

Congressional Court Watcher: Circuit Splits from July 2025

August 8, 2025

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 July 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.

- **Arbitration:** The D.C. Circuit held that the [Foreign Sovereign Immunities Act](#) (FSIA) barred consideration of Mauritian mining companies’ attempt to seek recognition of a foreign judgment confirming an arbitral award against the Republic of Zimbabwe and related entities. The panel held that the FSIA’s [exception allowing confirmation of arbitration awards](#) did not apply, because the plaintiffs were seeking not direct confirmation of an award (which would have been [time-barred](#) under U.S. law) but conversion of a foreign judgment into a domestic judgment, which the panel ruled to fall outside the exception. The panel also decided that the [FSIA’s exception when a foreign state has waived immunity by implication](#) did not apply. The panel held that Zimbabwe’s signing of the [New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards](#), and its later entry into an agreement to arbitrate in a signatory state, did

Congressional Research Service

<https://crsreports.congress.gov>

LSB11348

not demonstrate an intent to waive immunity from foreign judgment recognition actions. The D.C. Circuit parted ways on this holding with the [Second Circuit](#), which construed a foreign state's signing of the New York Convention and agreement to arbitrate in a signatory state as constituting an implied waiver for judgment recognition actions related to arbitration (*Amaplat Mauritius Ltd. v. Zimbabwe Mining Dev. Corp.*).

- **Civil Procedure:** The Fourth Circuit affirmed a district court's award of attorney fees to plaintiffs after the defendants improperly removed their state court lawsuit to federal court for a second time. The circuit panel, however, rejected the plaintiffs' request for the appeals court to award additional fees to offset the costs of defending the district court's fee award on appeal. The panel held that although the text of [28 U.S.C. § 1447\(c\)](#) permits awarding attorney fees as part of an order remanding the case to state court, such an order can be issued only by a district court, not an appeals court. The panel split with the [Seventh Circuit](#), which has interpreted Section 1447(c) as calling for automatic attorney fees when a party successfully defends on appeal a district court's fee award (*Black v. Mantei & Assoc., Ltd.*).
- **Civil Procedure:** The Fifth Circuit remanded a case to the district court for reconsideration of its denial of class certification, where the lower court ruled that the plaintiffs lacked standing due to a failure to establish an injury in fact. The circuit panel held that the district court erred by prematurely engaging in a merits-based evaluation of the plaintiffs' expert testimony to determine standing. The panel directed lower courts considering motions for class certification to evaluate only the individual standing of the named plaintiffs before turning to whether to certify a class in order to separate standing's injury-in-fact inquiry from a merits-based inquiry. While stating that its approach tracked with [that taken by many](#) circuits, the panel observed a split with the [Second](#) and [Eleventh](#) Circuits, which consider as part of the standing analysis not only whether the named plaintiffs suffered a cognizable injury due to the defendant's alleged conduct, but also whether that conduct implicates the same concerns as the conduct alleged to have injured unnamed members of the putative class (*Wilson v. Centene Mgmt. Co., L.L.C.*).
- **Civil Rights:** The Fourth Circuit vacated and remanded a district court's dismissal of an inmate's [42 U.S.C. § 1983](#) due process claim. The inmate argued that state prison officials violated his [Fourteenth Amendment](#) right to due process of law when they deducted money from his prison trust account as a fine without permitting him to present evidence at a hearing. Allowing the inmate's claim to proceed, the panel declined to apply the Supreme Court's analysis in *Sandin v. Conner* that deprivation of an inmate's liberty interests must pose "atypical and significant hardship" on the inmate to implicate the Due Process Clause. The panel noted *Sandin*'s focus on the deprivation of *liberty interests*, such as the use of solitary confinement, which it found distinguishable from an inmate's statutorily created *property interests* in his prison trust account. In limiting *Sandin*'s applicability to liberty interests, the Fourth Circuit panel stated that it was joining the [Second](#) and [Fifth](#) Circuits and splitting with the [Tenth Circuit](#), which had explicitly applied the *Sandin* analysis to property interests (*Brown v. Stapleton*).
- **Civil Rights:** A divided Seventh Circuit reversed a district court's dismissal of a student's suit against a university under [Title IX](#) of the Education Amendments of 1972. The plaintiff claimed that the university's decision to readmit another student whom the plaintiff alleged had sexually assaulted her constituted deliberate indifference to the harassment she suffered and deprived her of access to educational opportunities. In ruling that the suit could proceed, the circuit panel majority widened circuit splits on two issues. First, the majority joined [three other circuits](#) in holding that a single instance of student-on-student harassment may give rise to Title IX monetary liability for a school if the

harassment was sufficiently severe and the university's response was so unreasonable as to deny access to educational opportunities. The majority disagreed with the [Sixth](#) and [Eighth](#) Circuits, which it described as holding that a single incident of student-on-student sexual assault can never provide the basis for monetary liability against a university under Title IX. Second, the majority disagreed with [Sixth](#), [Eighth](#), and [Ninth](#) Circuit holdings that a Title IX plaintiff must show that a school's deliberate indifference after receiving notice of student-on-student harassment resulted in additional, concrete acts of harassment. The Seventh Circuit majority joined the [First](#), [Fourth](#), [Tenth](#), and [Eleventh](#) Circuits, which have held that a school's deliberate indifference after receiving notice must only make the student more vulnerable to future acts of harassment (*Arana v. Bd. of Regents of Univ. of Wisconsin Sys.*).

- **Communications:** The Eighth Circuit partially granted and partially denied petitions for review of the 2018 quadrennial review [order](#) issued by the Federal Communications Commission (FCC) in 2023. Although the panel rejected several of the petitioners' arguments, it agreed that the justifications for retaining the "Top-Four Prohibition"—which prohibits single ownership of more than one of the top four broadcast television stations in a local market—were arbitrary and capricious under the [Administrative Procedure Act](#). Further, the panel vacated the FCC's amendment to [Note 11](#) of its broadcast ownership rules, which restricts when stations can acquire the network affiliation of another station. The FCC had tightened Note 11 to close a loophole. The court, however, held that the amendment exceeded the FCC's authority under [Section 202\(h\)](#) of the Telecommunications Act of 1996, which obligates the FCC to review its media ownership regulations every [four years](#) to determine if they are still "necessary in the public interest as the result of competition" and repeal or modify any rules that are not. Acknowledging that its statutory interpretation was in tension with the [Third Circuit](#), the Eighth Circuit concluded that Section 202(h) was intended to be deregulatory—only permitting the FCC to modify a regulation that it had first determined was no longer in the public interest; therefore, the panel concluded that the FCC was permitted to change a regulation only if the change did not tighten the regulation (*Zimmer Radio of Mid-Missouri, Inc. v. Fed. Commc'ns Comm'n*).
- **Criminal Law & Procedure:** The First Circuit affirmed a district court's determination to revoke a releasee's terms of supervised release and impose a new sentence. The panel found that the district court had erred in admitting hearsay evidence without conducting the limited confrontation right balancing test required by [Federal Rule of Criminal Procedure](#) 32.1(b)(2)(C). Joining the [Fourth Circuit](#), the panel held that Rule 32.1's confrontation right applies to the entire revocation proceeding—both the "guilt phase," which examines whether the releasee violated the conditions of supervised release, and the "sentencing phase," which identifies the consequences for that violation. The panel decision split with the [Tenth Circuit](#), which applies the right to confrontation only to the guilt phase of the revocation proceeding, and is in tension with the [Fifth](#) and [Eighth](#) Circuits, which have suggested that the right is not implicated at the sentencing phase. The panel nonetheless found the consideration of hearsay evidence to be harmless because other evidence in the record strongly supported the district court's conclusions (*United States v. García-Oquendo*).
- **Criminal Law & Procedure:** The Third Circuit considered various challenges raised by a criminal defendant to his conviction and sentence for drug- and firearm-related offenses, including a challenge to the defendant's sentencing enhancement under [21 U.S.C. § 841\(b\)](#) for having been previously convicted of a "serious drug felony." The appellate court determined that the district court had failed to colloquy with the defendant

under [21 U.S.C. § 851\(b\)](#), which would have allowed him to affirm or deny a previous conviction alleged in the information, but observed that the defendant did not timely object. Joining the [Ninth Circuit](#), the Third Circuit decided that, because the defendant's objection was not preserved, the Section 851(b) violation was subject to review for plain error, under which the defendant bears the burden of showing a reasonable probability that, but for the error, a different outcome would have occurred. The panel held the defendant had not met this burden. The panel observed a split with the [D.C. Circuit](#), which reviews a Section 851(b) violation de novo and places the burden on the government to show the error was harmless (*United States v. Guyton*).

- **Criminal Law & Procedure:** The Seventh Circuit joined several other circuits in holding that the misclassification of a predicate offense for purposes of a sentencing enhancement under the [Armed Career Criminal Act](#) (ACCA) gives rise to a “legal innocence” claim by the criminal defendant, which cannot overcome the one-year statute of limitations for certain habeas corpus claims set forth in [28 U.S.C. § 2255\(f\)](#). The circuit panel distinguished a “legal innocence” claim, based on misapplication of the law or a challenge to the law’s validity, from an “actual innocence” claim, premised on new evidence of factual innocence (which might enable the defendant to overcome the statute of limitations). The panel acknowledged a split with both the [Ninth Circuit](#), which treats misclassification arguments based on a retroactive intervening change in the law to be “actual innocence” claims, and the [Eighth Circuit](#), which had excused a defendant’s procedural default when challenging application of the ACCA (*Lairy v. United States*).
- **Criminal Law & Procedure:** The Eighth Circuit affirmed a district court’s denial of a criminal defendant’s motion to dismiss his indictment, including his claim that his rights were violated under the [Speedy Trial Act](#). The Act generally requires a federal criminal trial to begin within 70 days of the defendant being charged or making an initial appearance before the court, but specifies periods of delay that are excluded from this 70-day period. These [exclusions include](#) the delay resulting from the court granting a continuance if the court has found that the “ends of justice served by granting the continuance outweigh the public’s and defendant’s interests in a speedy trial.” In this case, the district court had issued an open-ended continuance to allow the defendant’s newly appointed counsel time to prepare for trial, which resulted in the trial being delayed beyond the 70-day period normally required under the Speedy Trial Act. Rejecting the defendant’s subsequent challenge to the open-ended continuance, the Eighth Circuit joined [several other circuits in deciding](#) that such continuances are consistent with the Act’s “ends-of-justice” exception where, as here, the continuance was not of an unreasonable length. The court split with the [Second](#) and [Ninth](#) Circuits, which have held that “ends-of justice” continuances must be limited in time (*United States v. Harris-Franklin*).
- **Employee Benefits:** The Sixth Circuit affirmed a district court’s dismissal of state law claims brought by participants in a specific type of retirement plan called a “top-hat” plan against the plan administrator, holding that these claims were preempted by the [Employee Retirement Income Security Act of 1974](#) (ERISA). The court also upheld the district court’s ruling that, under ERISA’s civil enforcement provision for equitable relief, the plaintiffs could not pursue a right to “surcharge” (a type of monetary relief) against the plan administrator. Relying on Supreme Court [precedent](#), the panel determined that such relief was not traditionally available in courts of equity. The circuit panel joined the [Fourth Circuit](#) in holding that courts may not grant this kind of remedy under [29 U.S.C. § 1132\(a\)\(3\)](#) to compensate a plan participant for losses caused by a fiduciary. The panel

acknowledged that several circuits had concluded otherwise, specifically citing to an [Eleventh Circuit](#) case that took the contrary view (*Aldridge v. Regions Bank*).

- **Immigration:** In a reissued per curiam opinion, the First Circuit remanded an immigration removal case to the Board of Immigration Appeals (BIA) after deciding that the BIA applied the incorrect standard of proof to the Department of Homeland Security's determination that the petitioner was an alien. The First Circuit observed that a 1966 [Supreme Court decision](#) said that the government must establish a person's alienage by "clear, unequivocal, and convincing evidence" in removal proceedings and, absent express language in the governing statute stating otherwise, this standard governed the removal of aliens like the petitioner who had not been admitted into the United States. (The panel left undecided whether the standard also applies when the government seeks to remove a lawfully admitted alien.) Joining the [Sixth Circuit](#), the panel held that "clear, unequivocal, and convincing evidence" is a higher standard of proof than the "clear and convincing evidence" standard applied by the BIA. The panel acknowledged a split with the [Ninth Circuit](#), which has rejected "clear, unequivocal, and convincing evidence" as a distinct standard of proof from "clear and convincing evidence" (*Rosa v. Bondi*).
- **Immigration:** The First Circuit denied an alien's petition for review of a BIA decision, finding no error in the BIA's hardship determination and upholding the denial of the alien's application for cancellation of removal. Among other things, the circuit panel held that the BIA was not required to explicitly state the standard of review and did not apply the wrong standard. The panel expressed disagreement with the [Second Circuit](#), which the panel described as requiring the BIA to spell out the standard of review for its decisions (*Leao v. Bondi*).
- **Immigration:** The Fifth Circuit affirmed an alien's criminal conviction under [8 U.S.C. § 1326](#) for illegally reentering the United States after being ordered removed. The court rejected the defendant's collateral attack on his predicate removal order. Relying in part on immigration authorities' erroneous determination that he committed an aggravated felony making him removable, the defendant claimed that his waiver of judicial review was unknowing and involuntary and the order was fundamentally unfair. The court found that the defendant did not make the requisite showing under [8 U.S.C. § 1326\(d\)](#) to sustain the collateral attack. In so doing, the Fifth Circuit acknowledged two ways its approach to reviewing collateral attacks under Section 1326(d) differed from that taken by the Ninth Circuit. First, while the Fifth Circuit placed the burden on the defendant to show the invalidity of a judicial waiver, the [Ninth Circuit](#) has placed the burden on the government to show by clear and convincing evidence that the waiver was valid. Second, the Fifth Circuit disagreed with the [Ninth Circuit's](#) view that a defendant can establish a due process violation allowing for a collateral attack by showing that the order was based on a conviction that later was found not to be an aggravated felony. The Ninth Circuit implied that such a showing establishes both a due process violation and prejudice under the statute without further analysis. The Fifth Circuit believed the alien must also separately show that he was prejudiced by the error. The panel found no prejudice because, at the time of the removal order, the alien was removable under then-existing Fifth Circuit precedents (*United States v. Ortiz-Rodriguez*).
- **Labor & Employment:** Acknowledging circuit splits on two of its holdings, the Ninth Circuit partially vacated and remanded a district court's grant of preliminary certification of a collective action under the Fair Labor Standards Act ([FLSA](#)). The panel decided that the district court did not abuse its discretion in authorizing notice to potential claimants who had allegedly entered into arbitration agreements, because the existence and validity of the agreements were still in dispute. The panel declined to set a bright-line rule like the

[Fifth](#) and [Seventh](#) Circuits, which require an evidentiary hearing on the existence of the arbitration agreements before sending notice. The panel also noted the conflict between those circuits and the [Sixth Circuit](#)'s conclusion that a court should not determine whether absent claimants are bound by arbitration agreements and decided to retain district court discretion where the arbitration agreements are in dispute. The panel did find error in the district court's assumption that it would not need to assess specific personal jurisdiction—involving the contacts of the defendant with the forum—on a claim-by-claim basis for opt-in plaintiffs before authorizing nationwide service. Rejecting the holding of the [First Circuit](#), the Ninth Circuit joined the [Third](#), [Sixth](#), [Seventh](#), and [Eighth](#) Circuits in applying Supreme Court [precedent](#) to collective actions under the FLSA—requiring such claim-by-claim jurisdictional analysis for opt-in plaintiffs (*Harrington v. Cracker Barrel Old Country Store, Inc.*).

- **Separation of Powers:** The Second Circuit vacated a district court's entry of judgment for the defendant in an [Appointments Clause](#) challenge to the denial of Social Security benefits based on the Supreme Court's decision in *Lucia v. SEC*. After the Court in *Lucia* found that administrative law judges (ALJs) in the Securities and Exchange Commission were improperly appointed "inferior officers," the Acting Commissioner of Social Security ratified the appointment of the Social Security Administration's ALJs to cure any potential constitutional violation. The plaintiff's case was originally heard by an improperly appointed ALJ, whose decision was vacated on the merits by a district court, and then reheard by the same newly ratified ALJ. Although the Court in *Lucia* declared that an Appointments Clause violation can be remedied only by a new hearing before a new ALJ, the district court found that the concerns the Court had expressed in *Lucia* were allayed when the original ALJ decision had been vacated on the merits and determined that the ALJ's decision had not been tainted by the first hearing. The Second Circuit panel disagreed with the district court and the [Eleventh Circuit](#) that a merits-based vacatur eliminates the Appointments Clause violation and the requirement for remedy called for in *Lucia*. Joining the [Fourth Circuit](#), the panel found that any post-ratification decision by the same ALJ is presumptively tainted by the ALJ's pre-ratification assessment of the case. In adopting a bright-line rule instead of assessing the extent of the taint, the panel distinguished its holding slightly from the position of the [Ninth Circuit](#) (*Flinton v. Comm'r of Soc. Sec.*).
- **Separation of Powers:** The Third Circuit denied a petition for review of a Federal Aviation Administration (FAA) administrative adjudication related to packaging flammable paint for shipping, finding that the petitioner was not entitled to a jury trial under the [Seventh Amendment](#). The panel considered the action under a two-part analysis provided by the [Supreme Court](#): first, finding that the action's imposition of a civil monetary penalty—a common law remedy—implicated the Seventh Amendment, and second, concluding that the FAA's right to enforce technical prescriptions for shipping hazardous material fell into the "public rights" exception. The panel rejected the petitioner's other arguments, including that the FAA Administrator's authority to choose between an administrative forum or a federal court for enforcement constituted an improper delegation of congressional authority. Explicitly declining to adopt the majority opinion of a divided panel in the [Fifth Circuit](#) that such a forum choice is purely legislative and violates the nondelegation doctrine, the Third Circuit reached the opposite conclusion. It likened the forum choice to a prosecutor's charging discretion, which is a recognized exercise of executive power, and thus reasoned that the choice could not violate the nondelegation doctrine (*Axalta Coating Sys. LLC v. Fed. Aviation Admin.*).

- **Separation of Powers:** The Eleventh Circuit vacated a district court’s preliminary injunction and reversed its entry of summary judgment for the plaintiff in a constitutional challenge to a [provision](#) of the Administrative Procedure Act that protects ALJs from removal without “good cause.” The circuit panel found that the Department of Justice’s Office of the Chief Administrative Hearing Officer ALJs were “inferior officers” who had limited adjudicative duties and no policymaking functions and thus could be insulated from removal under Supreme Court precedent—specifically disagreeing with a panel majority in the [Fifth](#) Circuit and joining the [Ninth](#) and the [Tenth](#) Circuits (all of which had addressed the constitutionality of the provision in the context of other ALJs). The court emphasized that the ALJs have no power to make final decisions for the United States without the Attorney General’s permission and that Congress had rationally decided to add removal protections for ALJs to preserve the impartiality of administrative adjudications, while ensuring department head accountability to the President consistent with the President’s powers in [Article II](#). Further disagreeing with the [Fifth](#) Circuit, the panel distinguished related Supreme Court [precedent](#) and rejected the plaintiff’s argument that removal protections for the Board overseeing the ALJ removal proceedings created an unconstitutional “double layer” of removal restrictions for the ALJs (*Walmart, Inc. v. Chief Admin. L. Judge of Off. of Chief Admin. Hearing Officer*).
- **Transportation:** The Sixth Circuit reversed a district court’s dismissal of the plaintiff’s suit against a freight [broker](#) for negligently hiring an unsafe motor carrier, concluding that the plaintiff’s state-law claim was not preempted by [49 U.S.C. § 14501\(c\)](#). Section 14501(c) generally [preempts](#) state-law claims related to the price, route, or service of a broker with respect to the transportation of property, unless an exception applies. One such [exception](#) is if the claim is within “the safety regulatory authority of a State with respect to motor vehicles.” The Sixth Circuit panel joined the [Ninth Circuit](#) in concluding that this exception applies to negligent hiring claims against brokers, splitting with the [Seventh](#) and [Eleventh](#) Circuits (*Cox v. Total Quality Logistics*).

Author Information

Michael John Garcia
Deputy Assistant Director/ALD

Tamsin G. Harrington
Section Research Manager

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.
