

Congressional Court Watcher: Circuit Splits from August 2025

September 15, 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 August 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.

- **Antitrust:** The Ninth Circuit ruled that a joint operating arrangement (JOA) between two newspaper owners was unenforceable because it lacked the Attorney General’s approval, as required by [Section 4\(b\)](#) of the [Newspaper Preservation Act](#) (NPA). The NPA provides a limited exemption from antitrust laws for economically distressed competing newspapers that enter JOAs—provided they obtain prior written consent from the Attorney General. A lower court had accepted the Department of Justice’s (DOJ’s) interpretation that such consent was not a prerequisite to forming a JOA, but only to qualifying for the exemption. The Ninth Circuit rejected that view, holding that the statute’s plain language mandates Attorney General approval for a JOA to be lawful. This interpretation conflicts with decisions from the [D.C.](#) and [Sixth](#) Circuits, which upheld DOJ’s position (*Las Vegas Sun, Inc. v. Adelson*).

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LSB11366

- **Civil Procedure:** The Sixth Circuit vacated and remanded a district court’s judgment dismissing for lack of jurisdiction a breach of settlement claim against the National Credit Union Administration Board. The Board had entered into the settlement in its capacity as the liquidating agent of an insolvent credit union. The district court had found that a provision of the Federal Credit Union Act—[12 U.S.C. § 1787\(b\)\(13\)\(D\)](#)—stripped the court of jurisdiction for claims against the Board as a credit union liquidator. In interpreting the jurisdictional provision, the panel looked to cases addressing a “materially identical” [provision](#) in the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA). The [First](#), [Fifth](#), [Ninth](#), and [Eleventh](#) Circuits and an earlier Sixth Circuit panel [decision](#) had interpreted the jurisdiction stripping provision in FIRREA in tandem with its administrative exhaustion provision to provide that only claims that could have been brought against the Board administratively during the liquidation process are barred from court. The Sixth Circuit panel in this case applied the same logic to the identical provision in the Federal Credit Union Act and found that the claims were not time-barred and could proceed. Next the panel examined the conclusion of those same circuit decisions that, although these “late-arising claims” are not time barred, they must still exhaust their administrative remedies before bringing their claims in district court—finding instead that claims arising after the conclusion of the administrative review process under both statutes are not “claims” within the meaning of the statutes and therefore do not need to be exhausted prior to district court review (*Zai v. Nat’l Credit Union Admin. Bd.*).
- **Civil Rights:** The Second Circuit upheld a lower court’s order enforcing an Equal Employment Opportunity Commission (EEOC) subpoena for an investigation under [Title VII of the Civil Rights Act of 1964](#) (Title VII). Title VII [authorizes](#) an aggrieved party to file a charge with the EEOC, which the agency must promptly investigate. If the EEOC either dismisses the charge or does not act within a statutory deadline, it [must issue](#) a right-to-sue letter upon request. The aggrieved party then has [90 days](#) to file suit. In a decision that diverges from the [Fifth Circuit](#), the Second Circuit held that the EEOC keeps its investigative authority even after it issues a right-to-sue letter and a lawsuit is filed (*In re AAM Holding Corp.*).
- **Civil Rights:** The Sixth Circuit upheld a lower court’s dismissal of a sales representative’s hostile work environment claims under [Title VII](#). The panel concluded, among other things, that the employer could not be liable when a client harassed the representative. According to the panel, for an employer to be liable for third-party harassment, the plaintiff must demonstrate that the employer intended for the harassment to happen—something that was not established in this case. The panel noted that its interpretation aligns with the [Seventh Circuit](#) but diverges from the position of the EEOC and the [First](#), [Second](#), [Eighth](#), [Ninth](#), [Tenth](#), and [Eleventh](#) Circuits. These jurisdictions apply a negligence standard, holding an employer liable if it knew or should have known about the harassment and failed to take prompt corrective action (*Bivens v. Zep, Inc.*).
- **Criminal Law & Procedure:** The Third Circuit affirmed a defendant’s sentence, finding that due process generally applied in sentencing reduction proceedings, but that the defendant’s rights had not been violated. The defendant had argued that a district court’s reliance on a witness statement to deny his motion for a sentence reduction under [18 U.S.C. § 3582\(c\)\(2\)](#) had contravened due process. The Third Circuit panel concluded that the principles in U.S. Sentencing Guidelines [§ 6A1.3\(a\)](#) require that defendants receive notice and the opportunity to contest new information relied on by district courts in sentence reduction proceedings. Concurring with the [Fifth](#), [Seventh](#), [Eighth](#), and [Eleventh](#) Circuits on this requirement, the panel noted and distinguished a circuit split with the

[Ninth](#), which leaves the necessity for a hearing on supplemental findings to the discretion of the district court in Section 3582(c)(2) decisions. The panel found, however, that the witness statement at issue did not trigger due process requirements because it did not constitute “new information” relied on by the district court for the first time in finding material facts. The panel, therefore, affirmed the district court’s sentence reduction denial (*United States v. Harmon*).

- **Criminal Law & Procedure:** A divided Fourth Circuit panel vacated and remanded a district court’s finding of special maritime and territorial jurisdiction with instructions to apply the appropriate test under [18 U.S.C. § 7\(3\)](#). At a bench trial, the defendant was convicted on child pornography charges under [18 U.S.C. § 1466A\(a\)\(1\)](#) and (b)(1), which he committed while in a federal correctional institution. He argued that the government had not proven the required jurisdictional element in his case—that his federal institution fell within the special maritime and territorial jurisdiction of the United States. The panel majority decided that the question of whether the location of the crime fell within federal territorial jurisdiction component was a matter of law to be decided by the court rather than a matter to be proven to a factfinder beyond a reasonable doubt. The panel held that the facts surrounding the special maritime and territorial jurisdiction inquiry are “legislative facts” (facts that are universally true rather than varying from case to case), not “adjudicative facts” (which relate to the specific parties and events of a particular case), such that the question was properly decided by the court rather than the jury. In determining facts related to federal jurisdiction over a location to be legislative facts decided by the court, the panel majority joined the [Second](#), [Sixth](#), [Eighth](#), and [Ninth](#) Circuits and split with the [First](#) Circuit, which had found the jurisdictional status of a federal penitentiary to be an adjudicative fact for the jury. The panel majority separately disagreed with both the district court and a different [Sixth](#) Circuit case’s application of the appropriate jurisdictional test under Section 7(3). The panel majority noted that these decisions had focused too much on whether the federal government had practical dominion over the prison and remanded to the district court to apply all of the Section 7(3) elements to determine the jurisdictional question (*United States v. Perez*).
- **Criminal Law & Procedure:** Affirming a district court’s decision, the Sixth Circuit found that a defendant’s constitutional rights had not been violated during his trial. Among other things, the panel found no violation of the defendant’s [Sixth Amendment](#) right to compulsory process in the district court’s exclusion of a defense witness as a sanction for a discovery violation. The panel observed that under relevant Supreme Court precedent in *Taylor v. Illinois*, a willful discovery violation justifies a witness’s exclusion, but that courts are divided on whether *Taylor* requires a finding of willfulness to exclude a witness. The Sixth Circuit joined the [Seventh](#), [Tenth](#), and [D.C. Circuits](#) in recognizing bad faith or willfulness on the part of the defense as an important factor in balancing witness exclusion, but rejected the notion that bad faith was a prerequisite—splitting from the [Second](#) and [Ninth](#) Circuits. The panel concluded that the district court had applied the balancing test in *Taylor* reasonably in excluding the witness and did not commit constitutional error (*United States v. Pancholi*).
- **Criminal Law & Procedure:** An Eighth Circuit panel reversed and remanded a district court decision, which had initially dismissed a motion to vacate a defendant’s sentence as time-barred under [28 U.S.C. § 2255\(f\)](#). Section 2255 sets a one-year period of limitation from the date on which the judgment of conviction becomes final to contest the sentence. The defendant’s initial judgment deferred restitution and was later amended to include it, and the question before the panel was at what point the judgment of conviction becomes final when restitution is deferred. Agreeing with the [Second](#) and [Tenth](#) Circuits, the panel

found that the judgment is not final for Section 2255 purposes until it is amended to include restitution. Because restitution is a component of the sentence, the panel found that the clock starts when the entire sentence becomes final and therefore the defendant's motion was not time barred. The panel recognized a split with the [Ninth](#) Circuit, which had concluded that a judgment that included a restitution amount to be later determined was final for purposes of commencing the period of limitation under Section 2255 (*Lee v. United States*).

- **Criminal Law & Procedure:** The Ninth Circuit reversed and remanded a district court's order denying a writ of [habeas corpus](#). First applying plain text analysis and then canons of statutory construction, the panel found that [18 U.S.C. § 3632\(d\)\(4\)\(C\)](#) permits a defendant to use leftover earned time credits under the First Step Act to reduce his term of supervised release. Creating a circuit split, the Ninth Circuit found the language to be unambiguous and disagreed with the statutory analysis of the [Fourth](#), [Fifth](#), and [Eleventh](#) Circuits, which have interpreted this provision to apply time credits to the early start of prelease custody or supervised release, but not to reduce the period of supervised release. The decision also noted possible divergence from a [Third](#) Circuit decision, which the panel perceived to suggest that leftover time credits post release were not usable to reduce the amount of supervised release (*Gonzales v. Herrera*).
- **Elections:** The Third Circuit upheld a lower court's injunction blocking enforcement of a Pennsylvania statute that required completed mail-in ballots arriving in undated or misdated return envelopes to be discarded. The panel held that the lower court properly applied the [Anderson-Burdick balancing test](#)—which directs that the burdens on electoral participation imposed by state action be balanced against the asserted benefits of that action—to find that this requirement unduly burdened Pennsylvanians' constitutional right to vote. The panel found that the state's asserted interests—such as promoting the orderly administration and solemnity of elections or deterring voter fraud—were not meaningfully advanced by requiring voters to date the return envelope. The court found this especially true given that the state already required that mail-in ballots be received by Election Day to be counted. In applying the *Anderson-Burdick* test to mail-in ballot laws, the panel diverged from the [Seventh Circuit](#) but joined the [Second](#), [Sixth](#), [Ninth](#), and [Eleventh](#) Circuits (*Eakin v. Adams Cnty. Bd. of Elections*).
- **Firearms:** A divided Tenth Circuit panel reversed and remanded a district court decision, which had found the prohibition of controlled substance users from possessing firearms in [18 U.S.C. § 922\(g\)\(3\)](#) to be unconstitutional as applied to a user of marijuana who was not intoxicated at the time of the firearm possession. Applying the history-based framework provided by the Supreme Court to assess whether a firearm regulation is consistent with the [Second Amendment](#), the panel majority found that Section 922(g)(3) addresses a historic and general social concern about the danger of mixing firearms and intoxicants and that, according to the nation's history of firearm regulation, legislatures may disarm people who are believed to pose a risk of future danger, not just present danger. The panel majority identified historical disarmament laws analogous to Section 922(g)(3) at the time of the nation's founding, criticizing the [Fifth](#) Circuit's analysis of the same laws as too narrow under [clarifying](#) precedent. Recognizing the Fifth and the [Eighth](#) Circuits' findings that Section 922(g)(3) was unconstitutional as applied to non-intoxicated marijuana users, and the [Third](#) Circuit's suggestion that it might be constitutional, the panel majority refrained from drawing a final conclusion and remanded to the district court to further consider whether non-intoxicated marijuana users pose a risk of future danger that would justify their disarmament (*United States v. Harrison*).

- **Immigration:** A Fourth Circuit panel held that the Board of Immigration Appeals erred in concluding that the petitioner failed to show ineffective assistance of counsel during her removal proceedings. The panel remanded the case with instructions to grant the petitioner a new removal hearing. In reaching its decision, the majority joined most other circuits in recognizing that ineffective assistance of counsel in removal proceedings can violate an alien’s Fifth Amendment due process rights, while noting that the [Eighth Circuit](#) has declined to recognize a right to effective counsel in this context (*Guandique v. Bondi*).
- **Labor & Employment:** On interlocutory review, a partially divided Seventh Circuit vacated and remanded a district court’s conditional certification of a collective action under the [Age Discrimination in Employment Act](#) (ADEA), which incorporates the enforcement provisions of the [Fair Labor Standards Act](#) (FLSA). The district court had conditionally certified the action in order to issue notice based on the plaintiff’s “modest showing” of similarity and refused to consider the defendant’s opposing evidence. The panel joined the [Fifth](#) and [Sixth](#) Circuits in generally rejecting the modest level of scrutiny approach as too permissive; however, the panel also rejected adopting the “preponderance of the evidence” approach taken by the Fifth Circuit and the “strong likelihood” approach taken by the Sixth Circuit, noting the inflexibility of setting stringent standards in conditional certification of collectives. Instead, the panel set out a new standard for issuing notice based on the text and remedial goals of the FLSA and the ADEA—the plaintiffs must produce some evidence that they and the potential other plaintiffs are victims of a common unlawful employment practice, and the defendants must be able to present rebuttal evidence in order for the district court to assess whether a material dispute as to similarity exists. The decision generally leaves the next steps to the district court’s discretion with a stated goal of flexibility; however, the panel majority also found that once a permissive opt-in is complete, the plaintiffs bear the burden to prove their similarity by a preponderance of evidence to certify the collective action (*Richards v. Eli Lilly & Co.*).
- **Labor & Employment:** The D.C. Circuit affirmed a district court’s denial of a motion for a new trial based on an alleged jury instruction error in a retaliation claim under the [Labor-Management Reporting and Disclosure Act](#) (LMRDA). The jury was instructed that the appellant must prove that he would not have been removed from his union position “but-for” his protected speech. The appellant argued that the appropriate test under the LMRDA was whether the speech was a motivating factor in the removal. The panel acknowledged that the [Second](#), [Fourth](#), and [Sixth](#) Circuits had applied standards similar to substantial or motivating factor causation in LMRDA cases, but the panel observed that those decisions predated more recent Supreme Court [precedent](#) providing but-for causation as a default when statutes do not include an express causation standard. The D.C. Circuit concluded that, if anything, the LMRDA’s text suggests a but-for causation standard, and joined the [Third](#), [Seventh](#), and [Ninth](#) Circuits in requiring a finding that the adverse action was a direct result of the protected speech in order to prove retaliation under the LMRDA (*Hudson v. Am. Fed’n of Gov’t Emps.*).
- **Privacy:** The D.C. Circuit affirmed the dismissal of a claim under the [Video Privacy Protection Act](#) (VPPA) brought by a news website visitor against a website owner for disclosing videos she watched to a third party without her consent. The VPPA 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 D.C. Circuit agreed with the lower court that the plaintiff had not demonstrated that she was a “consumer” under the VPPA because she had not shown that

she subscribed to audiovisual content. The panel also agreed that the plaintiff's subscription to the website's newsletter was not sufficient to satisfy the VPPA's definition. (The panel observed that the plaintiff had not claimed to have accessed the videos through the newsletter.) The circuit 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 they are audiovisual in nature (*Pileggi v. Washington Newspaper Publ'g Co., LLC*).

- **Securities:** In an interlocutory appeal, the Sixth Circuit vacated a district court's class certification in a securities fraud case and remanded for reconsideration using the framework set forth by the circuit panel. [Section 10\(b\)](#) of the Securities Exchange Act of 1934 and [implementing regulations](#) authorize private plaintiffs to sue for securities fraud by proving several elements, including material misrepresentation or omission by the defendant and reliance on that misrepresentation or omission by the plaintiffs. For certification of a class action, plaintiffs [must show](#) that common issues predominate among the class, which the Sixth Circuit panel observed often is proven in securities fraud cases by invoking presumptions of reliance on the material misrepresentations or omissions of the defendant. The panel examined the applicability of the *Affiliated Ute* presumption—typically used in omission cases where a duty to disclose exists—to "mixed" cases involving both omissions and affirmative misrepresentations. The panel joined most courts and held that *Affiliated Ute* applies when a case primarily involves omissions, but split with the [Fourth Circuit](#), which the panel described as treating *Affiliated Ute* as inapplicable to "mixed" cases. Additionally, the panel established a multifactor test for determining whether a case primarily involves omissions, and clarified that half-truths should be characterized as misrepresentations (*In Re FirstEnergy Corp. Sec. Litig.*).
- **Securities:** The Ninth Circuit upheld a lower court ruling in favor of the Securities and Exchange Commission (SEC), ruling that sales agents violated the [Securities Act of 1933](#), as amended, by selling unregistered fractional interests in life settlements—agreements in which persons sell interest in their life insurance policies to investors. Among other things, the court held that these interests qualify as "[investment contracts](#)" subject to registration under the 1933 Act, aligning with the [Fifth](#) and [Eleventh](#) Circuits and diverging from the [D.C. Circuit's view](#) (*SEC v. Barry*).
- **Separation of Powers:** A divided D.C. Circuit panel lifted a district court's preliminary injunction blocking enforcement of an executive order that directed the State Department and U.S. Agency for International Development to freeze foreign aid spending under the [Further Consolidated Appropriations Act of 2024](#). The district court had enjoined enforcement of the executive order after deciding that plaintiffs were likely to succeed in their claims that the action (1) was contrary to law because it violated the [Impoundment Control Act](#) (ICA); (2) exceeded the President's statutory authority (i.e., was *ultra vires*); and (3) violated the constitutional separation of powers. The panel majority held that the plaintiffs were precluded from bringing their ICA-based challenge until the ICA's statutory process for remediating an interbranch dispute over alleged impoundment had run its course. The majority also ruled that the plaintiffs had not shown that the President's impoundment of funds was plainly in excess of his authority under the ICA. The majority also concluded that plaintiffs' separation of powers claim was effectively premised on violations of the ICA and appropriations statutes, and that [Supreme Court precedent](#) foreclosed bringing a freestanding constitutional challenge premised on statutory violations. The majority noted a split with the [Ninth Circuit](#), which has not

construed Supreme Court precedent to bar the raising of such claims (*Glob. Health Council v. Trump*).

- **Tax:** The Third Circuit affirmed a U.S. Tax Court decision that the IRS can extend the statute of limitations to assess a tax after the filing of a fraudulent or false return, even if it was a third party, and not the taxpayer, who intended to evade the tax. 26 U.S.C. § 6501(c)(1) provides an exception to the general three-year statute of limitations on the IRS to assess taxes after a return is filed for returns filed fraudulently with “the intent to evade tax.” The taxpayer argued that her tax preparer intended to evade the tax, not her, and therefore the exception should not apply and the IRS should be time-barred from assessing the tax. The Third Circuit found no indication in the text and context of the exception that intent was restricted to the taxpayer—acknowledging a split with the Federal Circuit, which had held the opposite. The panel disagreed with the taxpayer that its interpretation conflicted with a Fifth Circuit decision, which the panel observed had not evaluated the meaning and scope of the exception. Although the panel recognized alignment with a Second Circuit’s statement that intent of a tax preparer extends the statute of limitations, it declined to rely on the decision due to differences in the case (*Murrin v. Comm’r of Internal Revenue*).
- **Tax:** The Sixth Circuit held that the filing deadline in 26 U.S.C. § 6213(a), which gives most taxpayers 90 days from the date the Internal Revenue Service mails a notice of deficiency in payment for taxes owed to file a redetermination petition with the Tax Court challenging the deficiency, is nonjurisdictional and subject to equitable tolling. The decision aligns with rulings by the Second and Third Circuits, but it splits from the view of the Seventh and Ninth Circuits that Section 6213(a)’s deadline is jurisdictional and therefore not subject to equitable tolling. Applying this holding, the Sixth Circuit reversed the tax court’s dismissal of the taxpayer’s petition for lack of jurisdiction (*Oquendo v. Comm’r of Internal Revenue*).

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