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Legal Sidebar

Congressional Court Watcher: Circuit Splits from March 2025

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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. This Sidebar refers to each U.S. Court of Appeals by its number or descriptor (e.g., "D.C. Circuit" for "U.S. Court of Appeals for the D.C. Circuit").

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.

- **Arbitration:** In a dispute between doctors and a law firm on insurance matters, a Fifth Circuit panel affirmed in part and vacated in part a district court's confirmation of awards relating to four arbitrations between the parties. One of the four arbitration confirmations reviewed by the Fifth Circuit involved a class arbitration. The Fifth Circuit panel observed that parties must provide clear consent for an arbitrator to decide questions of class arbitrability. In this case, the arbitration agreement incorporated a generic rule that delegated questions of arbitrability to the arbitrator. Applying circuit precedent, the panel recognized that the arbitration agreement's incorporation of such a rule constituted clear consent to delegate questions of class arbitrability to the arbitrator. The panel observed a split with the Third, Fourth, Sixth, and Eighth Circuits, which have held that incorporation of a generic rule does not constitute clear consent to delegate questions of

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class arbitrability. The panel also suggested the deferential standard employed by the Fifth Circuit might be an outlier even among those circuits that have recognized that an agreement's reference to generic rules may constitute clear consent to delegate the question of class arbitrability to an arbitrator (*Sullivan v. Feldman*).

- **Criminal Law & Procedure:** The First Circuit decided that a trial court had improperly denied a criminal defendant's motion to dismiss his indictment for embezzlement in violation of 18 U.S.C. § 641. The defendant had argued that the government wrongly charged him for conduct that occurred outside the five-year statute of limitations applicable to Section 641 and most noncapital federal crimes. Disagreeing with the Fourth Circuit but joining the majority of circuit courts that have considered the question, the First Circuit panel ruled that federal law does not treat the crime of embezzlement as a "continuing offense" for which the limitations period begins to run only after the offense is completed. (For crimes that are not continuing offenses, the limitations period starts once all elements of the crime are present, no matter the duration of the resulting illegal activity.) Here, the First Circuit panel held that the defendant's limitations argument had merit on account of the government charging him with conduct at least partially occurring outside the five-year window. The panel remanded the case for the trial court to consider the appropriate remedy, possibly including sustaining the conviction on the basis of conduct that occurred within five years of indictment (*United States v. Pontz*).
- **Criminal Law & Procedure:** A divided Ninth Circuit panel held that a federal district court erred when, *sua sponte*, it dismissed a prisoner's habeas corpus petition as time-barred without providing him notice and a chance to respond. The petitioner, proceeding pro se, had included a legal memorandum with his petition acknowledging that his petition was outside the statute of limitations but arguing that the statute of limitations should be tolled. Citing circuit precedent, the panel majority held that the petitioner's apparent awareness of his rights did not displace the reviewing court's obligation to provide him with formal notice of its intention to dismiss his habeas claim and an opportunity to respond. The majority observed that its ruling conflicted with a decision from the Fourth Circuit that concluded notice is unnecessary if the materials presented to the district court make it clear that the petition is time-barred and equitable tolling principles cannot salvage the claim (*Race v. Salmonsen*).
- **Environmental Law:** The Fifth Circuit vacated the Environmental Protection Agency's (EPA's) disapproval of Mississippi's State Implementation Plan (SIP) for meeting EPA's 2015 air quality standards for ozone under the Clean Air Act (CAA), while upholding the agency's disapproval of the SIPs of Texas and Louisiana. The EPA's disapproval of the three states' SIPs was part of a final rule disapproving 21 states' SIPs. The Fifth Circuit first held that the petition to review EPA's denial was appropriately brought in that circuit under the CAA's judicial review provision, which specifies that challenges to certain "locally or regionally applicable" final actions by EPA should be filed in the appropriate regional circuit, while those challenging actions based on determinations "of nationwide scope or effect" should be filed in the D.C. Circuit. Joining several other courts but splitting with the Tenth Circuit, the Fifth Circuit panel held that a challenge to the denial of an individual state's SIP, even if included in a rule denying multiple states' SIPs, involves a "locally or regionally applicable" final action reviewable in the state's regional circuit. (The Supreme Court may resolve the circuit split in its review of the Tenth Circuit's ruling this term.) On the merits, the circuit panel concluded that the EPA arbitrarily and capriciously denied Mississippi's SIP based on updated data that were not

available when the SIP was submitted, but that Louisiana and Texas failed to establish that EPA's analysis of their SIPs was arbitrary and capricious (*Texas v. EPA*).

- **Firearms:** A divided en banc Eleventh Circuit rejected a Second Amendment challenge to a Florida statute that generally bars persons under 21 years old from purchasing firearms. Relying on the Supreme Court's 2022 decision in *New York State Rifle & Pistol Association., Inc. v. Bruen*, the court applied the two analytical steps set forth in that decision: first considering the plain text of the Second Amendment, and then looking for historical analogues evincing consistency of the challenged law with historical tradition. While reaching the same conclusion as an earlier three-judge panel in the case, the en banc majority's application of *Bruen* differed from the earlier approach by primarily looking to historical analogues from the Founding era rather than the Reconstruction period. The en banc majority found the Florida restriction to be sufficiently analogous to Founding-era, common law restrictions on minors' ability to enter contracts to purchase personal property, including firearms. The majority acknowledged a split with the Fifth Circuit regarding relevant analogues for modern-day restrictions on gun purchases by persons under 21 years of age. The Fifth Circuit had not placed the same import on the common law regime and, in looking for firearm-specific historical analogues in the Founding era, found insufficient support to sustain a federal statute limiting firearm sales to persons under 21 against a Second Amendment challenge (*Nat'l Rifle Ass'n v. Bondi*).
- **Immigration:** The Second Circuit held that the Department of Homeland Security (DHS) improperly treated a lawful permanent resident (LPR), who had briefly traveled abroad, as an applicant for admission upon his return to the United States due to his pending criminal charge, and vacated the removal order issued against the LPR. In general, LPRs are subject to different grounds of removal (i.e., grounds of deportation) than aliens seeking initial admission to the United States (i.e., grounds of inadmissibility). LPRs who travel abroad for short periods are not considered applicants for admission upon their return except in certain circumstances, including when the LPR has "committed" a specified criminal offense. Here, DHS authorities treated the returning LPR as an applicant for admission upon his return because he had been charged with—but not yet convicted of—such an offense (in this case, a crime involving moral turpitude). After being paroled into the country so the pending criminal charges could be resolved, the LPR was convicted of the criminal offense. The Second Circuit held that the criminal charging documents alone were not a sufficient basis for DHS to prove by clear and convincing evidence that the crime had been "committed" at the time of reentry. The panel therefore held that DHS's treatment of the returning LPR as an applicant for admission was impermissible. The panel disagreed with Fifth and Ninth Circuit decisions that allowed DHS to presumptively treat a returning LPR as an applicant for admission and use the alien's subsequent conviction to meet its evidentiary burden. The panel remanded the case, while leaving open the possibility that DHS could pursue removal based on applicable grounds of deportation (*Lau v. Bondi*).
- **International Law:** In affirming a lower court's denial of habeas corpus relief to a foreign national challenging her proposed extradition to India to face criminal charges, the Second Circuit held that a federal statute barred habeas review of the extraditee's claim that her transfer was prohibited by the U.N. Convention Against Torture (CAT) and its implementing legislation. CAT obligates treaty parties to refrain from transferring a person to a country where they would more likely than not face torture. Agreeing with the D.C. Circuit, the Second Circuit panel held that 8 U.S.C. § 1252(a)(4), which was added by the REAL ID Act of 2005, barred habeas review of CAT claims; instead, judicial review of CAT claims is available only in the immigration context, under the specific

judicial review procedures set forth in Section 1252 as part of an alien's challenge to a final order of removal. (Removal of aliens from the United States for immigration violations is governed by a different legal framework than extradition, which involves the surrender of a person to another country to face criminal charges or punishment.) The Fourth Circuit reached a similar conclusion but on a different legal ground, while a fractured en banc Ninth Circuit decided that habeas review of an extraditee's CAT claims was available only to confirm whether the Secretary of State had concluded that the extradition comported with CAT (*Kapoor v. DeMarco*).

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