



Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (April 1–April 7, 2024)

April 8, 2024

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 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.

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Decisions of the Supreme Court

The Supreme Court did not issue any opinions or agree to hear any new cases last week.

Decisions of the U.S. Court of Appeals

Topic headings marked with an asterisk (*) indicate cases where 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 non-uniform application of the law among the circuits.

- ***Bankruptcy:** The Eleventh Circuit held that [11 U.S.C. § 109\(a\)](#), which specifies that “only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title,” does not apply to cases brought under [Chapter 15](#) of the Bankruptcy Code, which addresses cases of cross-border insolvency. The panel described this ruling as controlled by binding circuit precedent, while noting that its interpretation was in tension with the plain language of the Bankruptcy Code. The

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court also observed that its position conflicted with that of the Second Circuit, which held that the entirety of Chapter 1 of the Bankruptcy Code, including Section 109(a), applies to Chapter 15 proceedings (*In re Al Zawawi*).

- ***Criminal Law & Procedure:** Citing circuit precedent, the Seventh Circuit held that under the Supreme Court’s ruling in *Stinson v. United States*, the Sentencing Commission’s official commentary interpreting the Sentencing Guidelines is binding, unless it is based on a plainly erroneous reading or is inconsistent with the relevant Sentence Guideline provision, or violates the Constitution. Five other circuits have joined the Seventh Circuit in this view. An equal number of circuits have disagreed, deciding that the Supreme Court’s post-*Stinson* decision in *Kisor v. Wilkie* means that deference is owed to the Commission’s commentary only when the Guideline provision the commentary interprets is ambiguous (*United States v. White*).
- **Criminal Law & Procedure:** In a per curiam opinion, an Eleventh Circuit panel affirmed a district court’s second commitment order of a criminal defendant found to be mentally incompetent to stand trial. The panel held that the statute governing mental competency determinations, 18 U.S.C. § 4241, places no limit on when and how often competency proceedings may be sought for a defendant. The panel also ruled that the maximum four-month period for which a defendant may be held under Section 4241(d)(1) does not begin when the defendant is put in the Attorney General’s custody under the district court’s commitment order, but starts when the defendant is then involuntarily hospitalized (*United States v. Alhindi*).
- **Immigration:** The Fourth Circuit rejected several criminal defendants’ constitutional challenge to their indictment for illegally reentering the United States in violation of 8 U.S.C. § 1326. The defendants argued that Section 1326 violates the Fifth Amendment’s equal protection principles because Congress enacted a 1929 predecessor statute out of racially discriminatory animus. Applying judicial precedent that constitutional defects caused by discriminatory animus can be cured by later enactments untainted by animus, the court held that the 1952 enactment of Section 1326 was the proper point of reference. Joining other circuits that have addressed similar challenges, the Fourth Circuit determined that the defendants failed to show that Congress enacted Section 1326 with a racially discriminatory motive (*United States v. Sanchez-Garcia*).
- **Immigration:** The Fourth Circuit decided it lacked jurisdiction to review immigration authorities’ decision to deny an alien’s adjustment of status application on terrorism grounds. 8 U.S.C. § 1252, which mainly addresses federal courts’ jurisdiction to review final orders of removal, also provides that courts **may not review** “any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in [their] discretion.” The court decided that a plain reading of 8 U.S.C. § 1159(b), which allows aliens to adjust to lawful permanent resident status, confirmed that adjustment decisions were discretionary, this discretion covers immigration authorities’ determination that an applicant was ineligible for adjustment on terrorism grounds, and the petitioner’s challenge in this case was therefore not reviewable (*Shaiban v. Jaddou*).
- **International Law:** The Second Circuit held that the **Montreal Convention for the Unification of Certain Rules for International Carriage by Air**, a treaty governing claims against carriers arising from the international air transportation of persons and cargo, applies to “contracting carriers” when cargo is damaged in international transport while in their charge. The court described “contracting carriers” as companies that arrange for

the international transportation of persons or cargo by engaging with third parties to perform the actual carriage (*Indem. Ins. of N. Am. v. Unitrans Int'l Corp.*).

- **National Security:** The D.C. Circuit denied in part and granted in part a petition challenging a Federal Communications Commission (FCC) order restricting two Chinese-owned companies from marketing or selling video surveillance equipment in the United States. In 2020, the FCC placed the companies' equipment on a list of products posing a threat to U.S. national security if used for certain purposes, including for "physical security surveillance of critical infrastructure." Congress then passed the [Secure Equipment Act of 2021](#) (SEA) directing the FCC not to approve the sale or marketing of equipment on the list, and the FCC thereafter issued an order barring the companies from selling video surveillance equipment in circumstances described in the pre-SEA listing. The circuit panel decided that the SEA ratified the covered list and left no room for the petitioners to challenge their products' placement on it. However, the court decided that the definition of "critical infrastructure" in the FCC order implementing the SEA prohibition was overly broad, and it remanded the order to the agency to align the definition with governing statutes (*Hikvision USA, Inc. v. FCC*).

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