

Congressional Court Watcher: Circuit Splits from December 2024

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The U.S. Courts of Appeals for the thirteen “circuits” issue thousands of precedential decisions each year. Because relatively few of these decisions are ultimately reviewed by the Supreme Court, the U.S. Courts of Appeals are often the [last word](#) on consequential legal questions. The federal appellate courts sometimes reach different conclusions on the same issue of federal law, causing a “split” among the circuits that leads to the non-uniform application of federal law among similarly situated litigants.

This Legal Sidebar discusses circuit splits that emerged or widened following decisions from the last month on matters relevant to Congress. The Sidebar does not address every circuit split that developed or widened during this period. Selected cases typically involve judicial disagreement over the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress’s lawmaking and oversight functions. The Sidebar only includes cases where an appellate court’s controlling opinion recognizes a split among the circuits on a key legal issue resolved in the opinion.

Some 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 click here](#) to subscribe to the *CRS Legal Update* and receive regular notifications of new products and upcoming seminars by CRS attorneys.

- **Criminal Law & Procedure:** The D.C. Circuit held that an offense under the federal bank robbery statute, [18 U.S.C. § 2113\(a\)](#), does not constitute a “crime of violence” under [18 U.S.C. § 924\(c\)](#). Section 924(c) establishes heightened penalties for an offender who carries a firearm when committing a “crime of violence,” which is defined to include those offenses that necessarily involve “the use, attempted use, or threatened use of physical force.” The D.C. Circuit held that Section 2113(a) defines a single crime that can be committed either “by force or violence, or by intimidation ... [or] extortion.” Because extortion need not involve the threat or use of physical force, the court held that Section 2113(a) did not constitute a crime of violence. The court acknowledged disagreement with the [First](#), [Second](#), and [Ninth Circuits](#), which have read Section 2113(a) to set forth multiple criminal offenses, including the crime of bank robbery (which those courts recognized as a crime of violence) and the crime of extortion (which those courts did not recognize as a crime of violence) (*United States v. Burwell*).

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- **Criminal Law & Procedure:** Days after the D.C. Circuit decision in *United States v. Burwell* discussed above, the Eleventh Circuit issued an opinion involving the meaning of the federal bank robbery statute. A divided Eleventh Circuit panel joined those courts that have treated 18 U.S.C. § 2113(a) as divisible into separate offenses relating to bank robbery and bank extortion. (The panel did not reference the contrary position taken by the D.C. Circuit in *Burwell*.) The panel majority upheld the defendant’s sentencing enhancement under 18 U.S.C. § 924(c) for brandishing a firearm in the commission of a crime of violence after concluding that the defendant’s multiple convictions under Section 2113(a) met the crime-of-violence definition. The majority ruled that the defendant’s conviction for attempted bank robbery was a crime of violence, joining those circuits that have read the offense to involve the actual or threatened use of force and violence or intimidation while attempting to take money from a bank. The majority disagreed with the [Second](#), [Fourth](#), [Sixth](#), and [Ninth Circuits](#), which have not read Section 2113(c) to require the actual or threatened use of force to sustain a conviction for attempted bank robbery (*United States v. Armstrong*).
- **Criminal Law & Procedure:** The Fifth Circuit affirmed a defendant’s conviction and sentence for various child pornography offenses under 18 U.S.C. §§ 2251 and 2252A. The panel rejected, among other things, the defendant’s argument that his conduct did not involve the “lascivious exhibition” of a child’s intimate areas necessary to qualify as prohibited “sexually explicit conduct” under Sections 2251 and 2252A. In so doing, the panel joined several other circuits in declining to adopt the [D.C. Circuit’s](#) narrower interpretation of “lascivious exhibition,” and further held that intervening Supreme Court caselaw had not abrogated controlling Fifth Circuit precedent (*United States v. Wilkerson*).
- **Environmental Law:** The Sixth Circuit vacated the Environmental Protection Agency’s (EPA’s) disapproval of Kentucky’s State Implementation Plan (SIP) for meeting EPA’s air quality standards for emissions of ozone-forming gases under the Clean Air Act (CAA). The EPA’s disapproval of Kentucky’s SIP was part of a [final rule](#) disapproving the SIPs of 21 states. The Sixth Circuit first considered whether it was the appropriate court to review the challenge under the CAA’s [judicial review provision](#). That provision provides that a challenge to a “locally or regionally applicable” final action by the EPA should be filed in the appropriate regional circuit, while a challenge to a “nationally applicable” final action that may only be reviewed in the D.C. Circuit. Joining several other courts but splitting with the [Tenth Circuit](#), the Sixth Circuit panel held that a challenge to the denial of an individual SIP, even if included in a rule denying multiple SIPs, involves a “locally or regionally applicable” final action reviewable in the state’s regional circuit. (The Supreme Court may resolve the circuit split over this issue later this term when it [reviews](#) the Tenth Circuit’s ruling.) On the merits, the circuit panel concluded that the EPA acted arbitrarily and capriciously when it denied Kentucky’s SIP using different emissions modeling and ozone thresholds than had been used in earlier agency guidance documents that Kentucky relied on when developing its SIP (*Kentucky v. EPA*).
- **Immigration:** The Ninth Circuit held that it had jurisdiction to review the Board of Immigration Appeals’ (BIA’s) denial of the petitioner’s motion to reopen her immigration removal proceedings pursuant to the Violence Against Women Act (VAWA). VAWA [allows](#) qualifying victims of domestic violence to have their cases reopened upon filing a motion within one year of the removal order’s issuance. The circuit court held that neither VAWA nor the Immigration and Nationality Act’s [jurisdiction-stripping provisions](#) prevented the court from deciding whether the petitioner had shown the extraordinary circumstances necessary to overlook the untimeliness of her motion to reopen

proceedings. The panel joined the [Fifth Circuit](#) but split with the [Third](#) and [Seventh Circuits](#) in deciding that the BIA's determination that an alien failed to show extraordinary circumstances is reviewable (*Magana-Magana v. Garland*).

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