 29 U.S.C. § 207). Another general rule is that an employer must pay employees a minimum wage. *See* 29 U.S.C. § 206. Despite the simplicity of these rules, the way the statute works in practice can be somewhat counterintuitive. The "list of exceptions" in the statute, *Pickens*, 133 F.4th at 579, comes in the form of a long

"Exemptions" section, 29 U.S.C. § 213. The exemptions in Section 13[1] are many and varied, but they all operate as exceptions to requirements the FLSA places on *employers*, meaning that they provide scenarios in which employers do not have to, say, pay minimum wage or overtime.

The exemptions at issue in this case were originally enacted as part of the Fair Labor Standards Amendments of 1974. The "Companionship Services Exemption" provides that the FLSA's minimum wage and overtime requirements do not apply to "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)." 29 U.S.C. § 213(a)(15). The Department defines "domestic service employment" as "services of a household nature performed by an employee in or about a private home (permanent or temporary)," which may "include[] services performed by employees such as companions, babysitters, cooks, waiters, butlers," and the like (this list is "illustrative and not exhaustive"). 29 C.F.R. § 552.3. Likewise, "the term companionship services" has been defined to mean "the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself," which may include "the provision of care . . . to assist the person with activities of daily living." *Id.* § 552.6. The "Live-In Exemption" provides that the FLSA's overtime requirements do not apply to "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. § 213(b)(21). The Department defines "live-in" domestic service workers as those "who reside in the household where they are employed." 29 C.F.R. § 552.102. The 1974 Amendments also included a general grant of rulemaking authority providing that "the Secretary of Labor is authorized to prescribe necessary rules, regulations, and orders with regard to the amendments made by this act." Pub. L. No. 93-259, § 29(b), 88 Stat. 76.

The Department adopted a set of implementing regulations in 1975, two of which are relevant here (together, the "1975 Third-Party Regulation"). One provided that both the

[1] While the United States Code citation is § 213, the Department tends to drop the hundreds digit, "2," in its regulations. For instance, it refers to the Companionship Services Exemption as Section 13(a)(15), even though its citation is 29 U.S.C. § 213(a)(15). *See* 29 C.F.R. § 552.109. We adopt the same style.

Companionship Services Exemption and the Live-In Exemption applied to third-party employees, those "who [were] employed by an employer or agency other than the family or household using their services." Application of the Fair Labor Standards Act to Domestic Service, 40 Fed. Reg. 7,407 (Feb. 20, 1975) (formerly codified at 29 C.F.R. § 552.109). The other defined "companionship services" to mean those that "provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs," which "may include household work related to the care of the aged or infirm person." *Id.* at 7,405 (formerly codified at 29 C.F.R. § 552.6).

In the 1990's and early 2000's, the Department began considering changes to these regulations, "citing dramatic changes in the provision of home care services." *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1088 (D.C. Cir. 2015) [hereinafter, "*Home Care Association*"] (citing a series of proposed amendments in 1993, 1995, and 2001). Also in this period, the Supreme Court heard a challenge by a third-party employee in *Long Island Care at Home, Ltd. v. Coke*, in which Coke contended the regulation that (then) permitted third-party employers to avail themselves of the Companionship Services Exemption was invalid. 551 U.S. 158, 161–64 (2007). The Court held unanimously that "the text of the FLSA does not expressly answer the third-party-employment question," that Congress "expressly instruct[ed] the agency to work out the details" of the Companionship Services Exemption, and that the Department's regulation including third-party employers was reasonable. *Id.* at 167–68.

In 2013, the Department changed course on third-party employers, explaining that the home care industry had transformed in the decades since the 1974 Amendments—a time when "many individuals with significant care needs were served in institutional settings rather than in their homes." Application of the Fair Labor Standards Act to Domestic Service, 78 Fed. Reg. 60,454, 60,455 (Oct. 1, 2013). "Since that time," the Department stated, "there has been a growing demand for long-term home care," such that "[a]s more individuals receive services at home rather than in nursing homes or other institutions, workers who provide home care services . . . perform increasingly skilled duties." *Id.* The new regulation (the "2013 Third-Party Regulation"), which went into effect in 2015, provides in relevant parts that "[t]hird-party employers of employees engaged in companionship services . . . may not avail themselves of the minimum wage and overtime exemption provided by section 13(a)(15)" and that "[t]hird-party employers of employees engaged in live-in domestic service employment . . . may not avail themselves of the overtime exemption provided by section 13(b)(21)." 29 C.F.R. § 552.109(a), (c). The Department also narrowed its definition of "companionship services," providing that the term "includes the provision of care . . . provided attendant to and in conjunction with the provision of fellowship and protection" only if "it does not exceed 20 percent of the total hours worked per person and per workweek" (the "Companionship Services Definition"). 29 C.F.R. § 552.6. The Department referred to the Companionship Services Exemption, the Live-In Exemption, and the general grant of rulemaking authority in Section 29(B) of the Fair Labor Standards Act Amendments of 1974 as authorities for these changes. 78 Fed. Reg. 60,557.

B. The Present Dispute

This is an enforcement proceeding brought by the Department against Americare and Adhikari, its owner. Adhikari initially founded his own home care agency, Intra-National Home Care, LLC, and later purchased Americare in 2016. Americare operates exclusively in Ohio, where it provides its services to elderly or disabled clients through the state's Medicaid waiver programs. These waiver programs allow individuals needing care, or their families, to initiate the enrollment process by contacting a relevant state agency or organization and then choosing a provider, such as Americare.

All of Americare's home care workers are live-in workers, and between 95 and 99.9 percent of those workers are employed by Americare to provide care to their own family members. This business model works because, as Americare represents, it serves a specific population of Nepali Ohioans who, based on cultural and religious beliefs, are unlikely to accept home care services from anyone other than a close family member. "In the rare case that a consumer does not come with, or have a family member to serve as, their care giver," Americare explains, it "has occasionally matched a consumer with a care giver"; this accounts for the very small percentage of Americare workers who are not family members. R. 113-3, at PageID 48604. Because Americare hires nearly all of its workers to serve their family members in their family homes, it contends that it "could not unilaterally cut weekly hours below forty."

The district court held that Americare and Adhikari violated the FLSA's overtime requirements in part because, from October 2018 to September 2019, Americare paid its workers a consistent hourly rate but did not pay them overtime. The record indicates that at least one attorney had advised Adhikari in early 2018 that he should pay overtime to Americare workers and that, as of July 2018, Adhikari was paying overtime to his other employees at Intra-National Home Care. In September 2019, Americare began paying overtime to workers by varying their hourly rates individually based on the number of hours they worked in a given week, then paying overtime according to the lower hourly rate; the result was that each worker's average hourly compensation remained the same, regardless of the number of hours each worked.

The Department filed this enforcement suit in October 2021. Americare and Adhikari moved for partial summary judgment, contesting the validity of the 2013 Third-Party Regulation and the Companionship Services Definition. The Department moved for summary judgment on all claims. While these cross-motions were pending, the Supreme Court decided *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), and the district court allowed both parties to amend their motions accordingly. The district court ultimately granted summary judgment to the Department, holding (a) that Americare and Adhikari were liable for violations of the FLSA, including willful overtime violations; (b) that the 2013 Third-Party Regulation is valid and enforceable; and (c) that Americare and Adhikari lack standing to challenge the Companionship Services Definition. Americare and Adhikari appeal only the district court's holdings that (1) the 2013 Third-Party Regulation is valid and (2) they lack standing to challenge the Companionship Services Definition.

II. STANDARD OF REVIEW

Under the Administrative Procedure Act (APA), courts must "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . [or] in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A), (C). In so doing, "the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action." *Id.* § 706.

Applying the APA, courts "must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," *Loper Bright*, 603 U.S. at 412, relying on "traditional tools of statutory construction" to determine a statute's "single, best meaning," *id.* at 400–01. The inquiry begins with the "statutory text," relying on "the language itself" and "the specific context in which that language is used." *United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428, 431 (6th Cir. 2021) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340–41 (1997)). And courts should interpret that text in accordance with binding judicial precedent. *Freeman v. Wainwright*, 959 F.3d 226, 232 (6th Cir. 2020). At times, a "statute's meaning may well be that the agency is authorized to exercise a degree of discretion" in interpreting or implementing its provisions, in which case "the role of the reviewing court under the APA is, as always, to independently interpret the statute and effectuate the will of Congress subject to constitutional limits." *Loper Bright*, 603 U.S. at 394–95 (citing *Batterton v. Francis*, 432 U.S. 416, 425 (1977)).

III. ANALYSIS

When the Supreme Court overruled *Chevron* in *Loper Bright*, it held that the "presumption" "that statutory ambiguities are implicit delegations [of authority to interpret statutes] to agencies" "cannot be reconciled with the APA." 603 U.S. at 399–400. But *Loper Bright* did not disturb the principle that an agency is "authorized to exercise a degree of discretion" when the best meaning of the statute is that Congress has expressly delegated to the agency "authority to give meaning to a particular statutory term." *Id.* at 394–95 (citing *Batterton*, 432 U.S. at 425). When a statute does convey such discretion to an agency, *Loper Bright* directs courts to engage in a three-step inquiry to determine whether an agency's action pursuant to its expressly delegated discretion is valid: we must (1) ensure the delegation is constitutional, (2) "fix[] the boundaries of [the] delegated authority," and (3) "ensur[e] the agency has engaged in reasoned decisionmaking within those boundaries." *Id.* at 395 (citations omitted).

We recently applied this three-step framework for express delegations in *Pickens*. *See* 133 F.4th at 588–90. That case concerned Section 13(a)(1) of the FLSA, which exempts from minimum wage and overtime requirements "any employee employed in a bona fide executive, administrative, or professional capacity . . . (*as such terms are defined and delimited from time to time by regulations of the Secretary*)." 29 U.S.C. § 213(a)(1) (emphasis added). Under regulations promulgated pursuant to Section 13(a)(1), the Department defines an employee as falling within the exemption in Section 13(a)(1) if, among other criteria, she is paid on a salaried, rather than hourly, basis. *See* 29 C.F.R. § 541.200, § 541.602, § 541.604(b). We upheld these regulations as permissible exercises of the agency's "express delegated authority to define executive, administrative, and professional employees" under Section 13(a)(1). *Pickens*, 133 F.4th at 588–90.

A. The Statutory Exemptions

The 2013 Third-Party Regulation provides that third-party employers may not avail themselves of two exemptions: the Companionship Services Exemption and the Live-In Exemption. Before applying the *Loper Bright* analysis, we first describe the statutory exemptions at issue. The Companionship Services Exemption provides that the FLSA's minimum wage and overtime requirements do not apply to "any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary)." 29 U.S.C. § 213(a)(15). The "Live-In Exemption" provides that the FLSA's overtime requirements do not apply to "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. § 213(b)(21).

Americare and Adhikari concede that the Companionship Services Exemption contains an express delegation of authority to the Secretary, and relevant precedent clearly compels that conclusion. In *Coke*, a unanimous Supreme Court concluded the following about the Companionship Services Exemption: "The statutory language refers broadly to 'domestic service employment' and to 'companionship services.' It *expressly instructs the agency* to work out the details of those broad definitions." 551 U.S. at 167 (emphasis added). The *Coke* Court interpreted the same statutory text that guides and binds the agency today. *See id.* at 163.

Loper Bright, having identified the category of express delegation as one where a statute's meaning confers discretion to an agency, then includes a footnote with two examples of such express delegations—the first of which is the Companionship Services Exemption. 603 U.S. at 394–95 n.5 (citing 29 U.S.C. § 213(a)(15); 42 U.S.C. § 5846(a)(2)). When citing the exemption, the Court italicized for emphasis the language "as such terms are defined and delimited by regulations of the Secretary." *Id.* In sum, the Court acknowledged the long-standing rule of express delegation, declined to disturb it in overruling *Chevron*, and cited the Companionship Services Exemption as a representative example (apparently the first to come to mind). *See id.* Thus, the *Loper Bright* majority recognized the Companionship Services Exemption as an express delegation of authority to the Secretary. Finally, the Supreme Court's treatment of the exemption is consistent with our decision in *Pickens*, as the express delegation language in Section 13(a)(1), "as such terms are defined and delimited from time to time by regulations of the Secretary," 29 U.S.C. § 213(a)(1), is nearly identical to the language *Loper Bright* emphasized in the Companionship Services Exemption, "as such terms are defined and delimited by regulations of the Secretary," § 213(a)(15). *See Pickens*, 133 F.4th at 588–90; *Loper Bright*, 603 U.S. at 394–95 n.5.

There is significant overlap between the Companionship Services Exemption and the Live-In Exemption. Both exemptions regulate domestic service employment: the former regulates "any employee employed in domestic service employment to provide companionship services," and the latter regulates "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. §§ 213(a)(15), (b)(21). The category of "companionship services" is a subset of "domestic service." *See* 29 C.F.R. § 552.3 (defining "domestic service employment" to include "services performed by employees such as companions"). The text of the Companionship Services Exemption reflects this overlap, as the language "employed in domestic service employment to provide companionship services" necessarily indicates that being employed "to provide companionship services" is a manner of being employed to provide "domestic service[s]." 29 U.S.C. § 213(a)(15). To be sure, the exemptions do not overlap entirely. The Companionship Services Exemption, but not the Live-In Exemption, would apply to companionship workers who do not reside in the homes of their patients; while the Live-In Exemption, but not the Companionship Services Exemption, would apply, for instance, to a live-in butler or nanny. *Compare* 29 U.S.C. § 213(a)(15), *with*

§ 213(b)(21). Still, both exemptions apply to live-in companionship workers, which includes all the workers employed by Americare.

This overlap in scope impacts the agency's ability to regulate the labor of companionship service workers under the FLSA. If the Department were to promulgate a regulation limiting the scope of the Companionship Services Exemption *only*, that regulation would have no practical effect on overtime payment for the substantial portion of companionship workers who are also live-in workers, because their employers could simply claim the Live-In Exemption instead. Thus, to regulate the overtime rights of live-in companionship workers effectively, the Department must address both exemptions. It has done so each time. When the Department regulated the application of the FLSA to companionship workers employed by third parties in 1974 and in 2013, it promulgated parallel regulations for the Companionship Services and Live-In Exemptions. *See* 29 C.F.R. § 552.109.

Americare and Adhikari, while acknowledging the express delegation in the Companionship Services Exemption and the overlap between the exemptions, contend we should treat the Live-In Exemption as if it affords the agency no discretion. But there is no reason to treat these exemptions differently.

Rather, the FLSA's text makes clear that the express delegation in the Companionship Services Exemption extends to the Live-In Exemption insofar as they overlap in their regulatory coverage. The Companionship Services Exemption is the first of the two exemptions to appear in the statute, and its references to "domestic service employment" and "companionship services" are the first appearances of either term in Section 13. *See* 29 U.S.C. § 213(a). In the Companionship Services Exemption, Congress "expressly instructs the agency to work out the details of [its] broad definitions," including by supplying the definition of "domestic service employment." *Coke*, 551 U.S. at 167. Congress "instructs the agency to work out [those] details," *id.*, furthermore, without limiting that instruction to the Companionship Services Exemption (the exemption does not say, for instance, "as such terms are defined and delimited by regulations of the Secretary *for purposes of this provision*"). *See* 29 U.S.C. § 213(a)(15). Then, the statute makes use of the *same term*, "domestic service," in the Live-In Exemption, which Congress enacted contemporaneously with the Companionship Services Exemption in the

1974 Amendments. *See id.* § 213(b)(21). These features form a clear textual link between the exemptions, extending the discretion afforded to the agency in the Companionship Services Exemption to the Live-In Exemption insofar as they cover the overtime pay of the same employees: live-in companionship service workers.[2]

This interpretation of the statute accounts for the overlap between the Companionship Services and Live-In exemptions in a manner consistent with the logic of *Loper Bright*. Principles of statutory construction counsel that courts should "give effect to the text Congress enacted," *Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 228 (2008), and "give effect to each word 'if possible,'" *Chickasaw Nation v. U.S.*, 534 U.S. 84, 94 (2001) (citing K. Llewellyn, *The Common Law Tradition* 525 (1960)). Reading the express delegation in the Companionship Services Exemption as extending to the Live-In Exemption in a limited capacity gives meaning to Congress's choice to include in the former the language "as such terms are defined and delimited by regulations of the secretary." 29 U.S.C. § 213(a)(15). Yet reading that express delegation language as applying to the Live-In Exemption *only insofar* as it regulates companionship workers gives meaning to Congress's decision not to include similar express delegation language in that exemption.

B. The 2013 Third-Party Regulation

We now apply the three-step framework articulated in *Loper Bright* to the 2013 Third-Party Regulation, which means (1) ensuring the delegation is constitutional, (2) determining "the boundaries of [the] delegated authority," and (3) "ensuring the agency has engaged in reasoned decisionmaking within those boundaries." 603 U.S. at 395 (citation modified). Our decision in *Pickens* guides this analysis—not only because *Pickens* is binding authority, but because the express delegation language of the FLSA provision we examined in that case, Section 13(a)(1), closely resembles that of the Companionship Services Exemption. *See* 133 F.4th at 579, 588.

A reviewing court's obligation to ensure a statutory delegation to an agency is constitutional, we explained in *Pickens*, means that the statute must contain an "intelligible

[2] In holding that the express delegation in the Companionship Services Exemption extends as specified to the Live-In Exemption, we do not reach the parties' arguments regarding whether the general grant of rulemaking authority in the 1974 Amendments, Section 29(B), confers any additional or independent discretion to the Secretary.

principle" and not be "an impermissible delegation of legislative power to an executive branch agency." 133 F.4th at 587–88 (citing *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001)). In *Pickens*, there was no dispute between the parties regarding the constitutionality of the delegation in Section 13(a)(1). *See id.* at 588. Here, the express delegation language in the Companionship Services Exemption contains an intelligible principle to guide regulatory actions under both exemptions because it provides that the Secretary must "define[] and delimit[]" the application of certain terms. 29 U.S.C. § 213(a)(15). As we instructed in *Pickens*, the obligation to define and delimit gave the secretary two distinct powers: to "state precisely" what key terms in the statute mean, and to "fix or mark [the] boundaries or limits" of the statute's application. 133 F.4th at 588. These specific directives provide an intelligible principle; Americare and Adhikari provide no authority or reason that would suggest otherwise. The express delegation here is constitutional.

In the second step, a reviewing court should "determine the scope of the agency's discretion under the statute by setting out the task that the agency must perform." *Id.* at 587–88 (citing 5 U.S.C. § 706(2)(C)). Here, too, our analysis in *Pickens* of the boundaries of the delegation set by the language "as such terms are defined and delimited . . . by regulations of the Secretary" is instructive. *See id.* The key verbs "define" and "delimit" are used in multiple provisions of the same "Exemptions" section of the statute (both Section 13(a)(1), which *Pickens* construed, and the Companionship Services Exemption), which typically indicates they have "a consistent meaning" in both iterations. *Zai v. Nat'l Credit Union Admin. Bd.*, 149 F.4th 837, 846 (6th Cir. 2025) (citing *Nat'l Credit Union Admin. v. First Nat'l Bank & Tr. Co.*, 522 U.S. 479, 501 (1998)); *see* 29 U.S.C. § 213(a)(15), (b)(21). We specified in *Pickens* what those meanings are: "'Define' means to state precisely what something means. . . . 'delimit' means something else—to fix or mark boundaries or limits." 133 F.4th at 588 (citations omitted).

Americare and Adhikari contend the scope of the Secretary's discretion under the statute is limited to classifying based on employees, not employers, such that she lacks authority to decide whether third-party employers can avail themselves of either the Live-In Exemption or the Companionship Services Exemption. But the Supreme Court's decision in *Coke* forecloses this interpretation. *See* 551 U.S. at 167. *Coke*'s reading of the scope of the delegation is unmistakable: "The statutory language refers broadly to 'domestic service employment' and to 'companionship services.' It expressly instructs the agency to work out the details of those broad definitions. And *whether to include workers paid by third parties within the scope of the definitions is one of those details*." *Id.* (emphasis added). Or as the Third Circuit put it recently in *Walsh v. WiCare Home Care Agency, LLC*, the Secretary's decision to "delimit the scope of the companionship services exemption by excluding third-party employers from its reach . . . was a lawful exercise of its expressly delegated authority under the FLSA." 2026 WL 36153, at *2 (3d Cir. Jan. 6 2026). (citation modified).

There is no doubt that *Coke* controls this case. Americare and Adhikari attempt to evade this conclusion by arguing that *Coke*'s "*Chevron*-based" construction of the FLSA has been abrogated by *Loper Bright* and, later, citing an amicus brief from *Coke* to suggest the Department's 1975 approach was correct in the first instance. These arguments misapprehend both *Coke* and *Loper Bright*. The Supreme Court stated clearly in *Loper Bright* that, by overruling *Chevron*, it "[did] not call into question prior cases that relied on the *Chevron* framework." 603 U.S. at 412. As the Court explained,

> The holdings of those cases that specific agency actions are lawful—including the Clean Air Act holding of *Chevron* itself—are still subject to statutory *stare decisis* despite our change in interpretive methodology. Mere reliance on *Chevron* cannot constitute a "special justification" for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, "just an argument that the precedent was wrongly decided." That is not enough to justify overruling a statutory precedent.

603 U.S. at 412 (citing *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014)). This statement guides a court's analysis of *Chevron*-era caselaw in at least two ways: (1) it makes clear that cases relying on *Chevron* remain binding as insofar as they interpret the statutes at issue; and (2) it cautions that the Court's ruling in *Loper Bright* is not a sufficient basis for courts or litigants to second-guess agency actions that have already been upheld as lawful (because reasoning that a case "was wrongly decided . . . is not enough to justify overruling a statutory precedent"). *See id.*

Americare and Adhikari's contention that *Coke* has been "abrogated" is wrong for two reasons. First, even cases that rely on *Chevron* are not abrogated by *Loper Bright*. *See id.*

Second, and moreover, *Coke* is not a *Chevron* case: its statutory holding is based on a finding of express delegation, rather than the implied delegation framework *Loper Bright* overturned. *See* 551 U.S. at 167. This grounding in express delegation distinguishes *Coke* from the decisions *Loper Bright* contemplates as being at risk of hasty overruling for the insufficient reason that they were "wrongly decided." 603 U.S. at 412. Thus, *Coke*'s holding regarding the Secretary's expressly delegated powers is still good law, even though the 1975 Third-Party Regulation is no longer in effect—a change that was *pursuant to* that expressly delegated discretion. In other words, *Coke* remains binding precedent insofar as it interprets the statutory language of the FLSA, but nothing in *Loper Bright* suggests the 1975 agency action *Coke* upheld was to be preserved in amber. *See id.* at 412.

What remains is whether the Department's promulgation of the 2013 Third-Party Regulation was "reasonable and reasonably explained." *Pickens*, 133 F.4th at 588 (citing *F.C.C. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021)). Under the *Chevron* regime, agencies were not subject to a heightened standard of review when the challenged action involved a change in course. *See F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 514–15 (2009). After *Loper Bright*, agencies without some delegation of authority from Congress may lack discretion to change course, because the lack of such a delegation generally means an agency is bound by the "single, best meaning" of the statute even if circumstances change. *See* 603 U.S. at 400–02. But this case is not in that category because the best meaning of the exemptions *is* "that the agency is authorized to exercise a degree of discretion." *Id.* at 394. The prior rules for changes in course therefore remain applicable. As the Supreme Court explained in *Fox Television Stations*,

> We find no basis in the Administrative Procedure Act or in our opinions for a requirement that all agency change be subjected to more searching review. The Act mentions no such heightened standard. . . . To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. . . . But it need not demonstrate to a court's satisfaction that the reasons for the new policy are *better* than the reasons for the old one; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.

556 U.S. at 514–15. As the text of the APA is unchanged, this reasoning should apply to the three-step express delegation framework identified in *Loper Bright*, *see* 603 U.S. at 395, just as it did for express delegations in the *Chevron* era.

Here, the Department explained its change in course thoroughly and by reference to a decades-long, "dramatic transformation" in the home care industry. *See* 78 Fed. Reg. 60,467. In the 1970's, most individuals needing elder care turned to nursing home facilities, such that the vast majority of professional care givers worked in nursing homes. *See id.* at 60,455. When the Department promulgated the 1975 Third-Party Regulation, then, it would have understood its inclusion of third-party employers in the scope of the exemptions as having a negligible impact on the application of the FLSA to the industry overall. By the 1990's, however, the industry had begun a steady shift toward professional home care, as more and more seniors began opting to secure companionship services rather than live in nursing homes—a trend that continued in the ensuing years leading up to the 2013 change in course. *See Home Care Ass'n*, 799 F.3d at 1088. As the Department pointed out, this transformation was "in part a result of the rising cost of traditional institutional care, and [it was] made possible in significant part by the availability of government funding assistance for home care under Medicare and Medicaid." 78 Fed. Reg. 60,458. Americare and Adhikari do not contest these facts. It is therefore reasonable that the Department would choose to update its regulation of third-party employers of home care workers to ensure that this growing population of workers is protected by the FLSA's overtime requirements. The 1974 Amendments were generally "intended to expand coverage to include more workers," *id.* at 60,507, and as a result, the Department reasoned, "the exemptions excluding employees from coverage must . . . be defined narrowly in the regulations to achieve the law's purpose of extending coverage broadly," *id.* at 60,482. This context, as well as the Department's explanation of it, indicates that the 2013 Third-Party Regulation is a reasoned and reasonably explained exercise of the agency's expressly delegated authority to regulate pursuant to the Companionship Services and Live-In exemptions.

The D.C. Circuit reached the same conclusion in *Home Care Association*, finding the Department's promulgation of the 2013 Third-Party Regulation was "entirely reasonable" given these changes in the industry. 799 F.3d at 1093. That case was decided in 2015 when *Chevron* was still binding authority. *Id.* at 1090. Nonetheless, as *Loper Bright* confirms by citing *Chevron*-era cases to elucidate the three-step express delegation framework, the reasonableness inquiry for express delegations is analogous to the standard previously applicable to implied delegations at "step two" of a *Chevron* analysis. *See* 603. U.S. at 395 (citing *Michigan v. EPA*, 576 U.S. 743, 750 (2015); *Allentown Mack Sales & Service, Inc. v. NLRB*, 522 U.S. 359, 374 (1998); *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29 (1983)). Thus, having determined that Congress delegated authority to the Department as to the Companionship Services Exemption and the Live-In Exemption (even though it did so by different reasoning), the *Home Care Association* court applied a reasonableness standard that was substantively similar, if not identical, to the "reasonable and reasonably explained" standard that applies under *Loper Bright* now. *Pickens*, 133 F.4th at 588 (citing *Prometheus Radio Project*, 592 U.S. at 423).

For all these reasons, the 2013 Third-Party Regulation is a valid exercise of the Department's expressly delegated authority under the Companionship Services Exemption, including the limited application of that authority to the Live-In Exemption.

C. Standing to Challenge the Companionship Services Definition

Americare and Adhikari also appeal the district court's holding that they lack standing to challenge the Companionship Services Definition, 29 C.F.R. § 552.6. Article III of the United States Constitution limits federal courts' jurisdiction to certain "cases" and "controversies," U.S. Const. art. III, § 2, and "[t]he doctrine of standing gives meaning to these constitutional limits by 'identif[ying] those disputes which are appropriately resolved through the judicial process,'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 (2014) (second alteration in original) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). To have standing, a plaintiff must have "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Daunt v. Benson*, 956 F.3d 396, 417 (6th Cir. 2020) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)).

The D.C. Circuit ruled on an analogous issue in *Home Care Association*, in which the plaintiffs were associations of third-party home care agencies that (like Americare and Adhikari) challenged the validity of the 2013 Third-Party Regulation and the Companionship Services Definition. *See* 799 F.3d at 1087. The D.C. Circuit first held, as we have here, that the 2013 Third-Party Regulation was valid, rendering the FLSA's overtime requirements enforceable against the employers. *See id.* at 1096. *Home Care Association* then determined the employers lacked standing to challenge the definition because, given that they could not avail themselves of the Companionship Services Exemption, they were not injured by an application (or lack thereof) of the Companionship Services Definition. *See id.* at 1096–97. Or as the court explained, "[i]n light of our disposition with respect to the third-party-employer regulation, . . . appellees cannot make use of the companionship-services exemption, and their members thus suffer no direct injury as a result of the Department's narrowed definition of companionship services." *Id.* We find the same reasoning persuasive here, because Americare and Adhikari's overtime obligations are traceable to the 2013 Third-Party Regulation (which prevents them from availing themselves of the exemption), not to the Companionship Services Definition. *See Home Care Ass'n*, 799 F.3d at 1096–97. Thus, Americare and Adhikari lack standing to challenge the Companionship Services Definition.

IV. CONCLUSION

The district court's judgment is hereby **AFFIRMED.**

CONCURRENCE

JOHN K. BUSH, Circuit Judge, concurring. I agree with my colleagues that *Long Island Care at Home, Ltd v. Coke*, 551 U.S. 158 (2007) decides this case. I write separately to express one point of disagreement regarding the path the majority takes to reach this conclusion, as well as two other concerns I have, relating to *Coke* and the Department's arguments concerning § 29(b).

I.

First, I address my disagreement with one aspect of the court's opinion. In Section III.A, the majority explains why the live-in exemption and the companionship-services exemption should be treated the same despite the live-in exemption containing no express delegation to define and delimit any terms in the exemption. The majority interprets the express delegation in the companionship-services exemption to "extend[] to the Live-In Exemption insofar as they overlap in their regulatory coverage." Maj. Op. at 12.

I am hard pressed to see how the text of these exemptions supports the majority's interpretation. The majority holds that because both the companionship-services exemption and live-in exemption cover domestic-service employment, the Department's regulatory authority extends to the live-in exemption when it is regulating the same employees covered by the companionship-services exemption. Maj. Op. at 12. But the delegation to define and delimit does not give the Department the authority to regulate all employees who fall under the exemption; it gives the Department a limited authority over specific terms within the exemptions. I will touch on this more later, but it also compels me not to join the majority on this point.

I agree that companionship services is a subset of domestic service employment, but the live-in exemption does not use the term describing the subset; it uses the broader term. No textual hook shows that Congress meant for the live-in exemption to provide overlapping coverage only for a subset when it used the broader term.

We could have (and should have) rested our conclusion on much simpler grounds. Congress gave the Department the authority to define and delimit the phrase "domestic service employment . . . ." 29 U.S.C. § 213(a)(15). The Department exercised its authority and defined this term, and, at least under *Coke*, could delimit the term to exclude third-party employers. We then apply that definition and its delimitations to the rest of the statute, including the live-in exemption. *See In re Jackson Masonry, LLC*, 906 F.3d 494, 501 (6th Cir. 2018) ("Courts presume that the same words in the same statute mean the same thing."); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 25 (2012) (discussing the presumption of consistent usage). So now the live-in exemption, after taking on the Department-supplied definition of domestic service employment, includes a third-party exclusion. End of analysis.

My preferred approach relies on traditional methods of statutory interpretation. The majority takes a contrary approach and instead looks to the scope of the Department's regulatory power combined with implications to determine that Congress gave the Department the authority to regulate "live-in companionship service workers," and not the broader category of live-in domestic service workers. Maj. Op. at 12. This approach simultaneously expands and contracts the Department's authority. It expands its authority by implying that the companionship-services exemption gives the Department the power to regulate live-in companionship service workers as a group, rather than the smaller power to regulate the terms that appear in the companionship-service exemption. But it also contracts the Department's power by limiting the definition of "employed in domestic service" to only the subset of domestic-service workers who are engaged in companionship services. I see no textual basis for either the expansion or the contraction.

In sum, I think the majority has moved away from the textual power to define and delimit a specific term and instead granted the power to more broadly regulate the workers themselves. Then, instead of recognizing that the text does not compel this conclusion, it artificially limits the text to apply only to a subset of domestic-service workers. This expands the power to regulate but narrows the class of workers to be regulated. Because I do not see how the text compels either conclusion, I cannot join this portion of the opinion.

It is true that my approach would also lead to an expansion of the Department's authority because it would expand *Coke*'s application to the live-in exemption. But I think this is the only consistent way to apply that case. *Coke* instructs that the Department has the authority under its power to define and delimit to answer whether third parties fit under the definitions. *Coke*, 551 U.S. at 167. This means that the inclusion or exclusion of third-party employers occurs through a definition or delimitation. Definitions and delimitations act on specific terms, and those terms carry their definitions and delimitations throughout the statute wherever they appear—including in the live-in exemption. As I explain in the next section, I believe that *Coke* was wrongly decided, but my approach applies it in the way that I think best harmonizes the case law and the statute's text.

In all other respects I agree with the majority opinion. So I now turn to my two other concerns that have come up in the case.

II.

This case raises the issue of how *Coke* fits in our post-*Loper Bright* world. Eighteen years before *Loper Bright*, the Supreme Court decided *Coke* by seeming to apply a truncated version of the three-part test that would be announced in *Loper Bright*. The *Coke* Court considered the scope of the delegation to the agency and concluded that the Department of Labor's authority to define and delimit the terms "domestic service employment" and "companionship services" included the authority to determine "whether to include workers paid by third parties within the scope of the definitions . . . ." *Coke*, 551 U.S. at 167. While *Coke* answered *Loper Bright*'s question about the scope of the delegation, it did not engage in a thorough consideration of it. Of course, that was understandable, considering *Loper Bright* was yet to come.

With the benefit of *Loper Bright*, I want to address this gap in the *Coke* analysis by looking more closely at the scope of the delegation here and whether the Department went beyond it. Congress delegated to the Department the authority to "define[] and delimit[]" key phrases, including "domestic service employment" and "companionship services . . . ." 29 U.S.C. § 213(a)(15). The Department exercised its authority to define these phrases, and it did not include the third-party exclusion in its definitions. *See* 29 C.F.R. §§ 552.3, 552.6. The regulation defines domestic service employment to mean "services of a household nature performed by an employee in or about a private home (permanent or temporary)." *Id.* § 552.3. This definition makes no distinction based on the identity of the employer. Likewise, the Department defined companionship services to mean "the provision of fellowship and protection for an elderly person or person with an illness, injury, or disability who requires assistance in caring for himself or herself." *Id.* § 552.6(a). The Department issued its third-party employment exclusion in a separate section from these definitions. See 29 C.F.R. § 552.109. This separate section does not purport to define or delimit any terms; it simply excludes third-party employers from availing themselves of the exemption, even when the employer meets the Department's definition. Yet the Department claims that the third-party exclusion is an exercise of its authority to delimit the exemptions.

In my view, if not for *Coke*, the third-party exclusion would exceed the Department's delegation. The statute only permits the Department to define and delimit specified terms in the exemptions, not to delimit the scope of the exemptions themselves. *See* 29 U.S.C. § 213(a)(15) ("[A]s such *terms* are defined and delimited by regulations of the Secretary." (emphasis added)). The Third Circuit recently glossed over this distinction and held that the Department could delimit "the scope of the companionship services exemption by excluding third-party employers from its reach." *Walsh v. WiCare Home Care Agency,* 2026 WL 36153, at *2 (3d Cir. Jan. 6, 2026). But this reading gives short shrift to the exemption's text. The Department's authority to delimit means that it can "fix or mark boundaries or limits" of the terms, but not of the exemption itself. *Pickens v. Hamilton-Ryker IT Sols., LLC*, 133 F.4th 575, 588 (6th Cir. 2025). This is a subtle but important difference. In delimiting the delegated term, the Department cannot change the scope of the other elements where the definitional power was not delegated. So this leaves us with a question regarding the third-party exclusion: was the Department delimiting a term or delimiting the exemption?

In *Pickens*, we said that the power to delimit meant the power to "establish a workable and reasonable method for applying the exemption in practice." *Id.* This delimiting power sufficed to let the Department use salary as a factor in drawing lines about who qualified as a "bona fide executive, administrative, or professional capacity" employee under 29 U.S.C. § 213(a)(1). *Pickens*, 133 F.4th at 589. Using salary "made good sense" because it was "an objective metric, readily understood, easily applied (usually), and perhaps the best single indicator of the degree of importance involved in a particular employee's job." *Id.* (cleaned up). The salary delimitation served as a corollary to the definitions of executive, administrative, and professional employment. It did not serve as a scope limitation divorced from the definitions. The delimitation provided a method for determining whether the definition is met, thus delimiting the terms, not the exemption itself.

The third-party employment exclusion does not share this feature—it serves as a substantive exclusion of a particular type of employer, rather than as a corollary to the already-provided definitions. It delimits the exemption rather than the terms. By supplying the definition, the Department filled the statutory gap left in 29 U.S.C. § 213(a)(15), and without a remaining gap in the statute, the third-party employment exclusion serves as a substantive limit on the exemption's scope—a limit the Department lacks the authority to impose. *See Gonzales v. Oregon*, 546 U.S. 243, 261 (2006). In *Gonzales*, the Attorney General issued a regulation excluding assisted suicide from the definition of "legitimate medical purpose," and stated that assisting suicide using controlled substances violates the Controlled Substances Act (CSA). *Id.* The Supreme Court held that the CSA did not grant the Attorney General this substantive authority when it granted him a narrower authority to register and deregister physicians. *Id.* at 262. The Court reasoned that narrow delegations of authority do not imply the authority to change the scope of the statute and "declare an entire class of activity" to be a violation of the statute. *Id.*; *see also MCI Telecomm. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 231 (1994) (holding that the agency's authority to "modify" did not include the power for the agency to fundamentally change the scope of the statute).

Coke blessed a similar expansion of the Department's statutory role. Congress delegated a narrow definitional power to the Department, which it now uses to change the substantive scope of multiple exemptions. And it changes the scope of terms that the Department did not have authority over. The third-party employment exclusion changes the live-in exemption to require that the domestic service worker be an *employee* of the head of household, even though the statute contains no such requirement. *See* 29 U.S.C. § 213(b)(21). This changes the scope of the exemption by changing the meaning of the other elements of the exemption. The Department does the same thing to the companionship-services exemption. Instead of just requiring that the companionship services be provided to old or infirm "individuals," the exclusion changes individuals to mean employers. *Id.* § 213(a)(15). This is a rewrite of the exemption that goes beyond delimiting the type of work that falls under the delegated terms.

Narrow delegations should be treated narrowly. *See Gonzales*, 546 U.S. at 262; *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 649–50 (1990) (declining to treat the narrow delegation to the Department of Labor as broad enough to let the agency change the scope of the remedy). Unlike in *Pickens*, where the Department issued a single rule defining the delegated terms and setting the boundaries for those definitions, 133 F.4th at 580 (citing 29 C.F.R. § 541.602), the Department here established the definitions and boundaries of the terms, and then—in a separate regulation—issued a substantive exclusion that set aside the definition and its boundaries. It would be like if the regulations at issue in *Pickens* concluded that people who work for real estate companies could never be exempt even if they are salaried employees. That would not be a method for determining whether someone is an executive, it would be a substantive bar based on a criterion disconnected from the definition.

We also know that this is a substantive change rather than a boundary to the definition because the texts of §§ 213(a)(15) and 213(b)(21) never reference the employer. They are both framed broadly to apply to any employee and are determined based on criteria separate from the identity of the employer. The exemptions do not mention who the employer is, so any extra requirement identifying the employer delimits the exemption rather than the delegated terms. The Department cannot rework the exemption to make it depend on the employer rather than the employee. *See Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 325 (2014) (holding that the EPA could not rewrite "the statutory thresholds" to achieve its "bureaucratic policy goals").

The third-party exclusion does not on its face purport to be defining or delimiting any term. *See* 29 C.F.R. § 552.109. It instead relies on definitions provided by other regulations, notes that the third-party employers meet those definitions, and then places a substantive condition on who can qualify for the exemption. *Id.* The third-party employment exclusion does not add or take away anything from the term. Instead, it says that even if a particular group of employers meets the definition, that group cannot claim the exemption. That goes beyond the power to "establish a workable and reasonable method for applying the exemption in practice." *Pickens*, 133 F.4th at 588. In other words, the Department went beyond its authority to delimit.

Scrutinizing the scope of the delegation is a command that we as federal judges must take seriously. That command has added force where, as here, the Department flip-flops from its longstanding position. For almost forty years, the Department allowed third-party employers to benefit from these exemptions. During that time, the Department was free to change its definitions and delimitations of the delegated terms. It did not do so. Employers and employees alike began to rely on the scope of the exemptions being what Congress said they were. Then *Coke* expanded the Department's authority to cover not just the delegated terms, but the scope of the entire exemption. And it did so in two sentences. The Department then took advantage of the change. Companies like Americare were at one moment exempt and the next moment precluded from seeking the exemption. Agency flip-flopping can undermine the rule of law in even the best of circumstances. It is more troubling still when the agency flip-flops on a question that Congress never gave it the authority to answer.

III.

Now to the final point—the scope of delegation under § 29(d). In my view, not all grants of rulemaking authority include a grant of *legislative* rulemaking authority. As part of our duty to consider the scope of the delegation, I believe we must seriously consider whether the delegation included a grant of legislative rulemaking authority in the first place. The Department asserted here that, regardless of the specific delegation, it has the authority to exclude third-party employers from qualifying for the live-in exemption because of the general rulemaking delegation that the 1974 amendments gave to the Department. This general grant allowed the Secretary of Labor the authority "to prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act." Pub. L. No. 93-259 § 29(b), 88 Stat. 76. The Department would have us conclude that this deputization is the type of delegation described in *Loper Bright* that empowers the agency "to fill up the details of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility, such as 'appropriate' or 'reasonable.'" 603 U.S. at 395 (cleaned up).

I would take almost the opposite tack from the Department. As an initial matter, the Department makes the exact argument that this court rejected in *Moctezuma-Reyes v. Garland*, 124 F.4th 416, 420 (6th Cir. 2024). Broad grants of rulemaking authority like § 29(b) do not require deference to the agency. *Id.* But more than just not warranting deference, broad grants of rulemaking authority, like the one in § 29(b), do not result in the power to promulgate legislative rules at all. This was the understanding in the early years of the Administrative Procedure Act, but it began to fall away in the 1960s and 1970s. *See* Thomas W. Merrill & Kathryn Tongue Watts, *Agency Rules with the Force of Law: The Original Convention*, 116 Harv. L. Rev. 467, 481 & n.54 (2002); *see also* Ronald A. Cass, *Rulemaking Then and Now: From Management to Lawmaking*, 28 Geo. Mason L. Rev. 683, 698–99 (2021) (describing the increase in legislative rulemaking in the 1970s).

But before we get to the reason for the shift, I offer a brief response to the Department's contention that § 29(b) is the type of specific delegation contemplated by *Loper Bright*. Generally, Congress delegates rulemaking authority to agencies in three ways: (1) specific delegations, (2) general delegations, and (3) hybrid delegations. *See* Kristin E. Hickman & Amy J. Wildermuth, *Harmonizing Delegation and Deference after* Loper Bright, 100 N.Y.U. L. Rev. 1924, 1930–31 (2025). Specific delegations of authority are those that identify "a particular statutory term, requirement, or limitation that needs elaboration and instructs" the administering agency to carry out that directive through rules and regulations. *Id.* at 1934; *see Loper Bright*, 603 U.S. at 394. When an agency acts pursuant to a specific delegation, it is performing the function that Congress entrusted to it, and we review the agency's actions in light of its delegated authority. *Loper Bright*, 603 U.S. at 394. The delegations cited in *Loper Bright* are of this type. 603 U.S. at 395. The Court did not cite to any general delegations when discussing agencies filling up the details of a statute. 603 U.S. at 395; *see also* Hickman & Wildermuth, *supra*, at 1972 ("Citations to general authority/housekeeping delegations are noticeably absent from the examples offered by the *Loper Bright* Court as delegations warranting reasoned decisionmaking review.").

The delegation in § 29(b) that gives the Department the ability to make "necessary rules, regulations, and orders with regard to the amendments made by this Act" is a general delegation. Pub. L. No. 93-259 § 29(b), 88 Stat. 76. This type of delegation is also sometimes referred to as a grant of "housekeeping authority." Merrill & Watts, *supra*, at 481 n.54. The delegation in § 29(b) uses broad language like "necessary" without connecting such language to a specific term or provision of the statute. Hickman & Wildermuth, *supra*, at 1936. And it does not appear alongside any of the substantive provisions of the statute; its only companion is § 29(a), which provides an effective date for the FLSA 1974 Amendments. Pub. L. No. 93–259, § 29(a), 88 Stat. 76.

As a general or housekeeping delegation, § 29(b) gives broad rulemaking authority entrusting the agency with adopting rules and regulations that the agency finds necessary to accomplish the goals of the statute. Historically, this type of grant would provide the agency with only the limited "authority to promulgate nonlegislative substantive rules (interpretive rules and policy statements) and procedural rules." Merrill & Watts, *supra*, at 481 n.54. But the Department does not wrestle with this history because agencies have become accustomed to courts affirming agency rulemaking authority in nearly every instance.

So what changed from the early days of the APA to now? One answer is that the Supreme Court stopped policing the lines for what type of power Congress delegated to the agency.[1] And once agencies realized that the Supreme Court was not going to police the line between legislative and housekeeping authority, agencies that never thought they had legislative rulemaking authority suddenly realized that they "in fact had enjoyed such power from their inception." Merrill & Watts, *supra*, at 545. Because the Supreme Court stopped enforcing the scope of the delegation when it came to legislative versus housekeeping authority, we have been operating in a world where "ambiguous grants of rulemaking authority are presumed to confer

[1] *See, e.g.*, *Nat. Broad. Co. v. United States*, 319 U.S. 190 (1943); *Am. Trucking Ass'ns v. United States*, 344 U.S. 298, 311 (1953); *United States v. Storer Broad. Co.*, 351 U.S. 192 (1956); *Fed. Power Comm'n v. Texaco Inc.*, 377 U.S. 33 (1964); *Thorpe v. Hous. Auth.*, 393 U.S. 268, 277 (1969); *Mourning v. Fam. Publ'ns Serv., Inc.*, 411 U.S. 356 (1973). In some of these cases the agency likely did have legislative rulemaking authority, but the Supreme Court ignored the question of what kind of power Congress gave to the agency and instead made assumptions about the scope of the delegation. *See* Merrill & Watts, *supra*, at 475.

legislative rulemaking power unless Congress expressly indicates that the grant is limited to procedural or interpretive rules." *Id.* at 545–46.

In my view, *Loper Bright* eliminated this presumption. Courts now have the obligation to police the lines that the Supreme Court so long ignored. As part of determining the scope of the delegation under the *Loper Bright* framework, we must also determine whether that delegation included the authority to promulgate legislative rules or only the power to promulgate housekeeping rules. Using the historical distinction, this case is easy as it relates to § 29(b)—it is a housekeeping delegation, so it carries with it the limited authority to promulgate interpretive and procedural rules and issue statements of policy. The Department could not have issued the third-party employment exclusion pursuant to § 29(b) because this section does not allow the Department to engage in legislative rulemaking.

Not only is this the more faithful reading of *Loper Bright*, but also my understanding as a matter of happy coincidence has the beneficial effect of diminishing the damage of the flip-flopping that I described earlier. When narrow delegations are treated narrowly, the agency needs some express congressional authority before it sets out on a path of flipping back and forth in its regulation of an industry. Interpreting every grant of rulemaking power as a grant of legislative rulemaking power gives the agencies a power that Congress never intended and lets them regulate industry in ways that lack the consistency we expect from rules that carry the force of legislation.

Contrary to the Department's reading of *Loper Bright* that would expand deference to agencies based on general delegations, my reading gives *Loper Bright* its teeth. Rather than treating any delegation as a command for deference, we should do exactly what *Loper Bright* said and determine the scope of the delegation and whether the agency acted under that delegation. If Congress did not give the agency legislative rulemaking authority, then we ought not to read it in.

But, as it is, *Coke* decides this case, so we need not reach any issues touching § 29(b). While I may not agree with *Coke*, I must follow it until the Supreme Court says otherwise. *See Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989) ("If a precedent of [the Supreme] Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions.").

No. 25-3128

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jun 12, 2026
KELLY L. STEPHENS, Clerk

UNITED STATES DEPARTMENT OF LABOR, Plaintiff-Appellee, v. AMERICARE HEALTHCARE SERVICES, INC.; DILLI ADHIKARI, Defendants-Appellants.	)	O R D E R

BEFORE: STRANCH, BUSH, and DAVIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court.* No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

*Judge Hermandorfer is recused in this case.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DEPARTMENT OF LABOR,

Plaintiff,

v.

AMERICARE HEALTHCARE SERVICES, LLC, *et al*.,

Defendants.

Case No. 2:21-cv-5076
Judge Edmund A. Sargus, Jr.
Magistrate Judge Kimberly A. Jolson

OPINION AND ORDER

This matter is before the Court on several motions. The Court previously ordered the Parties to re-file their Motion and Partial Motion for Summary Judgment after the Supreme Court's holding in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024). (ECF No. 108.) Plaintiff the United States Department of Labor ("DOL") has since renewed its Motion for Summary Judgment on its claims that Defendants Americare Healthcare Services, LLC, and Dilli Adhikari violated the Fair Labor Standards Act ("FLSA"). (DOL's Mot., ECF No. 112-1.) Defendants also renewed their Partial Motion for Summary Judgment asking the Court to vacate and set aside a regulation issued by DOL requiring third-party employers to pay home care workers overtime compensation. (Defs.' Mot., ECF No. 113-2.)

Both Motions are ripe for the Court's review. For the reasons below, the Court **DENIES** Defendants' Partial Motion (ECF No. 113) and **GRANTS** DOL's Motion for Summary Judgment (ECF No. 112). DOL also moves to admit the deposition testimony of John Linkosky. (ECF No. 101.) Since the Court awards DOL summary judgment, that Motion is **DENIED as MOOT**.

BACKGROUND

DOL brings this enforcement action against Americare, a third-party home care agency, and its owner Mr. Adhikari, for alleged violations of the FLSA's overtime and recordkeeping rules. DOL insists that Defendants must pay their home care aides back pay and liquidated damages for unpaid overtime hours worked, but Defendants argue they need not pay the aides overtime when the aides provide in-home companionship and live-in assistance.

I. Factual Background

Mr. Adhikari bought Americare in November 2016, after founding his own home care agency, Intra-National Home Care, LLC. (Americare Dep., ECF No. 64-1, 45:14–24; *see also* ECF No. 113-3,[1] PageID 48602.) While Intra-National provides services in Michigan and Pennsylvania, Americare has offices in Columbus, Cleveland, Cincinnati, and Akron. (Bharati Dep.,[2] ECF No. 66-1, 10:25–11:09.) Each office has an Area Director or Office Manager responsible for hiring and supervising the aides. (*Id.*) The aides provide several services for Americare's mainly elderly clients, including hygiene, personal care, nutrition, and mobility assistance. (*Id.* 60:17–61:23.)

To ensure the aides provide proper care to Americare clients, Americare uses an Electronic Visit Verification platform. (*Id.* 36:05–21; 38:12–20.) The aides sign in and out when they perform work for a particular client and then the client confirms the work performed by the aide. (*Id.* 37:01–

[1] Defendants attach as an Exhibit to their Motion a "Concise Statement of Undisputed Material Facts." (ECF No. 113-3.) The statement is seven pages long and disputed by DOL. (*See* ECF No. 114-1.) The Court had instructed Defendants to review this Court's Local Rules before filing its renewed motion with an attached statement of facts. (ECF No. 108, PageID 26776.) The Court emphasized that facts should be discussed in the primary memorandum and that the Court does not permit additional memoranda beyond those enumerated in the Local Rules. (*Id.* citing S.D. Ohio Civ. Rule 7.2 (a) and (d).) If Defendants file additional memoranda in this Court, they are ordered to comply with the Local Rules.

[2] Rup Bharati is the Office Manager for Americare's Columbus Office. (Bharati Dep., 7:21–8:04.)

16.) The Electronic Visit Verification platform, including the GPS-location data, is monitored daily to ensure all clients received their required services. (*Id.* 38:02–14.)

A. Americare's Payment Structure

From October 2018 to September 2019, Defendants did not pay overtime at the premium rate of time and a half when the aides worked more than 40 hours in a workweek. (Defs.' Opp., ECF No. 115, PageID 48856; *see also* Defs.' Resp. to Pls.' Req. for Admis., ECF No. 64-3, PageID 917–18; Adhikari Dep., ECF No. 69-1, 38:06–10.) Mr. Adhikari explained that he thought the aides were exempt from the overtime requirements because to his knowledge, no other agency paid overtime. (Americare Dep., ECF No. 64-1, 48:08–21.)

He alleges that he consulted an attorney in 2016 or 2017, whose name Mr. Adhikari could not remember, about exemptions to the overtime requirements under the FLSA. (*Id.* 51:19–52:13.) According to Mr. Adhikari, that attorney advised him that some personal care services were exempted from the FLSA's overtime requirements. (*Id.*)[3] Explaining that he was still confused, Mr. Adhikari testified that he consulted a different attorney from Pittsburg who told him that the aides were not owed overtime. (*Id.* 55:05–56:22; 62:3–9.)

Soon after a class action lawsuit and a Pennsylvania Department of Labor investigation were initiated against Mr. Adhikari and Intra-National, prompting Mr. Adhikari to seek the advice of a third attorney named John Linkosky. (*Id.* 62:19–63:14; 64:20–65:6; 275:3–12.) According to Mr. Adhikari, Mr. Linkosky suggested that homecare agencies may lack sufficient control over the aides to be considered "employees" and subject to the FLSA. Mr. Linkosky disputes Mr. Adhikari's characterization of his advice. (Linkosky Decl., ECF No. 72-1, ¶¶ 8, 10 (explaining

[3] The attorney-client privilege does not apply to communications between Mr. Adhikari and his attorneys because Mr. Adhikari expressly waived the privilege under Rule 502(a) of the Federal Rules of Evidence.

that he "never advised [Mr.] Adhikari, Americare, or any Americare manager or officer that Americare's direct care workers were exempt from the minimum wage or overtime provisions of the FLSA due to the companionship services, live-in caregiver, or domestic service exemption.").) Mr. Adhikari also concedes that Mr. Linkosky advised him to pay the aides overtime compensation in "early 2018." (Adhikari Dep. 2022,[4] ECF No. 69-2, 123:10–24.) In July 2018, Mr. Adhikari began paying home care aides employed by Intra-National overtime compensation, but Defendants did not start paying Americare aides overtime until September 2019. (Adhikari Dep., ECF No. 69-1, 38:06–18.)

Starting in September 2019, Defendants reduced the aides' hourly rate based on the number of hours the aides worked and paid overtime on the lower regular rate for overtime hours worked. (Defs.' Resp. to Pls.' Interrog., ECF No. 64-3, PageID 898.) Deepesh Pradhan, Americare's payroll coordinator, explained that under the new payment practice, the aides' regular rate varied based on the number of hours worked. (Pradhan Dep., ECF No. 70-1, 23:03–26:25; Americare and Adhikari Cont. Dep., ECF No. 65-1, 68:16–25.) The more hours the aide worked, the lower the rate. (*Id.*) Mr. Adhikari candidly explained that Americare could not afford to pay overtime compensation without a rate adjustment. (Americare Dep., 232:11–13 ("we don't have enough money to pay [the aides]."); *see also* Americare and Adhikari Cont. Dep., 68:06–12.)

Mr. Adhikari acknowledges that Mr. Linkosky advised him that he could set a regular, lower rate of pay, and then pay overtime on the lower rate, but that he could not fluctuate the regular rate of pay based on the number of hours worked. (*Id.* 70:15–71:6.) Mr. Linkosky also

[4] DOL submits a copy of Mr. Adhikari's deposition transcript from a similar enforcement action brought by DOL in the Western District of Pennsylvania. *See Walsh v. Intra-Nat'l Home Care, LLC, et al.*, Case No. 2:21-cv-1391 (W.D. Pa.) The Court will refer to this deposition transcript as "Adhikari Dep. 2022." (*See* ECF No. 69-2.)

counseled Mr. Adhikari to make any changes to the regular rate by agreement with the aides. (Americare and Adhikari Cont. Dep., ECF No. 65-1, 9:25–13:22.) Yet Defendants produced only 81 written rate change agreements (*id.*), even though DOL alleges that 1,700 aides were subject to Defendants' improper pay practices. (DOL's Reply, ECF No. 118, PageID 48949.)

In 2020, Defendants learned that DOL was investigating them for potential overtime violations. (*See* Alloway Decl., ECF No. 111-1.) Stephen Alloway, an investigator with the Wage and Hour Division of DOL, participated in that investigation. (*Id.*) After obtaining self-audited reports from Defendants through discovery, and subpoenaing Defendants' payroll services provider, Mr. Alloway calculated the amount of overtime Defendants failed to pay the aides. (*Id.* ¶¶ 4–6, 8; *see also* ECF No. 111-3 (detailed spreadsheet of back wages owed). In total, DOL argues Defendants owe $7,478,820.79 in back wages. (*Id.* ¶ 30; ECF No. 111-3.)

B. Cases Between DOL and Defendants in Federal Courts in Pennsylvania

Once learning that Defendants, along with their affiliated entity Intra-National, were under investigation, Intra-National and Mr. Adhikari brought a lawsuit in the Western District of Pennsylvania under the Administrative Procedure Act ("APA") seeking a declaratory judgment that DOL's rule prohibiting third party employers from claiming an exemption to the overtime requirements be set aside as arbitrary and capricious. *Intra-Nat'l Home Care, LLC v. United States Dep. of Lab.*, Case No. 2:22-cv-1545 (W.D. Pa.).[5] One year later, DOL filed an enforcement action against Intra-National Home Care, LLC, and Mr. Adhikari in the Western District of Pennsylvania. *Walsh v. Intra- Nat'l Home Care, LLC, et al.*, Case No. 2:21-cv-1391 (W.D. Pa.). Both cases

[5] The district court dismissed Intra-National's claims as untimely under the statute of limitations applicable to the APA, 28 U.S.C. § 2401(a), but the Third Circuit vacated the district court's decision and remanded the case for further proceedings. *Intra-Nat'l Home Care, LLC v. United States Dep't of Lab.*, No. 22-2628, 2024 U.S. App. LEXIS 22675, at *2 (3d Cir. Sep. 6, 2024).

remain pending and neither case has reached the merits on the enforceability of the challenged regulation or Defendants' alleged FLSA violations.

II. Procedural Background

In October 2021, DOL filed this lawsuit seeking to enjoin Americare and Mr. Adhikari from violating provisions of the FLSA by failing to pay the home care aides overtime compensation. (*See* Compl., ECF No. 1; *see also* Am. Compl., ECF No. 8.) DOL moved for summary judgment seeking back wages, liquidated damages, and injunctive relief for Defendants' alleged willful violations of the FLSA from October 2018 to April 2024. (DOL's Mot., PageID 48515.) Defendants opposed that Motion. (Defs.' Opp., ECF No. 115.)

One day after the deadline to reply in support of its Motion passed, DOL moved for leave to file its reply instanter. (ECF No. 117.) The Court **GRANTS** DOL's Motion and will consider its Reply (DOL's Reply, ECF No. 118).

Defendants separately moved for partial summary judgment. (Defs.' Mot., ECF No. 113.) DOL opposed that Motion (DOL's Opp., ECF No. 114), and Defendants replied in support of their Motion (Defs.' Reply, ECF No. 116).

STANDARD OF REVIEW

Summary judgment is appropriate when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The movant has the burden of establishing there are no genuine issues of material fact, which may be achieved by demonstrating the nonmoving party lacks evidence to support an essential element of its claim. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *Barnhart v. Pickrel, Schaeffer & Ebeling Co.*, 12 F.3d 1382, 1388–89 (6th Cir. 1993). The burden then shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986) (quoting Fed. R. Civ. P. 56). When evaluating a motion for summary judgment, the evidence must be viewed in the light most favorable to the nonmoving party. *Tolan v. Cotton*, 572 U.S. 650, 651 (2014).

A genuine issue exists if the nonmoving party can present "significant probative evidence" to show that "there is [more than] some metaphysical doubt as to the material facts." *Moore v. Philip Morris Cos.*, 8 F.3d 335, 339–40 (6th Cir. 1993). In other words, "the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248; *see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (awarding summary judgment when the evidence could not lead a jury to find for the nonmoving party).

The legal standard remains the same when evaluating cross-motions for summary judgment. To the extent that the cross-motions overlap, the Court addresses the legal arguments together, but otherwise considers each Motion separately. *See Taft Broad. Co. v. United States*, 929 F.2d 240, 248 (6th Cir. 1991).

ANALYSIS

DOL asserts that Defendants violated the FLSA in two ways. First, by failing to pay their employees overtime compensation at one and one-half times their regular rate of pay for all hours worked over 40 hours per workweek. Second, by failing to maintain accurate records. The Court addresses each alleged violation in turn.

I. Defendants are Liable for Overtime Violations

The FLSA dictates that covered employees who work more than 40 hours per workweek shall be paid overtime compensation at a rate not less than one and one-half times their regular pay. 29 U.S.C. § 207(a)(1). Employers who violate this requirement may be liable in the amount of the employee's unpaid overtime compensation and an equal amount of liquidated damages. 29 U.S.C. § 216(b).

To prevail on an unpaid overtime claim, a plaintiff must first prove that an employer-employee relationship existed. 29 U.S.C. § 207(a)(1) ("[N]o employer shall employ any of his employees . . ."). Next, the plaintiff must show that the employer or its employees are engaged in interstate commerce. *Id.*; *see also Bey v. WalkerHealthCareIT, LLC*, No. 2:16-cv-1167, 2018 U.S. Dist. LEXIS 72819, at *10 (S.D. Ohio May 1, 2018) (Smith, J.). Finally, the employees must show that they worked more than 40 hours per workweek and were not paid overtime. *Stansbury v. Faulkner*, 443 F. Supp. 3d 918, 925 (W.D. Tenn. 2020) (describing this as a four factor test).

The FLSA creates exemptions to an employer's duty to pay covered employees overtime compensation. *See* 29 U.S.C. § 213(a)(1)–(19). Once a plaintiff establishes the elements above, the burden shifts to the employer to show by a preponderance of the evidence that one of the exemptions applies to the employment relationship in question. *Kowalski v. Kowalski Heat Transfer Co.*, 920 F. Supp. 799, 806 (N.D. Ohio 1996) (explaining employer has burden of proof to establish an exemption); *Corning Glass Works v. Brennan*, 417 U.S. 188, 197 (1974) (describing an exemption as an affirmative defense on which the employer has the burden of proof).

Defendants assert that two exemptions apply to relieve them from their obligation to pay the home care aides overtime compensation. (Defs.' Mot.; *see also* Defs.' Opp., PageID 48851–52.) DOL moves for summary judgment arguing that third-party agencies are not entitled to claim either exemption, thus Defendants were required to pay their employees overtime compensation. (DOL's Mot., PageID 48541–50.) But Defendants counter that the administrative regulation prohibiting third-party agencies from claiming either exemption is unlawful and should be vacated. (Defs.' Mot., PageID 48582–600.) The Court begins by addressing whether an employment relationship existed.

A. The Americare Aides are Employees under FLSA

DOL asks this Court to find that the Americare aides are employees under the FLSA. (DOL's Mot., PageID 48539.) The FLSA broadly defines an "employee" as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). To give effect to Congress's broad definition, courts look to whether workers are "as a matter of 'economic reality,' an employee." *Keller v. Miri Microsystems LLC*, 781 F.3d 799, 807 (6th Cir. 2015) (citation omitted).

The economic reality test applies six factors: (1) the permanency of the relationship; (2) the degree of skill required; (3) the worker's investment in equipment or materials; (4) the worker's opportunity for profit or loss; (5) the degree of the alleged employer's right to control the work; and (6) whether the service rendered is essential to the employer's business. *Id.* at 807 (citations omitted). Whether a relationship is an employment relationship is a question of law based on the totality of the circumstances. *See Fegley v. Higgins*, 19 F.3d 1126, 1132 (6th Cir. 1994). Only if the factors are in "equipoise" should the question be put to the trier of fact. *Imars v. Contractors Mfg. Servs.*, No. 97-3543, 1998 U.S. App. LEXIS 21073, at *19 (6th Cir. Aug. 24, 1998).

Defendants argue that DOL cannot establish that Americare's aides were employees under the FLSA. Defendants dispute factors (1) and (5) of the economic reality test, but admit that factors (2), (3), (4) and (6) favor a finding of an employment relationship. (Defs.' Opp., PageID 48853–54.) The Court focuses its analysis on the disputed factors.

i. The Permanence of the Relationship

This factor looks to the "length and regularity of the working relationship between the parties." *Keller*, 781 F.3d at 807 (citation omitted). This Court has held that the length and regularity of the working relationship between a third-party agency and a home care aide supports a finding of an employment relationship. *Julie A. Su v. HALO Homecare Servs.*, LLC, No. 1:20-

cv-744, 2023 U.S. Dist. LEXIS 114605, at *16 (S.D. Ohio June 30, 2023) (McFarland, J.) (explaining that home care workers are employed at-will, rather than for a fixed employment period). Independent contractors, in comparison, have more "variable or impermanent working relationships" and "transfer from place to place as particular work is offered to them." *Keller*, 781 F.3d at 807. Even "short, exclusive relationships between the worker and the company may [nonetheless] be indicative of an employee-employer relationship." *Id.* (citing *Sec'y of Labor v. Lauritzen*, 835 F.2d 1529, 1537 (7th Cir. 1987)).

Defendants argue that the relationship between Americare and its aides is temporary because when a client switches agencies, the aide will often change agencies as well to stay with the client. (Defs.' Opp., PageID 48853–54.) Defendants offer no evidence to support their proposition. (*Id.*)

DOL acknowledges that the home health care industry is somewhat transient, but attributes the "lack of permanence" to the "operational characteristics of the industry" instead of "the workers' own business initiative." (DOL's Reply, PageID 48936–37 (citing *Crouch v. Guardian Angel Nursing, Inc.*, No. 3:07-cv-00541, 2009 U.S. Dist. LEXIS 103832, at *43 (M.D. Tenn. Nov. 4, 2009).) And although there may be high turnover in the industry, DOL argues that a majority (71.9%) of the aides stayed with Americare for over a year. (*See* Alloway Decl., ECF No. 118-1, ¶ 4.) Thus, the relationship between Americare and the aides, even if short, is indicative of an employment relationship.

ii. Defendants' Degree of Control

Defendants also argue that the fifth factor—the employer's right to control the aides' work—weighs against finding an employment relationship. (Defs.' Opp., PageID 48854–55.) Under the fifth factor, the Court evaluates the level of control that an employer has over its workers and "ask[s] whether the company 'retains the right to dictate the manner' of the worker's performance." *Acosta v. Off Duty Police Servs.*, 915 F.3d 1050, 1060 (6th Cir. 2019) (citing *Donovan v. Brandel*, 736 F.2d 1114, 1119 (6th Cir. 1984)). "The absence of need to control should not be confused with the absence of the right to control, and the actual exercise of control requires only such supervision as the nature of the work requires." *Id.* at 1061 (cleaned up) (citing *Peno Trucking, Inc. v. Comm'r of Internal Revenue*, 296 F. App'x 449, 456 (6th Cir. 2008)). Control may be exhibited by an employer's control over scheduling, the workers' ability to take on other contracts, the employer's ability to discipline, and overall supervision of the worker's work product. *Scalia v. G.E.M. Interiors, Inc.*, No. 1:17-cv-203, 2021 U.S. Dist. LEXIS 185082, at *40 (S.D. Ohio Sep. 28, 2021) (Barrett, J.) (citations omitted).

Defendants reason that the aides control their own work schedule and work with the clients directly to determine when and how to provide services. (Defs.' Opp., PageID 48854.) DOL counters that the aides' work is pre-determined by company policy. (DOL Reply, PageID 48943.) While the Ohio Area Agency on Aging creates a client's care plan, Americare ensures the aides execute each client's care plan. (Americare Dep., 139:23–25.) To ensure the aides provide the services required by the client's care plan, Defendants utilize an Electronic Visit Verification platform to track the aides using both client verification and location data. (Bharati Dep., 36:05–21; 38:12–20.) The platform requires the aide to sign in and out when they perform services for a particular client to document the number of hours and the services or tasks performed for each client. (*Id.* 37:01–16.) The visit verification data is monitored daily to ensure all clients received their required services. (*Id.* 38:02–14.)

The aides' conduct is further controlled by Americare's Employee Handbook which outlines attendance, confidentiality, and non-solicitation policies, as well as rules governing how aides must conduct themselves in the client's home and when they may utilize their personal cell phone. (*See* Employee Handbook, ECF No. 64-2, PageID 701–82.) When aides violate the policies in the Employee Handbook, or Americare receives client complaints, Americare "educates" and disciplines the aides. (Archarya Dep.[6], ECF No. 67-1, 25:24–26:11; 27:08–15.)

Thus, while the aides had some control over their schedule, Defendants exercised control over their work. The aides' ability to set their own hours "is not sufficient to negate control." *Lilley v. BTM Corp.*, 958 F.2d 746, 750 (6th Cir. 1992). This is especially so when Defendants track the aides' hours and whereabouts through a GPS-enabled electronic verification platform. *HALO Homecare*, 2023 U.S. Dist. LEXIS 114605, at *18 (concluding that the third-party home care agency exercised control over its employees by tracking their hours through a GPS-enabled smartphone application). The exclusive relationship between Americare and the aides, Defendants' close supervision via the Electronic Visit Verification platform, and Defendants' power to discipline the aides, collectively support finding that an employment relationship exists.

Defendants concede that Mr. Adhikari may be held individually liable under the FLSA. (ECF No. 86, PageID 2634 (explaining that he is the "sole beneficial owner of Americare and is actively involved in both overall policymaking and day-to-day operations"); *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 966 (6th Cir. 1991 (finding that the "top man" at a corporation that functions for his profit is enough to impose FLSA liability). Thus, the Court finds that Americare and Mr. Adhikari are employers and that Mr. Adhikari may be held individually liable.

After balancing the six factors of the economic reality test, including the undisputed factors, the Court finds that the aides are employees and Americare and Mr. Adhikari are employers under the FLSA. Defendants failed to raise a genuine dispute of material fact about

[6] Keshab Archarya is Americare's Human Resource Director. (Archarya Dep., 8:08–22.)

whether an employment relationship existed. DOL's Motion for Summary Judgment on this question is **GRANTED**.

B. Defendants are Employers Covered by the FLSA

Not all employees are protected by the FLSA's overtime provisions—only those who are engaged in interstate commerce as defined by 29 U.S.C. §§ 206(a) and 207(a) are covered. *Bey*, 2018 U.S. Dist. LEXIS 72819, at *10. An employee can be covered in two ways: enterprise coverage or individual coverage. *Id.* (citing 29 U.S.C. §§ 203(r) and (s)(1)). A plaintiff need establish only one or the other. Defendants do not dispute that Americare is a covered enterprise under the FLSA. (ECF No. 86, PageID 26341 ("Defendants have stipulated that they are subject to 'enterprise' coverage under 29 U.S.C. § 203(s)(1)(A)."); ECF No. 64-2, PageID 694, ¶ 3.) Americare is therefore a covered enterprise.

C. Defendants Cannot Claim an Exemption to the FLSA's Overtime Requirements

Once a plaintiff has established the elements of an unpaid overtime claim, an employer may show by a preponderance of the evidence that one of the exemptions afforded by § 213 of the FLSA applies to this employment. *See Kowalski*, 920 F. Supp. at 806; 29 U.S.C. § 213(a)(1)–(19). In other words, if an employer proves it is entitled to an exemption, the employer need not pay its employees overtime compensation.

Two such exemptions are at issue. First, the "live-in exemption" provides that domestic service workers who reside in their employer's home are exempt from the overtime requirements of the FLSA. 29 U.S.C. § 213(b)(21). Second, the "companionship exemption" exempts "any employee in domestic service employment [who] provide[s] companionship services for individuals who (because of age or infirmity) are unable to care for themselves." *Id.* § 213(a)(15).

The regulations accompanying the FLSA promulgated by DOL preclude third-party employers like Defendants from claiming the companionship or live-in exemptions. *See* 29 C.F.R. § 552.109(a) and (c). DOL promulgated this rule in 2013 and it became effective in 2015. *See* Application of the Fair Labor Standard Act to Domestic Service; Final Rule, 78 Fed. Reg. 60454, 60557 (Oct. 1, 2013) (codified at 29 C.F.R. § 552.109(a), (c)) ("2013 Rule"). The 2013 Rule also amended and narrowed the definition of what services are considered "companionship services" under 29 U.S.C. § 213(a)(15). *Id.* (codified at 29 C.F.R. § 552.6(b)).

Defendants' Partial Motion for Summary Judgment challenges the 2013 Rule and its subsequent codified regulations (29 C.F.R. §§ 552.109, 552.6), as arbitrary and capricious, unreasonable, and in violation of the text of the FLSA, the APA, and the major questions doctrine. (Defs.' Mot., PageID 48566.) Defendants ask the Court to vacate and set aside the 2013 Rule and find that Defendants may claim the live-in and companionship exemption. (*Id.*) Because the Court finds that the 2013 Rule was a valid exercise of regulatory authority, the Court **DENIES** Defendants' Partial Motion for Summary Judgment and finds as a matter of law that Defendants are not entitled to claim either exemption to the FLSA's overtime requirements.

i. *Loper Bright* Does Not Impact the Validity of the 2013 Rule.

In 1974, Congress amended the FLSA to extend its protections to domestic service employees. *See* Fair Labor Standards Act Amendments of 1974, Pub. L. No. 93-259, 88 Stat. 55 ("1974 Amendments"); 29 U.S.C. §§ 206(a), 207(l). That same amendment also created the companionship and live-in exemptions. *Id.*

But in amending the FLSA, Congress did not define several terms like "companionship services," or "domestic service employment" and instead empowered DOL to do so. 1974 Amendments, § 29(b), 88 Stat. 76 (authorizing DOL to "prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act.”). Congress also authorized DOL to “define[] and delimit[] by regulation[]” the scope of the workers exempted under the companionship exemption. 29 U.S.C. § 213(a)(15).

DOL did so by issuing implementing regulations. At first, these regulations allowed third-party agencies to claim the live-in and companionship exemptions to the FLSA’s requirements. 29 C.F.R. § 552.109(a), (c) (before Jan. 1, 2015). Consequently, until 2015, third-party agencies did not have to pay their home care workers overtime compensation. The regulation promulgated in 1975, defined “companionship services” as “those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs.” 29 C.F.R. § 552.6 (before Jan. 1, 2015). It included household work such as “meal preparation, bed making, washing of clothes, and other similar services.” *Id.*

In 2007, the Supreme Court heard a challenge to the regulation allowing third-party agencies to avoid the overtime requirements of the FLSA. *See Long Island Home Care at Home, Ltd. v. Coke*, 551 U.S. 158, 164 (2007). An employee of a home care agency argued that she should be entitled to the protections of the FLSA. *Id.* The Supreme Court disagreed and explained that Congress did not expressly answer the third-party employment question in the text of FLSA. *Id.* at 168, 171. Instead, Congress granted the authority to DOL to resolve the issue and DOL’s answer at that time was to allow third-party agencies to claim an exemption. *Id.*

But DOL changed course in 2013. Under a new regulation, third-party employers of companionship and live-in workers could no longer “avail themselves” of the statutory exemptions. 2013 Rule, 78 Fed. Reg. 60454, at 60455. Third-party employers under the 2013 Rule were required to pay employees providing companionship services and live-in employees overtime compensation. 29 C.F.R. § 552.109(a), (c). The 2013 Rule also narrowed what services qualified as "companionship services." *Id.* § 552.6(b). "[M]eal preparation, driving, light housework, managing finances, assistance with the physical taking of medication, and arranging medical care" qualified as companionship services—only if it did not exceed 20% of the total hours worked. *Id.*

Before the 2013 Rule went into effect in 2015, a group of trade associations representing third-party employers challenged the 2013 Rule under the APA. *Home Care Ass'n of Am. v. Weil*, 799 F.3d 1084, 1089 (D.C. Cir. 2015), *cert. denied*, 597 U.S. 927 (2016). The district court declared the revised third-party regulation invalid under *Chevron* step one, but the D.C. Circuit by a unanimous panel reversed the district court's vacatur. *Id.* at 1090, 1097 (reversing *Home Care Ass'n of Am. v. Weil*, 76 F. Supp. 3d 138, 139 (D.D.C. 2014)).

Applying the *Chevron* framework, the D.C. Circuit first decided that "Congress delegated the authority to [DOL] to determine whether employees of third-party agencies should fall within the scope of the companionship-services and live-in worker exemptions." *Id.* at 1093.[7] Congress amended the FLSA in 1974 to expand the FLSA's protections to more workers. *Id.* at 1093–94. Thus, DOL's narrow construction of the exemptions helped achieve congressional intent and was reasonable. *Id.* Because the court found the regulation was a reasonable exercise of rulemaking authority, and was neither arbitrary nor capricious, the court held that the regulation was valid and enforceable. *Id.* at 1094–95.

Recently, the Supreme Court overruled the *Chevron* deference framework relied upon by the D.C. Circuit in *Home Care*. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024).

[7] While *Coke* addressed a challenge only to the companionship exemption, *Home Care* determined that the *Coke* Court's holding applied equally to DOL's authority under the FLSA's live-in exemption. *Home Care*, 799 F.3d at 1091 (describing the parallel construction of § 213(a)(15) and § 213(b)(21)).

Defendants argue that after *Loper Bright*, the D.C. Circuit's decision no longer offers persuasive guidance. (Defs.' Mot., PageID 48590.)

The Court acknowledges that *Loper Bright* changes the framework for interpreting some agency regulations but finds that it has no such impact here. *Chevron* instructed courts to defer to "permissible agency interpretations of the statutes those agencies administer." *Loper Bright*, 144 S. Ct. at 2254 (discussing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council*, 467 U.S. 837 (1984)). Now, under *Loper Bright*, courts "need not . . . and may not" defer to agency interpretations of *ambiguous* statutes. *Id.* at 2273 (emphasis added). "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority," but "when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it." *Id.*

In this case, both the 1974 Amendments and § 213(a)(15) of the FLSA unambiguously delegate authority to DOL to prescribe the rules and regulations to shape the parameters of the exemptions to the FLSA. *See* 1974 Amendments, § 29(b), 88 Stat. 76 and 29 U.S.C. § 213(a)(15). In fact, the Supreme Court in *Loper Bright* recognized § 213(a)(15) as an example of a statute that "expressly delegates to an agency the authority to give meaning to a particular statutory term." *Loper Bright*, 144 S. Ct. 2263 n.5 (cleaned up).

Since the delegation of statutory authority to DOL is clear and unambiguous, the *Loper Bright* decision does not impact the outcome here. *See Su v. WiCare Home Care Agency, LLC*, No. 1:22-cv-00224, 2024 U.S. Dist. LEXIS 135200, at *42 n.12 (M.D. Pa. July 31, 2024) (concluding on cross motions for summary judgment that *Loper Bright* did not impact the validity of the companionship exemption); *Barnes v. Res. for Hum. Dev., Inc.*, No. 24-757, 2024 U.S. Dist.

LEXIS 193273, at *5 (E.D. Pa. Oct. 24, 2024) (same).[8] DOL's authority to promulgate regulations was within the bounds of its statutory authority, as contemplated by Congress.

Further, the mere fact that the D.C. Circuit relied on *Chevr*on does not cast doubt on that court's holding in *Home Care*. *See Loper Bright*, 144 S. Ct. 2272. The Supreme Court made clear that cases that relied on *Chevron* "are still subject to statutory stare decisis despite our change in interpretative methodology." *Id.* Thus, Defendants' argument that the 2013 Rule is invalid under *Loper Bright* is unpersuasive.

ii. The 2013 Rule Excluding Third Parties from the Live-In Exemption is Valid and Enforceable.

Defendants argue that the regulation preventing third-party agencies from claiming the live-in exemption is unlawful and should be set aside. (Defs.' Mot., PageID 48582, citing 2013 Rule, 78 Fed. Reg. 60454, codified at 29 C.F.R. § 552.109.) Because most aides are family members of Americare's clients, and live in the client's home, Defendants argue they have a right to claim this exemption. (*See* Americare Dep., 27:11–12.) First, Defendants reason that the live-in exemption is met if the employee resides where they work, no matter who their employer is. (*Id.* PageID 48582–87.) Second, Defendants maintain that the Supreme Court's holding in *Coke* does not apply to the live-in exemption. (*Id.* PageID 48587–90.)

As for Defendants' first argument, the live-in exemption states that the FLSA's overtime requirements "shall not apply" to "any employee who is employed in domestic service in a household and who resides in such household." 29 U.S.C. § 213(b)(21). Since the statute does not

[8] The unambiguous delegation of statutory authority here also distinguishes this case from the Sixth Circuit's recent decision in *FCC v. FCC (In re MCP)*, No. 24-7000, 2025 U.S. App. LEXIS 11, at *14 (6th Cir. Jan. 2, 2025). In that case, the court applied the *Loper Bright* framework and held that the Federal Communications Commission exceeded its implicit statutory authority by imposing net-neutrality policies under the "telecommunications service" provision of the Communications Act. *Id.*

mention the type of employer who may claim the exemption, Defendants argue that DOL did not have the authority to exclude certain employers. (Defs.' Mot., PageID 48583.) Limiting the employers that may claim the exemption is not the "best reading" of the statute and amounts to rewriting clear statutory terms. (*Id.* PageID 48584; citing *Loper Bright*, 144 S. Ct. at 2264.)

But the Supreme Court explained that the 1974 Amendments to the FLSA gave DOL the "power to fill [] gaps through rules and regulations," and "instruct[ed] [DOL] to work out the details of [its] broad definitions." *Coke*, 551 U.S. at 168. "[W]hether to include workers paid by third parties within the scope of the definitions is one of those details." *Id.* DOL's authority to define which employers may claim the exemption was conclusively resolved by the Supreme Court in *Coke*, and *Loper Bright* has not changed that. *See Loper Bright*, 144 S. Ct. at 2272 (protecting statutes that "empower an agency to prescribe rules to 'fill up the details' of a statutory scheme" or "expressly delegate[]" to an agency). DOL's decision to exclude third-party employers from the employers who could claim this exemption was within its statutory authority under the 1974 Amendments and amounts to "fair reading" of the exemption. *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79, 88–89 (2018) (holding that exemptions must be given a fair reading).

Defendants counter that the Supreme Court's holding in *Coke* is limited to the companionship exemption. (Defs.' Mot., PageID 48587.) Defendants reason that *Coke* should not apply to the live-in exemption because the companionship exemption at issue in *Coke* provides a unique statutory authorization to "define[] and delimit[]" its terms, but the live-in exemption contains no such parallel authorization. (*Id.* PageID 48589–90.)

While Defendants are correct that the plaintiff in *Coke* challenged only the companionship exemption, as the D.C. Circuit in *Home Care* explained, the exemptions were phrased similarly and the court found no reason to treat the exemptions differently. 799 F.3d at 1091 (citing *Coke*, 551 U.S. at 167–68 and the 1974 Amendments.) The companionship exemption excludes from the FLSA's requirements "*any employee employed in domestic service employment* to provide companionship services for individuals who . . . are unable to care for themselves." 29 U.S.C. § 213(a)(15) (emphasis added). Similarly, the live-in exemption applies to "*any employee who is employed in domestic service* in a household and who resides in such household." 29 U.S.C. § 213(b)(21) (emphasis added). Both left details or gaps to be filled in, and the D.C. Circuit determined that Congress authorized DOL to fill in those details. *Home Care,* 799 F.3d at 1091.

Further, the Supreme Court's holding *Coke* was based on Congress's broad grant of authority "to prescribe necessary rules, regulations, and orders with regard to the" exemptions created therein. *See* 1974 Amendments, Pub. L. No. 93-259, § 29(b), 88 Stat. at 76. DOL's power to fill in the details of both exemptions, in other words, did not come from the unique "define[] and delimit[]" language in § 213(a)(15), but from Congress's general grant of authority in 1974 Amendments. Because Congress gave DOL broad authority to enforce all provisions of the 1974 Amendments, the *Coke* Court's holding applies equally to DOL's authority under the FLSA's live-in exemption. Defendants' arguments to the contrary are unpersuasive. Thus, the 2013 Rule excluding third-party employers from claiming the live-in exemption is valid.

iii. The 2013 Rule Excluding Third Parties from the Companionship Exemption is Valid and Enforceable.

Defendants raise different challenges to the application of the third-party rule to the companionship exemption. Defendants argue that precluding third-party employers from claiming the companionship exemption conflicts with the major questions doctrine. (Defs.' Mot., PageID 48591–92.) Next, Defendants argue that DOL failed to identify ambiguity in the companionship exemption to warrant deference to DOL's regulation before or after *Loper Bright*. (*Id.* PageID 48592–95.) Defendants also reason that the 2013 Rule creates an unfair paradox because an individual or family member who jointly employs a home care worker with a third-party agency may claim the exemption, but the third-party agency cannot. (*Id.* PageID 48595–96.)

The major questions doctrine requires agencies to have "clear congressional authorization" before making major policy decisions. *West Virginia v. EPA,* 597 U.S. 697, 724 (2022). Courts "expect Congress to speak clearly when authorizing an agency to exercise powers of vast economic and political significance." *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs*., 594 U.S. 758, 764 (2021) (quotations omitted). This doctrine applies only "in extraordinary cases in which the history and breadth of the authority that the agency has asserted, and the economic and political significance of that assertion, provide a reason to hesitate before concluding that Congress meant to confer such authority." *Allstates Refractory Contractors, LLC v. Su*, 79 F.4th 755, 767, n. 3 (6th Cir. 2023) (cleaned up). Thus, the question is whether DOL's 2013 Rule implicates the major questions doctrine by exercising powers of vast economic and political significance, and if so, whether DOL had clear congressional authorization to do so.

Courts generally consider an agency action to be of vast economic significance if it requires "billions of dollars in spending." *King v. Burwell*, 576 U.S. 473, 485 (2015); *see also West Virginia*, 597 U.S. at 715 (projecting that the Clean Power Plan would have a trillion-dollar impact); *Ala. Ass'n of Realtors*, 594 U.S. at 764 (concluding that an economic impact of $50 billion was of vast economic significance); *Biden v. Nebraska*, 143 S. Ct. 2355, 2369 (2023) (finding that the student loan program would impact 43 million Americans and $430 billion in federal debt so the program implicated the major questions doctrine).

Defendants contend that the 2013 Rule was an exercise of economic significance because it impacted a $66 billion-dollar industry. *(*Defs.' Mot., PageID 48591, citing 2013 Rule, 78 Fed. Reg. at 60554, n.225.) But as DOL points out, that figure represents the total expenditures for the entire industry, not the economic impact of the 2013 Rule. 2013 Rule, 78 Fed. Reg. at 60554, n.225. DOL counters that the 2013 Rule was projected to increase state Medicaid budgets by 0.03% per year and have a $20.7 million effect on employers in the first year, with additional transfers of up to $210.2 million depending on how employers managed overtime hours. *Id.* at 60555, n.229. But while the numbers are large, the economic impact of the 2013 Rule is distinguishable from the cases implicating the major questions doctrine. *See e.g.*, *Mayfield v. United States DOL*, 117 F.4th 611, 616 (5th Cir. 2024) (concluding that because the economic impact of an FLSA exemption was in the hundreds of millions, rather than billions, the major questions doctrine did not apply).

Turning to the political significance of the 2013 Rule. Defendants argue that whether third-party employers can claim the companionship exemption is a matter of political significance. (Defs.' Mot., PageID 48591.) To demonstrate political significance, Defendants point out that Congress repeatedly rejected efforts to amend the companionship exemption before DOL promulgated the 2013 Rule. (*Id.*) But Congress (and the President through the Secretary of Labor) has left the 2013 Rule in place for over ten years. (DOL's Opp., PageID 48800.) Though important to the domestic service employees, the issue of which employees are exempt from the FLSA is not analogous to the types of issues considered politically significant enough to trigger the application of the major questions doctrine. *See Mayfield*, 117 F.4th at 617 (concluding FLSA exemptions are not "politically contentious" enough to trigger the doctrine).

Nor is this an instance in which DOL "discover[ed] in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy.'" *Mayfield*, 117 F.4th at 617 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). DOL has promulgated regulations regarding third-party employers since 1975 based on the statutory authority provided by the 1974 Amendments. *See* 29 C.F.R. § 552.109(a), (c) (before Jan. 1, 2015). So, the 2013 Rule is not the sort of "extraordinary case" to which the major questions doctrine applies. Therefore, Defendants' major questions doctrine argument fails as a matter of law.

Next, Defendants argue again that *Coke* cannot survive *Loper Bright* and continue to protect the companionship exemption. (Defs. Mot., PageID 48592–48595.) After *Loper Bright*, Defendants posit that there are only two ways to read the Supreme Court's decision in *Coke*. (*Id.*) Either the Supreme Court inferred a "gap" in the term domestic service employment—a term only found in the companionship exemption, not in the live-in exemption. (*Id.* PageID 48592–93.) Or it relied on an implied delegation from statutory "silence" which now defies *Loper Bright*. (*Id.*)

Not so. As the Court discussed *supra*, Congress broadly delegated authority to DOL to "prescribe necessary rules, regulations, and orders with regard to the amendments made by this Act." 1974 Amendments, § 29(b), 88 Stat. 76. That authority was not limited to defining domestic service employment and thus applied broadly to the companionship and live-in exemptions. This Court refuses to read *Coke* so narrowly. The second interpretation is also incorrect because DOL's rulemaking authority is not grounded in statutory silence, but an express delegation under the 1974 Amendments. *Id.* The 2013 Rule is within the outer bounds of that delegation. *Id.*

Finally, Defendants take issue with the fact that an individual or family member who jointly employees a home care worker with a third-party agency may still assert the companionship exemption, but the third-party agency may not. *See* 29 C.F.R. 552.109(a). Defendants contend that the regulation creates an unreasonable paradox because an employee could be both exempt and not exempt at the same time. (Defs.' Mot., PageID 48595–96.) But there is nothing in the text of § 213(a)(15) that precludes this result. As DOL explains, Congress created other circumstances where joint employers of the same employee have different obligations under the FLSA depending on the nature of the employer. (DOL's Opp., PageID 48795.)

Congress intended for DOL to resolve complex questions of whether or how to include workers paid by third parties within the scope of the exemptions under the 1974 Amendments. *Coke*, 551 U.S. at 167–68. This Court sees no reason to break with the Supreme Court's precedent in *Coke* and finds as a matter of law that excluding third-party employers from claiming the companionship exemption is a valid exercise of DOL's rulemaking authority.

iv. The Third-Party Rule is Neither Arbitrary Nor Capricious.

Finally, Defendants challenge the third-party rule as arbitrary and capricious in violation of the APA. (Defs.' Mot., PageID 48598–600.) The APA requires that courts "hold unlawful and set aside agency action[s]" that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). But courts do not vacate a rule for being arbitrary and capricious unless the agency "entirely failed to consider an important aspect of a problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (citation omitted). The regulatory decision need not be "the best one possible or even . . . better than the alternatives." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260, 292 (2016). Courts should uphold an agency regulation "if the agency has examined the relevant considerations and articulated a satisfactory explanation for its action." *Id.* (cleaned up). No greater scrutiny is applied to agency actions that change or reverse a prior policy. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

DOL's explanation for its 2013 Rule meets those standards. When reversing its policy, DOL explained that the home care industry transformed since 1975. 2013 Rule, 78 Fed. Reg. at 60481. Originally, most people received care in an institutional setting, rather than in their homes, and home care workers were employed directly by a member of the household. *Id.* at 60455; *see* *also Home Care*, 799 F.3d at 1095 (citations omitted). But over time, people preferred to receive care in their homes. *Id.* Third party agencies grew to meet the increased demand and by the time the Supreme Court decided *Coke*, most home care workers were employed by third-party agencies. *Id*. Thus, most of the workers in this growing industry were not protected by the FLSA.

Defendants assert that DOL ignored the fact that the regulation would increase the cost of home care and exceed the Medicaid reimbursement rate, making home care less accessible. (Defs.' Mot., PageID 48599.) Forcing third-party employers to pay their home care employees overtime compensation would raise costs and compel employers to cut employees' hours to reduce overtime costs. (*Id.*) Cutting employees hours would not achieve DOL's desired outcome of increasing earnings for home care workers. (*Id.* PageID 48600.) Defendants spill much ink over a 2020 Government Accountability Office report to show that employers reduced home care workers' hours in response to the 2013 Rule, and the Rule did not improve earnings. (Defs.' Mot., PageID 48599; citing GAO-21-72, https://www.gao.gov/products/gao-21-72.)

DOL considered the potential costs increases when promulgating the final rule. The agency acknowledged that direct care workers may receive fewer hours but balanced that against the potential to improve the quality of home care services. 2013 Rule, 78 Fed. Reg. at 60483. Increasing the protections for home care workers would attract and retain better qualified workers, reduce turnover, and result in a higher quality of care. *Id.* at 60548, 60459–60; *see also Home Care*, 799 F.3d at 1096 (deciding that DOL's conclusions were reasonable).

Further, as DOL points out, judicial review under the APA is limited to the administrative record before the agency at the time the agency's decision was made. *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 404, 420 (1971); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (refusing to rescind agency regulations based on impermissible "post hoc rationalization"). The Government Accountability Office report, issued in 2020, was not in the administrative record at the time DOL promulgated the 2013 Rule.

DOL did not "entirely fail[] to consider an important aspect of a problem," *Defs. of Wildlife*, 551 U.S. at 658, and instead "examined the relevant considerations and articulated a satisfactory explanation for its action." *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 292. DOL's regulatory decision need not be "the best one possible or even . . . better than the alternatives," *FERC v. Elec. Power Supply Ass'n*, 577 U.S. at 292, but it is not "so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Defs. of Wildlife*, 551 U.S. at 658. Accordingly, the third-party employer regulation was neither arbitrary nor capricious and Defendants are not entitled to summary judgment on this issue.

v. Defendants Lack Standing to Challenge 29 C.F.R. § 552.6(b).

Apart from challenging the third-party regulation under 29 C.F.R. § 552.109, Defendants also challenge 29 C.F.R. § 552.6(b), as amended by the 2013 Rule. (Defs.' Mot., PageID 48596–98.) That regulation defines the services included in "companionship services." 29 C.F.R. § 552.6 (2014). The 2013 Rule amended that definition to expand the type of tasks that fell outside the companionship exemption if performed more than 20% of the time. 29 C.F.R. § 552.6(b) (2015). If more than 20% of an employee's time is spent providing care related to "daily living" tasks like feeding, dressing, meal preparation, or assistance with medication, then the companionship exemption does not apply. *WiCare*, 2024 U.S. Dist. LEXIS 135200, at *41 (describing this test as the "duties test"). Effectively, the narrowed definition operates as an exception to the companionship exemption. *Faulkner*, 443 F. Supp. 3d at 929 (citations omitted).

Under this framework, an employer bears the initial burden of proving that it is entitled to the companionship exemption under 29 U.S.C. § 213(a)(15). *Id.* "If satisfied, the burden shifts to the employee to prove that [they are] entitled to the care exception (i.e., submit proof that [they] performed care-related work more than 20% of the time)." *Id.*

Defendants cannot meet their initial burden to claim the companionship exemption because they are a third-party employer. The Court concluded *supra* that the rule prohibiting third-party employers from claiming exemptions was valid and enforceable. Since the 2013 Rule is valid, and Defendants are third-party employers, no genuine dispute of material fact exists as to whether Defendants can claim the companionship exemption—they cannot.

Facing a similar situation in *Home Care*, the D.C. Circuit held that "because third-party employers were not allowed to avail themselves of the exemption under any definition of companionship services," the third-party employers did not suffer an injury in fact for standing from the narrowed definition. *Home Care*, 799 F.3d at 1097. Without a direct injury from the 2013 Rule, the D.C. Circuit concluded that it lacked jurisdiction to consider the merits of the challenge to 29 C.F.R. § 552.6(b) under the APA. *Id.*

The Court agrees with the D.C. Circuit's reasoning. Defendants cannot avail themselves of the FLSA's companionship exemption as a third-party employer, and thus cannot show that the revised definition of companionship services caused them an injury in fact. Accordingly, the Court lacks jurisdiction to consider the merits of Defendants' challenge.

The Court has dispensed of all arguments raised by Defendants in their Partial Motion for Summary Judgment. The Court concludes that the 2013 Rule, and its accompanying codified regulation (29 C.F.R. § 552.109) was a valid exercise of DOL's rulemaking authority under the text of the FLSA and did not violate either the major questions doctrine or the APA. Having found that the Rule prohibiting third-party employers from claiming exemptions to the FLSA was valid, no genuine issue of material fact exists as to whether Defendants may claim either the companionship or live-in exemption. Thus, Defendants' Motion for Partial Summary Judgment (ECF No. 113) is **DENIED**. DOL is entitled to judgment as a matter of law on this question. The Court now addresses the specific overtime violations alleged by DOL.

D. Defendants Failed to Pay the Aides Overtime Compensation

DOL alleges that Defendants violated the overtime requirements of the FLSA in three ways. First, DOL argues that Defendants did not pay overtime to the Americare aides when they worked over 40 hours in a week from October 2018 to September 2019. (DOL's Mot., PageID 48550–51.) DOL contends that Defendants changed their pay structure in September 2019 to lower the regular hourly rate when the aides worked overtime, and then paid them one and one-half times the lowered regular rate. (*Id.* PageID 48551–54.) Finally, DOL argues that Defendants offer no evidence of compliance with the FLSA to date and have likely not paid overtime since April 2024. (*Id.* PageID 48554.)

i. Defendants willfully violated the FLSA from October 2018 to September 2019.

DOL moves for summary judgment on its claims that Defendants paid the Americare aides straight time for all hours worked from October 2018 to September 2019. (DOL's Mot., PageID 48550.) Defendants do not dispute that they paid the aides straight time for all hours worked, including for overtime hours during this period. (Defs.' Opp., PageID 48856; *see also* Defs.' Resp. to Pls.' Req. for Admis., ECF No. 64-3, PageID 917–18; Adhikari Dep., ECF No. 69-1, 38:06–10.) But Defendants argue that they may only be held liable if the Court finds that the violations were willful. (Defs.' Opp., PageID 48856.)

The FLSA has a two-year statute of limitations for actions to recover unpaid overtime, but it extends the limitations to three years if the violations are willful. 29 U.S.C. § 255(a). Since DOL filed its Complaint on October 19, 2021, unless the three-year limitations period applies, DOL's claims for violations from October 2018 to September 2019 would be time barred.

An FLSA violation is willful if the defendant "knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute." *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 134 (1988). But an employer who merely acts negligently could not have acted willfully. *Elwell v. Univ. Hospitals Home Care Services*, 276 F.3d 832, 841 n.5 (6th Cir. 2002). When the evidence shows that the employer knew that its conduct violated the FLSA, either because of a prior DOL investigation, a complaint from an employee, or similar lawsuit, courts within this Circuit have found that an employer acted willfully. *See, e.g.*, *Crowell v. M St. Ent., LLC*, 670 F. Supp. 3d 563, 600 (M.D. Tenn. 2023) ("[T]he Sixth Circuit has found an employer to have acted knowingly or recklessly when it had 'actual notice of the requirements of the FLSA by virtue of earlier violations, [an] agreement to pay overtime wages, and [its] assurance of future compliance.'") (quoting *Walsh v. KDE Equine, LLC*, 56 F. 4th 409, 414–15 (6th Cir. 2022)).

Mr. Adhikari's testimony about whether he knew that Americare was required to compensate the aides at a premium rate for overtime worked is contradictory. When he started Intra-National and took over Americare, he testified that he thought that aides were exempt from overtime requirements because no other agency paid overtime. (Americare Dep., ECF No. 64-1, 48:08–21.) But he also testified that he knew that DOL amended the rules in 2013 to exclude home care agencies from the overtime exemptions. (*Id.* 51:12–18.)

Mr. Adhikari attributes this contradiction to allegedly conflicting advice he received from attorneys. An attorney allegedly told him in 2016 that personal care services were exempt from the overtime requirements. (*Id.* 51:19–22.) But Mr. Adhikari could not remember the name of this attorney. (*Id.*) Mr. Adhikari testified that he also consulted another attorney from Pittsburg. (*Id.*

55:05–16; 62:3–9.) Mr. Adhikari alleges that this attorney told him that home care workers were not owed overtime, but offers not documentation to support his allegations. (*Id.* 55:24–56:22.) Mr. Adhikari consulted a third attorney named John Linkosky. (Americare Dep., 62:19–63:14; 64:20–65:6.) Defendants concede that Mr. Linkosky advised Mr. Adhikari to pay home care aides overtime compensation. (Defs.' Opp., PageID 48857.) But Mr. Adhikari also testifies that Mr. Linkosky told him that homecare agencies may lack sufficient control over the aides to be considered employers and covered by the FLSA.[9] (Americare Dep., 65:10–66:23.)

Mr. Adhikari may have received confusing or contradictory advice from various attorneys. But even viewing the facts in the light most favorable to Defendants, the Court can conclude that Defendants knew or should have known that they were violating the FLSA by 2018. Defendants concede that in "early 2018," Mr. Linkosky advised Mr. Adhikari to pay the aides overtime compensation. (*See* Adhikari Dep. 2022, ECF No. 69-2, 123:10–24.) In July 2018, Mr. Adhikari began paying home care aides employed by Intra-National overtime compensation but did not pay Americare aides overtime until September 2019. (Adhikari Dep., ECF No. 69-1, 38:06–18.) Even before that, Mr. Adhikari acknowledged that DOL had changed the regulations such that home care agencies as third-party employers were no longer exempt from overtime requirements. (Americare Dep., 51:12–18.)

The investigation by the Pennsylvania Department of Labor and the class action lawsuit for unpaid overtime also put Defendants on notice of their obligations under the FLSA.

[9] Mr. Linkosky disputes Mr. Adhikari's characterization of his advice. He says he "never advised [Mr.] Adhikari, [or] Americare, . . . that Americare's direct care workers were exempt from the minimum wage or overtime provisions of the FLSA due to the companionship services, live-in caregiver, or domestic service exemption. Likewise, I did not advise [them], that Americare's direct care workers were exempt from the minimum wage or overtime provisions of the FLSA due to any other exemption." (Linkosky Decl., ECF No. 72-1, ¶¶ 8, 10.)

Additionally, "[s]everal courts have held that allegations of recordkeeping violations may bolster a plaintiff's allegation of willfulness." *Bey*, 2018 U.S. Dist. LEXIS 72819, at *15 (collecting cases within the Sixth Circuit). As discussed below, the Court finds that Defendants also failed to maintain accurate records and violated § 211(c) of the FLSA. (*See infra*, Section II; *see also* Defs.' Opp., PageID 48861 (conceding some recordkeeping violations, but contesting others).)

Accordingly, a reasonable jury could conclude that Defendants acted willfully in failing to pay Americare aides overtime compensation from October 2018 to September 2019 such that the three-year statute of limitations under 29 U.S.C. § 255(a) applies. Because Defendants do not dispute that they paid straight time for all overtime hours worked, the Court finds that no genuine issue of material fact exists and DOL is entitled to summary judgment for these FLSA violations.

ii. Defendants failed to properly compensate the aides for overtime hours worked from 2019 to 2024.

DOL next contends that it is entitled to an award of summary judgment for Defendants' violations of the overtime provisions of the FLSA from September 2019 to April 2024. (DOL's Mot., PageID 48551–54.) When Defendants started paying the aides overtime in September 2019, Defendants lowered the aides' regular rate of pay when they worked overtime hours (more than 80 hours in a two-week period), so that the aides were paid one and one-half times the lowered rate for overtime hours worked. (*Id.*; *see also* Alloway Decl., ECF No. 111-1, ¶¶ 22–27.)

Defendants do not contest that they reduced the aides' hourly rates and then paid time and one-half for overtime hours worked. (Defs.' Resp. to Pls.' Interrog., ECF No. 64-3, PageID 898.) Mr. Adhikari candidly explained that Americare could not afford to pay overtime compensation without a rate adjustment. (Americare Dep., ECF No. 64-1, 232:11–13 ("we don't have enough money to pay [the aides]."); *see also* Americare and Adhikari Cont. Dep., ECF No. 65-1, 68:06–12.) Since "the employer and employee are free to establish [the] regular rate at any point and in any manner they see fit," Defendants contend that their pay practice did not violate the FLSA. *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945).

But the freedom to contract and set the regular rate of pay "does not include the right to compute the regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes." *Walling v. Helmerich & Payne*, 323 U.S. 37, 42 (1944). The FLSA was not intended to reduce employees' regular rate of pay, but "to compensate employees for the burden of overtime workweeks." *Brennan v. Elmer's Disposal Serv., Inc.*, 510 F.2d 84, 87 (9th Cir. 1975) (citing *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446, 460 (1948)). An employer cannot implement a compensation system designed to avoid paying the minimum wage and overtime requirements. *Youngerman-Reynolds Hardwood Co.*, 325 U.S. at 424.

29 C.F.R. § 778.316 describes practices at odds with the FLSA and states that "the parties cannot lawfully agree that the rate for that work shall be lower merely because the work is performed during the statutory overtime hours, or during a week in which statutory overtime is worked." The hourly rate cannot "vary from week to week inversely with the length of the workweek." 29 C.F.R. § 778.500(b). The regulations also illustrate an example of an unlawful pay practice that is analogous to the pay practice utilized by Defendants:

> It is obvious that as a matter of simple arithmetic an employer might adopt a series of different rates for the same work, varying inversely with the number of overtime hours worked in such a way that the employee would earn no more than his straight time rate no matter how many hours he worked. If [the employer] set the rate at $ 6 per hour for all workweeks in which the employee worked 40 hours or less, approximately $ 5.93 per hour for workweeks of 41 hours, approximately $ 5.86 for workweeks of 42 hours, approximately $ 5.45 for workweeks of 50 hours, and so on, the employee would always receive (for straight time and overtime at these "rates") $ 6 an hour regardless of the number of overtime hours worked. This is an obvious bookkeeping device designed to avoid the payment of overtime compensation and is not in accord with the law. *See Walling v. Green Head Bit & Supply Co.*, 138 F. 2d 453 [(10th Cir. 1943)]. The regular rate of pay of this employee for overtime purposes is, obviously, the rate he earns in the normal nonovertime week — in this case, $ 6 per hour.

29 C.F.R. § 778.327(a).

The difference between a permissible reduction to an employee's regular rate of pay, and an impermissible one, hinges on "whether the rate change is 'justified by no factor other than the number of hours' an employee worked." *Thompson v. Regions Sec. Servs., Inc.*, 67 F.4th 1301, 1310 (11th Cir. 2023) (quoting 29 C.F.R. § 778.327); *see also Parth v. Pomona Valley Hosp. Med. Ctr.*, 630 F.3d 794, 797 (9th Cir. 2010) (explaining that an employee's average rate can be reduced "so long as the rate reduction was not designed to circumvent" the FLSA). When the regular rate reduction is "justified by the length of the workweek, 'the device is evasive and the rate actually paid in the shorter or non[-]overtime week is [the employee's] regular rate for overtime purposes in all weeks." *Thompson*, 67 F.4th at 1310; *see also Walsh v. Kynd Hearts Home Healthcare, LLC,* Civil Action No. 2:20CV630 (RCY), 2022 U.S. Dist. LEXIS 63694, at *9 (E.D. Va. Apr. 5, 2022) (holding that the plaintiff adequately stated a claim for an FLSA violation where the employer paid employees one rate of pay during normal, non-overtime weeks, and a different lower rate of pay during the weeks where the employees worked overtime); *Marshall v. Murray*, No. 76-167, 1979 U.S. Dist. LEXIS 9811, at *15 (M.D. Pa. Sep. 14, 1979) (finding that the employer's system was in fact the type of system designed to avoid the overtime requirements).

Intent, rather than "the mere fact of a reduction in the regular rate is the true indicator of whether a rate reduction is permissible under the FLSA." *Wofford v. Seba Abode, Inc.*, No. 2:20-cv-00084-RJC, 2024 U.S. Dist. LEXIS 170753, at *52 (W.D. Pa. Sep. 23, 2024). Defendants' intent is clear from the testimony of Mr. Adhikari and Americare's payroll coordinator, Deepesh Pradhan. (Americare and Adhikari Cont. Dep., ECF No. 65-1, 68:16–25 (explaining that the regular rate depended on the number of hours worked); Pradhan Dep., ECF No. 70-1, 23:03–26:25

(same).) The purpose of the variable rate policy was to save money by reducing the regular rate when an employee worked overtime. (Americare Dep., 232:11–13.)

The reduction to the aides' regular rate depended on the number of hours an employee worked. For example, Sujata Dahal worked 77 hours in a two-week pay period at a rate of $12.50 per hour. (ECF No. 64-1, 209:01–210:03.) But when Mr. Dahal worked 96 hours (16 overtime hours), his hourly rate was reduced to $11.45 per hour, and then to $10.75 per hour when he worked 119 hours in a pay period. (*Id.*) Similarly Durga Chhetri was paid $12.70 per hour when she worked 84 hours, but $11.44 when she worked 110 hours. (Chhetri Records, ECF No. 111-18.)

This method was designed to ensure that the aides would effectively earn their original regular rate for all hours worked, including overtime. Defendants make no effort to conceal the fact that they enacted a scheme nearly identical to the plan described in 29 C.F.R. § 778.327. Defendants' pay practice offends the core policy goals of the FLSA. *See Thompson*, 67 F.4th at 1309–10 ("Without that prohibition, the FLSA would neither (1) place financial pressure on employers to hire additional workers instead of scheduling their existing employees to work overtime, nor (2) ensure that employees receive additional compensation for the burden of a workweek in excess of the hours."). Defendants were not without other options to avoid paying overtime rates. They could have hired more aides, or not offered the opportunity to work overtime, or even simply justified a company-wide rate reduction for reasons other than the number of hours the employees worked. *Wofford*, 2024 U.S. Dist. LEXIS 170753, at *59. But Defendants instead utilized a rate reduction practice to avoid paying the proper premium overtime rate. Defendants cite no cases that support their pay practice and thus fail to raise a genuine issue of material fact to avoid summary judgment. The Court enters summary judgment for DOL on this issue.

iii. Defendants have not shown compliance with the FLSA to date.

DOL also argues that Defendants have made no representation that they have come into compliance with the FLSA since April 14, 2024. (DOL's Mot., PageID 48554.) Since DOL's Complaint (Am. Compl., ECF No. 8) requests liquidated damages for violations continuing through the present, DOL urges the Court to award more back wages and liquidated damages because of Defendants continued violations. (DOL's Mot., PageID 48554.) Defendants do not address DOL's arguments nor do they respond with evidence of compliance. (*See* Defs.' Opp.) Accordingly, Defendants fail to raise a genuine issue of material fact that they complied with the FLSA's overtime requirements from April 2024 to the date of this Order.

The Court awards DOL summary judgment as to liability on this issue. To determine the appropriate amount of damages, the Court also **ORDERS** Defendants to produce payroll and time records for April 15, 2024 to the date of this Court's order within **14 DAYS**. If the records confirm continuing violations, DOL is **ORDERED** to file Notice and a Proposed Order detailing the amount of damages within **21 DAYS** of receiving the records.

II. Defendants are Liable for Record Keeping Violations

Section 11(c) of the FLSA requires an employer to "make, keep, and preserve" records of the persons they employ, as well as "the wages, hours, and other conditions and practices of employment" for a period set forth in the regulations. 29 U.S.C. § 211(c). These records must be accurate and include (1) the employee's regular hourly rate of pay per week under 29 C.F.R. § 516.2(a)(6); and (2) an employee's total weekly hours of work under 29 C.F.R. § 516.2(a)(7). *See, e.g.*, *Acosta v. Min & Kim, Inc.*, 919 F.3d 361, 365 (6th Cir. 2019).

Defendants concede that they maintained only bi-weekly payroll records and thus failed to compute overtime on a workweek basis as required by 29 C.F.R. § 516.2(a)(7). (Defs.' Opp., PageID 48861.) But Defendants argue that they did not fail to maintain records of the aides' regular hourly rate worked because that "assumes DOL established the alleged overtime violations." (*Id.*)

As discussed above, Defendants varied the aides' regular rate based on the number of hours the aides worked each bi-weekly pay period. (*See supra*, Section I(D)(ii).) The Court concluded that the regular rate changed based on the number of overtime hours worked. (*Id.*) Thus, the regular rate listed in Defendants' payroll records was incorrect, and so Defendants failed to maintain accurate records. As a result, DOL is entitled to summary judgment for Defendants' violations of the FLSA's recordkeeping requirements. DOL's Motion is **GRANTED** on this issue.

III. Defendants are Liable for Back Wages as Calculated by DOL

DOL asserts that it is entitled to summary judgment for back wages from Defendants' failure to pay overtime. First, DOL seeks $555,905.40 for the overtime hours when Defendants did not pay any over time from 2018 to 2019. (DOL's Mot., PageID 48551; Alloway Decl., ECF No. 111-1, ¶ 27.) DOL argues that it is also entitled to an additional amount of $6,922,915.39 for back wages after Defendants lowered the regular rate of pay, and effectively paid the aides straight time for all overtime hours worked. (DOL's Mot., PageID 48554; Alloway Decl., ¶ 29.) In total, DOL requests an award of $7,478,820.79. (Alloway Decl., ¶ 30; *see* ECF No. 111-3.)

In support of this calculation, DOL submitted the declaration of Stephen Alloway, an investigator in the Wage and Hour Division of DOL. (Alloway Decl.) According to Mr. Alloway, DOL calculated back wages by taking each employees' gross pay and dividing it by the number of bi-weekly hours worked, to reach a regular rate of pay. (ECF No. 111-2 (Mr. Alloway's Narrative Report of his investigation into Americare and Mr. Adhikari).) Then Mr. Alloway multiplied the regular rate of each aide by 1.5, to reach a premium overtime rate, and multiplied that premium rate by the number of overtime hours worked. (*Id.*) Mr. Alloway relied on Defendants' self-audited reports and payroll records subpoenaed from Automatic Data Processing, Inc. ("ADP"), which provided payroll services to Defendants, to reach the damages figure. (Alloway Decl., ¶¶ 4–6, 8.) He also provided a detailed spreadsheet of all back wages owed to each aide for overtime violations. (*Id.* ¶ 7; *see* ECF No. 111-3.)

Defendants do not point to any errors in DOL's calculations, nor have they provided their own damages calculations. (*See* Defs.' Opp.) Without evidence to the contrary, Defendants' evidence cannot establish a dispute of material fact on damages. The Court **GRANTS** DOL's Motion for Summary Judgment and awards back wages in the amount of $7,478,820.79.

IV. Defendants are Liable for Liquidated Damages

Next, DOL contends that it is entitled to summary judgment regarding Defendants' liability for liquidated damages. (DOL's Mot., PageID 48554–57.) Defendants counter that their good faith defense precludes summary judgment. (Defs.' Opp., PageID 48859.)

Liquidated damages are the default for FLSA violations, unless an employer can prove that it acted in good faith and had reasonable grounds to believe that its act or omission complied with the FLSA. 29 U.S.C. § 216(b) ("An employer who violates the provisions of section . . . 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid . . . overtime compensation . . . and in an additional equal amount as liquidated damages."); 29 U.S.C. § 260 (explaining good faith defense to liquidated damages); *Miller v. SBK Delivery, LLC*, No. 2:21-cv-4744, 2024 U.S. Dist. LEXIS 35204, at *10 (S.D. Ohio Feb. 29, 2024) (Watson, J.). Liquidated damages are considered "compensation, not a penalty or punishment," and compensate employees for the delay in payment of wages. *Elwell*, 276 F.3d at 840 (citations omitted).

The burden is on the employer to prove it acted in good faith and had reasonable grounds to believe that it complied with the FLSA, and the burden is "substantial." *Id.* To show that it acted in good faith, an employer "must show that [it] took affirmative steps to ascertain the Act's requirements, but nonetheless violated its provisions." *Sec'y of Labor v. Timberline S., LLC*, 925

F.3d 838, 856 (6th Cir. 2019) (quoting *Martin v. Ind. Mich. Power Co.*, 381 F.3d 574 (6th Cir. 2004) (citations omitted)). "[D]emonstrating good faith requires more than the absence of intent or knowledge." *Solis v. Min Fang Yang*, 345 F. App'x 35, 39 (6th Cir. 2009).

Defendants argue that Mr. Adhikari had an honest intention to learn the requirements under FLSA, and to comply with the Act. (Defs.' Opp., PageID 48859.) To support this proposition, Mr. Adhikari testified that he sought the advice of several attorneys to understand Americare's obligations. (*Id.*; *see also* Americare Dep., ECF No. 64-1, 51:19–22; 55:05–16; 62:3–9.) He claims he received contradictory and confusing advice, that led him to consult Attorney Linkosky. (*Id.*) According to Mr. Adhikari, Mr. Linkosky told him that he could lower the employee's regular rate of pay, by agreement with employee, and then pay overtime at that lowered rate. (Americare Dep., 70:15–71:6.) Based on this advice, Mr. Adhikari implemented the post-September 2019 pay practices. (*Id.*) Mr. Adhikari reasons that his reliance on the advice of his counsel gave him reasonable grounds to believe he complied with the FLSA. (Defs.' Opp., PageID 48860.)

Here, Defendants have not met their burden to establish that liquidated damages are inappropriate. As the Court noted *supra*, even if Mr. Adhikari received conflicting legal advice, he also admitted that Mr. Linkosky advised him to start paying overtime to the aides. (*Supra*, Section I(D)(i); Defs.' Opp., PageID 48857; Americare Dep., ECF No. 64-1, 282:25–283:10; 285:23–24.) He also testified that he knew DOL amended the rules in 2013 to exclude home care agencies from overtime exemptions. (Americare Dep., 51:12–18.) By July 2018, Mr. Adhikari paid the Intra-National home care aides overtime compensation, but he waited until September 2019 to pay Americare aides overtime. (Adhikari Dep., ECF No. 69-1, 38:06–18.)

Mr. Adhikari also admits that Mr. Linkosky advised him to set a regular pay rate, by agreement with aides, and that the regular rate of pay could not fluctuate. (Americare Dep., 70:15–

71:6.) Yet the aides' rate of pay from September 2019 to April 2024 fluctuated depending on the number of hours worked. (*See supra*, Section I(D)(ii).) And despite acknowledging that any changes to the regular rate should be done by agreement with the employees, Defendants produced only 81 written rate change agreements. (Americare and Adhikari Cont. Dep., ECF No. 65-1, 9:25–13:22.) DOL has put forth evidence that over 1,700 aides were subject to Defendants' improper pay practice. (DOL's Reply, PageID 48949.)

Defendants cannot meet their substantial burden by shifting the blame to others to keep them apprised of the law. *Walsh v. Indep. Home Care of Mich., LLC*, No. 20-10170, 2022 U.S. Dist. LEXIS 88634, at *15 (E.D. Mich. May 17, 2022). Ignorance of the law does not demonstrate good faith. *Solis*, 345 F. App'x at 39 (concluding that good faith requires more than "the absence of intent or knowledge"). Defendants did not take sufficient affirmative steps to comply with the FLSA. The Court's conclusion on Defendants' good faith defense is consistent with the Court's finding that Defendants acted willfully. *See E.E.O.C. v. City of Detroit Health Dept., Herman Kiefer Complex*, 920 F.2d 355, 358 (6th Cir. 1990) (explaining that where the jury found a willful violation of the FLSA, the district court could not find the defendant acted in good faith). DOL is thus entitled to an equal amount of liquidated damages and its Motion is **GRANTED**.

V. DOL is Entitled to Injunctive Relief

DOL also requests injunctive relief against Defendants to prevent future violations. (DOL's Mot., PageID 48561.) Under 29 U.S.C. § 217, "[t]he district courts . . . shall have jurisdiction, for cause shown, to restrain violations" of the FLSA. "The purpose of issuing an injunction against future violations is to effectuate general compliance with the Congressional policy of abolishing substandard labor conditions by preventing recurring future violations." *Reich v. Petroleum Sales*, 30 F.3d 654, 656 (6th Cir. 1994) (quoting *Martin v. Funtime, Inc.*, 963 F.2d 110, 113–14 (6th Cir. 1992) and describing the remedial, rather than punitive purpose of an injunction)

Issuing an injunction is left to the reasonable discretion of the trial judge. *Id.* (citation omitted). But courts should consider: (1) the previous conduct of the employer; (2) the current conduct of the employer; and (3) the dependability of the employer's promises for future compliance." *Id.* at 657. "The most important factor is the likelihood that the employer will comply with the [FLSA] in the future." *Id.* DOL bears the burden of proving an injunction is warranted.

Applying the considerations above, the Court finds injunctive relief prohibiting Defendants from violating FLSA overtime and recordkeeping provisions appropriate. Incorporating much of the earlier damages analysis, the record shows that Defendants continuously disregarded obligations under the FLSA and demonstrated a past and persistent history of violating the FLSA's overtime requirements. (*See supra*, Section IV); *Sec'y of United States DOL v. Am. Made Bags, LLC*, No. 5:19CV863, 2022 U.S. Dist. LEXIS 27352, at *28 (N.D. Ohio Feb. 15, 2022) (awarding injunctive relief where defendants had a "past and persistent history" of violating the FLSA); *Funtime, Inc.*, 963 F.2d at 114 (granting injunctive relief because defendant "exercised less than good faith in attempting to comply with the FLSA"). Defendants have presented no evidence of compliance with the FLSA's requirements. Nor have Defendants shown a likelihood, or given any assurance, that they would obey the FLSA. *See Reich*, 30 F.3d at 657. Accordingly, the Court **GRANTS** DOL's Motion for Summary Judgment.

CONCLUSION

For the reasons discussed above, the Court **GRANTS** the Department of Labor's Motion for Leave to File Reply in Support of Motion for Summary Judgment Instanter (ECF No. 117).

The Court **DENIES** Defendants' Partial Motion for Summary Judgment (ECF No. 113) and **GRANTS** the Department of Labor's Motion for Summary Judgment (ECF No. 112).

Defendants are **ORDERED** to pay back wages in the amount of $7,478,820.79 for the period between October 2019 and April 2024 when Defendants failed to pay overtime to their employees. To determine the appropriate amount of damages from April 2024 to present, the Court **ORDERS** Defendants to produce payroll and time records dating back to April 15, 2024 to DOL within **14 DAYS**. If the records confirm continuing overtime violations, DOL is **ORDERED** to file Notice and a Proposed Order detailing the amount of damages owed within **14 DAYS** of receiving the records. Defendants may respond within **14 DAYS** of DOL's Notice. Defendants are **ORDERED** to pay an equal amount of liquidated damages.

DOL's Motion for an Order to Admit Deposition of John Linkosky (ECF No. 101) is **DENIED as MOOT**. The Settlement Conference scheduled for January 14, 2025 is **VACATED** (ECF No. 100). This case remains open.

IT IS SO ORDERED.

1/9/2025	**s/Edmund A. Sargus, Jr.**
DATE	**EDMUND A. SARGUS, JR. UNITED STATES DISTRICT JUDGE**