

## *Kisor v. Wilkie*: Auer Deference Lives On, But In What Form?

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The Supreme Court in [Kisor v. Wilkie](#) has declined to overrule *Auer v. Robbins* and *Bowles v. Seminole Rock & Sand Co.*, instead narrowing deference to a federal agency's interpretation of its own ambiguous regulations by putting in place new guideposts around its use. What this means for Auer remains to be seen: the concurrence remarked that the Auer "doctrine emerges maimed and enfeebled—in truth, zombified" and the *Kisor* decision "is more a stay of execution than a pardon." Moreover, three justices signed on to part of an opinion casting doubt on not only *Auer* but also *Chevron*. The tension between the majority and concurring opinions as to both *Auer* and *Chevron* is likely to lead to a fresh spate of litigation as well as cause some confusion in the federal agencies. Our [client memorandum](#) discusses the case and its implications in additional detail.