



Congressional Court Watcher: Circuit Splits from October 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 October 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.

- **Civil Procedure:** The Fourth Circuit partially reversed a lower court’s ruling that plaintiffs in a putative class action lacked standing to sue an insurance company after hackers obtained their driver’s license numbers in a data breach. The plaintiffs raised various civil claims relating to the data breach, including under the [Driver’s Privacy Protection Act](#). The panel agreed with the lower court that the mere acquisition of the license numbers by hackers did not constitute a **concrete injury** sufficient to establish standing under Article III of the Constitution. Still, the court held that a subset of the plaintiffs had alleged a concrete injury from their hacked license numbers being posted on the dark web. In reaching this conclusion, the court applied the Supreme Court’s holding in *TransUnion LLC v. Ramirez* that when a federal statute provides a cause of action for a violation of federal law, a plaintiff must demonstrate a “concrete harm”

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closely related to a harm traditionally recognized in American law. Diverging from the [Seventh Circuit's conclusion](#) in a similar case, the Fourth Circuit found that the harm from having driver's license numbers listed on the dark web was analogous to the tort of public disclosure of private information, and thus satisfied the standing requirement (*Holmes v. Elephant Ins. Co.*).

- **Civil Procedure:** A divided Sixth Circuit upheld a lower court's certification of a class action against an automobile insurer accused of wrongly reducing the valuations of customers' vehicles that were totaled in accidents, allegedly in breach of contracts with its customers and in violation of state law. The issue before the court was whether the plaintiffs satisfied the class certification requirements of [Federal Rule of Civil Procedure 23](#). In allowing the class action to proceed, the panel majority identified two circuit splits. First, the court joined circuits that have held that an alleged breach of contract constitutes an injury-in-fact sufficient for [Article III standing](#), disagreeing with the [Seventh Circuit](#) and other courts that require a tangible harm to result from the breach. Second, the panel majority found no abuse of discretion in the lower court's conclusion that questions of law and fact common to the class members relating to the valuation methodology used by the automobile insurer predominated over questions specific to individual class members (as required for class certification under Rule 23). The majority identified the [Third](#), [Fourth](#), [Fifth](#), [Seventh](#), and [Ninth Circuits](#) as having declined to certify similar insurance valuation class actions, describing those courts as reasoning that individualized damages calculations for each plaintiff predominated over common questions of law or fact (*Clippinger v. State Farm Automobile Ins. Co.*).
- **Criminal Law & Procedure:** The Second Circuit vacated a criminal forfeiture order against a defendant convicted of robbery under the [Hobbs Act](#). The court held that the scope of the order was improper because it was calculated based on a pro rata share of what the group of robbery perpetrators took, rather than on what the defendant directly acquired. Under [18 U.S.C. § 981\(a\)\(1\)\(C\)](#), property that "constitutes or is derived from proceeds traceable to a violation" of certain listed statutes—including the Hobbs Act—is subject to forfeiture to the United States. (Although Section 981 concerns civil forfeiture, [28 U.S.C. § 2461](#) permits criminal forfeiture as a form of punishment when civil forfeiture is authorized.) Widening a circuit split, the court joined the [Third](#) and [Ninth Circuits](#) in holding that criminal forfeiture under the governing statutes is limited to property tainted by the underlying offense and actually acquired by the defendant. These courts' view relies on the Supreme Court's decision in *Honeycutt v. United States*, which interpreted a different forfeiture statute that the courts viewed as functionally similar to Section 981(a)(1)(C). The Second Circuit also acknowledged that the [Sixth](#) and [Eighth Circuits](#) have taken a different view. Those courts have interpreted the statute at issue in *Honeycutt* as meaningfully distinct from Section 981(a)(1)(c) and have held that forfeiture under that provision may extend to property acquired by a co-defendant, so long as that property is traceable to the offense (*United States v. Elias*).
- **Criminal Law & Procedure:** A divided panel of the Sixth Circuit vacated sentences reduced by the district court under [Section 404](#) of the First Step Act and remanded for further proceedings. The panel addressed a circuit split regarding whether the First Step Act permits a reduction of sentences in a defendant's conviction for offenses not covered by the Act's reduction provisions in addition to reductions for covered offenses. In line with the [Fourth](#), [Seventh](#), and [Eighth Circuits](#), the panel majority determined that a district court has discretion under the Act to reduce sentences for noncovered offenses along with covered offenses if the noncovered offenses are part of a sentencing package—where a sentence for one count affects the sentence for another.

Acknowledging that its holding split from decisions of the [Second](#) and [Tenth](#) Circuits, the panel majority pointed to the Act's lack of explicit restrictions applicable to reductions to sentences for noncovered offenses in finding that district courts retain discretion (*United States v. Dale*).

- **Criminal Procedure:** A divided Sixth Circuit panel declined to expand a petitioner's [Certificate of Appealability](#) (COA), which he sought to be able to present more arguments to the appellate court during his habeas corpus proceedings. Under the [Antiterrorism and Effective Death Penalty Act of 1996](#) (AEDPA), a petitioner may not appeal from final orders in certain habeas corpus proceedings unless the judge issues a COA. In this case, after petitioner's habeas corpus hearing in district court—where he asserted trial counsel was constitutionally ineffective for four separate reasons—the district court declined to issue a COA. Petitioner appealed this denial, and a panel of the Sixth Circuit—called a motions panel, for its role in screening incoming petitions without deciding the merits—granted a COA on only one of his four theories of relief. The Sixth Circuit merits panel—which considers the substance of a petitioner's arguments—then declined to expand the petitioner's COA. First, the panel explained that the text and structure of AEDPA indicated that merits panels were not to consider issues outside the scope of the COA. The panel opined that one purpose of AEDPA was to limit a petitioner's ability to seek relief in the federal courts and to promote finality of convictions. The COA process promotes finality by requiring a petitioner to seek leave to present an argument before merits briefing begins. If merits panels reconsidered the determinations of motions panels, this would be counter to AEDPA's text and structure, the court said. Additionally, the panel explained, the law-of-the-case doctrine was a further reason not to expand the COA. This doctrine precludes revisiting questions decided at earlier stages of the same case. The court explained that the motions panel's decision to grant a COA on only one theory of relief is part of the law of the case that the merits panel may not reconsider, because none of the exceptions to that doctrine applied in this instance. In so concluding, the Sixth Circuit split from the [Third Circuit](#), which permits a merits panel in certain circumstances to expand a COA (*Randolph v. Macauley*).
- **Criminal Procedure:** A divided Eighth Circuit determined that a petitioner's motion to file a belated appeal tolled AEDPA's [statute of limitations](#), reversing and remanding a district court's order to the contrary. After the petitioner was convicted at trial, he asked his lawyer to appeal the case; instead, the attorney filed a motion to withdraw without filing an appeal. By the time the petitioner was able to file his paperwork for his direct appeal in the correct court, the deadline to appeal had passed. The petitioner then filed a motion for belated appeal, which was denied. In subsequent habeas corpus proceedings, petitioner alleged he was deprived of his constitutional right to a direct appeal. The question was whether the statute of limitations in AEDPA was tolled while petitioner's motion for a belated appeal was pending. Under AEDPA, the [statute of limitations is tolled](#) while a "properly filed application for State post-conviction or other collateral review ... is pending." The Eighth Circuit explained that collateral review is a "judicial reexamination of a judgment or claim in a proceeding outside of the direct review process." The petitioner argued that his motion for belated direct appeal constituted "collateral review" because a belated-appeal motion would cause the state court to begin new proceedings. The Eighth Circuit agreed, concluding that a motion for belated direct appeal constitutes "collateral review" within the meaning of AEDPA, and so tolls the statute of limitations. In so concluding, the Eighth Circuit joined the [Sixth Circuit](#), which previously assumed without deciding that pending belated-appeal motions toll AEDPA's

statute of limitations, and split with the [Eleventh Circuit](#), which previously held to the contrary (*Garrett v. Payne*).

- **Labor & Employment:** The Fifth Circuit granted in part an employer’s petition for review of an order of the National Labor Relations Board (NLRB), which had found that the termination of a group of employees interfered with their right to engage in collective bargaining activities, and remanded in part to the NLRB. Although the court rejected the employer’s contention that some of the discharged employees were supervisors and not employees under the [National Labor Relations Act \(NLRA\)](#), it agreed with the employer that the NLRB did not have authority under [29 U.S.C. § 160\(c\)](#) to order full compensatory damages, including for foreseeable harms. The court identified a circuit split regarding the scope of the NLRB’s authority to award damages. Agreeing with the [Third Circuit](#) and splitting with the [Ninth Circuit](#), the court distinguished between equitable remedies such as backpay and related costs that are authorized by the statute, and legal remedies such as compensatory damages that are not. The Fifth Circuit concluded that the NLRB’s award of all foreseeable costs associated with the employees’ discharge exceeded its statutory authority to order equitable remedies (*Hiran Mgmt., Inc. v. Nat’l Lab. Rels. Bd.*).
- **Labor & Employment:** The Ninth Circuit granted the NLRB’s application for enforcement of an order finding a violation of the NLRA for terminating an employee for engaging in protected activities. At the outset, the court identified a circuit split regarding whether it could exercise jurisdiction over constitutional challenges to the NLRB that had not been raised in the administrative proceeding. The Ninth Circuit agreed with the [D.C. Circuit](#) and split with the [Eighth Circuit](#), finding jurisdiction over unexhausted constitutional claims under the NLRA’s “extraordinary circumstances” [exception](#). Having established jurisdiction over the claims, the court dismissed the employer’s constitutional challenge to statutory removal protections for NLRB Administrative Law Judges based on an insufficient showing of actual harm to receive retroactive relief. The court also rejected the argument that the NLRB’s award of foreseeable costs was legal in nature rather than equitable and thus could potentially trigger the right to a jury trial under the [Seventh Amendment](#) in accordance with [Supreme Court](#) precedent. The court found that the NLRB’s foreseeable harm remedies were equitable in that they aimed to restore the status quo absent the unfair labor practice (*Nat’l Lab. Rels. Bd. v. N. Mountain Foothills Apartments*).
- **Speech:** A divided panel of the Sixth Circuit ruled that a school district may prohibit students from wearing a slogan that the school reasonably understands to be vulgar, even if the slogan conveys a political message. [First Amendment](#) caselaw ensures students retain some measure of free speech while at school, but schools may regulate student speech when—among other things—it is indecent, lewd, or vulgar. The panel majority, following circuit precedent, agreed that the school district deserved deference in its decision to bar students from wearing these sweatshirts, which bore a well-recognized euphemistic chant that stood in for profanity directed at the President. With this conclusion, the Sixth Circuit split from the [Third Circuit](#), which had held in an en banc decision that schools may not restrict student speech that a “reasonable observer could interpret as lewd” if the speech plausibly comments on a social or political issue. The differing holdings stemmed from the appellate courts’ diverging interpretations of [Supreme Court](#) precedent in school speech cases such as *Bethel School District No. 403 v. Fraser* and *Morse v. Frederick (B.A. v. Tri County Area Schools)*.

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