

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 3-April 7, 2023)

April 11, 2023

The federal courts issue hundreds of decisions every week in cases involving diverse legal disputes. This Sidebar series selects decisions from the past week that may be of particular interest to federal lawmakers, focusing on the orders and decisions of the [Supreme Court](#) and precedential decisions of the courts of appeals for the [thirteen federal circuits](#). Selected cases typically involve the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress's lawmaking and oversight functions.

Some of the cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may contact the authors to subscribe to the *CRS Legal Update* newsletter and receive regular notifications of new products published by CRS attorneys.

Decisions of the Supreme Court

The Supreme Court did not issue any opinions or agree to review any cases this week.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which the appellate court's controlling opinion recognizes a split among the federal appellate courts on a key legal issue resolved in the opinion, contributing to a nonuniform application of the law among the circuits.

- ***Civil Rights:** The Sixth Circuit held that children seeking redress for the wrongful incarceration of a parent, absent state action against the children themselves, do not have a claim under [42 U.S.C. § 1983](#), which creates a private cause of action if a state actor violates rights established by the Constitution. The court held that the claim at issue failed because, even assuming that the children had a right to family integrity under the Fourteenth Amendment, they did not prove the state acted with the intent to disrupt their

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family integrity. The case creates a circuit split with at least the Ninth Circuit, which allows children to sue for harm caused by the wrongful incarceration of a parent without additional state action (*Chambers v. Sanders*).

- **Civil Rights:** A divided Seventh Circuit rejected a Title VII religious discrimination and retaliation suit brought by a former teacher who objected on religious grounds to using the first names of transgender students to the extent that he deemed those names to be inconsistent with their sex recorded at birth. The majority first determined that, at this stage, the plaintiff had established that his refusal to use the preferred names and pronouns of transgender students was based on a sincerely held religious belief. The majority then held that the school had met its burden under Title VII of showing that accommodating the plaintiff's religious beliefs would constitute an undue hardship, as the accommodation (i.e., allowing the plaintiff to call all students by their last names) was tried, and the school found that it emotionally harmed transgender students and disrupted the overall learning environment. As to the retaliation claim, the majority concluded that the plaintiff failed to draw a causal connection between his request for a religious accommodation and his alleged constructive termination from the school (*Kluge v. Brownsburg Community School Corporation*).
- **Criminal Law & Procedure:** A divided D.C. Circuit held that individuals who allegedly assaulted law enforcement officers while participating in the January 6, 2021, Capitol riot can be charged with corruptly obstructing, influencing, or impeding an official proceeding in violation of 18 U.S.C. § 1512(c)(2). Section 1512(c)(2) makes it unlawful to corruptly (1) alter, destroy, mutilate, or conceal a record, document, or other object, or attempt to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstruct, influence, or impede any official proceeding, or attempt to do so. The district court determined that a violation of this provision requires some action with respect to a document, record, or other object in order to corruptly obstruct, impede, or influence an official proceeding. The majority held, instead, that Section 1512(c)(2) applies to all forms of corrupt obstruction of an official proceeding, including the defendants' efforts to stop Congress from certifying the results of the 2020 presidential election (*United States v. Fischer*).
- **Criminal Law & Procedure:** The Eleventh Circuit concluded that home confinement of federal criminal offenders—as authorized under 18 U.S.C. §§ 3563(b)(19) and 3583(e)(4)—may only be imposed as an alternative to incarceration. Based on this understanding, the court vacated a criminal defendant's revised sentence that included both the relevant statutory maximum period of imprisonment *and* an additional one-year term of home confinement. The court held that it is illegal to impose home confinement in addition to, rather than as a part of, a maximum period of imprisonment (*United States v. Hall*).
- ***Criminal Law & Procedure:** The Sixth Circuit upheld the denial of a motion to suppress incriminating statements under the Fifth Amendment, where *Miranda* warnings were provided “midstream,” or in the middle of the defendant's statements. The court applied an objective standard to determine the admissibility of statements made after “midstream” warnings, under which the court probed whether a reasonable suspect under the circumstances would believe that they had a genuine choice to speak to law enforcement after the warnings. The court held that such a genuine choice existed here, pointing to the defendant's eagerness to speak to the officers and the officers' relative disinterest in having the defendant talk. The court acknowledged that other circuits weigh subjective considerations, particularly the intent of the officers, in assessing the admissibility of post-warning statements (*United States v. Woolridge*).

- **Environmental Law:** In its second case relating to the [Mountain Valley Pipeline](#) in two weeks, the Fourth Circuit vacated the West Virginia Department of Environmental Protection's (DEP's) water quality certification for a portion of the pipeline project. Under [Section 401 of the Clean Water Act](#) (CWA), applicants for a federal license or permit to conduct activity that may discharge pollution into navigable waters must obtain certification that the discharge will comply with applicable provisions of the CWA. The court held that DEP's water quality certification was arbitrary and capricious because DEP did not sufficiently address the pipeline developer's history of CWA violations, require compliance with a state general permit program for oil and gas construction, apply the correct standards for the proposed activities, or provide a reasoned explanation for forgoing location-specific antidegradation review (*Sierra Club v. West Virginia DEP*).
- ***Firearms:** The Eighth Circuit upheld the constitutionality of [18 U.S.C. § 922\(g\)\(5\)\(A\)](#), which provides that any alien unlawfully present in the United States is prohibited from possessing a firearm. The appellant argued that § 922(g)(5)(A) violates the [Second Amendment](#), among other things. The court disagreed, holding that under circuit precedent, illegally present aliens are not part of "the people" covered by the Second Amendment. The Eighth Circuit's decision places it in tension with the Second, Seventh, Ninth, and Tenth Circuits, which have either held or assumed without deciding that such aliens can be considered part of "the people" in at least some circumstances. The Fourth and Fifth Circuits, like the Eighth Circuit, have held that illegally present aliens are categorically excluded from "the people" (*United States v. Sitladeen*).
- **Immigration:** A divided Fifth Circuit panel held that it lacked subject-matter jurisdiction to review a status-adjustment decision by United States Citizenship and Immigration Services under the [Administrative Procedure Act](#), which requires a final agency action. The court held that status-adjustment decisions are not final because an alien retains the right to *de novo* review of that decision in final removal proceedings under the [Immigration and Nationality Act](#) (INA), and the INA allows status-adjustment applications to be renewed during removal proceedings. Here, the plaintiff had not exhausted those administrative remedies (*Elldaki v. Garland*).
- **Labor & Employment:** The Third Circuit held that statutory deadlines for enforcement of whistleblower protections of employees of government contractors enacted in the 2017 National Defense Authorization Act and codified at [41 U.S.C. § 4712](#) are not jurisdictional. A federal contractor claimed that the U.S. Department of the Interior (DOI) lacked authority to issue an order that the contractor violated the statute's provision prohibiting reprisals against whistleblower employees because the statutory deadlines passed before the order was issued. The court held that Congress intended for the deadlines to encourage prompt agency action, not prevent a claim from proceeding under § 4712, and as such DOI retained jurisdiction to issue the order even after the deadlines had passed (*Jacobs Project Management Co. v. Dep't of the Interior*).
- **Veterans:** The Federal Circuit affirmed the Court of Appeals for Veterans Claims' interpretations of [38 U.S.C. §§ 5107](#) and [7261](#). The "benefit of the doubt rule" under § 5107(b) provides that when the evidence relating to a matter before the Board of Veterans' Appeals cuts both ways, the Board must give the benefit of the doubt to the claimant. The circuit court held that while § 5107 requires the Board to identify the probative value of positive and negative evidence in making its determination, it does not need to precisely list all of the evidence it considered in its benefit of the doubt analysis. In turn, § 7261(a)(4) provides that findings of fact adverse to the claimant can be reversed if they are "clearly erroneous," and § 7261(b) provides that the Court of Appeals for Veterans Claims "shall take due account of the Secretary's application of section

- 5107(b).” The Federal Circuit looked to legislative history to hold that § 7261(b) is constrained by § 7261(a), meaning that a court reviewing under § 5107(b) can only review adverse findings of fact for clear error (*Roane v. McDonough*).

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