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Legal Sidebar

Congressional Court Watcher: Circuit Splits from November 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 November 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 Rights:** The Tenth Circuit affirmed the district court's judgment against a U.S. Army employee who brought a Title VII employment discrimination claim alleging a hostile work environment based on gender. Among other findings, the panel rejected the plaintiff's argument that the district court should have applied the Supreme Court's decision in *Muldrow v. City of St. Louis*, which clarified that a plaintiff must prove only "some injury" related to employment terms or conditions to bring a Title VII claim related to a discrete employment action (e.g., firing or reassignment). The panel concluded that *Muldrow* does not apply to hostile work environment claims. Instead, the panel held that directly applicable earlier Supreme Court caselaw remained controlling, requiring a more stringent showing of "severe or pervasive" mistreatment to establish such claims. The panel diverged from the Sixth Circuit, which applied *Muldrow*'s

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reduced showing of harm to both discrete action and hostile work environment claims (*Russell v. Driscoll*).

- **Firearms:** A divided Fifth Circuit affirmed a criminal defendant's conviction and sentence for unlawful possession of a firearm as an alien admitted under a nonimmigrant visa. Among other things, the majority agreed with the trial court that the defendant was not entitled to assert an entrapment-by-estoppel defense, under which the defendant would have argued that a federally licensed, private firearms dealer misrepresented the defendant's eligibility to possess firearms he rented from the dealer. The panel described entrapment by estoppel as a defense available when a government official affirmatively misrepresents the law, actively assuring the defendant that the conduct is legal. The panel majority held that the defense was unavailable because the dealer was not a federal officer. The majority noted its conclusion that a federally licensed firearm dealer is not a federal officer aligns with the Seventh, Eighth, Tenth, and Eleventh Circuits, but that the Ninth Circuit has held that dealers may be considered federal officers for purposes of entrapment-by-estoppel claims (*United States v. Ahmadou*).
- **Firearms:** A divided Fifth Circuit panel vacated a criminal defendant's conviction under 18 U.S.C. § 922(g)(1) for possessing a firearm as a convicted felon, holding that the statute violated the Second Amendment as applied to the defendant based on his prior conviction for possessing a firearm as an unlawful user of marijuana under 18 U.S.C. § 922(g)(3). The panel majority followed an earlier Fifth Circuit decision that held Section 922(g)(1) may be unconstitutional as applied to certain felons, which the majority described as aligning with precedential decisions by the First, Third, Sixth, and Seventh Circuits. This stands in contrast to decisions from the Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits, which have upheld Section 922(g)(1) as categorically constitutional for all felons. The Fifth Circuit majority concluded that permanently prohibiting firearm possession based on this defendant's predicate felony offense involving habitual marijuana use was inconsistent with the Second Amendment because the prohibition was not sufficiently analogous to historical restrictions on firearm possession by dangerous or intoxicated individuals. The panel majority also noted that its approach to deciding whether a criminal defendant is a dangerous felon who may be subject to Section 922(g)(1) considered only the defendant's felony history, in contrast to the approach of the Third and Sixth Circuits, which also consider the felon's prior misdemeanor offenses when assessing dangerousness (*United States v. Mitchell*).
- **Environmental Law:** The Ninth Circuit concluded that a plaintiff's outstanding request for civil penalties under the Clean Water Act was insufficient for Article III standing in view of existing mootness doctrine and the defendant's compliant behavior. The defendant restaurant had for years discharged fireworks during its Fourth of July celebrations, and the plaintiff environmental group alleged this was a violation of the Clean Water Act. After the initial case was filed, the defendant applied for, and received, a permit for fireworks displays over the water; this permit had not been available when the initial case was filed. The Ninth Circuit concluded the permit mooted the matter, even though the plaintiff had an outstanding demand for civil penalties. In so concluding, the Ninth Circuit agreed with the Eighth Circuit, which understood the request for civil penalties, like a request for injunctive relief, to be mooted when the defendant receives a permit to discharge the pollutant. The court observed that its conclusion split from the Second, Third, Fourth, Seventh, and Eleventh Circuits, each of which has held that any request for civil penalties defeats mootness. The Ninth Circuit noted that these contrary decisions were concluded before a seminal Supreme Court case changed the mootness doctrine. Under that case, the parties must have a "continuing interest" in the litigation,

which the panel explained would be impossible when no threat of future violation exists (*Coastal Env't Rights Found. v. Naples Rest. Grp., LLC*).

- **Immigration:** The Fourth Circuit rejected an alien's challenge to a removal order. The court held that the alien's conviction for receiving stolen property was a crime involving moral turpitude (CIMT), rendering him statutorily ineligible for cancellation of removal. The court noted that its decision aligned with most reviewing courts but diverged from the Ninth Circuit, which recognized that receipt of stolen property constitutes a CIMT only if the offense includes, as an element, an intent to permanently deprive the owner of the property (*Solis-Flores v. Bondi*).
- **Immigration:** The Tenth Circuit concluded that the Equal Access to Justice Act (EAJA) authorized awarding fees in habeas actions challenging immigration detention. After the plaintiff was released from immigration detention, she filed a motion in federal district court for attorneys' fees under EAJA. EAJA authorizes fees in "any civil action," with some exceptions. The court held that plaintiff's habeas petition was a "civil action" within the meaning of EAJA, drawing on the consistent use of this term since English common law and finding that every federal circuit court with caselaw on the question before EAJA's passage had so concluded. The panel was unpersuaded by the government's invocation of Fourth and Fifth Circuit caselaw concluding that some habeas actions are hybrid, not purely civil, and precluding EAJA fees. The Tenth Circuit explained that it split from these holdings because they did not consider the civil nature of habeas petitions, particularly those challenging immigration detention (*Daley v. Ceja*).
- **Religion:** The Ninth Circuit concluded the Religious Freedom Restoration Act (RFRA) does not apply in actions where the government is not a party. The plaintiffs had sued an insurance company for failing to provide certain treatments for gender dysphoria, and the company asserted RFRA as a defense. The panel held that RFRA was not applicable here, for several reasons, concluding that the text and structure of RFRA did not indicate Congress's intent to regulate private parties. In so concluding, the Ninth Circuit agreed with the Sixth and Seventh Circuits but split from the Second Circuit, which has suggested that RFRA may apply to actions between private parties (*Pritchard on behalf of C.P. v. Blue Cross Blue Shield of Illinois*).
- **Takings:** The Ninth Circuit concluded the plaintiff did not state a claim under the Fifth Amendment's Takings Clause when his business suffered damage after city police officers entered in pursuit of a fugitive. The panel relied on a "necessity exception" to the Takings Clause, exempting from compensation law enforcement's reasonable and necessary destruction of property to protect public safety. In so concluding, the panel split from the Seventh Circuit, which has held that there is a categorical police-power exception to the Takings Clause and has flatly precluded compensation under the Fifth Amendment when the government destroys private property pursuant to its police power. Instead, the panel agreed with the reasoning of the Fourth, Fifth, Sixth, and the Federal Circuits, each of which has concluded there is no categorical police-power exception to the Takings Clause. However, in none of these cited cases—whether applying the necessity exception or the categorical exception—did the plaintiffs state a claim that the courts found compensable under the Takings Clause (*Pena v. City of Los Angeles*).

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