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Legal Sidebar

# Congressional Court Watcher: Circuit Splits from May 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 from May 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").

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.

- **Bankruptcy:** In partially affirming a federal magistrate judge's order in an appeal of a bankruptcy court decision, the Third Circuit rejected a challenge to the magistrate's jurisdiction over the appeal. A federal bankruptcy court is a unit of a federal district court, and under 28 U.S.C. § 158, a bankruptcy court's final judgments and orders generally may be appealed to federal district court. The Third Circuit held that the Federal Magistrate Act of 1979 (FMA) authorized a federal magistrate judge, upon the consent of the parties and referral by a federal district court, to enter final judgment in a bankruptcy appeal. The court parted ways from the Seventh and Tenth Circuits, which have not construed the FMA as conferring to the district courts the specific power to refer bankruptcy appeals to magistrates. On the merits, the court affirmed the magistrate

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judge's order on certain claims and remanded other claims for further proceedings (*In re MTE Holdings LLC*).

- **Criminal Law & Procedure:** The First Circuit held that a criminal defendant's application for habeas relief, premised on the ineffective assistance of counsel by the lawyer who represented him in criminal proceedings and an earlier habeas petition, should be treated as a "second or successive" habeas application and dismissed under 28 U.S.C. § 2244(b)(2). The panel noted disagreement with the Third Circuit, which concluded in a case involving a similar fact pattern that Section 2244(b)(2) did not require dismissal of the petitioner's second habeas petition because the petitioner lacked the opportunity to raise an ineffective assistance of counsel claim earlier due to the same counsel representing him at trial and in his first habeas petition (*Anderson v. Divris*).
- **Criminal Law & Procedure:** The Fifth Circuit widened a circuit split as to whether a federal criminal defendant sentenced under 18 U.S.C. § 3583 to a period of supervised release following imprisonment may have the supervised release period tolled if he absconds. Agreeing with the reasoning of an earlier Fifth Circuit decision that had been rendered moot, the panel endorsed the application of the judicially crafted "fugitive tolling doctrine" to those who violate the conditions of their supervision and abscond. The court joined the Second, Third, Fourth, and Ninth Circuits, which apply the doctrine to the terms of supervised release. The court split with the First and Eleventh Circuits, which do not recognize that the period of supervised release may be tolled when a fugitive absconds (*United States v. Swick*).
- **Criminal Law & Procedure:** A divided Ninth Circuit affirmed a district court's order that accumulated deposits made by friends and family of a federal inmate be applied to the inmate's restitution obligations under the Mandatory Victims Restitution Act (MVRA). A provision of the MVRA, 18 U.S.C. § 3664(n), generally requires a covered criminal who "receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration . . . to apply the value of such resources to any restitution or fine still owed." The Ninth Circuit majority held that Section 3664(n)'s reference to "any source" indicated that the MVRA applied to aggregated sums accrued in an inmate's trust account from periodic deposits by multiple sources. The majority disagreed with the Fifth and First Circuits, among other courts, which have interpreted the MVRA's reference to an "inheritance, settlement, or other judgment" to indicate that the statute was intended to apply in more limited fashion to sudden financial windfalls (*United States v. Myers*).
- **Criminal Law & Procedure:** The Tenth Circuit affirmed a federal district court's exercise of jurisdiction under the Juvenile Delinquency Act (JDA) in a case where the juvenile defendant had shot and killed a U.S. postal worker. When the federal government seeks to exercise jurisdiction over a juvenile, the JDA requires, among other things, that the Attorney General certify "a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction." In rejecting the defendant's challenge to the exercise of federal jurisdiction, the Tenth Circuit joined nearly every federal appeals court except the Fourth Circuit in holding that the Attorney General's certification of a substantial federal interest is an unreviewable act of prosecutorial discretion. The circuit panel further held that the JDA does not require the Attorney General to identify the specific basis for her subjective belief that a substantial federal interest exists in the certification (*United States v. Zamora*).
- **Firearms:** Sitting en banc, the Ninth Circuit held that 18 U.S.C. § 922(g)(1), which prohibits the possession of firearms by most felons, does not violate the Second

Amendment, regardless of whether the felony involves a nonviolent offense. The majority opinion described the decision as consistent with rulings by multiple circuits in specific as-applied challenges, but observed a split with the Third Circuit, which found Section 922(g)(1) to be unconstitutional as applied to a felon convicted of making false statements to secure food stamps (*United States v. Duarte*).

- **Immigration:** In an amended decision, a divided Ninth Circuit panel largely affirmed a district court's ruling blocking the Department of Homeland Security (DHS) from enforcing the Asylum Transit Rule—which generally required aliens traveling to the United States through a third country to seek asylum there before applying for such relief in the United States—against certain aliens who were subject to a now-rescinded metering policy. The metering policy required some asylum seekers who sought to enter the United States at the southwest border to remain in Mexico until DHS decided it could process them. The lower court had decided that this policy violated federal immigration laws and the Administrative Procedure Act (APA), and the court ordered that DHS not apply the Asylum Transit Rule to those against whom the metering policy was enforced before the rule went into effect. The Ninth Circuit panel majority agreed with the lower court that DHS was statutorily required to inspect asylum seekers who were subject to metering and that failure to inspect those persons meant that the agency had "unlawfully withheld" required agency action under the APA. The majority rejected the government's argument that the metering policy had only "delayed" the inspection of metered persons, which would have constituted an APA violation only if the delay was determined to be unreasonable. The panel held that agency action is unlawfully withheld when, as it found had occurred here, an agency categorically refuses to act on requests to take required action. In reaching this conclusion, the majority disagreed with the approach of the Tenth Circuit, which holds that a legal duty is "unlawfully withheld" under the APA only when an agency fails to meet a legally imposed deadline for a required action. In conjunction with the amended decision, the Ninth Circuit declined to rehear the case sitting en banc (*Al Otro Lado v. Executive Office of Immigration Review*).
- **Privacy:** The Second Circuit affirmed a lower court's dismissal of a suit brought against a video streaming service under the Video Privacy Protection Act (VPPA). The plaintiff alleged that the sharing of certain information by the streaming service with Facebook about videos she had accessed violated the VPPA's prohibition on the unauthorized disclosure of "personally identifiable information" (PII). The circuit panel held that the information shared with Facebook—a unique string of computer code—did not constitute PII under the VPPA because it would enable only a sophisticated technology company, not an ordinary person, to identify the consumer's video viewing history. Joining the Third and Ninth Circuits, the Second Circuit decided that Congress intended PII under the VPPA to cover only the type of information that an ordinary person could use to identify a consumer's video-watching behavior. The circuit panel acknowledged a split with the First Circuit, which does not apply the "ordinary person" standard but instead interprets PII to include any information that would reasonably and foreseeably lead the recipient of such information to identify videos the consumer accessed (*Solomon v. Flipps Media, Inc.*).

- **Speech:** A divided en banc panel of the Fifth Circuit reversed a preliminary injunction and ordered the dismissal of a First Amendment challenge to a county library's decision to remove books that plaintiffs alleged had been selected because of their racial and sexual themes. The majority held that plaintiffs could not invoke a First Amendment right to receive information as a basis to challenge a library's removal of books, and that a public library's collection decisions are government speech not subject to First Amendment challenge. In reaching this conclusion, the panel majority noted its disagreement with an earlier three-judge circuit panel in the case, along with a prior Fifth Circuit decision that suggested that persons could bring a First Amendment challenge to a library collection decision. A plurality of the court also identified a split with the Eighth Circuit, which the plurality described as recognizing that library collection decisions would not be perceived by the public as government speech (*Little v. Llano County*).

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