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Legal Sidebar

Congressional Court Watcher: Circuit Splits from April 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 nonuniform application of federal law among similarly situated litigants.

This Legal Sidebar discusses circuit splits that emerged or widened following decisions in April 2025 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 includes only 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").

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- **Civil Procedure:** The Sixth Circuit widened a circuit split over who bears the burden of proof when a defendant moves to dismiss a civil suit on the grounds that it was brought in an improper venue. In this case, the plaintiff claimed that venue was proper under 28 U.S.C. § 1391(b)(2), which permits a federal civil suit to be filed in the federal district where a substantial portion of the activities giving rise to the suit have occurred. In reviewing the defendant's motion to dismiss for improper venue, the Sixth Circuit joined the First, Second, and Fourth Circuits in holding that the plaintiff bears the burden of proving by a preponderance of evidence that venue is proper. Applying this standard, the Sixth Circuit upheld the lower court's conclusion that plaintiff's suit was filed in an improper venue because the plaintiff failed to show a substantial portion of activities giving rise to the suit occurred in the judicial district where the suit was filed. The court expressed disagreement with the Third Circuit, which held that the burden rests with the defendant to prove venue is improper, and the court also suggested a potential conflict with the Eighth Circuit on similar grounds. The panel also cited two cases from the Seventh Circuit that took different sides in the split in interpreting different venue statutes (*Tobien v. Nationwide Gen. Ins. Co.*).
- **Civil Rights:** The First Circuit issued an opinion on the notice procedures that the Equal Employment Opportunity Commission (EEOC) must follow when informing an employee of his or her right to sue under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. An employee generally must file suit under either statute within a 90-day period that begins after the employee has exhausted administrative remedies and received notice from the EEOC that the 90-day period has begun. Here, the EEOC had sent the employee emails with a hyperlink to his EEOC docket and notice that an "important document" had been added; the linked document explained that the employee had 90 days to file suit. Splitting with the Eighth Circuit, the court held this notice method inadequate. The First Circuit stated that for electronic notice to be adequate when the right-to-sue letter is not attached to the email, the email must unambiguously indicate that the recipient has 90 days to bring suit (*Garcia-Gesualdo v. Honeywell Aerospace of Puerto Rico, Inc.*).
- **Criminal Law & Procedure:** The Third Circuit held that a criminal defendant's conviction for attempted armed bank robbery constituted 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 as including an offense that necessarily involves "the use, attempted use, or threatened use of physical force." The defendant here pleaded guilty to attempted armed bank robbery under 18 U.S.C. § 2113. Section 2113(a) proscribes the taking of bank property "by force and violence, or by intimidation . . . [or] extortion." The Third Circuit also reaffirmed its agreement with those courts that 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). The court acknowledged a split with the D.C. Circuit, which has held that Section 2113(a) defines a single crime that can be committed in various ways and, because one of those ways involves extortion, the crime does not satisfy the categorical requirements to be a "crime of violence" under Section 924(c). In deciding that attempted bank robbery is categorically a "crime of violence," the Third Circuit approvingly cited Second, Fifth, and Seventh Circuit decisions as recognizing attempted bank robbery as necessarily involving threats of force or intimidation. The court split with the Fourth, Sixth, and Ninth Circuits, which have held that *attempted* bank robbery, unlike the crime

of bank robbery itself, does not require proof of actual force, violence, or intimidation in order to sustain a conviction (*United States v. Vines*).

- **Criminal Law & Procedure:** The Third Circuit upheld a criminal defendant's felon-in-possession-of-a-firearm conviction under 18 U.S.C. § 922(g)(1) but concluded his sentencing enhancement under the Armed Career Criminal Act (ACCA) was improper. The ACCA provides for a sentencing enhancement when a defendant has "three previous convictions . . . for a violent felony." The ACCA defines "violent felony" to include certain enumerated offenses, including extortion, as well as any offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another." The circuit court held that the defendant's carjacking offense under Puerto Rico law did not satisfy the ACCA's general definition of a violent felony because the offense may be committed through threats against property rather than persons. The court further concluded the Puerto Rico carjacking offense did not satisfy the generic definition of extortion (i.e., obtaining the victim's induced consent through force or intimidation) because the offense could be committed without the victim's induced consent to the taking of the vehicle. In so doing, the court expressed its disagreement with the Seventh and Tenth Circuits, which the court described as treating the difference between taking property against a victim's will and taking property with the victim's induced consent as a legally meaningless distinction (*Rodríguez-Méndez v. United States*).
- **Immigration:** A divided Sixth Circuit panel affirmed a district court's dismissal of a lawful permanent resident's request that the court make a determination on his naturalization application under 8 U.S.C. § 1447(b) where the applicant was subject to ongoing removal proceedings. The panel majority held that 8 U.S.C. § 1429 barred the district court from considering the application while removal proceedings were pending. Section 1429 provides that "no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding." (Changes made by the Homeland Security Act transferred this function to U.S. Citizenship and Immigration Services (USCIS), despite Section 1429's continued reference to the Attorney General.) The panel majority disagreed with the Ninth Circuit that Section 1429 applies only to the consideration of naturalization applications by USCIS. Joining the Second and Fifth Circuits, the Sixth Circuit ruled that the interplay between Section 1429 and surrounding statutory provisions made clear that it was intended to also apply to district courts' determinations of naturalization applications under Section 1447(b). The panel majority also ruled that Section 1429 barred consideration of the applicant's request for a declaratory judgment that he was prima facie eligible for naturalization (*Ebu v. USCIS*).

- **Telecommunications:** A divided Sixth Circuit affirmed a district court's dismissal of a claim brought under the Video Privacy Protection Act (VPPA) by a subscriber of an online sports newsletter that featured links to video content. The plaintiff asserted that the defendant's disclosure of which third-party videos he watched violated the VPPA. The statute authorizes civil actions against "a video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any *consumer* of such provider" (emphasis added). The majority of the Sixth Circuit panel agreed with the lower court that the plaintiff had not demonstrated he was a "consumer" under the VPPA because he had not shown that he subscribed to *audiovisual content*. The panel ruled that the newsletter was not itself audiovisual content and observed that the plaintiff had not claimed he accessed the videos through the newsletter. The majority acknowledged a split with the Second and Seventh Circuits, which held that the VPPA's definition of "consumer" encompasses subscribers of *any* goods and services from a video tape service provider, regardless of whether it is audiovisual in nature (*Salazar v. Paramount Glob.*).

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