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SUMMARY

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The U.S. Courts of Appeals frequently act as the final arbiters of questions of law within their respective jurisdictions. Although the Supreme Court of the United States sits at the pinnacle of the American judicial system and acts as the final arbiter on questions of federal law, the number of precedential decisions issued each year by the Court is quite small. For example, in both of its two most recently concluded terms, the 2023 and 2024 Terms, the Court issued final decisions in 68 argued cases, 64 through signed opinions and the remainder through per curiam opinions. By contrast, the courts that sit just below the Supreme Court in the federal judicial hierarchy—the U.S. Courts of Appeals for 13 "circuits"—issue thousands of precedential decisions every year. The most current data available from the U.S. Courts reveal that in FY2024 and FY2023, the appellate courts for the 12 "regional" circuits (i.e., all of the federal courts of appeals other than the U.S. Court of Appeals for the Federal Circuit) published, respectively, 3,369 and 3,325 precedential opinions disposing of appeals to those courts.

This state of affairs is a product of both the design and the historical evolution of the federal judiciary. With limited exceptions, the Supreme Court exercises wholly discretionary appellate jurisdiction, deciding for itself which appeals it will accept out of the thousands that are submitted for its consideration each year. The federal courts of appeals, by contrast, are statutorily obligated to accept and decide all appeals challenging a final decision of a federal trial court, as well as certain appeals challenging non-final orders. What is more, in the absence of a binding Supreme Court decision on an issue, each federal court of appeals is free to decide that issue independently, and its decision will then be binding on all federal trial courts within the jurisdiction of that circuit. As a result, the federal appellate courts can, and often do, reach different conclusions on the same issue of federal law, causing a "split" among the circuits that leads to the non-uniform application of federal law among similarly situated litigants. These conflicts may then be locked into place due to the judge-made "law of the circuit doctrine," which all of the federal courts of appeals have adopted. Under this doctrine, the first published decision on a question of federal law by a three-judge panel within a circuit—including one diverging from a decision in another federal court of appeals—is generally binding on all later panels within that same circuit unless the decision is reviewed and overruled by the Supreme Court or a later (usually en banc) appellate panel within that circuit, or is superseded by a legislative change in the governing law.

The U.S. Courts of Appeals play a pivotal role in shaping federal law. Their decisions often determine how statutes and constitutional provisions apply in practice, particularly when the Supreme Court declines review. Because these rulings bind all district courts within a circuit and frequently diverge across circuits, they can create lasting differences in the interpretation and application of federal law nationwide. In 2025, more than 100 circuit splits emerged or widened and remain unresolved as of this report. Congress is constitutionally empowered to respond legislatively to many of these decisions, and may amend to clarify statutory provisions that courts interpret differently across the country.

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The Supreme Court of the United States sits at the pinnacle of the American judicial system, and its decisions are the final word on questions of federal law, having nationwide effect. It is thus unsurprising that the Supreme Court's decisions regularly garner widespread attention from the general public, the media, and the other branches of federal government, including Congress. The Supreme Court, however, decides fewer than 100 argued cases annually, compared to the thousands of precedential decisions issued every year by the courts that sit just below the Supreme Court in the federal judicial hierarchy—the U.S. Courts of Appeals for the 13 judicial circuits, commonly referred to as "circuit courts." This disparity ensures that the U.S. Courts of Appeals frequently act as the final arbiters of questions of federal law within their respective jurisdictions.

This report provides insight into the substantial, and often decisive, role played by the federal courts of appeals in applying and developing federal law. The report begins with a brief description of the historical development and current organization of the federal judiciary as a whole. The report then provides information regarding the structure and role of the U.S. Courts of Appeals within the federal judicial system. The report next discusses the impact of "circuit splits"—that is, divergent decisions among the federal courts of appeals on the same federal legal issue—on the application and evolution of federal law. The report then offers some considerations for Congress before concluding with a catalogue of 106 circuit splits that arose or deepened within the federal courts of appeals in 2025, and that remain in place as of the date of this report. The discussed circuit splits were identified by the *Congressional Court Watcher*, a CRS Legal Sidebar series that tracks notable federal appellate court decisions of interest to Congress.

The Structure of the Federal Court System

Article III, Section 1 of the U.S. Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."[1] Pursuant to this directive, Congress created the Supreme Court of the United States and two tiers of "inferior" Article III federal courts, the U.S. Courts of Appeals and the U.S. District Courts.[2] The term "inferior" as used in Article III connotes a court's placement below the Supreme Court in the organizational hierarchy of the federal judiciary.[3]

[1] U.S. CONST. art. III, § 1. *See also id.* art. I, § 8, cl. 9 ("The Congress shall have Power . . . To constitute Tribunals inferior to the supreme Court.").

[2] Congress established the Supreme Court, 3 circuit courts, and 13 district courts in the First Judiciary Act of 1789. *See* Judiciary Act of 1789, 1 Stat. 73. The current structure of the Article III judiciary is set forth in 28 U.S.C. §§ 1, 41, 81–131, 251.

[3] Article III courts are vested with the full judicial power conferred by the Constitution, and thus are sometimes called "constitutional" courts. *See* American Ins. Co. v. Canter, 26 U.S. (1 Pet.) 511, 546 (1828). Congress has exercised other of its constitutional powers to create a number of non-Article III, or "legislative," courts to undertake specialized functions or fill unique needs, such as the U.S. Court of Federal Claims, the U.S. Tax Court, the U.S. Court of Appeals for Veterans Claims, and the territorial district courts. *See* 26 U.S.C. § 7441 ("There is hereby established, under article I of the Constitution of the United States, a court of record to be known as the United States Tax Court."); 28 U.S.C. § 171 (stating that the U.S. Court of Federal Claims "is declared to be a court established under article I of the Constitution of the United States"); 38 U.S.C. § 7251 ("There is hereby established, under Article I of the Constitution of the United States, a court of record to be known as the United States Court of Appeals for Veterans Claims."); CRS Report R47641, *Federal and State Courts: Structure and Interaction*, by Joanna R. Lampe and Laura Deal (2023); Cong. Rsch Serv., *Congressional Power to Establish Non-Article III Courts*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIII-S1-9-1/ALDE_00013604/ (last visited Jan. 28, 2026); Cong. Rsch Serv., *Power of Congress over Territories*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artIV-S3-C2-3/ALDE_00013511/ (last visited Jan. 28, 2026). A full discussion of the legal bases for, functions of, and constitutional limitations applicable to non-Article III courts is beyond the scope of this report.

The U.S. District Courts occupy the lowest tier of the federal judicial hierarchy.[4] They are the federal trial courts, empowered to try both civil and criminal cases that meet the criteria for the exercise of federal subject-matter jurisdiction.[5] There is at least one district court in each state along with one in the District of Columbia and one in Puerto Rico.[6] In addition, the U.S. Court of International Trade is a specialized Article III trial court that has nationwide jurisdiction over claims involving international trade and U.S. customs laws.[7]

The 13 U.S. Courts of Appeals occupy the middle tier of the federal judiciary's hierarchy.[8] They decide appeals by parties challenging a final decision of a federal district court or one of the specialized courts, as well as appeals challenging certain interlocutory, or non-final, orders.[9] In addition, some federal statutes provide that particular agency actions are directly reviewed by the U.S. Courts of Appeals.[10] Direct review of agency decisions makes up a sizable portion of the federal appellate docket.[11]

The U.S. Supreme Court is the highest court in both the federal judicial system and, on questions of federal law, the entire American judiciary. While the Court has original jurisdiction over

[4] *See* 28 U.S.C. §§ 81–131; *About Federal Courts: Court Role and Structure*, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/court-role-and-structure [https://perma.cc/U5Q6-SDHN] (last visited Jan. 28, 2026) [hereinafter *Court Role and Structure*].

[5] Congress has granted federal courts two categories of subject-matter jurisdiction. "Federal-question jurisdiction" encompasses "all civil actions" that "aris[e] under" federal law. 28 U.S.C. § 1331. "Diversity jurisdiction" encompasses civil cases in which the monetary amount in controversy exceeds $75,000 and there is diversity of citizenship among the parties—for example, the parties are citizens of different states. *Id.* § 1332(a). The Supreme Court has explained that "[e]ach serves a distinct purpose: Federal-question jurisdiction affords parties a federal forum in which 'to vindicate federal rights,' whereas diversity jurisdiction provides 'a neutral forum' for parties from different States." Home Depot U.S.A., Inc. v. Jackson, 587 U.S. 435, 438 (2019) (quoting Exxon Mobil Corp. v. Allapattah Servs. Inc., 545 U.S. 546, 552 (2005)).

[6] *See* 28 U.S.C. §§ 81–131; *Court Role and Structure*, *supra* note 4; *About Federal Courts*: *Federal Courts & the Public, Court Website Links*, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links [https://perma.cc/BW2J-Z5ZN] (last visited Jan. 28, 2026) [hereinafter *Federal Court Website Links*]. Each federal district court includes an Article I bankruptcy court dedicated to resolving bankruptcy cases. *See id.*; 28 U.S.C. § 151; *Court Role and Structure*, *supra* note 4. Each of the territories of Guam, the Northern Mariana Islands, and the Virgin Islands has a non-Article III trial court that handles all federal cases, including bankruptcy cases. *See* 48 U.S.C. § 1424 (Guam); *id.* §§ 1611, 1612(a) (Virgin Islands); *id.* §§ 1821–1822 (Northern Mariana Islands); *Court Role and Structure*, *supra* note 4; *Federal Court Website Links*, *supra*.

[7] *See* 28 U.S.C. § 251; *About the Court*, U.S. COURT OF INTERNATIONAL TRADE, https://www.cit.uscourts.gov/about-court [https://perma.cc/QL5N-W5UC] (last visited Jan. 28, 2026).

[8] *See* 28 U.S.C. § 41.

[9] *See* "The Structure and Role of the U.S. Courts of Appeals," *infra*.

[10] *See, e.g.*, 8 U.S.C. § 1252(a) (authorizing direct appellate review of most final immigration removal orders issued in administrative proceedings); 28 U.S.C. § 2342 (giving federal appeals courts exclusive jurisdiction to review various agency actions); 29 U.S.C. § 655(f) (providing that a pre-enforcement challenge to an emergency temporary standard issued by the Occupational Safety and Health Administration may be filed with the U.S. Court of Appeals in the jurisdiction where the petitioner resides or has a principal place of business). Some statutes may specify that review takes place in a particular appellate court. *See, e.g.*, 42 U.S.C. § 7607(b) (granting the U.S. Court of Appeals for the D.C. Circuit exclusive jurisdiction for review of Clean Air Act regulations promulgated by the Environmental Protection Agency).

[11] In the 12-month period ending March 31, 2025, for example, approximately 12.3% of all filings in the 12 regional U.S. Courts of Appeals involved appeals of agency administrative decisions. Federal Judicial Caseload Statistics 2025, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical-reports/federal-judicial-caseload-statistics/federal-judicial-caseload-statistics-2025 [https://perma.cc/26VD-Z6FE] (last visited Feb. 2, 2026). About 75% of reviewed agency administrative decisions were appeals of immigration decisions by the Board of Immigration Appeals. *Id.*

certain legal disputes,[12] most cases come to the Court through appeals from decisions of the U.S. Courts of Appeals and state supreme courts, when the state case raises issues of federal law.[13]

The Structure and Role of the U.S. Courts of Appeals

Twelve of the 13 U.S. Courts of Appeals are organized into regional "circuits," meaning that each court exercises jurisdiction over appeals from the district courts within a specific set of states and, sometimes, U.S. territories.[14] For example, the U.S. Court of Appeals for the First Circuit (First Circuit) exercises jurisdiction over appeals from the district courts in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.[15] The jurisdiction of the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) extends over more states and territories than any other regional circuit court, with the Ninth Circuit adjudicating appeals from the district courts in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, the Northern Mariana Islands, Oregon, and Washington.[16] **Figure 1** below depicts the geographic jurisdiction of each of the 12 regional U.S. Courts of Appeals.

The U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) exercises geographic jurisdiction only over appeals from the U.S. District Court for the District of Columbia.[17] That limited geographic reach belies, however, the wide scope of cases handled by the D.C. Circuit, which has been called the second-most-important court in the country after the Supreme Court.[18] Due to a combination of geographic and statutory factors, the D.C. Circuit handles a uniquely large number of administrative law cases, national security cases, and other cases concerning the federal government as compared to the other circuits.[19] The D.C. Circuit also exercises exclusive appellate jurisdiction over a variety of specialized subject matter, including decisions of copyright royalty judges[20] and certain military commissions.[21]

The jurisdiction of the 13th federal court of appeals—the U.S. Court of Appeals for the Federal Circuit (Federal Circuit)—is defined by subject matter rather than geography.[22] The Federal

[12] U.S. CONST., art. III, § 2, cl. 2 (giving the Supreme Court original jurisdiction over "all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party"); 28 U.S.C. § 1251 (setting forth matters over which the Court has original and exclusive jurisdiction—i.e., controversies between two or more states—and cases where it has both original and appellate jurisdiction).

[13] *See* 28 U.S.C. § 1254 (providing that "[c]ases in the courts of appeals may be reviewed by the Supreme Court"); *id.* § 1257 (providing that "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court" when the state case involves an issue of federal law).

[14] *See* 28 U.S.C. § 41.

[15] *See id.*

[16] *See id.*; 48 U.S.C. § 1821(a) ("The Northern Mariana Islands shall constitute a part of the same judicial circuit of the United States as Guam."); **Figure 1**, *infra*.

[17] *See* 28 U.S.C. § 41.

[18] *See* Jake Kobrick, *The Role of the U.S. Courts of Appeals in the Federal Judiciary, Differences Between Circuits*, https://www.fjc.gov/history/courts/Role-of-the-Courts-of-Appeals [https://perma.cc/R9T4-MVJ6] (last visited Jan. 28, 2026) [hereinafter *Differences Between Circuits*]; Richard J. Pierce Jr., *The Special Contributions of the D.C. Circuit to Administrative Law*, 90 GEO. L.J. 779, 779 (2002).

[19] *See Differences Between Circuits*, *supra* note 18; Eric M. Fraser et al., *The Jurisdiction of the D.C. Circuit*, 23 CORNELL J. OF L. & PUB. POL. 131, 140–48, 152 (2013); Brett M. Kavanaugh, *The Courts and the Administrative State*, 64 CASE W. RES. L. REV. 711, 715, 719–26 (2014); Pierce, *supra* note 18.

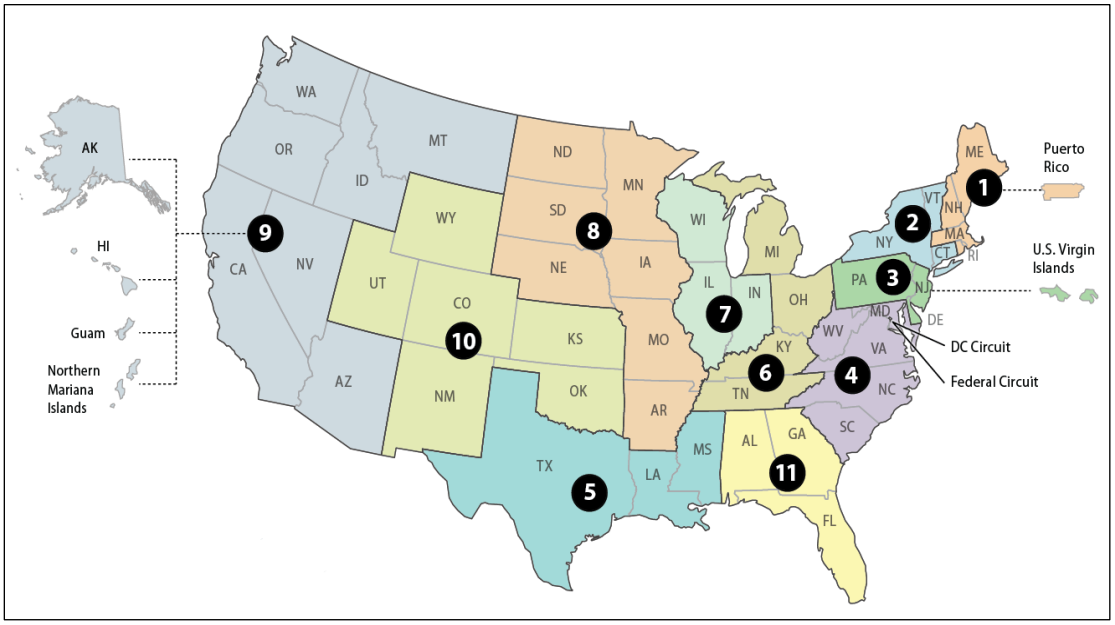
[20] 17 U.S.C. § 803(d)(1).

[21] 10 U.S.C. § 950g(a).

[22] *Statistics & Reports: Judicial Business, U.S. Courts of Appeals—Judicial Business 2024, U.S. Court of Appeals for the Federal Circuit*, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/data-news/reports/statistical- (continued...)

Circuit exercises exclusive nationwide jurisdiction over appeals involving customs and patent claims, as well as appeals from the U.S. Court of Federal Claims (which adjudicates suits for money damages brought against the United States) and the U.S. Court of International Trade.[23] The Federal Circuit also exercises exclusive jurisdiction over specified appeals from the Merit Systems Protection Board, the U.S. Court of Appeals for Veterans Claims, and agency boards of contract appeals.[24]

Figure 1. Geographic Boundaries of the U.S. Courts of Appeals and District Courts



Source: Admin. Office of the U.S. Courts, https://www.uscourts.gov/about-federal-courts/federal-courts-public/court-website-links [https://perma.cc/BW2J-Z5ZN] (last visited Jan. 28, 2026).

The U.S. Courts of Appeals are "intermediate" courts of appeals.[25] This is because they occupy the middle tier of the federal court system between the federal district courts and the Supreme Court, and because their decisions are subject to review by the Supreme Court.[26] As a practical matter, however, the Supreme Court exercises its review authority in only a limited number of cases each year. For example, during its 2024 Term, the Court heard arguments in 73 cases, deciding 64 through signed opinions and 4 through per curiam opinions, while in its 2023 Term,

reports/judicial-business-united-states-courts/judicial-business-2024/us-courts-appeals-judicial-business-2024 [https://perma.cc/44CJ-XKW3] (last visited Jan. 28, 2026) [hereinafter *Judicial Business 2024—Federal Circuit*]; *Differences Between Circuits*, *supra* note 18.

[23] 28 U.S.C. § 1295(a)(1)–(5); *Judicial Business 2024—Federal Circuit*, *supra* note 22; *Court Role and Structure*, *supra* note 4; *Differences Between Circuits*, *supra* note 18.

[24] *See* 28 U.S.C. § 1295(a)(9)–(10) (appeals from the Merit Systems Protection Board and agency boards of contract appeals); 38 U.S.C. § 7292 (establishing the Federal Circuit's jurisdiction over appeals from the U.S. Court of Appeals for Veterans Claims). The U.S. Court of Appeals for Veterans Claims is a specialized Article I court with exclusive jurisdiction to review administrative decisions of the Board of Veterans' Appeals within the Department of Veterans Affairs. *See About the Court*, U.S. COURT OF APPEALS FOR VETERANS CLAIMS, https://www.uscourts.cavc.gov/about.php [https://perma.cc/MY5K-7KE8] (last visited Jan. 28, 2026).

[25] *See* Sentilles v. Inter-Caribbean Shipping Corp., 361 U.S. 107, 112 (1959) (Frankfurter, J., dissenting) (noting that the Evarts Act of 1891 "established intermediate courts of appeals to free th[e Supreme] Court from reviewing the great mass of federal litigation").

[26] *See* 28 U.S.C. § 1254.

the Court heard arguments in 69 cases, again deciding 64 through signed opinions and 4 through per curiam opinions.[27] (The total number of cases filed in the Supreme Court was 3,856 in the 2024 Term and 4,223 in the 2023 Term.[28])

By contrast, the most recent data available from the Administrative Office of the U.S. Courts indicate that in FY2024 and FY2023 the 12 regional federal circuits (i.e., all of the federal courts of appeals other than the Federal Circuit) published 3,369 and 3,325 precedential opinions in FY2024 and FY2023, respectively.[29] Overall, in FY2024, the 12 regional U.S. Courts of Appeals collectively issued 23,460 appellate opinions or orders in cases terminated on the merits, and 24,534 such opinions or orders in FY2023.[30]

The vast difference in the number of cases decided by the Supreme Court and the U.S. Courts of Appeals stems from the different scope of their respective appellate jurisdictions. With very limited exceptions, the Supreme Court exercises wholly discretionary appellate jurisdiction,[31] deciding for itself which appeals it will hear out of the thousands that are submitted for its consideration. The Court's rules indicate that the Court grants discretionary review, or a writ of certiorari, "only for compelling reasons," which may include

- a "conflict" among two or more U.S. Courts of Appeals "on the same important matter";[32]
- a "conflict" between a U.S. Court of Appeals and a state court of last resort on "an important federal question";[33]

[27] HON. JOHN G. ROBERTS, JR., 2025 YEAR END REPORT ON THE FEDERAL JUDICIARY 8 (2025), [hereinafter FEDERAL JUDICIARY 2025 YEAR-END REPORT]; HON. JOHN G. ROBERTS, JR., 2024 YEAR END REPORT ON THE FEDERAL JUDICIARY 10 (2024), https://www.supremecourt.gov/publicinfo/year-end/2024year-endreport.pdf [https://perma.cc/T82Z-YZTK]. The Supreme Court's annual term begins "on the first Monday in October and end[s] on the day before the first Monday in October of the following year." S. Ct. R. 3. The Court does not always issue a decision in cases after hearing oral arguments, such as when a case is dismissed as improvidently granted or scheduled for reargument in a later term.

[28] 2025 YEAR-END REPORT ON THE FEDERAL JUDICIARY, *supra* note 27, at 8. Besides several dozen "merits" decisions issued by the Court each year after full briefing and oral argument, the Supreme Court also issues orders granting or denying petitions for a writ of certiorari; rulings in emergency matters, such as requests to stay lower court decisions pending appeal; and orders setting deadlines and other procedures for litigation before the Court. While most of these orders involve either granting or denying certiorari in a case or routine procedural questions, some orders may have a major impact on high-profile litigation. For further discussion, see CRS Report R47382, *Congressional Control over the Supreme Court*, by Joanna R. Lampe (2023), at 27–32.

[29] ADMIN. OFFICE OF THE U.S. COURTS, U.S. COURTS OF APPEALS—TYPE OF OPINION OR ORDER FILED IN CASES TERMINATED ON THE MERITS, BY CIRCUIT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2024 at 1 tbl. B-12 (2024), https://www.uscourts.gov/sites/default/files/2025-01/jb_b12_0930.2024.pdf [https://perma.cc/SAF3-RU7Q] [hereinafter U.S. COURTS, tbl. B-12 (2024)]; ADMIN. OFFICE OF THE U.S. COURTS, U.S. COURTS OF APPEALS—TYPE OF OPINION OR ORDER FILED IN CASES TERMINATED ON THE MERITS, BY CIRCUIT, DURING THE 12-MONTH PERIOD ENDING SEPTEMBER 30, 2023 at 1 tbl. B-12 (2023), https://www.uscourts.gov/sites/default/files/data_tables/jb_b12_0930.2023.pdf [https://perma.cc/ES7R-J8BC] [hereinafter U.S. COURTS, tbl. B-12 (2023)]. These tallies include both signed and per curiam opinions, but not unsigned published orders that do not "expound the law as applied to the facts of the case and detail the judicial reasons upon which the judgment is based." U.S. COURTS, tbl. B-12 (2024), *supra*, at Note.

[30] U.S. COURTS, tbl. B-12 (2024), *supra* note 29; U.S. COURTS, tbl. B-12 (2023), *supra* note 29.

[31] Congress removed the last vestiges of the Supreme Court's mandatory appellate jurisdiction over judgments of the U.S. Courts of Appeals and state supreme courts in 1988. *See* Act of June 27, 1988, Pub. L. No. 100-352, 102 Stat. 662 (1988). The current statutes that confer and control the Supreme Court's jurisdiction are codified at 28 U.S.C. §§ 1251, 1253–1254, 1257–1260.

[32] S. Ct. R. 10(a).

[33] S. Ct. R. 10(a), (b).

- a "conflict" among two or more state courts of last resort on "an important federal question";[34]
- a decision of a state court or U.S. Court of Appeals on "an important federal question" that "conflicts with relevant decisions of" the U.S. Supreme Court;[35]
- a decision of a state court or U.S. Court of Appeals on "an important question of federal law" that "has not been, but should be, settled by" the U.S. Supreme Court;[36] and
- a decision of a U.S. Court of Appeals that "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of" the Supreme Court's "supervisory power."[37]

The scope of the U.S. Courts of Appeals' mandatory appellate jurisdiction is much broader. Under 28 U.S.C. § 1291, the 12 regional courts of appeals "shall have jurisdiction of appeals from all final decisions of the district courts of the United States."[38] This jurisdiction is mandatory because, under § 1291, "a party may appeal to a court of appeals *as of right* from 'final decisions of the district courts.'"[39] A final decision for these purposes "is normally limited to an order that resolves the entire case."[40]

The 12 regional U.S. Courts of Appeals also exercise appellate jurisdiction over certain interlocutory, or non-final, decisions of district courts under 28 U.S.C. § 1292. Section 1292(a) assigns these courts mandatory jurisdiction over appeals from "interlocutory orders of the district courts … granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions," "appointing receivers, or refusing orders to wind up receiverships," and "determining the rights and liabilities of the parties to admiralty cases."[41] Section 1292(b) grants the U.S. Courts of Appeals discretion to review other non-final orders if the district court first certifies that the "order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation."[42]

The Federal Circuit has similar mandatory and discretionary appellate authority over final decisions and non-final orders issued in the limited set of specialized cases over which Congress granted it exclusive jurisdiction.[43]

Each final published decision of a U.S. Court of Appeals establishes binding law, or precedent, that applies throughout that circuit, unless the decision is reviewed and overruled by the Supreme Court or a subsequent (most likely en banc) appellate panel within that circuit, or is superseded by a legislative change in the governing law.[44] As discussed earlier, only a fraction of final

[34] S. Ct. R. 10(b).

[35] S. Ct. R. 10(c).

[36] *Id.*

[37] S. Ct. R. 10(a).

[38] 28 U.S.C. § 1291.

[39] Ritzen Group, Inc. v. Jackson Masonry, LLC, 589 U.S. 35, 38 (2020) (emphasis added).

[40] *Id.*

[41] 28 U.S.C. § 1292(a).

[42] *Id.* § 1292(b).

[43] *See id.* §§ 1292(c)–(d), 1295.

[44] BRYAN GARNER ET AL., THE LAW OF JUDICIAL PRECEDENT 492–94 (2016) (discussing traditional rules for overruling (continued...)

decisions by the circuit courts are reviewed by the Supreme Court. In this way, the federal courts of appeals are at the forefront of the application and interpretation of every aspect of federal law. As one analysis observed, "Ultimately, the appellate courts 'bear the chief responsibility for lawmaking in the federal system' because the Supreme Court chooses to review an 'extremely narrow' band of cases."[45]

The Importance of Circuit Splits in the Evolution and Application of Federal Law

In exercising their broad mandatory and discretionary appellate jurisdiction, the U.S. Courts of Appeals decide constitutional questions and interpret the meaning of federal statutes and their interplay with other federal and state laws, international treaties, and the U.S. Constitution. They also frequently interpret federal agency rules to assess whether they adhere to Congress's statutory directives.

One of the clearest indicators that the federal courts of appeals are grappling with an unsettled issue of federal law is the existence of a conflict, or "split," among the circuits. A "circuit split" occurs when 2 or more of the 13 federal courts of appeals reach different conclusions on the same question of federal law—for example, by applying different interpretations of the same statutory term.[46] A court of appeals often expressly indicates in its opinion that its decision differs from that of another court or "deepens" a preexisting split among the circuits by joining one side in that conflicting interpretation of a point of law.[47] This difference results in the non-uniform treatment of similarly situated litigants, depending on the circuits that hear their cases, and also may lead to greater uncertainty for litigants in the circuits that have not yet addressed the issue.[48]

Circuit splits can arise when the Supreme Court has not unambiguously resolved the question, leaving the federal courts of appeals without mandatory precedent to follow.[49] In the absence of a binding Supreme Court decision on an issue, each federal court of appeals is free to decide that

circuit decisions, but noting that some judicial circuits' procedural rules allow a three-judge circuit panel to overturn an earlier decision). Historically, en banc review referred to a procedure by which all of the judges of a court of appeals who were in regular active service would review the decision of the three-judge panel that originally decided the matter. Due to the differing numbers of active judges that now comprise each of the 13 U.S. Courts of Appeals, the circuits may have different rules establishing what constitutes en banc review for that court. *Compare, e.g.*, 1st Cir. R. 40(c)(2)(A) (providing that "a court en banc consists solely of the circuit judges of this circuit in regular active service," with limited exceptions allowing participation by a senior judge), *with* 9th Cir. R. 35-3 ("The en banc court . . . shall consist of the Chief Judge of this circuit and 10 additional judges to be drawn by lot from the active judges of the Court. In the absence of the Chief Judge, an 11th active judge shall be drawn by lot, and the most senior active judge on the panel shall preside.").

[45] Jonathan M. Cohen & Daniel S. Cohen, *Iron-ing Out Circuit Splits: A Proposal for the Use of the Irons Procedure to Prevent and Resolve Circuit Splits Among United States Courts of Appeals*, 108 CALIF. L. REV. 989, 997 (2020) (quoting Shay Lavie, *Appellate Courts and Caseload Pressure*, 27 STAN. L. & POL'Y R. 57, 58 (2016).

[46] Circuit Split, LEGAL INFO. INST., https://www.law.cornell.edu/wex/circuit_split [https://perma.cc/A5YD-NRNM] (last visited Jan. 28, 2026) [hereinafter *Legal Info. Inst.*]; Cohen & Cohen, *supra* note 45, at 990; Christina M. Manfredi, *Waiving Goodbye to Personal Jurisdiction Defenses: Why United States Courts Should Maintain a Rebuttable Presumption of Preclusion and Waiver Within the Context of International Litigation*, 58 CATH. UNIV. L. REV. 233, 256 n.156 (2008).

[47] *See, e.g.*, United States v. Chavez, 29 F.4th 1223 (10th Cir. 2022), *cert. denied*, 143 S. Ct. 485 (2022).

[48] *Legal Info. Inst.*, *supra* note 46; Cohen & Cohen, *supra* note 45, at 990, 996. The non-uniform interpretation of the law may also affect federal agencies responsible for implementing statutes and regulations subject to conflicting judicial rulings. For further discussion, see CRS Report R47882, *Agency Nonacquiescence: An Overview of Constitutional and Practical Considerations*, by Benjamin M. Barczewski (2023).

[49] Manfredi, *supra* note 46, at 256 n.156.

issue independently, and that decision is then binding on all federal trial courts within the jurisdiction of that circuit.[50] What is more, all federal courts of appeals follow the "law of the circuit doctrine."[51] Under that doctrine, the first published decision on a question of federal law by a three-judge appellate panel within a circuit is generally binding on all later panels within that same circuit unless the decision is overruled by the Supreme Court or a later (typically en banc) appellate panel of that circuit, or is superseded by legislation.[52] If the Supreme Court decides a legal question that was the subject of a circuit split or if Congress resolves the question through legislation, all 13 federal courts of appeals are bound to apply those directives, ensuring nationwide uniformity on the issue.[53]

As noted earlier, a split among the circuits on a question of federal law is one of the main factors that prompts the Supreme Court to agree to accept an appeal.[54] Commenters have observed that the Supreme Court appears to fill the majority of its docket—often around 70%—with cases involving apparent conflicts.[55] The Supreme Court's rules make it clear, however, that the existence of a circuit split is not on its own sufficient to warrant Supreme Court review; the split must concern an "important matter."[56]

Thus, by both design and the historical evolution of the federal judiciary, the federal courts of appeals serve as incubators for legal issues of national importance and novel questions of federal law as those issues move toward possible resolution by the U.S. Supreme Court.[57] That process, however, ensures that a conflict among the federal courts of appeals may persist and deepen for years, unless and until the Supreme Court grants certiorari to resolve it.[58] In the absence of a Supreme Court decision, the federal courts of appeals remain the final decisionmakers on many of those questions.[59]

[50] Wyatt G. Sassman, *How Circuits Can Fix Their Splits*, 103 MARQ. L. REV. 1401, 1430–31 (2020) (noting that the Supreme Court's decision in Mast, Foos & Co. v. Stover Mfg. Co., 177 U.S. 485, 488 (1900), "paired with congressional maintenance of the regional circuits over time, can reasonably be read as support for a longstanding practice of treating decisions from other circuits as persuasive and not binding authority").

[51] Sassman, *supra* note 50, at 1406.

[52] *See id.* at 1401, 1405, 1406–07, 1426–27; Cohen & Cohen, *supra* note 45, at 1006. *See also* BRYAN GARNER ET AL., *supra* note 44, at 492–94. *See also* Hon. Michael S. Kanne, *The "Non-Banc En Banc": Seventh Circuit Rule 40(e) and the Law of the Circuit*, 32 S. Ill. U. L.J. 611 (2007-2008) (discussing Seventh Circuit rule requiring the circulation of any proposed panel opinion that would overrule a prior circuit decision to all active members of the court, and providing that the opinion not be published unless a majority of the members do not vote to rehear the issue en banc).

[53] *See* Manfredi, *supra* note 46, at 256 n.156.

[54] S. Ct. R. 10(a).

[55] Sassman, *supra* note 50, at 1421. *See also* Stephen M. Shapiro, et al., SUPREME COURT PRACTICE §§ 4.3, 4.4 (11th ed. 2013).

[56] S. Ct. R. 10(a).

[57] *See* Cohen & Cohen, *supra* note 45, at 998 (noting that some commenters "argue that the current system allows the circuits to act as laboratories for the development of federal law"); Sassman, *supra* note 50, at 1447–50.

[58] *See* Sassman, *supra* note 50, at 1403, 1405, 1419–21.

[59] *See* Cohen & Cohen, *supra* note 45, at 994–95 (noting that "the Court has left unresolved circuit splits in important and numerous areas of federal law," and that, "[e]ven if the Court changed course and shifted most of its focus to cases that present circuit splits, it might be unwilling or unable to hear enough cases to meaningfully reduce the number of circuit splits"); Sassman, *supra* note 50, at 1405 ("[T]he open secret is that the Supreme Court cannot possibly resolve all of the conflicts generated by the courts of appeals.").

Considerations for Congress

Congress is constitutionally empowered to respond legislatively to many federal judicial decisions. The volume and diffuse nature of appellate court decisions may, however, make it more challenging for an individual Member or their staff to monitor judicial developments at the appellate level than at the Supreme Court.[60] This characteristic may, in turn, make it much less likely that Congress will respond through legislation to issues raised by appellate court decisions. For instance, one study of congressional responses to appellate rulings concluded that, between 1990 and 1998, Congress responded "to only a minute percentage of cases decided by the courts of appeals, even though the majority of appeals court decisions involve the application of federal statutes."[61] The study identified 65 instances where Congress enacted a law to overrule or codify an appellate court decision during that period.[62] In contrast, a different study, focusing on congressional overrides of Supreme Court decisions interpreting statutes, identified 104 legislative overrides of such decisions over roughly the same period.[63]

There are several ways for lawmakers to discern when a judicial opinion indicates an issue that may benefit from legislative attention. In addition to pointing out circuit splits, federal courts of appeals may use other means to "set the table" for consideration of the question by the Supreme Court or by Congress.[64] As the First Circuit has explained, "it is not uncommon in this and other circuits to include language in opinions that flags potential issues for Congress to consider, should it choose to do so."[65] To this end, courts of appeals have stated in their opinions that Congress may wish to "revisit," "examine," "reexamine," "clarify," or "give further direction" on some aspect of federal statutory or regulatory law.[66] A vigorous dissent from a majority opinion by a judge, or a number of judges, of a court of appeals might also signal that a case raises an important federal-law issue on which the judges of the court strongly disagree.[67]

One tool available to help Congress identify federal appellate court decisions that may be of legislative interest is the Congressional Research Service's (CRS's) *Congressional Court Watcher*

[60] *See* Stefanie A. Lindquist & David A. Yalof, *Congressional Responses to Federal Circuit Court Decisions, 85* JUDICATURE 61, 67 (2001) ("Indeed, in the case of appellate court decisions interpreting federal statutes, Congress is faced with thousands of decisions each year of potential relevance, in contrast to yearly consideration of less than 100 Supreme Court decisions in recent terms."); Marin K. Levy & Tejas N. Narechania, *Interbranch Information Sharing: Examining the Statutory Opinion Transmission Project*, 108 CAL. L. REV. 917, 918–19 (2020) (observing that "the vast and largely undifferentiated nature of the modern Judiciary's body of decisions creates a problem of attention for Congress: Which statutory interpretations merit a second look?"); Robert A. Katzmann, *Bridging the Statutory Gulf Between Courts and Congress: A Challenge of Positive Political Theory*, 80 GEO. L.J. 653, 662 (1992).

[61] Lindquist & Yalof, *supra* note 60, at 68.

[62] *Id.*

[63] Matthew R. Christiansen & William N. Eskridge, Jr., *Congressional Overrides of Supreme Court Statutory Interpretation Decisions, 1967–2011*, 92 TEX. L. REV. 1317, 1356 (2014) (identifying 104 legislative overrides of Supreme Court decisions in the 1990s).

[64] *See* Pierce, *supra* note 18, at 779–81.

[65] Goethel v. U.S. Dep't of Com., 854 F.3d 106, 116 (1st Cir. 2017).

[66] *See id.* at 117 (quoting cases).

[67] *See, e.g.*, William J. Brennan, Jr., *In Defense of Dissents*, 50 HASTINGS L.J. 671, 674 (1999) ("In its most straightforward incarnation, the dissent demonstrates flaws the author perceives in the majority's legal analysis."); Daryl Lim, *I Dissent: The Federal Circuit's "Great Dissenter," Her Influence on the Patent Dialogue, and Why It Matters*, 19 VAND. J. OF ENT. & TECH L. 873, 887 (2017) ("Some judges see dissenting as an obligation because Congress makes the laws and judges interpret them. Since majority opinions may be wrong, dissents inject accountability and thus integrity into the judicial process.") (footnote omitted); *id.* at 890 ("In an appellate court like the Federal Circuit, the dissent can tell the Supreme Court or future panels that the majority's rule needs to be examined carefully and should be revised or overturned.").

series, published as part of the CRS Legal Sidebar product line. The *Congressional Court Watcher* provides brief summaries of decisions from the 13 federal courts of appeals issued in a particular month, focusing on cases where the controlling opinion identifies a circuit split on a key legal issue resolved in the decision. Selected cases typically involve the interpretation or validity of federal statutes, the validity of agency action taken pursuant to statutory delegations of authority, and constitutional issues relevant to Congress's lawmaking and oversight functions. **Table 1** below recaps the circuit splits identified in the *Congressional Court Watcher* series in 2025, illustrating the array of federal legal issues of potential congressional interest decided by the federal courts of appeals throughout the past year.

Circuit Splits That Emerged or Widened in 2025 on Topics of Congressional Interest

Table 1 below identifies 106 appellate court decisions from 2025 where the controlling opinion of a circuit panel or en banc circuit court recognized a split among the federal appellate courts on a key legal issue resolved in the opinion, contributing to a non-uniform application of the law among the circuits. **Table 1** does not include court decisions that were abrogated by the circuit court or the Supreme Court as of the date of this report.[68]

Identified cases are organized into 24 topics:

- Antitrust (1 case)
- Arbitration (2 cases)
- Bankruptcy (1 case)
- Civil Procedure (11 cases)
- Civil Rights (7 cases)
- Criminal Law & Procedure (29 cases)
- Elections (1 case)
- Employee Benefits (2 case)
- Environmental Law (1 case)
- Firearms (8 cases)
- Freedom of Information Act (1 case)
- Health (2 cases)
- Immigration (11 cases)
- International Law (1 case)
- Labor & Employment (7 cases)
- Privacy (2 cases)

[68] *See, e.g.*, Oklahoma v. Env't Prot. Agency, 605 U.S. 609 (2025) (resolving a circuit split that had widened in 2025 over the application of the Clean Air Act's judicial review provision, which holds that challenges to certain "locally or regionally applicable" final actions by Environmental Protection Agency should be filed in the appropriate regional circuit, while those challenging actions based on determinations "of nationwide scope or effect" should be filed in the D.C. Circuit); Arana v. Bd. of Regents of Univ. of Wis. Sys., No. 22-2454, 2025 WL 2726022 (7th Cir. Sept. 22, 2025) (vacating, for rehearing en banc, a three-judge circuit panel decision which split with the Sixth, Eighth, and Ninth Circuits on the question of when, if ever, a single incident of student-on-student harassment may give rise to Title IX monetary liability for a school).

- Religion (2 cases)
- Securities (3 cases)
- Separation of Powers (4 cases)
- Speech (2 cases)
- Takings (1 case)
- Tax (3 cases)
- Telecommunications (3 cases)
- Transportation (1 case)

These categories do not necessarily capture the full range of legal issues the listed cases address.

Cases under each topic are arranged by federal judicial circuit (with cases from the D.C. Circuit and the Federal Circuit preceding numbered circuits, which are organized numerically) and then in order of publication in the *Federal Reporter*. Each case is accompanied by a brief summary of the key holding or holdings of the controlling opinion, along with citations to decisions from other circuits identified by the controlling opinion as taking a conflicting view on a legal question resolved in the case.[69]

Methodology

Cases listed in **Table 1** were originally identified and summarized in the *Congressional Court Watcher*. *Congressional Court Watcher* authors reviewed all reported federal appellate decisions between January 1 and December 31, 2025, and summarized those circuit splits likely to be of particular interest to lawmakers. **Table 1** below includes appellate decisions identified in the *Congressional Court Watcher* in which the controlling opinion acknowledged a circuit split on a legal issue resolved in the opinion. All cases referenced in **Table 1** (including decisions cited in a referenced case as reflecting a circuit split) were reviewed before publication of this CRS report to ensure that they had not been abrogated or superseded by a later decision. This report omits from **Table 1** decisions originally included in the *Congressional Court Watcher* that announced a circuit split but were later vacated or overruled.

The last column of **Table 1** identifies decisions from other circuits that are referenced in a listed case as evidence of a circuit split. **Table 1** only identifies reported (i.e., precedential) decisions from other federal courts of appeals that the controlling opinion identifies as conflicting. (If an opinion cites multiple conflicting decisions from a particular circuit, only the most recent is listed.) **Table 1** does not identify conflicting decisions by other circuits in non-precedential cases or decisions by state courts or federal district courts. **Table 1** omits conflicting decisions from other circuits if those decisions were subsequently abrogated. **Table 1** does not include citations to circuit court rulings that are mentioned in a controlling opinion as *agreeing* with its position in a circuit split. **Table 1** also omits cases where a controlling opinion recognizes the existence of a circuit split on a particular issue but does not take a position on that issue in deciding the case.

Table 1 does not attempt to present an exhaustive list of all circuit splits that emerged or widened in 2025. Different approaches might have yielded different results. **Table 1** is based on the CRS *Congressional Court Watcher* series, which selects court decisions on the topics most relevant to

[69] The citation of the acknowledged circuit split corresponds to the citation provided by the controlling opinion recapped in **Table 1**. In some cases, the controlling opinion may cite generally to a decision in which another circuit is described as having adopted a conflicting view. In other instances, the controlling opinion may cite a specific page in that other court's decision where the conflicting view is expressed. This report does not attempt to assess the accuracy of a controlling opinion's characterization of another court's ruling.

Congress's legislative and oversight functions. The collected cases in **Table 1** typically involve (1) the interpretation or validity of a federal statute; (2) the validity or interpretation of a rule or regulation implementing a federal statute; or (3) a constitutional issue of relevance to Congress's lawmaking and oversight functions. **Table 1** does not attempt to identify circuit splits involving matters that generally fall outside of Congress's legislative purview, such as judicial doctrines not tied to a particular federal law or program.[70]

Because the methodology used to identify circuit splits turns on whether a controlling circuit court opinion recognizes disagreement with one or more circuits on a key legal question, **Table 1** could be underinclusive or overinclusive as compared to other approaches for counting circuit splits.

For example, **Table 1** only includes cases where the controlling opinion specifically acknowledges a divergent approach by one or more other circuits. This detail means that **Table 1** does not include cases where the controlling opinion does not specifically acknowledge this difference in approach. **Table 1** also does not include cases where, for example, a dissenting opinion characterizes the controlling opinion as causing a circuit split but the controlling opinion—which serves as binding precedent for future courts in the circuit—either does not acknowledge or disputes the dissent's characterization.[71]

Still, it may not always be clear whether a controlling opinion, when announcing its disagreement with another circuit, is creating or widening a circuit split. While each case discussed in **Table 1** identifies a decision from one or more other circuits that take a diverging view on a legal issue, observers may disagree as to whether some of these divergences are so significant as to result in the non-uniform application of the law among the circuits. There may also, occasionally, be uncertainty as to whether the disagreement involves a matter critical to the identifying court's decision, or instead involves a non-critical matter that might be treated as non-binding dictum by future jurists. **Table 1**'s inclusion of citations to referenced cases allows readers to review the cases themselves and make an independent assessment.

[70] *See, e.g.*, Epic Games, Inc. v. Apple Inc., 161 F.4th 1162, 1179 (9th Cir. 2025) (observing circuit split over the appropriate test for assessing attorney-client privilege claims when communications involve both business and legal advice); United States v. Pancholi, 148 F.4th 382, 390 (6th Cir. 2025), *cert. denied*, No. 25-565, 2025 WL 3620412 (U.S. Dec. 15, 2025) (observing circuit split over when a willful discovery violation in a criminal trial is judicially sanctionable).

[71] *See, e.g.*, HollyFrontier Cheyenne Ref., LLC v. United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union Loc. 11-574, 132 F.4th 1184, 1190 (10th Cir. 2025) (ruling that the arbitrator exceeded the scope of authority by deciding an issue not submitted for arbitration, rejecting the dissent's view that the decision failed to afford adequate deference to the arbitrator's judgment and conflicted with the prevailing authority in other circuits, and asserting that each case cited by the dissent "is either inapposite, distinguishable, or less deferential to the arbitrator's authority than the dissent claims").

Table 1. Circuit Splits Recognized in 2025

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Antitrust	Ninth Circuit	L.V. Sun, Inc. v. Adelson, 147 F.4th 1103 (9th Cir. 2025) *petition for cert. filed*, No. 25-697 (U.S. Dec. 16, 2025)	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.	D.C. Circuit Newspaper Guild v. Levi, 539 F.2d 755, 760–61 (D.C. Cir. 1976) Sixth Circuit Taft Broad. Co. v. United States, 929 F.2d 240 (6th Cir. 1991)
Arbitration	D.C. Circuit	Amaplat Mauritius Ltd. v. Zimbabwe Mining Dev. Corp., 143 F.4th 496 (D.C. Cir. 2025)	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 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.	Second Circuit Seetransport Wiking Trader Schiffarhtsgesellschaft MBH & Co., Kommanditgesellschaft v. Navimpex Centrala Navala, 989 F.2d 572, 578–79 (2d Cir.), *as amended* (May 25, 1993)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Arbitration	Fifth Circuit	Sullivan v. Feldman, 132 F.4th 315 (5th Cir. 2025), *cert. denied*, No. 25-240, 2026 WL 79907 (U.S. Jan. 12, 2026)	In a dispute between doctors and a law firm on insurance matters, a Fifth Circuit panel affirmed in part and vacated in part a district court's confirmation of awards relating to four arbitrations between the parties. One of the four arbitration confirmations reviewed by the Fifth Circuit involved a class arbitration. The Fifth Circuit panel observed that parties must provide clear consent for an arbitrator to decide questions of class arbitrability. In this case, the arbitration agreement incorporated a generic rule that delegated questions of arbitrability to the arbitrator. Applying circuit precedent, the panel recognized that the arbitration agreement's incorporation of such a rule constituted clear consent to delegate questions of class arbitrability to the arbitrator. The panel observed a split with the Third, Fourth, Sixth, and Eighth Circuits, which have held that incorporation of a generic rule does not constitute clear consent to delegate questions of class arbitrability. The panel also suggested the deferential standard employed by the Fifth Circuit might be an outlier even among those circuits that have recognized that an agreement's reference to generic rules may constitute clear consent to delegate the question of class arbitrability to an arbitrator.	Third Circuit Chesapeake Appalachia, LLC v. Scout Petroleum, LLC, 809 F.3d 746 (3d Cir. 2016) Fourth Circuit Del Webb Communities, Inc. v. Carlson, 817 F.3d 867, 876–77 (4th Cir. 2016) Sixth Circuit Reed Elsevier, Inc. *ex rel.* LexisNexis Div. v. Crockett, 734 F.3d 594, 599–600 (6th Cir. 2013) Eighth Circuit Catamaran Corp. v. Towncrest Pharmacy, 864 F.3d 966, 972–73 (8th Cir. 2017)
Bankruptcy	Third Circuit	*In re* MTE Holdings LLC, 136 F.4th 506 (3d Cir. 2025)	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 judge's order on certain claims and remanded other claims for further proceedings.	Seventh Circuit In re Elcona Homes Corp., 810 F.2d 136, 137 (7th Cir. 1987) Tenth Circuit Va. Beach Fed. Savings & Loan Ass'n v. Wood, 901 F.2d 849, 850 (10th Cir. 1990) (per curiam)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Civil Procedure	D.C. Circuit	Levin *in re* Levin v. Wells Fargo Bank, 156 F.4th 632 (D.C. Cir. 2025)	The D.C. Circuit reversed a trial court's ruling that creditors with terrorism-related judgments against Iran could not attach funds blocked under the International Emergency Economic Powers Act (IEEPA) because (1) the funds remained immunized from attachment under the Foreign Sovereign Immunities Act (FSIA) and (2) the U.S. government already had commenced a civil forfeiture action against those same funds. As to the FSIA, the D.C. Circuit held that the funds met the statutory definition of "blocked assets" under the Terrorism Risk Insurance Act of 2002, which creates an exemption to foreign sovereign immunity when a party that has obtained a terrorism-based judgment against a designated state sponsor of terrorism seeks to attach assets "seized or frozen by the United States" under IEEPA or the Trading with the Enemy Act. The court of appeals rejected the trial court's ruling that the funds had lost their "blocked" status because the Office of Foreign Assets Control (OFAC) had issued a forfeiture "license" to the government. The D.C. Circuit held that the license simply permitted forfeiture proceedings to begin but did not "unfreeze" the funds, in contrast to the holdings of other courts, including the Seventh Circuit, that such assets are unblocked once licensed by OFAC. Turning to the trial court's alternative basis for quashing the creditors' attachment motions, the D.C. Circuit held that the federal government's prior commencement of a civil forfeiture proceeding against the funds did not preclude the attachment actions under the prior exclusive jurisdiction doctrine. The court of appeals explained that this doctrine dictates that "only one court at a time may exercise jurisdiction over particular property," and thus the doctrine did not apply in this case because both the forfeiture and attachment actions had been filed in the same court. Recognizing that its holding might reduce forfeited assets available for deposit into the U.S. Victims of State Sponsored Terrorism Fund, the D.C. Circuit observed that this is a situation for Congress to address, not the courts, as it arose from an "anomaly in the interaction" of two federal statutes.	Seventh Circuit United States v. All Funds on Deposit With RJ O'Brien & Assoc., 783 F.3d 607 (7th Cir. 2015).

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Civil Procedure	Fourth Circuit	*In re* Banco Mercantil del Norte, S.A., 126 F.4th 926 (4th Cir. 2025)	The Fourth Circuit affirmed a lower court's approval of a Mexican bank's application to conduct discovery on another Mexican bank's American subsidiary in connection to ongoing Mexican civil proceedings. Under 28 U.S.C. § 1782(a), a federal district court may compel a person within the district to give testimony or other evidence "for use in a proceeding in a foreign or international tribunal." In deciding that the lower court had not abused its discretion in granting the application for discovery, the Fourth Circuit panel widened a circuit split over the appropriate standard for evaluating arguments that requested material is shielded from discovery under the laws of the foreign tribunal. The panel joined those circuits that have decided that a party asserting a foreign law privilege bears the burden of establishing that privilege, and the panel upheld the lower court's decision that the American subsidiary had not met this burden. The panel declined to adopt the approach of the First, Seventh, and Eleventh Circuits, which do not impose an evidentiary burden on the moving party to show that the privilege exists and instead leave it to the discretion of the reviewing court to determine whether a privilege applies based on available evidence.	First Circuit *In re* Schlich, 893 F.3d 40, 50 (1st Cir. 2018) Seventh Circuit *In re* Application of Venequip, S.A., 83 F.4th 1048, 1058 (7th Cir. 2023) Eleventh Circuit Dep't of Caldas v. Diageo PLC, 925 F.3d 1218, 1223 (11th Cir. 2019)
Civil Procedure	Fourth Circuit	Black v. Mantei & Assoc., Ltd., 145 F.4th 528 (4th Cir. 2025)	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.	Seventh Circuit PNC Bank, N.A. v. Spencer, 763 F.3d 650, 655 (7th Cir. 2014)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Civil Procedure	Fourth Circuit	Holmes v. Elephant Ins. Co., 156 F.4th 413 (4th Cir. 2025)	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" 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.	Seventh Circuit Baysal v. Midvale Indemnity Co., 78 F.4th 976, 979 (7th Cir. 2023)
Civil Procedure	Fifth Circuit	Wilson v. Centene Mgmt. Co., 144 F.4th 780 (5th Cir. 2025)	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.	Second Circuit Amara v. CIGNA Corp., 775 F.3d 510, 129 (2d Cir. 2014) Eleventh Circuit Fox v. Ritz-Carlton Hotel Co., LLC, 977 F.3d 1039, 1047 (11th Cir. 2020)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Civil Procedure	Sixth Circuit	Tobien v. Nationwide Gen. Ins. Co., 133 F.4th 613 (6th Cir. 2025), *cert. denied*, No. 25-439, 2026 WL 135652 (U.S. Jan. 20, 2026)	The Sixth Circuit widened a circuit split over who bears the burden of proof when a defendant moves to dismiss a civil suit on the grounds that it was brought in an improper venue. In this case, the plaintiff claimed that venue was proper under 28 U.S.C. § 1391(b)(2), which permits a federal civil suit to be filed in the federal district where a substantial portion of the activities giving rise to the suit have occurred. In reviewing the defendant's motion to dismiss for improper venue, the Sixth Circuit joined the First, Second, and Fourth Circuits in holding that the plaintiff bears the burden of proving by a preponderance of evidence that venue is proper. Applying this standard, the Sixth Circuit upheld the lower court's conclusion that plaintiff's suit was filed in an improper venue because the plaintiff failed to show a substantial portion of activities giving rise to the suit occurred in the judicial district where the suit was filed. The court expressed disagreement with the Third Circuit, which held that the burden rests with the defendant to prove venue is improper, and the court also suggested a potential conflict with the Eighth Circuit on similar grounds. The panel also cited two cases from the Seventh Circuit that took different sides in the split in interpreting different venue statutes.	Third Circuit Myers v. Am. Dental Ass'n, 695 F.2d 716, 724 (3d Cir. 1982) Seventh Circuit *In re* Peachtree Lane Assocs., Ltd., 150 F.3d 788 (7th Cir. 1998) (identified by the Sixth Circuit as taking opposing view); *but see* Grantham v. Challenge-Cook Bros., 420 F.2d 1182 (7th Cir. 1969) (identified by the Sixth Circuit as aligning with its view) Eighth Circuit United States v. Orshek, 164 F.2d 741, 742 (8th Cir. 1947)
Civil Procedure	Sixth Circuit	Fire-Dex, LLC v. Admiral Ins. Co., 139 F.4th 519 (6th Cir. 2025)	The Sixth Circuit widened a circuit split on whether a district court must exercise jurisdiction over a "mixed" legal action that seeks both coercive relief (i.e., damages or requiring or precluding specific action from another party) and declaratory relief (i.e., clarification of a party's legal rights). Where federal courts have subject matter jurisdiction over coercive claims, they must exercise jurisdiction unless a traditional abstention doctrine applies. Under 28 U.S.C. § 2201(a), courts have greater discretion to decline to exercise jurisdiction over claims seeking declaratory relief. The circuit panel held that, in a mixed legal action, the district court must generally exercise jurisdiction over the coercive claim but may still decline to exercise jurisdiction over the declaratory claim. However, the panel continued that it would likely be an abuse of discretion for a district court to decline to exercise jurisdiction over a declaratory claim involving the same legal issue as the coercive claim. The panel described its approach as similar to that taken by the First Circuit but differing from (1) the Second, Fourth, and Fifth Circuits, which recognize that a district court	Second Circuit Village of Westfield v. Welch's, 170 F.3d 116, 124 n.5 (2d Cir. 1999) Third Circuit Rarick v. Federated Serv. Ins. Co., 852 F.3d 223, 229 (3d Cir. 2017) Fourth Circuit VonRosenberg v. Lawrence, 781 F.3d 731, 735 (4th Cir.), as *amended* (Apr. 17, 2015) Fifth Circuit New England Ins. Co. v.

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			generally must exercise jurisdiction over the entire mixed legal action as a whole, so long as the coercive claim is not frivolous and a traditional abstention doctrine does not apply; (2) the Third, Seventh, and Ninth Circuits, which hold that a court may decline to exercise jurisdiction over an entire mixed action when the coercive claim is "dependent" on the declaratory claim; and (3) the Eighth Circuit, which applies either the more or less permissive standard depending on whether the "essence of the suit" involves the declaratory claim or the coercive claim.	Barnett, 561 F.3d 392, 395 (5th Cir. 2009) Seventh Circuit R.R. St. & Co. v. Vulcan Materials Co., 569 F.3d 711, 716 (7th Cir. 2009) Eighth Circuit Royal Indem. Co. v. Apex Oil Co., 511 F.3d 788, 793 (8th Cir. 2008) Ninth Circuit United Nat. Ins. Co. v. R&D Latex Corp., 242 F.3d 1102, 1113 (9th Cir. 2001)
Civil Procedure	Sixth Circuit	Zai v. Nat'l Credit Union Admin. Bd., 149 F.4th 837 (6th Cir. 2025)	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	First Circuit Heno v. FDIC, 20 F.3d 1204, 1209 (1st Cir. 1994) Fifth Circuit FDIC v. Scott, 125 F.3d 254, 259 (6th Cir. 1997) Ninth Circuit McCarthy v. FDIC, 348 F.3d 1075, 1081 (9th Cir. 2003) Eleventh Circuit Stamm v. Paul, 121 F.3d 635, 641 (11th Cir. 1987)

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			"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.	
Civil Procedure	Sixth Circuit	Clippinger v. State Farm Auto. Ins. Co., 156 F.4th 724 (6th Cir. 2025)	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.	Third Circuit Lewis v. Gov't Emps. Ins. Co., 98 F.4th 452 (3d Cir. 2024) Fourth Circuit Freeman v. Progressive Direct Ins. Co., 149 F.4th 461 (4th Cir. 2025) Fifth Circuit Sampson v. United Servs. Auto. Ass'n, 83 F.4th 414 (5th Cir. 2023) Seventh Circuit Dinerstein v. Google, LLC, 73 F.4th 502, 518–20 (7th Cir. 2023) Schroeder v. Progressive Paloverde Ins. Co., 146 F.4th 567 (7th Cir. 2025) Ninth Circuit Lara v. First Nat'l Ins. Co. of Am., 25 F.4th 1134, 1140 (9th Cir. 2022)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Civil Procedure	Ninth Circuit	Harrison *ex rel.* California v. Express Scripts, Inc., 154 F.4th 1069 (9th Cir. 2025)	In a dispute over application of the federal officer removal statute, the Ninth Circuit held that a federal district court's remand of a case to state court is not automatically stayed while the defendant appeals the remand order. Under 28 U.S.C. § 1442, a suit brought in a state tribunal may be removed to federal court if it relates to a private person's assistance to federal officers in the performance of their official duties. In this case, the federal district court concluded that the defendant had not satisfied the criteria for removal, ordered remand of the suit to state court, and denied the defendant's request that the court stay its remand order pending appeal. The Ninth Circuit held that the district court appropriately exercised its discretion when denying the stay request. The panel rejected the defendant's argument that the Supreme Court's decision in *Coinbase, Inc. v. Bielski*, which mandates automatic stays for interlocutory appeals of arbitration denials, should apply in the federal officer removal context. The panel characterized its ruling as consistent with decisions of all reviewing courts except the Fourth Circuit, which has extended Coinbase's analysis to federal officer removal cases.	Fourth Circuit City of Martinsville v. Express Scripts, Inc., 128 F.4th 265 (4th Cir. 2025)
Civil Procedure	Ninth Circuit	Rosenwald v. Kimberly-Clark Corp., 152 F.4th 1167 (9th Cir. 2025)	The Ninth Circuit ordered a district court to dismiss without prejudice plaintiffs' complaints against the manufacturer of Kleenex wipes for lack of subject matter jurisdiction. The panel explained that to establish subject matter jurisdiction in this case, the plaintiffs needed to show both diversity of citizenship and a requisite dollar amount in controversy under 28 U.S.C. § 1332, and observed that plaintiffs had failed to establish the citizenship of the defendant in their complaint. Agreeing with the Tenth Circuit, the panel decided that diversity of citizenship could not be established by the court through judicial notice because the burden of pleading and proving jurisdiction is with the party seeking the exercise of the court's jurisdiction. On this issue, the panel explicitly disagreed with the Fifth Circuit and noted that the Second and Third Circuits had issued decisions in which they had taken judicial notice of a party's citizenship without explanation. To correct the deficiency, the court permitted plaintiffs to file an amended complaint directly with the appeals court, which the panel found adequately demonstrated diversity of citizenship. It concluded, however, that the amended complaint failed to establish the other element of Section 1332—the threshold dollar amount in	Fifth Circuit Swindol v. Aurora Flight Scis. Corp., 805 F.3d 516, 519 (5th Cir. 2015), *certified question answered*, 194 So. 3d 847 (Miss. 2016)

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			controversy—and therefore remanded to the district court for dismissal for lack of subject matter jurisdiction.	
Civil Rights	D.C. Circuit	Joyner v. Morrison & Foerster LLP, 140 F.4th 523 (D.C. Cir. 2025)	The D.C. Circuit affirmed a federal district court's dismissal of claims of racial discrimination and a hostile work environment brought by an employee under 42 U.S.C. § 1981 and Title VII of the Civil Rights Act of 1964. The panel concluded that the employee had not sufficiently alleged disparate treatment due to his race, where he merely stated that White workers received better work assignments and did not describe those workers' assignments, experience, or qualifications to permit an inference that they were similarly situated except for their race. The panel noted disagreement with the Seventh Circuit, which the panel described as allowing a claim of racial discrimination based on an allegation of different treatment due to race, without also having to plead specific facts in support.	Seventh Circuit Thomas v. JBS Green Bay, Inc., 120 F.4th 1335, 1337–38 (7th Cir. 2024)
Civil Rights	First Circuit	Garcia-Gesualdo v. Honeywell Aerospace, Inc., 135 F.4th 10 (1st Cir. 2025)	The First Circuit issued an opinion on the notice procedures that the Equal Employment Opportunity Commission (EEOC) must follow when informing an employee of his or her right to sue under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. An employee generally must file suit under either statute within a 90-day period that begins after the employee has exhausted administrative remedies and received notice from the EEOC that the 90-day period has begun. Here, the EEOC had sent the employee emails with a hyperlink to his EEOC docket and notice that an "important document" had been added; the linked document explained that the employee had 90 days to file suit. Splitting with the Eighth Circuit, the court held this notice method inadequate. The First Circuit stated that for electronic notice to be adequate when the right-to-sue letter is not attached to the email, the email must unambiguously indicate that the recipient has 90 days to bring suit.	Eighth Circuit McDonald v. St. Louis Univ., 109 F.4th 1068, 1071 (8th Cir. 2024)
Civil Rights	Second Circuit	*In re* AAM Holding Corp., 153 F.4th 252 (2d Cir. 2025)	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	Fifth Circuit EEOC v. Hearst Corp., 103 F.3d 462, 468–69 (5th Cir. 1997)

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			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.	
Civil Rights	Fourth Circuit	Brown v. Stapleton, 142 F.4th 252 (4th Cir. 2025)	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.	Tenth Circuit Cosco v. Uphoff, 195 F.3d 1221, 1222 (10th Cir. 1999) (per curiam)
Civil Rights	Sixth Circuit	Bivens v. Zep, Inc., 147 F.4th 635 (6th Cir. 2025)	The Sixth Circuit upheld a lower court's dismissal of a sales representative's hostile work environment claims under Title VII of the Civil Rights Act of 1964 (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.	First Circuit Rodriguez-Hernandez v. Miranda-Velez, 132 F.3d 848, 854 (1st Cir. 1998) Second Circuit Summa v. Hofstra Univ., 708 F.3d 115, 124 (2d Cir. 2013) Eighth Circuit Crist v. Focus Homes, Inc., 122 F.3d 1107, 1108 (8th Cir. 1997) Ninth Circuit Folkerson v. Circus Circus Enters., Inc., 107 F.3d 754,

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				756 (9th Cir. 1997) Tenth Circuit Lockard v. Pizza Hut, Inc., 162 F.3d 1062, 1074 (10th Cir. 1998) Eleventh Circuit Watson v. Blue Circle, Inc., 324 F.3d 1252, 1259 (11th Cir. 2003)
Civil Rights	Ninth Circuit	Detwiler v. Mid-Columbia Med. Ctr., 156 F.4th 886 (9th Cir. 2025)	A divided Ninth Circuit panel affirmed the dismissal of an employee's religious discrimination claim under Title VII of the Civil Rights Act of 1964 (Title VII), where the plaintiff alleged that her medical employer discriminated against her in denying an accommodation from COVID-19 vaccination and testing requirements. The majority held that in deciding whether a Title VII plaintiff has sufficiently stated a religious accommodation claim, a court must look for a close connection between the plaintiff's religious belief and her opposition to a work requirement. The majority rejected the approach of the Sixth, Seventh, and Eighth Circuits, which it described as adopting a more lenient standard in which a plaintiff need only invoke a religious belief in opposition to a secular work requirement to state a Title VII claim. The majority held that the plaintiff's complaint in this case did not sufficiently show a religious reason for her accommodation request; instead, it showed her request was based on her secular interpretation of medical research that she confirmed through personal prayer.	Sixth Circuit Lucky v. Landmark Med., 103 F.4th 1241, 1243 (6th Cir. 2024) Seventh Circuit Passarella v. Aspirus, Inc., 108 F.4th 1005, 1011 (7th Cir. 2024) Eighth Circuit Ringhofer v. Mayo Clinic, Ambulance, 102 F.4th 894, 902 (8th Cir. 2024)
Civil Rights	Tenth Circuit	Russell v. Driscoll, 157 F.4th 1348 (10th Cir. 2025)	The Tenth Circuit affirmed the district court's judgment against a U.S. Army employee who brought an employment discrimination claim under Title VII of the Civil Rights Act of 1964 (Title VII), 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	Sixth Circuit McNeal v. City of Blue Ash, 117 F.4th 887, 904 (6th Cir. 2024)

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			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 reduced showing of harm to both discrete action and hostile work environment claims.	
Criminal Law & Procedure	Fifth Circuit	United States v. Riojas, 139 F.4th 465 (5th Cir. 2025)	The Fifth Circuit widened a circuit split over the ability of an appeals court to *sua sponte* decide whether a criminal defendant's unconditional guilty plea waives any prior, nonjurisdictional challenges to the underlying criminal proceedings. The Fifth Circuit joined the Ninth and Tenth Circuits in holding that the government must timely invoke the waiver on appeal or else forfeit the benefit. The panel observed a split with the Seventh Circuit, which recognizes that an appeals court can independently determine whether an unconditional guilty plea precludes review of a defendant's challenge even if the government fails to invoke the waiver.	Seventh Circuit United States v. Combs, 657 F.3d 565, 568–71 (7th Cir. 2011)
Criminal Law & Procedure	First Circuit	United States v. Pontz, 132 F.4th 10 (1st Cir. 2025)	The First Circuit decided that a trial court had improperly denied a criminal defendant's motion to dismiss his indictment for embezzlement in violation of 18 U.S.C. § 641. The defendant had argued that the government wrongly charged him for conduct that occurred outside the five-year statute of limitations applicable to Section 641 and most noncapital federal crimes. Disagreeing with the Fourth Circuit but joining the majority of circuit courts that have considered the question, the First Circuit panel ruled that federal law does not treat the crime of embezzlement as a "continuing offense" for which the limitations period begins to run only after the offense is completed. (For crimes that are not continuing offenses, the limitations period starts once all elements of the crime are present, no matter the duration of the resulting illegal activity.) Here, the First Circuit panel held that the defendant's limitations argument had merit on account of the government charging him with conduct at least partially occurring outside the five-year window. The panel remanded the case for the trial court to consider the appropriate remedy, possibly including sustaining the conviction on the basis of conduct that occurred within five years of indictment.	Fourth Circuit United States v. Smith, 373 F.3d 561, 563–64 (4th Cir. 2004) (per curiam)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Criminal Law & Procedure	First Circuit	Rodriguez-Mendez v. United States, 134 F.4th 1 (1st Cir. 2025)	The Third Circuit upheld a criminal defendant's felon-in-possession-of-a-firearm conviction under 18 U.S.C. § 922(g)(1) but concluded his sentencing enhancement under the Armed Career Criminal Act (ACCA) was improper. The ACCA provides for a sentencing enhancement when a defendant has "three previous convictions . . . for a violent felony." The ACCA defines "violent felony" to include certain enumerated offenses, including extortion, as well as any offense that "has as an element the use, attempted use, or threatened use of physical force against the person of another." The circuit court held that the defendant's carjacking offense under Puerto Rico law did not satisfy the ACCA's general definition of a violent felony because the offense may be committed through threats against property rather than persons. The court further concluded the Puerto Rico carjacking offense did not satisfy the generic definition of extortion (i.e., obtaining the victim's induced consent through force or intimidation) because the offense could be committed without the victim's induced consent to the taking of the vehicle. In so doing, the court expressed its disagreement with the Seventh and Tenth Circuits, which the court described as treating the difference between taking property against a victim's will and taking property with the victim's induced consent as a legally meaningless distinction.	Seventh Circuit United States v. Hatley, 61 F.4th 536, 537 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 545 (2024) (mem.) Tenth Circuit United States v. Castillo, 811 F.3d 342, 348 (10th Cir. 2015), *superseded by regulation as stated in*, United States v. Duran, 754 F. App'x 739 (10th Cir. 2018)
Criminal Law & Procedure	First Circuit	Anderson v. Divris, 138 F.4th 625 (1st Cir. 2025), *cert. denied sub nom.*, Anderson v. Lizotte, No. 25-5486, 2026 WL 79630 (U.S. Jan. 12, 2026)	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.	Third Circuit Lesko v. Sec'y of Penn. Dep't of Corrs., 34 F.4th 211, 238 (3d Cir. 2022)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Criminal Law & Procedure	First Circuit	United States v. Garcia-Oquendo, 144 F.4th 66 (1st Cir. 2025)	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.	Tenth Circuit United States v. Ruby, 706 F.3d 1221, 1226–27 (10th Cir. 2013)
Criminal Law & Procedure	Second Circuit	United States v. Elias, 154 F.4th 56 (2d Cir. 2025)	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	Sixth Circuit United States v. Sexton, 894 F.3d 787, 799 (6th Cir. 2018) Eighth Circuit United States v. Peithman, 917 F.3d 635, 652 (8th Cir. 2019)

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			acquired by a co-defendant, so long as that property is traceable to the offense.	
Criminal Law & Procedure	Third Circuit	United States v. Clay, 128 F.4th 163 (3d Cir. 2025), *cert. denied*, No. 25-163, 2025 WL 3198590 (U.S. Nov. 17, 2025)	The Third Circuit rejected a criminal defendant's facial and as-applied constitutional challenges to his international sex tourism conviction under 18 U.S.C. § 2423(c) (barring U.S. citizens and lawful permanent residents from engaging in illicit sexual conduct in foreign countries). The panel held that Section 2423(c) was a lawful exercise of Congress's power under the Foreign Commerce Clause and the Necessary and Proper Clause. In so doing, the panel disagreed with the Sixth Circuit and joined the majority of reviewing circuit courts in ruling that the Constitution grants Congress more expansive power to regulate foreign commerce than interstate commerce. Still, the Third Circuit held that the defendant's convictions would be constitutionally permissible even under the standard employed in interstate commerce cases, because although Section 2423(c) as applied to the defendant involved noncommercial conduct, the provision regulates channels of foreign commerce and activities that substantially affect foreign commerce.	Sixth Circuit United States v. Al-Maliki, 787 F.3d 784, 789 (6th Cir. 2015)
Criminal Law & Procedure	Third Circuit	United States v. Vines, 134 F.4th 730 (3d Cir. 2025), *cert. denied*, No. 25-106, 2025 WL 3198587 (U.S. Nov. 17, 2025) (mem.)	The Third Circuit held that a criminal defendant's conviction for attempted armed bank robbery constituted a "crime of violence" under 18 U.S.C. § 924(c). Section 924(c) establishes heightened penalties for an offender who carries a firearm when committing a "crime of violence," which is defined as including an offense that necessarily involves "the use, attempted use, or threatened use of physical force." The defendant here pleaded guilty to attempted armed bank robbery under 18 U.S.C. § 2113. Section 2113(a) proscribes the taking of bank property "by force and violence, or by intimidation . . . [or] extortion." The Third Circuit also reaffirmed its agreement with those courts that read Section 2113(a) to set forth multiple criminal offenses, including the crime of bank robbery (which those courts recognized as a crime of violence) and the crime of extortion (which those courts did not recognize as a crime of violence). The court acknowledged a split with the D.C. Circuit, which has held that Section 2113(a) defines a single crime that can be committed in various ways and, because one of those ways involves extortion, the crime does not satisfy the categorical requirements to be a "crime of violence" under Section 924(c).	Fourth Circuit United States v. McFadden, 739 F.2d 149, 151–52 (4th Cir. 1984) Sixth Circuit United States v. Wesley, 417 F.3d 612, 618 (6th Cir. 2005) Ninth Circuit United States v. Moore, 921 F.2d 207, 209 (9th Cir. 1990)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			In deciding that attempted bank robbery is categorically a "crime of violence," the Third Circuit approvingly cited Second, Fifth, and Seventh Circuit decisions as recognizing attempted bank robbery as necessarily involving threats of force or intimidation. The court split with the Fourth, Sixth, and Ninth Circuits, which have held that attempted bank robbery, unlike the crime of bank robbery itself, does not require proof of actual force, violence, or intimidation in order to sustain a conviction.	
Criminal Law & Procedure	Third Circuit	United States v. Guyton, 144 F.4th 449 (3d Cir. 2025), *cert. denied*, No. 25-5967, 2025 WL 3507067 (U.S. Dec. 8, 2025) (mem.)	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.	D.C. Circuit United States v. Baugham, 613 F.3d 291, 296 (D.C. Cir. 2010) (per curiam)
Criminal Law & Procedure	Third Circuit	United States v. Harmon, 150 F.4th 197 (3d Cir. 2025)	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	Ninth Circuit United States v. Mercado-Moreno, 869 F.3d 942, 956 (9th Cir. 2017)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			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.	
Criminal Law & Procedure	Third Circuit	Honda Lease Trust v. Malanga's Auto., 152 F.4th 477 (3d Cir. 2025)	In a case stemming from the towing of a vehicle, the Third Circuit examined whether a lawful towing becomes unlawfully unreasonable under the Fourth Amendment through prolonged detention, among other constitutional challenges. The Court decided that the Fourth Amendment requires that both the initial seizure and continued retention of property by the government be reasonable. In doing so, the Third Circuit joined the Ninth and D.C. Circuits and split with the First, Second, Sixth, Seventh, and Eleventh Circuits, which have found the Fourth Amendment to be inapplicable to the protracted detention of legally seized property. Nevertheless, the Third Circuit panel partially reversed the district court and determined that the city's constructive retention of the vehicle in this case was reasonable and did not violate the Fourth Amendment.	First Circuit Denault v. Ahern, 857 F.3d 76, 84 (1st Cir. 2017), *superseded by rule as stated in*, Gonpo v. Sonam's Stonewalls & Art, LLC, 41 F.4th 1 (1st Cir. 2022) Second Circuit Shaul v. Cherry Valley-Springfield Centr. Sch. Dist., 363 F.3d 177, 187 (2d Cir. 2004) Sixth Circuit Fox v. Van Oosterum, 176 F.3d 342, 352 (6th Cir. 1999) Seventh Circuit Lee v. City of Chicago, 330 F.3d 456, 466 (7th Cir. 2003) Eleventh Circuit Case v. Eslinger, 555 F.3d 1317, 1330 (11th Cir. 2009)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Criminal Law & Procedure	Fourth Circuit	United States v. Perez, 150 F.4th 237 (4th Cir. 2025)	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.	First Circuit United States v. Bello, 194 F.3d 18, 22–23 (1st Cir. 1999) Sixth Circuit United States v. Blunt, 558 F.2d 1245, 1247 (6th Cir. 1977) (per curiam)
Criminal Law & Procedure	Fifth Circuit	United States v. Swick, 137 F.4th 336 (5th Cir. 2025)	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	First Circuit United States v. Hernandez-Ferrer, 599 F.3d 63 (1st Cir. 2010) Eleventh Circuit United States v. Talley, 83 F.4th 1296 (11th Cir. 2023)

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			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.	
Criminal Law & Procedure	Sixth Circuit	United States v. Drake, 126 F.4th 1242 (6th Cir. 2025)	The Sixth Circuit affirmed a lower court's application of the U.S. Sentencing Guidelines' career-offender sentencing enhancement to a criminal defendant. A defendant qualifies for a sentencing enhancement under the Guidelines if the defendant "has at least two prior felony convictions of . . . a controlled substance offense." Although the Guidelines do not define what constitutes a "controlled substance," the Sixth Circuit looked to the state and federal drug schedules in place at the time of a defendant's conviction. The panel held that even if the defendant's prior state marijuana offense would not be considered a "controlled substance" offense following changes to the state drug laws, the sentencing enhancement applied based on drug schedules in place at the time of the defendant's conviction. The court described its ruling as consistent with circuit caselaw and rejected the defendant's argument that an intervening Supreme Court decision cast doubt on circuit precedent. The court acknowledged disagreement with the Fifth Circuit, which looks to whether a defendant's earlier convictions would qualify as controlled substance offenses at the time of the defendant's sentencing for his most recent offense.	Fifth Circuit United States v. Minor, 121 F.4th 1085, 1091 (5th Cir. 2024)
Criminal Law & Procedure	Sixth Circuit	United States v. Shaw, 139 F.4th 548 (6th Cir. 2025)	In affirming conditions imposed on a defendant pursuant to his criminal sentence, a divided Sixth Circuit panel considered the relationship between the district court's oral pronouncement of a sentence and the subsequent written judgment. The defendant had entered a plea agreement that waived his right to challenge his criminal sentence, but alleged on appeal that the district court's written judgment conflicted with the orally pronounced sentence. The panel held that the written judgment is merely evidence of the defendant's sentence, which is delivered by oral pronouncement. The panel joined the Fourth and Seventh Circuits in holding that a defendant's waiver of the right to challenge his criminal sentence does not preclude challenges to a district court's written judgment. The panel split from the Fifth Circuit, which has held that the written judgment is part of a defendant's sentence and that the plea agreement	Fifth Circuit United States v. Higgins, 739 F.3d 733, 738 (5th Cir. 2014)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			therefore waives the ability of the defendant to challenge the judgment as inconsistent with the oral pronouncement. Turning to the merits, the panel upheld conditions set forth by the district court in its written judgment, concluding that they clarified rather than conflicted with the orally pronounced sentence.	
Criminal Law & Procedure	Sixth Circuit	United States v. Pancholi, 148 F.4th 382 (6th Cir.), *cert. denied*, No. 25-565 (U.S. Dec. 15, 2025) (mem.)	In 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.	Second Circuit Noble v. Kelly, 246 F.3d 93, 99–101 (2d Cir. 2001) Ninth Circuit United States v. Peters, 937 F.2d 1422, 1426 (9th Cir. 1991)
Criminal Law & Procedure	Sixth Circuit	Randolph v. Macauley, 155 F.4th 859 (6th Cir. 2025)	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	Third Circuit Villot v. Varner, 373 F.3d 327, 337 n.13 (3d Cir. 2004)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			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.	
Criminal Law & Procedure	Sixth Circuit	United States v. Dale, 156 F.4th 757 (6th Cir. 2025)	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.	Second Circuit United States v. Young, 998 F.3d 43, 55 (2d Cir. 2021) Tenth Circuit United States v. Gladney, 44 F.4th 1253, 1262 (10th Cir. 2022)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Criminal Law & Procedure	Seventh Circuit	Lairy v. United States, 142 F.4th 907 (7th Cir. 2025)	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.	Eighth Circuit Lofton v. United States, 920 F.3d 572, 576–77 (8th Cir. 2019) Ninth Circuit Allen v. Ives, 950 F.3d 1184, 1190 (9th Cir. 2020)
Criminal Law & Procedure	Eighth Circuit	United States v. Harris-Franklin, 146 F.4th 631 (8th Cir. 2025)	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.	Second Circuit United States v. Gambino, 59 F.3d 353, 358 (2d Cir. 1995) Ninth Circuit United States v. Jordan, 915 F.2d 563, 565 (9th Cir. 1990)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Criminal Law & Procedure	Eighth Circuit	Lee v. United States, 149 F.4th 981 (8th Cir. 2025)	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.	Ninth Circuit United States v. Gilbert, 807 F.3d 1197, 1200 (9th Cir. 2015)
Criminal Law & Procedure	Eighth Circuit	Garrett v. Payne, 154 F.4th 599 (8th Cir. 2025)	A divided Eighth Circuit determined that a petitioner's motion to file a belated appeal tolled the statute of limitations under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 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	Eleventh Circuit Espinosa v. Sec'y Dep't of Corr., 804 F.3d 1137, 1138–39 (11th Cir. 2015)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			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.	
Criminal Law & Procedure	Eighth Circuit	United States v. Wright, 163 F.4th 469 (8th Cir. 2025)	The Eighth Circuit held that a presidential commutation of a defendant's sentence does not deprive the court of jurisdiction to hear collateral attacks on that sentence. The defendant filed a motion for a reduction in his sentence, arguing "extraordinary and compelling reasons" warranted a reduction. While the challenge was still being litigated, President Biden commuted the defendant's sentence to 330 months. The panel first addressed whether presidential commutation deprives an Article III court of jurisdiction to hear the case and noted a split among the circuits on this question. The Fourth Circuit has said a commutation may not be disturbed by the courts, while the Sixth Circuit has said a court may not modify the commutation itself but may correct its own errors, for example, if the sentence were unconstitutional in the first place. The Fifth and Eleventh Circuits likewise found jurisdiction after a commutation but did not address the separation-of-powers inquiry. The Eighth Circuit panel concluded the court retained jurisdiction to hear collateral attacks on the underlying sentence notwithstanding the commutation. The panel reasoned that the President would otherwise have the power to insulate certain sentences from judicial review, contrary to the principle that sentencing is the purview of courts.	Fourth Circuit Blount v. Clarke, 890 F.3d 456, 462 (4th Cir. 2018)
Criminal Law & Procedure	Ninth Circuit	Race v. Salmonsen, 131 F.4th 792 (9th Cir. 2025)	A divided Ninth Circuit panel held that a federal district court erred when, *sua sponte*, it dismissed a prisoner's habeas corpus petition as time-barred without providing him notice and a chance to respond. The petitioner, proceeding pro se, had included a legal memorandum with his petition acknowledging that his petition was outside the statute of limitations but arguing that the statute of limitations should be tolled. Citing circuit precedent, the panel majority held that the petitioner's apparent awareness of his rights did not displace the reviewing court's obligation to provide him with formal notice of its	Fourth Circuit Hill v. Braxton, 277 F.3d 701, 707 (4th Cir. 2002)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			intention to dismiss his habeas claim and an opportunity to respond. The majority observed that its ruling conflicted with a decision from the Fourth Circuit that concluded notice is unnecessary if the materials presented to the district court make it clear that the petition is time-barred and equitable tolling principles cannot salvage the claim.	
Criminal Law & Procedure	Ninth Circuit	United States v. Myers, 136 F.4th 917 (9th Cir. 2025)	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.	First Circuit United States v. Saemisch, 70 F.4th 1, 6 (1st Cir. 2023) Fifth Circuit United States v. Hughes, 914 F.3d 947, 949 (5th Cir.), *as revised* (Feb. 1, 2019), *as revised* (Feb. 14, 2019)
Criminal Law & Procedure	Ninth Circuit	Gonzalez v. Herrera, 151 F.4th 1076 (9th Cir. 2025)	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.	Fourth Circuit Valladares v. Ray, 130 F.4th 74, 79 (4th Cir. 2025) Fifth Circuit Stinson v. Martinez, No. 24-30793, 2025 WL 2017872, at *1 (5th Cir. July 18, 2025) (per curiam) Eleventh Circuit Guerriero v. Miami RRM, No. 24-10337, 2024 WL 2017730, at *2 (11th Cir. May 7, 2024) (per curiam)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
				Possible divergence from Third Circuit: Malik v. Warden Loretto FCI, No. 23-2281, 2024 WL 3649570, at *2 (3d Cir. Aug. 5, 2024) (per curiam)
Criminal Law & Procedure	Tenth Circuit	United States v. Zamora, 136 F.4th 1278 (10th Cir. 2025)	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.	Fourth Circuit United States v. Juv. Male No. 1, 86 F.3d 1314, 1317–20 (4th Cir. 1996)
Criminal Law & Procedure	Tenth Circuit	United States v. Rudolph, 152 F.4th 1197 (10th Cir. 2025), *petition for cert. filed*, No. 25-675 (U.S. Dec. 10, 2025)	After affirming a defendant's conviction for foreign murder (18 U.S.C. § 1119) and mail fraud (18 U.S.C. § 1341), the Tenth Circuit rejected the defendant's arguments that assets purchased using the proceeds of his murdered wife's life insurance along with other untainted funds were too commingled to justify forfeiture under 18 U.S.C. § 981(a)(1)(C). The panel cited decisions by the Eighth and Ninth Circuits involving direct forfeiture of property traceable to wire fraud as support for its holding. The panel specifically rejected the defendant's reliance on a Third Circuit opinion, which had found that when commingled assets cannot be easily divided, the government must use the substitute assets provision in 21 U.S.C. § 853(p) to satisfy forfeiture. The Tenth Circuit also pointed to a subsequent Third Circuit decision in which that court had allowed the direct forfeiture of commingled assets where the laundered funds could be clearly traced. The Tenth Circuit concluded that there was no clear error in the district court's finding that the defendant's commingled assets could be	Third Circuit United States v. Voigt, 89 F.3d 1050, 1088 (3d Cir. 1996)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			divided and were traceable to laundered funds and thus deemed the forfeiture proper.	
Criminal Law & Procedure	Eleventh Circuit	United States v. Leahy, 152 F.4th 1356 (11th Cir. 2025)	The Eleventh Circuit affirmed a criminal conviction under 18 U.S.C. § 245(b)(2)(B), which, among other things, prohibits using force or threats of force to willfully injure, intimidate, or interfere with a person because of their race and because they are enjoying a facility administered by a state or local government. A trial court found that the defendant repeatedly attempted to run a family's car off a county road while shouting racial slurs and miming shooting the victims. In upholding the conviction, the panel rejected the defendant's constitutional challenge, holding that Section 245(b)(2)(B) is a valid exercise of Congress's Thirteenth Amendment authority to legislate against the badges and incidents of slavery. The panel also interpreted the statute to require only "but-for" causation—meaning the government needed to prove only that the racially motivated attack would not have occurred but for the victim's use of the county road. It rejected the defendant's more stringent reading of Section 245(b)(2)(B) as requiring proof that the defendant's intent or reason for acting was to stop the defendant from using the road. The Eleventh Circuit acknowledged that some other circuits, including the Second Circuit, interpreted Section 245(b)(2)(B) to impose such an intent standard, but declined to follow them in light of subsequent Supreme Court caselaw on but-for causation.	Second Circuit United States v. Nelson, 277 F.3d 164, 189 (2d Cir. 2002)
Elections	Third Circuit	Eakin v. Adams Cnty. Bd. of Elections, 149 F.4th 291 (3d Cir. 2025)	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	Seventh Circuit Common Cause Ind. v. Lawson, 977 F.3d 663, 664 (7th Cir. 2020)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			Anderson-Burdick test to mail-in ballot laws, the panel diverged from the Seventh Circuit but joined the Second, Sixth, Ninth, and Eleventh Circuits.	
Employee Benefits	Fifth Circuit	Aramark Servs., Inc. Grp. Health Plan v. Aetna Life Ins. Co., 162 F.4th 532 (5th Cir. 2025)	A divided Fifth Circuit panel affirmed a lower court's decision not to stay litigation of the plaintiffs' claims under the Employee Retirement Income Security Act of 1974 (ERISA) pending arbitration. The plaintiffs alleged that the defendant, a health plan administrator, violated its fiduciary duties under ERISA in mishandling health plan claims. An agreement between the parties provided for the mandatory arbitration of claims not seeking equitable relief. Although the plaintiffs sought money damages (which are typically not equitable), the panel held that the claims were equitable because plaintiffs sought "make-whole" monetary relief from the defendant's violation of a fiduciary duty under ERISA. The panel majority acknowledged disagreement with the Fourth Circuit, which has held that such claims under ERISA cannot be considered equitable in nature unless the plaintiff seeks the transfer of specific funds alleged to be wrongfully in the defendant's possession, which had not occurred here. The Fifth Circuit panel majority observed that the disagreeing circuits' position relied on a Supreme Court decision concerning monetary damage claims under ERISA against non-fiduciaries. The panel majority found no indication the Court intended its decision to extend to fiduciary defendants.	Fourth Circuit Rose v. PSA Airlines, 80 F.4th 488, 496, 507 (4th Cir. 2023)
Employee Benefits	Sixth Circuit	Aldridge v. Regions Bank, 144 F.4th 828 (6th Cir. 2025)	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	Eleventh Circuit Gimeno v. NCHMD, Inc., 38 F.4th 910, 914–15 (11th Cir. 2022)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			concluded otherwise, specifically citing to an Eleventh Circuit case that took the contrary view.	
Environmental Law	Ninth Circuit	Coastal Env'l Rts. Found. v. Naples Rest. Grp., LLC, 158 F.4th 1052 (9th Cir. 2025)	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.	Second Circuit Atl. States Legal Found., Inc. v. Pan Am. Tanning Corp., 993 F.2d 1017, 1021 (2d Cir. 1993) Third Circuit Nat. Res. Def. Council, Inc. v. Texaco Refin. & Mktg., Inc., 2 F.3d 493, 503 (3d Cir. 1993) Fourth Circuit Chesapeake Bay Found., Inc. v. Gwaltney of Smithfield, Ltd., 890 F.2d 690, 696 (4th Cir. 1989) Seventh Circuit Atl. States Legal Found., Inc. v. Stroh Die Casting Co., 116 F.3d 814, 820 (7th Cir. 1997) Eleventh Circuit Atl. States Legal Found., Inc. v. Tyson Foods, Inc., 897 F.2d 1128, 1135 (11th Cir. 1990)

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Firearms	Third Circuit	Koons v. Att'y Gen. of New Jersey, 156 F.4th 210 (3d Cir. 2025), *vacated*, No. 23-1900, 2025 WL 3552513 (3d Cir. Dec. 11, 2025)	A divided panel of the Third Circuit held some, but not all, portions of a New Jersey law imposing firearms permitting requirements and carry restrictions on firearms owners were likely constitutional on appeal of a preliminary injunction. Applying the history-based framework established by the Supreme Court's decision in *New York State Rifle & Pistol Association., Inc. v. Bruen* to assess whether a firearms regulation is consistent with the Second Amendment, the panel majority upheld the constitutionality of many of the law's firearms restrictions relating to sensitive places, such as public gatherings, parks, public libraries and museums, health care facilities, and public transit. Conversely, it agreed with the district court's injunction of portions of the law related to permitting fees, private property requirements, liability insurance requirements, and restrictions on private vehicles, among other sections, as inconsistent with the Second Amendment. As a threshold issue, the panel majority specifically rejected the state's arguments that a state acting as proprietor of its own land need not justify firearms restrictions on state property generally under the Second Amendment. In analyzing this issue, the panel majority differentiated pre-*Bruen* decisions from the D.C. Circuit and Ninth Circuit and recognized a disagreement with a post-*Bruen* statement of the Ninth Circuit, allowing states to exclude firearms from their property in the same way as a private party. Instead, the panel majority determined that *Bruen* required that a state's exclusions of firearms on state property undergo analysis under its history-based framework, under which analogous historical laws protecting sovereign functions and officials would be considered as relevant.	Ninth Circuit Wolford v. Lopez, 116 F.4th 959, 970–71 (9th Cir. 2024), *cert. granted in part*, No. 24-1046, 2025 WL 2808808 (Oct. 3, 2025) (mem.)
Firearms	Fifth Circuit	United States v. Ahmadou, 159 F.4th 936 (5th Cir. 2025)	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	Ninth Circuit United States v. Tallmadge, 829 F.2d 767, 774 (9th Cir. 1987)

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			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.	
Firearms	Fifth Circuit	United States v. Mitchell, 160 F.4th 169 (5th Cir. 2025)	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.	Fourth Circuit United States v. Hunt, 123 F.4th 697, 702 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 2756 (2025) Eighth Circuit United States v. Jackson, 110 F.4th 1120, 1129 (8th Cir. 2024), *cert. denied*, 145 S. Ct. 2708 (2025) Ninth Circuit United States v. Duarte, 137 F.4th 743, 748 (9th Cir. 2025) (en banc) Tenth Circuit Vincent v. Bondi, 127 F.4th 1263, 1265–66 (10th Cir. 2025) Eleventh Circuit United States v. Dubois, 94 F.4th 1284, 1293 (11th Cir. 2024), *vacated*, 145 S. Ct. 1041, *and reinstated*, 139 F.4th 887 (11th Cir. 2025)

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Firearms	Ninth Circuit	United States v. Duarte, 137 F.4th 743 (9th Cir. 2025) (en banc)	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.	Third Circuit Range v. Att'y Gen., 124 F.4th 218, 222–23 (3d Cir. 2024) (en banc)
Firearms	Tenth Circuit	Vincent v. Bondi, 127 F.4th 1263 (10th Cir. 2025), *petition for cert. filed*, No. 24-1155 (U.S. May 12, 2025)	A Tenth Circuit panel reaffirmed an earlier decision that 18 U.S.C. § 922(g)(1), which bans the possession of firearms by most felons, does not violate the Second Amendment regardless of whether the felony involves a nonviolent offense. The court's earlier ruling had been vacated and remanded by the Supreme Court for reconsideration in light of the Supreme Court's intervening decision in the 2023 case *of United States v. Rahimi*, which expounded upon text-and-history test used by the Court to assess whether a law violates the Second Amendment. On remand, the circuit panel now held that *Rahimi* did not abrogate prior circuit precedent upholding Section 922(g)(1). In finding Section 922(g)(1) constitutional, that earlier precedent had relied on the Supreme Court's statement in its 2008 decision in *Heller v. District of Columbia* that its recognition of an individual right to bear arms under the Second Amendment did not displace "longstanding prohibitions on the possession of firearms by felons." The Tenth Circuit noted disagreement with the Sixth Circuit's determination that its *Heller*-based precedent was no longer binding in a Second Amendment challenge to Section 922(g)(1), even though after employing the Supreme Court's text-and-history standard as described in *Rahimi*, the Sixth Circuit similarly found Section 922(g)(1) to be constitutional.	Sixth Circuit United States v. Williams, 113 F.4th 637, 648 (6th Cir. 2024)
Firearms	Tenth Circuit	United States v. Harrison, 153 F.4th 998 (10th Cir. 2025)	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	Fifth Circuit United States v. Connelly, 117 F.4th 269, 278–82 (5th Cir. 2024)

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			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.	
Firearms	Eleventh Circuit	Nat'l Rifle Ass'n v. Bondi, 133 F.4th 1108 (11th Cir. 2025), *petition for cert. filed,* No. 24-1185 (U.S. May 20, 2025)	A divided en banc Eleventh Circuit rejected a Second Amendment challenge to a Florida statute that generally bars persons under 21 years old from purchasing firearms. Relying on the Supreme Court's 2022 decision in *New York State Rifle & Pistol Association., Inc. v. Bruen*, the court applied the two analytical steps set forth in that decision: first considering the plain text of the Second Amendment, and then looking for historical analogues evincing consistency of the challenged law with historical tradition. While reaching the same conclusion as an earlier three-judge panel in the case, the en banc majority's application of *Bruen* differed from the earlier approach by primarily looking to historical analogues from the Founding era rather than the Reconstruction period. The en banc majority found the Florida restriction to be sufficiently analogous to Founding-era, common law restrictions on minors' ability to enter contracts to purchase personal property, including firearms. The majority acknowledged a split with the Fifth Circuit regarding relevant analogues for modern-day restrictions on gun purchases by persons under 21 years of age. The Fifth Circuit had not placed the same import on the common law regime and, in looking for firearm-specific historical analogues in the Founding era, found insufficient support to sustain a federal statute limiting firearm sales to persons under 21 against a Second Amendment challenge.	Fifth Circuit Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives, 127 F.4th 583, 586 (5th Cir. 2025)

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Firearms	Eleventh Circuit	United States v. Gaines, 154 F.4th 1317 (11th Cir. 2025)	The Eleventh Circuit vacated a defendant's conviction under 18 U.S.C. § 922(g)(1), often referred to as the felon-in-possession prohibition, which generally prohibits a person who is convicted of a crime punishable by imprisonment for a term exceeding a year from possessing a firearm. The defendant had been convicted under Alabama law for a crime that was broadly punishable by more than a year of imprisonment. Another Alabama law, however, entirely foreclosed imprisonment for someone with the defendant's limited prior criminal history. The panel noted that whether a defendant's conviction qualifies under Section 922(g)(1) could be either (a) an offense-specific inquiry—requiring only that the imprisonment for the underlying conviction had the possibility of being over a year—or (b) a defendant-specific inquiry—requiring the length of potential imprisonment applicable to the specific defendant to be over a year. The panel read two analogous Supreme Court decisions to require a defendant-specific inquiry, joining the Fourth, Eighth, Ninth, and Tenth Circuits, which it observed had all overturned previous comparable circuit precedents in light of these Supreme Court decisions. The panel noted that, even after the Supreme Court's decisions, the D.C. Circuit appeared to maintain an offense-specific application of the term of imprisonment in Section 922(g)(1), although it had not discussed any of the recent countervailing authority. The Eleventh Circuit applied the defendant-specific inquiry to the defendant's case and overturned his conviction because he could not have been subject to imprisonment for his violation of Alabama law and therefore was not federally prohibited from possessing a firearm.	D.C. Circuit Schrader v. Holder, 704 F.3d 980, 986 (D.C. Cir. 2013)
Freedom of Information Act	D.C. Circuit	Hum. Rts. Def. Ctr. v. U.S. Park Police, 126 F.4th 708 (D.C. Cir. 2025)	The D.C. Circuit vacated a lower court's clawback order that blocked an organization from using or disseminating information about U.S. Park Police personnel that was inadvertently disclosed in response to the organization's Freedom of Information Act (FOIA) request. The circuit panel held that the Park Police failed to satisfy its burden of showing that disclosure of personnel names would compromise a substantial privacy interest to support withholding such information under FOIA Exemption 6 and the FOIA Improvement Act. The panel further held that the lower court lacked the power to issue the clawback order because the order was not an exercise of the court's inherent authority to	Tenth Circuit Rocky Mountain Wild, Inc. v. U.S. Forest Serv., 56 F.4th 913, 930–31 (10th Cir. 2022)

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			manage judicial proceedings. Instead, the panel characterized the order as an effort to fill a perceived gap in the FOIA statute, which had resulted in the government being unable to prevent the dissemination of certain information it had mistakenly disclosed. The panel observed disagreement with the Tenth Circuit, which upheld a lower court's order instructing the return or destruction of documents inadvertently disclosed in response to a FOIA request.	
Health	First Circuit	United States v. Regeneron Pharms., Inc., 128 F.4th 324 (1st Cir. 2025)	The First Circuit widened a circuit split over the interplay between the Anti-Kickback Statute (AKS) and the False Claims Act (FCA). The AKS includes a criminal prohibition against certain quid pro quo arrangements involving federal health care programs. The statute also provides that a claim seeking payment from a federal health care program "that includes items or services resulting from a violation" of the AKS is a false or fraudulent claim giving rise to liability under the FCA. The First Circuit joined the Sixth and Eighth Circuits in interpreting the AKS's "resulting from" language as establishing a "but-for" causation standard for FCA liability, where the government must prove that the AKS violation actually caused the delivery of medical items or services. The panel disagreed with the Third Circuit's view that FCA liability only requires a sufficient causal connection between the AKS violation and the provision of medical items or services.	Third Circuit United States *ex rel.* Greenfield v. Medco Health Sols., Inc., 880 F.3d 89, 100 (3d Cir. 2018)
Health	Fourth Circuit	Pharmacy Coal. for Patient Access v. United States, 126 F.4th 947 (4th Cir. 2025)	The Fourth Circuit rejected a suit challenging an advisory opinion by the Office of the Inspector General (OIG) for the Department of Health and Human Services. The advisory opinion had concluded that a proposed patient assistance program for Medicare beneficiaries by a charitable organization involving a group of drug manufacturers would violate the Anti-Kickback Statute. The OIG decided that the program, which would have subsidized Medicare Part D beneficiary co-pays for oncology drugs produced by participating drug manufacturers, would violate the Anti-Kickback Statute's prohibition against knowingly and willfully offering or paying "any remuneration (including any kickback, bribe, or rebate)" to "induce" the purchase of a federally reimbursable health care product. The panel generally agreed with the IG that the program would violate the Anti-Kickback Statute's plain terms because it would encourage beneficiaries, through the offer of subsidies, to buy	Sixth Circuit United States *ex rel.* Martin v. Hathaway, 63 F.4th 1043, 1051 (6th Cir. 2023)

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			federally reimbursable health care goods. The panel decided that the statute used "induce" in its ordinary sense to refer to influencing another, and not in the narrower sense sometimes used in criminal statutes to cover the solicitation or facilitation of the commission of an unlawful act by another. The panel also decided that the program's subsidization of co-pays was a type of "remuneration" covered by the statute. The panel rejected the organization's argument that the statute was meant to apply only to corrupt payments like kickbacks and bribes. The panel emphasized that the statute's text expressly covered "any remuneration," regardless of whether or not it was for corrupt purposes, and the panel acknowledged disagreement with the Sixth Circuit, which had interpreted the term as having a narrower scope.	
Immigration	Fifth Circuit	United States v. Ortiz-Rodriguez, 145 F.4th 593 (5th Cir. 2025), *petition for cert. filed*, No. 25-5962 (U.S. Oct. 27, 2025)	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,	Ninth Circuit United States v. Martinez, 786 F.3d 1227, 1230 (9th Cir. 2015)

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			the alien was removable under then-existing Fifth Circuit precedents.	
Immigration	First Circuit	Rosa v. Bondi, 144 F.4th 37 (1st Cir. 2025) (per curiam)	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."	Ninth Circuit Mondaca-Vega v. Lynch, 808 F.3d 413, 420 (9th Cir. 2015) (en banc)
Immigration	First Circuit	Leao v. Bondi, 144 F.4th 43 (1st Cir. 2025)	The First Circuit denied an alien's petition for review of a Board of Immigration Appeals (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.	Second Circuit Hernandez v. Garland, 66 F.4th 94, 102 (2d Cir. 2023)
Immigration	Second Circuit	Lau v. Bondi, 130 F.4th 42 (2d Cir. 2025), *cert. granted*, No. 25-429, 2026 WL 73094 (U.S. Jan. 9, 2026) (mem.)	The Second Circuit held that the Department of Homeland Security (DHS) improperly treated a lawful permanent resident (LPR), who had briefly traveled abroad, as an applicant for admission upon his return to the United States due to his pending criminal charge, and vacated the removal order issued against the LPR. In general, LPRs are subject to different grounds of removal (i.e., grounds of deportation) than aliens seeking initial admission to the United States (i.e., grounds of	Fifth Circuit Munoz v. Holder, 755 F.3d 366, 370–71 (5th Cir. 2014) Ninth Circuit Vazquez Romero v. Garland, 999 F.3d 656, 664 (9th Cir. 2021)

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			inadmissibility). LPRs who travel abroad for short periods are not considered applicants for admission upon their return except in certain circumstances, including when the LPR has "committed" a specified criminal offense. Here, DHS authorities treated the returning LPR as an applicant for admission upon his return because he had been charged with—but not yet convicted of—such an offense (in this case, a crime involving moral turpitude). After being paroled into the country so the pending criminal charges could be resolved, the LPR was convicted of the criminal offense. The Second Circuit held that the criminal charging documents alone were not a sufficient basis for DHS to prove by clear and convincing evidence that the crime had been "committed" at the time of reentry. The panel therefore held that DHS's treatment of the returning LPR as an applicant for admission was impermissible. The panel disagreed with Fifth and Ninth Circuit decisions that allowed DHS to presumptively treat a returning LPR as an applicant for admission and use the alien's subsequent conviction to meet its evidentiary burden. The panel remanded the case, while leaving open the possibility that DHS could pursue removal based on applicable grounds of deportation.	
Immigration	Fourth Circuit	Romero v. Bondi, 150 F.4th 332 (4th Cir. 2025)	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.	Eighth Circuit Rafiyev v. Mukasey, 536 F.3d 853, 860 (8th Cir. 2008)
Immigration	Fourth Circuit	Solis-Flores v. Bondi, 159 F.4th 205 (4th Cir. 2025)	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.	Ninth Circuit Castillo-Cruz v. Holder, 581 F.3d 1154, 1159–61 (9th Cir. 2009)

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Immigration	Fifth Circuit	Garcia Morin v. Bondi, 152 F.4th 626 (5th Cir. 2025), *petition for cert. filed*, No. 25-693 (U.S. Dec. 12, 2025)	The Fifth Circuit rejected an alien petitioner's claim that the Board of Immigration Appeals erred in refusing to consider his second motion to reopen removal proceedings. Under 8 U.S.C. § 1229a(c)(7)(A), most aliens subject to removal orders may file only one motion to reopen a removal proceeding. Aligning with some appellate courts but diverging from the Second and Ninth Circuits, the Fifth Circuit held that the statutory limit on motions to reopen is not subject to equitable tolling that would allow consideration of more than one motion to reopen when extraordinary circumstances exist beyond the petitioner's control.	Second Circuit Iavorski v. U.S. Immigr. & Naturalization Serv., 232 F.3d 124, 132 (2d Cir. 2000) Ninth Circuit Ray v. Gonzales, 439 F.3d 582, 588–90 (9th Cir. 2006)
Immigration	Sixth Circuit	Ebu v. U.S. Citizenship & Immigr. Servs., 134 F.4th 895 (6th Cir. 2025), *cert. denied*, No. 25-467, 2026 WL 79681 (U.S. Jan. 12, 2026) (mem.)	A divided Sixth Circuit panel affirmed a district court's dismissal of a lawful permanent resident's request that the court make a determination on his naturalization application under 8 U.S.C. § 1447(b) where the applicant was subject to ongoing removal proceedings. The panel majority held that 8 U.S.C. § 1429 barred the district court from considering the application while removal proceedings were pending. Section 1429 provides that "no application for naturalization shall be considered by the Attorney General if there is pending against the applicant a removal proceeding." (Changes made by the Homeland Security Act transferred this function to U.S. Citizenship and Immigration Services (USCIS), despite Section 1429's continued reference to the Attorney General.) The panel majority disagreed with the Ninth Circuit that Section 1429 applies only to the consideration of naturalization applications by USCIS. Joining the Second and Fifth Circuits, the Sixth Circuit ruled that the interplay between Section 1429 and surrounding statutory provisions made clear that it was intended to also apply to district courts' determinations of naturalization applications under Section 1447(b). The panel majority also ruled that Section 1429 barred consideration of the applicant's request for a declaratory judgment that he was prima facie eligible for naturalization.	Ninth Circuit Yith v. Nielsen, 881 F.3d 1155, 1158 (9th Cir. 2018)

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Immigration	Sixth Circuit	Osabas-Rivera v. Bondi, 161 F.4th 446 (6th Cir. 2025)	The Sixth Circuit held that it lacked jurisdiction to review a determination made by the Board of Immigration Appeals (BIA) that a petitioner failed to establish extraordinary circumstances required to excuse an untimely asylum application. The petitioner argued that the BIA incorrectly determined that his severe depression—which caused him to miss deadlines—failed to create the statutorily necessary extraordinary circumstances to excuse his untimely filing. In holding that there was no jurisdiction to review the BIA's determination, the Sixth Circuit noted that the relevant statute grants to the Attorney General the discretion to make these determinations. Citing a prior Sixth Circuit decision that collected cases, the panel noted that most circuit courts, including the First, Third, Seventh, Eighth, Tenth, and Eleventh Circuits, have concluded that the Attorney General's findings on "extraordinary circumstances" are unreviewable because of the discretion inherent in such a determination, and statutory language specifying that the asylum applicant must make a showing "to the satisfaction of the Attorney General." Only the Ninth Circuit has decided this question differently, reasoning that the statute simply answers who has the discretion to decide—the Attorney General—rather than singularly vesting discretion in the Attorney General. The panel noted this rendered the remaining statutory language surplusage, and agreed with the majority of the circuits to conclude that it lacked jurisdiction to review the denial of the petitioner's asylum application.	Ninth Circuit Ramadan v. Gonzales, 479 F.3d 646, 654–56 (9th Cir. 2007) Note: The Sixth Circuit did not identify the specific Ninth Circuit case that took a different approach, but cited an earlier Sixth Circuit decision, Rahman v. Bondi, 131 F.4th 399, 408 (6th Cir. 2025), *cert. denied*, No. 25-168, 2026 WL 79621 (U.S. Jan. 12, 2026), that referenced the case.
Immigration	Ninth Circuit	Al Otro Lado v. Exec. Off. for Immigr. Rev., 138 F.4th 1102 (9th Cir. 2025), *cert. granted sub nom.*, Noem v. Al Otro Lado, No. 25-5, 2025 WL 3198572 (U.S. Nov. 17, 2025) (mem.)	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	Tenth Circuit Forest Guardians v. Babbitt, 174 F.3d 1178, 1190 (10th Cir. 1999)

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			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.	
Immigration	Tenth Circuit	Daley v. Ceja, 158 F.4th 1152 (10th Cir. 2025)	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.	Fourth Circuit Obando-Segura v. Garland, 999 F.3d 190, 194 (4th Cir. 2021) Fifth Circuit Barco v. Witte, 65 F.4th 782, 785 & n.1 (5th Cir. 2023)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
International Law	Second Circuit	Kapoor v. DeMarco, 132 F.4th 595 (2d Cir. 2025), *cert. denied*, No. 24-1288, 2025 WL 2949563 (U.S. Oct. 20, 2025) (mem.)	In affirming a lower court's denial of habeas corpus relief to a foreign national challenging her proposed extradition to India to face criminal charges, the Second Circuit held that a federal statute barred habeas review of the extraditee's claim that her transfer was prohibited by the U.N. Convention Against Torture (CAT) and its implementing legislation. CAT obligates treaty parties to refrain from transferring a person to a country where they would more likely than not face torture. Agreeing with the D.C. Circuit, the Second Circuit panel held that 8 U.S.C. § 1252(a)(4), which was added by the REAL ID Act of 2005, barred habeas review of CAT claims; instead, judicial review of CAT claims is available only in the immigration context, under the specific judicial review procedures set forth in § 1252 as part of an alien's challenge to a final order of removal. (Removal of aliens from the United States for immigration violations is governed by a different legal framework than extradition, which involves the surrender of a person to another country to face criminal charges or punishment.) The Fourth Circuit reached a similar conclusion but on a different legal ground, while a fractured en banc Ninth Circuit decided that habeas review of an extraditee's CAT claims was available only to confirm whether the Secretary of State had concluded that the extradition comported with CAT.	Ninth Circuit Trinidad y Garcia v. Thomas, 683 F.3d 952, 955 (9th Cir. 2012) (en banc) (per curiam)
Labor & Employment	D.C. Circuit	Hudson v. AFGE, 151 F.4th 456 (D.C. Cir. 2025)	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	Second Circuit Petramale v. Local No. 17, Laborers Int'l Union of N. Am., 736 F.2d 13, 18 (2d Cir. 1984) Fourth Circuit Bradford v. Textile Workers of Am. Local 1093, 563 F.2d 1138, 1143 (4th Cir. 1977) Sixth Circuit Black v. Ryder/P.I.E. Nationwide, Inc., 970 F.2d 1461, 1469 (6th Cir. 1992)

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			a direct result of the protected speech in order to prove retaliation under the LMRDA.	
Labor & Employment	Third Circuit	Spring Creek Rehab. & Nursing Ctr. LLC v. Nat'l Lab. Rels. Bd.,160 F.4th 380 (3d Cir. 2025)	The Third Circuit panel rejected an employer's attempt to enjoin the National Labor Relations Board (NLRB) from subjecting the employer to administrative proceedings arising from a labor dispute with its employees. The employer argued that these proceedings were constitutionally invalid because the NLRB's members and administrative law judges are unconstitutionally insulated from presidential removal. A majority of the panel based its decision on the Norris-LaGuardia Act, which generally strips federal courts of authority "to issue any . . . injunction in a case involving or growing out of a labor dispute." The majority acknowledged a split with the Fifth Circuit, which has held that direct constitutional challenges to the structure of the NLRB are meaningfully distinct from labor disputes and therefore fall outside the scope of the Norris-LaGuardia Act.	Fifth Circuit Space Expl. Techs. Corp. v. Nat'l Lab. Rels. Bd., 151 F.4th 761, 770 (5th Cir. 2025)
Labor & Employment	Fifth Circuit	Hiran Mgmt., Inc. v. Nat'l Lab. Rels. Bd., 157 F.4th 719 (5th Cir. 2025)	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.	Ninth Circuit Int'l Union of Operating Engineer's v. Nat'l Lab. Rels. Bd., 127 F.4th 58, 86 (9th Cir. 2025), *amended and superseded on denial of rehearing en banc*, 155 F.4th 1023, *petition for cert. filed sub nom.*, Macy's Inc. v. Nat'l Lab. Rels. Bd., No. 25-627 (U.S. Nov. 26, 2025)

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Labor & Employment	Seventh Circuit	Richards v. Eli Lilly & Co., 149 F.4th 901 (7th Cir. 2025), *cert. denied*, No. 25-476, 2026 WL 79908 (U.S. Jan. 12, 2026) (mem.)	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.	Fifth Circuit Swales v. KLLM Transp. Servs., LLC, 985 F.3d 430, 434 (5th Cir. 2021) Sixth Circuit Clark v. A&L Homecare & Training Ctr., LLC, 68 F.4th 1003, 1011 (6th Cir. 2023)
Labor & Employment	Ninth Circuit	Harrington v. Cracker Barrel Old Country Store, Inc., 142 F.4th 678 (9th Cir. 2025)	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	First Circuit Waters v. Day & Zimmermann NPS, Inc., 23 F.4th 84, 92 (1st Cir. 2022)

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			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.	
Labor & Employment	Ninth Circuit	Nat'l Lab. Rels. Bd. v. N. Mountain Foothills Apartments, 157 F.4th 1089 (9th Cir. 2025)	The Ninth Circuit granted the National Labor Relation's Board (NLRB's) application for enforcement of an order finding a violation of the National Labor Relations Act (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.	Eighth Circuit Nat'l Lab. Rels. Bd. v. RELCO Locomotives, Inc., 734 F.3d 764, 796–98 (8th Cir. 2013)
Labor & Employment	Ninth Circuit	Amazon.com Servs., LLC v. Teamsters Amazon Nat'l Negotiating Comm.,163 F.4th 624 (9th Cir. 2025)	The Ninth Circuit upheld a lower court's decision that it lacked jurisdiction to stay administrative proceedings before the National Labor Relations Board (NLRB). NLRB proceedings had been initiated against Amazon concerning alleged unfair labor practices, and Amazon filed suit in federal court to halt NLRB proceedings on the grounds that statutory restrictions on the President's ability to remove NLRB members and administrative law judges were unconstitutional. The circuit	Fifth Circuit Space Expl. Techs. Corp. v. Nat'l Lab. Rels. Bd., 151 F.4th 761, 770 (5th Cir. 2025)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			panel agreed with the lower court that it lacked jurisdiction to enjoin the NLRB's proceedings because the Norris-LaGuardia Act strips federal courts of authority "to issue any . . . injunction in a case involving or growing out of a labor dispute." The panel reasoned that Amazon's constitutional challenge to the NLRB arose from the labor dispute that prompted the NLRB's proceedings, even though the opposing party in that dispute was not a named party to Amazon's constitutional challenge. The panel's interpretation of the Norris-LaGuardia Act aligns with a recent Third Circuit decision but conflicts with the Fifth Circuit, which held in a similar case that an employer's constitutional challenge to the NLRB was distinct from an ongoing labor dispute and therefore not covered by the Act.	
Privacy	D.C. Circuit	Pileggi v. Wash. Newspaper Publ'g Co., 146 F.4th 1219 (D.C. Cir. 2025)	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." 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.	Second Circuit Salazar v. Nat'l Basketball Ass'n, 118 F.4th 533, 550 (2d Cir. 2024), *cert. denied*, No. 24-994, 2025 WL 3506972 (U.S. Dec. 8, 2025) (mem.) Seventh Circuit Gardner v. Me-TV Nat'l Ltd. P'ship, 132 F.4th 1022, 1025 (7th Cir. 2025), *reh'g denied*, No. 24-1290, 2025 WL 1433664 (7th Cir. May 14, 2025)
Privacy	Second Circuit	Solomon v. Flipps Media, Inc., 136 F.4th 41 (2d Cir. 2025)	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	First Circuit Yershov v. Gannett Satellite Info. Network, Inc., 820 F.3d 482, 486 (1st Cir. 2016)

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			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.	
Religion	Eighth Circuit	Barnett v. Short, 129 F.4th 534 (8th Cir. 2025)	The Eighth Circuit considered claims brought by a prisoner under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against a county and a county jail administrator in her individual capacity. RLUIPA generally prohibits a "government" from imposing a "substantial burden on the religious exercise of a person residing in or confined to an institution," and authorizes suits seeking "appropriate relief." In deciding whether RLUIPA permits claims for money damages, the court observed that RLUIPA was enacted under Congress's Spending Clause authority, and that conditions in Spending Clause legislation must be spelled out unambiguously. Splitting with the Sixth Circuit, the panel held the term "appropriate relief" under RLUIPA had sufficient clarity to encompass the recovery of money damages. While concluding that the prisoner's RLUIPA claim for money damages against the county could proceed, the Eighth Circuit nonetheless held RLUIPA's application against non-recipients of federal funds who were acting in their individual capacities exceeded Congress's spending power. The court therefore ruled that the prisoner's RLUIPA suit against the jail administrator could not proceed.	Sixth Circuit Haight v. Thompson, 763 F.3d 554, 568–70 (6th Cir. 2014)
Religion	Ninth Circuit	Pritchard *ex rel.* C.P. v. Blue Cross Blue Shield, 159 F.4th 646 (9th Cir. 2025)	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	Second Circuit Hankins v. Lyght, 441 F.3d 96, 103 (2d Cir. 2006)

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			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.	
Securities	Sixth Circuit	*In re* FirstEnergy Corp. Secs. Litig., 149 F.4th 587 (6th Cir. 2025)	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 is often 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.	Fourth Circuit Cox v. Collins, 7 F.3d 394, 395–96 (4th Circuit 1993)
Securities	Ninth Circuit	Sec. & Exch. Comm'n v. Barry, 146 F.4th 1242 (9th Cir. 2025)	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.	D.C. Circuit Sec. & Exch. Comm'n v. Life Partners, Inc., 87 F.3d 536, 538 (D.C. Cir. 1996)

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Securities	Ninth Circuit	Sec. & Exch. Comm'n v. Sripetch, 154 F.4th 980 (9th Cir. 2025), *cert. granted*, No. 25-466, 2026 WL 73091 (U.S. Jan. 9, 2026) (mem.)	The Ninth Circuit upheld a lower court's disgorgement award in a securities enforcement action under 15 U.S.C. § 78u(d)(5) and (d)(7). The defendant contended that the Securities and Exchange Commission failed to show that investors who were defrauded by the defendant's actions suffered pecuniary harm. Splitting with the Second Circuit and agreeing with the First Circuit, the Ninth Circuit held that a showing that investors suffered pecuniary harm is not required for a disgorgement award to be granted.	Second Circuit Sec. & Exch. Comm'n v. Govil, 86 F.4th 89, 106 (2d Cir. 2023)
Separation of Powers	D.C. Circuit	Glob. Health Council v. Trump, 153 F.4th 1 (D.C. Cir. 2025)	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.	Ninth Circuit Murphy Co. v. Biden, 65 F.4th 1122, 1130 (9th Circuit 2023), *cert. denied*, 144 S. Ct. 1111 (2024) (mem.)
Separation of Powers	Second Circuit	Flinton v. Comm'r of Soc. Sec., 143 F.4th 90 (2d Cir. 2025)	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. Securities and Exchange Commission (SEC)*. After the Court in *Lucia* found that administrative law judges (ALJs) in the SEC were improperly appointed "inferior officers," the Acting Commissioner of Social Security ratified the	Eleventh Circuit Raper v. Comm'r of Soc. Sec., 89 F.4th 1261, 1270–73 (11th Cir.), *cert. denied sub nom*., Raper v. O'Malley, 145 S. Ct. 984 (2024) (mem.)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			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.	
Separation of Powers	Third Circuit	Axalta Coating Sys. LLC v. Fed. Aviation Admin., 144 F.4th 467 (3d Cir. 2025)	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	Fifth Circuit Jarkesy v. Sec. & Exch. Comm'n, 34 F.4th 446, 461 (5th Cir. 2022), *aff'd and remanded*, 603 U.S. 109, *and adhered to*, 132 F.4th 745 (5th Cir. 2024)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			power, and thus reasoned that the choice could not violate the nondelegation doctrine.	
Separation of Powers	Eleventh Circuit	Walmart, Inc. v. Chief Admin. Law Judge, 144 F.4th 1315 (11th Cir. 2025)	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 administrative law judges (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.	Fifth Circuit Jarkesy v. Sec. & Exch. Comm'n, 34 F.4th 446, 449–50 (5th Cir. 2022), *aff'd and remanded*, 603 U.S. 109, *and adhered to*, 132 F.4th 745 (5th Cir. 2024)
Speech	Fifth Circuit	Little v. Llano County, 138 F.4th 834 (5th Cir. 2025) (en banc), *cert denied*, No. 25-284, 2025 WL 3507000 (U.S. Dec. 8, 2025) (mem.)	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	Eight Circuit GLBT Youth in Iowa Sch. Task Force v. Reynolds, 114 F.4th 660, 668 (8th Cir. 2024)

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			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.	
Speech	Sixth Circuit	B.A. *ex rel.* D.A. & X.A. v. Tri Cnty. Area Schs., 156 F.4th 782 (6th Cir. 2025)	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 sweatshirts that 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*.	Third Circuit B.H. *ex rel.* Hawk v. Easton Area Sch. Dist., 725 F.3d 293, 316–17 (3d Cir. 2013) (en banc)
Takings	Ninth Circuit	Pena v. City of Los Angeles, 158 F.4th 1033 (9th Cir. 2025)	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 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	Seventh Circuit Johnson v. Manitowoc Cnty., 635 F.3d 331, 336 (9th Cir. 2011)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			exception—did the plaintiffs state a claim that the courts found compensable under the Takings Clause.	
Tax	Third Circuit	Murrin v. Comm'r, 158 F.4th 527 (3d Cir. 2025)	The Third Circuit affirmed a U.S. Tax Court decision that the Internal Revenue Service (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. Section 6501(c)(1) of the Tax Code 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.	Federal Circuit BASR P'ship v. United States, 795 F.3d 1338, 1350 (Fed. Cir. 2015)
Tax	Sixth Circuit	Oquendo v. Comm'r, 148 F.4th 820 (6th Cir. 2025)	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.	Seventh Circuit Tilden v. Comm'r, 846 F.3d 882, 886 (7th Cir. 2017) Ninth Circuit Organic Cannabis Found. v. Comm'r, 962 F.3d 1082, 1094 (9th Cir. 2020)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
Tax	Eleventh Circuit	United States v. Schwarzbaum, 127 F.4th 259 (11th Cir. 2025)	The Eleventh Circuit issued a superseding opinion in a case originally decided in 2024. The panel reaffirmed its earlier ruling that fines assessed for failing to properly report foreign bank accounts (known as FBAR penalties) are subject to the Eighth Amendment's Excessive Fines Clause, as FBAR penalties are largely punitive. The court decided that penalties levied on one of the defendant's accounts violated the Clause because those penalties were grossly disproportionate to the FBAR offense. The panel remanded with directions for the trial court to enter a judgment in a lower amount. The circuit panel noted its disagreement with the First Circuit, which had concluded that the Excessive Fines Clause does not apply to FBAR penalties.	First Circuit United States v. Toth, 33 F.4th 1, 15–18 (1st Cir. 2022)
Telecommunications	Second Circuit	Verizon Commc'ns Inc. v. Fed. Commc'ns Comm'n, 156 F.4th 86 (2d Cir. 2025), *cert. granted*, No. 25-567, 2026 WL 73090 (U.S. Jan. 9, 2026)	The Second Circuit denied a telecommunications provider's petition for review of a Federal Communications Commission (FCC) enforcement action concerning the mishandling of customer location data, which resulted in a monetary forfeiture order exceeding $40 million. In doing so, the court rejected the provider's argument that the FCC's forfeiture action under 47 U.S.C. § 503(b)(4) violated the provider's Seventh Amendment right to a jury trial in an Article III forum. Assuming that the Seventh Amendment right applied, the Second Circuit nevertheless concluded that the provider had waived that right. The panel noted that a forfeiture penalty under Section 503(b)(4) is enforceable through 47 U.S.C. § 504(a), which allows the government to pursue the fine via a "trial de novo" in federal court. The court held that the provider waived its right to a jury trial by choosing to pay the forfeiture penalty following administrative proceedings, rather than refusing to pay and preserving its right to a jury trial if the government sought judicial enforcement. In reaching this conclusion, the Second Circuit diverged from the Fifth Circuit, which has held that a trial under Section 504(a) does not satisfy the Seventh Amendment because it follows an administrative adjudication under Section 503(b)(4) and the imposition of fines. The Second Circuit also disagreed with a decision in another Fifth Circuit case that a defendant in a Section 504(a) proceeding cannot challenge the FCC's legal interpretations or raise constitutional objections. According to the Second Circuit, the "trial de novo" provision allows defendants to contest both the	Fifth Circuit AT&T, Inc. v. Fed. Commc'ns Comm'n, 149 F.4th 491, 503 (5th Cir. 2025), *cert. granted*, No. 25-406, 2026 WL 73092 (U.S. Jan. 9, 2026) United States v. Stevens, 691 F.3d 620, 622–24 (5th Cir. 2012)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			legal and factual foundations of a forfeiture order in a Section 504(a) proceeding.	
Telecommunications	Sixth Circuit	Salazar v. Paramount Glob., 133 F.4th 642 (6th Cir. 2025), *cert. granted*, No. 25-459, 2026 WL 189831 (U.S. Jan. 26, 2026) (mem.)	A divided Sixth Circuit affirmed a district court's dismissal of a claim brought under the Video Privacy Protection Act (VPPA) by a subscriber of an online sports newsletter that featured links to video content. The plaintiff asserted that the defendant's disclosure of which third-party videos he watched violated the VPPA. The statute authorizes civil actions against "a video tape service provider who knowingly discloses, to any person, personally identifiable information concerning any consumer of such provider." The majority of the Sixth Circuit panel agreed with the lower court that the plaintiff had not demonstrated he was a "consumer" under the VPPA because he had not shown that he subscribed to audiovisual content. The panel ruled that the newsletter was not itself audiovisual content and observed that the plaintiff had not claimed he accessed the videos through the newsletter. The majority 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 it is audiovisual in nature.	Second Circuit Salazar v. Nat'l Basketball Ass'n, 118 F.4th 533, 549 (2d Cir. 2024), *cert. denied*, No. 24-994, 2025 WL 3506972 (U.S. Dec. 8, 2025) (mem.) Seventh Circuit Gardner v. Me-TV Nat'l Ltd. P'ship, 132 F.4th 1022, 1025 (7th Cir. 2025)
Telecommunications	Eighth Circuit	Zimmer Radio of Mid-Missouri, Inc. v. Fed. Commc'ns Comm'n, 145 F.4th 828 (8th Cir. 2025)	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	Third Circuit Prometheus Radio Project v. Fed. Commc'ns Comm'n, 373 F.3d 372, 394–95 (3d Cir. 2004), *as amended* (June 3, 2016)

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on a Controlling Issue
			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.	
Transportation	Sixth Circuit	Cox v. Total Quality Logistics, Inc., 142 F.4th 847 (6th Cir. 2025)	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.	Seventh Circuit Ye *ex rel.* Lin v. GlobalTranz Enters., 74 F.4th 453, 464 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 564 (2024) (mem.) Eleventh Circuit Aspen Am. Ins. Co. v. Landstar Ranger, Inc., 65 F.4th 1261, 1272 (11th Cir. 2023)

Source: Cases identified by CRS using the Westlaw legal database and searching for federal appeals court decisions identified for publication in the *Federal Reporter*.

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