

PLEA BARGAINING AND THE CDL DRIVER: Has the mask of uncertainty been lifted post *Chevron*?

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Commercial drivers are the backbone of the American economy, transporting vital goods across vast distances. However, this responsibility comes with a heightened standard for safety. Traffic violations for Commercial Driver's License (CDL) holders can have serious consequences, impacting their livelihoods and potentially jeopardizing public safety. In Nevada, like most states, strict regulations govern all drivers, but CDL holders face even more scrutiny due to the size and weight of the vehicles they operate. These regulations encompass everything from driver qualifications and vehicle maintenance to hours of service and restrictions on cargo. By adhering to these regulations, Nevada keeps its roads safe for everyone.

One crucial question arises when a CDL driver receives a traffic citation: can they negotiate a plea bargain, or does a federal rule create a roadblock? This article delves into the concept of "masking" in light of a recent U.S. Supreme Court decision and explores the potential impact on plea bargaining for CDL drivers.

The Masking Rule: Transparency and a Public Record

The Federal Motor Carrier Safety Administration (FMCSA) enforces a regulation known as the "masking rule," 49 CFR 384.226. This rule prohibits any action by a court that would prevent a conviction for a traffic violation from appearing on a CDL driver's record. This rule has been adopted by Nevada pursuant to NAC 483.800. The FMCSA prioritizes complete transparency, ensuring a driver's qualifications are accurately reflected based on proven offenses.

It is critical to distinguish between a traffic citation (the initial allegation) and a conviction (the outcome after guilt is established). The masking rule applies only after a conviction is reached, not to the citation itself.



The FMCSA defines “conviction”¹ broadly, encompassing several scenarios:

- An unvacated adjudication of guilt;
- An unvacated forfeiture of bail or collateral deposited to secure the person’s appearance in court;
- A plea of guilty or nolo contendere accepted by the court; or
- Payment of a fine or court cost.

Good Faith Negotiations and Bona Fide Legal/Factual Issues

The masking rule and the concept of good faith negotiations have a complex interplay. Prosecutors retain discretion in pursuing charges, but the masking rule restricts actions that would prevent a conviction from appearing on a CDL driver’s record. In many cases, prosecutors must consider whether charges requiring a lower standard of culpability might be appropriate, especially when proving the original charge beyond a reasonable doubt could be challenging.²

Effective plea bargaining hinges on the concept of good faith negotiations supported by facts and law. This ensures a balance between public safety and the rights of the CDL driver. The anti-masking regulation cannot supersede a defendant’s constitutional right to due process. Plea negotiations that address bona fide legal or factual issues can be a way to uphold both public safety concerns and the driver’s rights.

For instance, imagine a scenario where a CDL driver receives a speeding citation. The defense attorney might raise a bona fide factual issue if

evidence suggests the ticketing officer’s radar device wasn’t properly calibrated. In such a case, a prosecutor, through good faith negotiations, might consider a reduced charge.

Open communication and a willingness to compromise are essential for reaching a fair resolution through plea bargaining. This practice ensures that both public safety and the CDL driver’s due process rights are taken into account.

Loper v. Raimondo: Shaking the Foundation?

In the 1984 *Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984) case, the U.S. Supreme Court addressed how much respect (deference) courts should give a federal agency’s interpretation of the law the agency enforces. This principle of giving weight to the agency’s view was known as *Chevron* deference. The recent U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. ____ (2024) overturned *Chevron* and limited the deference courts must give to federal agencies’ interpretations of ambiguous language in their governing laws. The FMCSA’s definition of “conviction,” particularly in the context of plea bargains, could be seen as ambiguous.

Loper’s relevance lies in potentially weakening the argument that a plea bargain automatically equates to “masking” a conviction. Plea negotiations typically involve a defendant pleading guilty or nolo contendere to a lesser offense in exchange for the dismissal of the original charge. While some prosecutors and judges interpret the masking rule to encompass plea bargains, the FMCSA’s definition focuses on specific outcomes like unvacated adjudications or pleas accepted by the court. The absence of a clear, nationwide legal precedent on this issue leaves room for interpretation.

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Striking a Balance: Safety and Fairness

The potential impact of *Loper* on plea bargaining for CDL drivers is multifaceted:

- **Defense Perspective:** With *Loper* limiting deference to the FMCSA’s interpretation, defense attorneys may argue that plea negotiations are permissible, even if they involve an amended charge following a deferred adjudication. This argument is possible because the negotiations address the allegation, not a proven conviction, ensuring both transparency (the amended charge appears on the record) and fairness to the driver.
- **Prosecutorial Considerations:** Prosecutors might advocate stricter interpretation, emphasizing the importance of a clear record for public safety. However, they would likely acknowledge the importance of plea bargains in resolving cases efficiently while considering mitigating factors.

The Presumption of Innocence and the Burden of Proof

Beyond the masking rule and *Loper*, the concept of the presumption

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of innocence plays a vital role. In any case where a CDL driver was not convicted of the violation alleged in the citation, they are entitled to this presumption. Nevada Revised Statute 175.191 enshrines this principle in Nevada law, but it extends far beyond state statutes. The presumption of innocence is a cornerstone of American jurisprudence, with roots in several sources:

- **The Fifth and Fourteenth Amendments to the U.S. Constitution:** These amendments guarantee due process of law, which has been interpreted to include the presumption of innocence. This interpretation means the burden of proof lies with the prosecution to establish guilt beyond a reasonable doubt.
- **International Human Rights Law:** The Universal Declaration of Human Rights (Article 11) and the International Covenant on Civil and Political Rights (Article 14(2)) affirm the right of the accused to be presumed innocent until proven guilty according to law.
- **Common Law Legal Tradition:** The presumption of innocence is a fundamental principle inherited from England's common law legal system, which forms the foundation of the American legal system.

The Evolving Landscape: Monitoring Future Developments

The interplay between the masking rule, the *Loper* case, and the presumption of innocence creates a complex legal landscape for CDL drivers facing traffic violations. While *Loper* injects some uncertainty, it is important to remember that the masking rule focuses on *convictions*, not allegations. This focus suggests that plea negotiations, which address potential convictions, may still be permissible. However, the final outcome (amended charge or otherwise) remains a matter of public record.

Staying informed about future legal developments is crucial for both defense attorneys and prosecutors involved in CDL traffic cases. This process includes monitoring relevant court rulings that interpret *Loper* in the context of the masking rule.

Here are some resources for staying up to date:

- **The Federal Motor Carrier Safety Administration (FMCSA) website:** Provides updates on regulations and enforcement policies related to CDLs. (<https://www.fmcsa.dot.gov/>)

- **Legal databases and publications:** Services like FastCase, Westlaw, or LexisNexis offer access to recent court decisions and legal scholarship on traffic law and CDL regulations.
- **Industry associations:** Organizations like the American Trucking Associations (ATA) or the Owner-Operator Independent Drivers Association (OOIDA) may offer resources and updates relevant to CDL legal issues. (<https://www.trucking.org/> and <https://www.ooida.com/>)

A Balancing Act for Safety and Fairness

The ability to negotiate a plea bargain for a traffic violation can significantly impact a CDL driver's livelihood. The interplay between the masking rule, *Loper*, and the presumption of innocence creates a complex but potentially promising landscape for plea bargaining in CDL traffic cases. As courts continue to interpret these legal principles, staying informed and seeking qualified legal counsel will be crucial for CDL drivers and legal professionals navigating these complexities. Ultimately, the goal is to achieve a balance between public safety on the roads and fairness for CDL drivers facing traffic citations.



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ENDNOTES:

1. Elizabeth Earleywine, Attorney Advisor, Federal Motor Carrier Safety Administration, *MASTERING MASKING: Why & How to Avoid Masking CDL-Holder Convictions*, National Traffic Law Center BETWEEN THE LINES, Volume 27, Issue 6, JULY 2019, P. 3, citing Commercial Driver Licensing Standards; Requirements and Penalties, 52 Fed.Reg. 20581, 20587 (June 1, 1987).
2. *MASTERING MASKING: Why & How to Avoid Masking CDL-Holder Convictions*, P. 7.