



Congressional Court Watcher: Circuit Splits from January 2026

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The U.S. Courts of Appeals for the thirteen “circuits” issue thousands of precedential decisions each year. Because relatively few of these decisions are ultimately reviewed by the Supreme Court, the U.S. Courts of Appeals are often the [last word](#) on consequential legal questions. The federal appellate courts sometimes reach different conclusions on the same issue of federal law, causing a “split” among the circuits that leads to the nonuniform application of federal law among similarly situated litigants.

This Legal Sidebar discusses circuit splits that emerged or widened following decisions from January 2026 on matters relevant to Congress. The Sidebar does not address every circuit split that developed or widened during this period. Selected cases typically involve judicial disagreement over the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress’s lawmaking and oversight functions. The Sidebar includes only cases where an appellate court’s controlling opinion recognizes a split among the circuits on a key legal issue resolved in the opinion. This Sidebar refers to each U.S. Court of Appeals by its number or descriptor (e.g., “D.C. Circuit” for “U.S. Court of Appeals for the D.C. Circuit”).

Some cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may [click here](#) to subscribe to the *CRS Legal Update* and receive regular notifications of new products and upcoming seminars by CRS attorneys.

- **Commerce:** In consolidated cases, the Ninth Circuit rejected challenges to residency requirements in cannabis dispensary licensing schemes in Washington State and the City of Sacramento, California. Both California and Washington state laws permit marijuana sales for recreational and medicinal use, and the challenged licensing schemes allow only state or city residents to hold dispensary licenses. Plaintiffs argued these requirements discriminated against out-of-state businesses in violation of the [dormant Commerce Clause](#), a judicial doctrine that construes the Commerce Clause to prohibit state laws that unduly restrict interstate commerce, even in the absence of federal legislation. Observing that the Supreme Court has urged caution in the doctrine’s application, the Ninth Circuit held that it did not apply to the challenged residency requirements because medical and recreational marijuana remain [illegal under federal law](#). As such, according to the court,

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the challenged laws aligned with Congress's efforts to eliminate interstate drug markets. The Ninth Circuit's conclusion diverges from the [First](#) and [Second](#) Circuits, which have held that the dormant Commerce Clause applies to state economic restrictions even if the market is unlawful under federal law (*Peridot Tree WA, Inc. v. Washington State Liquor & Cannabis Control Bd.*).

- **Criminal Law & Procedure:** The Third Circuit held that a criminal defendant's bare, nonspecific motion for acquittal under [Federal Rule of Criminal Procedure 29](#) did not preserve specific arguments for appellate review regarding whether the prosecution presented sufficient evidence to sustain his convictions. The circuit panel observed that its approach diverges from the [D.C.](#), [First](#), [Second](#), [Sixth](#), [Seventh](#), and [Ninth](#) Circuits, which recognize that a broadly stated Rule 29 motion preserves such arguments on appeal. Because the Third Circuit concluded that the defendant's specific sufficiency-of-the-evidence claims were not preserved on appeal and therefore were not subject to *de novo* review, the court instead reviewed the defendant's insufficiency claims under the stringent plain-error standard and found no reversible error (*United States v. Abrams*).
- **Firearms:** A 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 state-law conviction for simple possession of methamphetamine. The panel concluded that permanently prohibiting firearm possession based on this defendant's illegal possession of methamphetamine 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 court acknowledged widespread disagreement among the appellate courts over how to apply the Supreme Court's history-based framework set forth in *New York State Rifle & Pistol Association v. Bruen* to assess the compatibility of firearm restrictions with the Second Amendment, including with respect to Section 922(g)(1). The panel observed that an [earlier Fifth Circuit opinion](#) identified the [Second](#), [Fourth](#), [Eighth](#), [Ninth](#), [Tenth](#), and [Eleventh](#) Circuits as upholding the constitutionality of Section 922(g)(1) as applied to all felons. The panel also recognized disagreement among those courts that hold that a criminal defendant's dangerousness must be assessed to determine whether he may, consistent with the Second Amendment, be permanently disarmed under Section 922(g)(1). The [Third](#) and [Sixth](#) Circuits consider both felony and misdemeanor histories in assessing dangerousness, while the Fifth Circuit's analysis of dangerousness focuses exclusively on the predicate felony convictions giving rise to the Section 922(g)(1) violation (*United States v. Hembree*).
- **Firearms:** A divided Ninth Circuit panel held that California's ban on open carry of firearms in urban areas violated the Second Amendment, while its licensing regime for rural areas—requiring permits for individuals expressing a general desire for self-defense—survived a facial constitutional challenge. The majority emphasized that open carry was historically the default lawful method of firearm carriage, with no evidence of outright bans at the time of the Founding. Applying the history-based framework set forth by the Supreme Court in *Bruen* to assess a firearms restriction's compatibility with the Second Amendment, the panel concluded that open carry is clearly protected by the Second Amendment and that California's urban ban is unconstitutional. The Ninth Circuit criticized the [Second Circuit's approach](#), which permits the government to ban either open or concealed carry provided that at least one of the two forms of public carry remains available. The Ninth Circuit contended that such reasoning rested on a misreading of *Bruen* and was inconsistent with the historical tradition of allowing open

carry. The panel also upheld California's rural licensing regime on its face, characterizing *Bruen* as indicating that licensing schemes are permissible when, as here, a permit shall be issued when the request is based on a general desire for self-defense (*Baird v. Bonta*).

- **Immigration:** In a per curiam opinion, a divided Third Circuit panel held that although a federal district court retained habeas jurisdiction over an alien detained by the federal government, the court lacked subject matter jurisdiction to consider the alien's claims challenging the lawfulness of his detention and removability. Federal courts exercising [habeas jurisdiction](#) typically may review the legality of an individual's incarceration. Under [8 U.S.C. § 1252\(b\)\(9\)](#), "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States shall be available only" as part of a federal appeals court's consideration of a petition for review (PFR) of a final removal order. In this case, the government argued that the alien was removable from the United States on [foreign policy](#) grounds and for [obtaining lawful permanent resident status through fraud or willful misrepresentation](#), and he was arrested and detained pending removal proceedings. Before those proceedings were completed, the alien sought habeas relief, claiming that his detention and placement in removal proceedings constituted unlawful retaliation for engaging in protected political speech under the First Amendment. The panel majority held that Section 1252(b)(9) stripped the habeas court of subject matter jurisdiction to consider these claims because they involved legal and factual questions that could ultimately be reviewed by a federal appeals court considering a PFR. The majority acknowledged that its ruling diverged from recent decisions in similar cases by other courts—including [published opinions](#) from the Second Circuit—holding that Section 1252(b)(9) does not prevent aliens from challenging, in habeas proceedings, the underlying basis for their removability and detention prior to the issuance of a removal order (*Khalil v. President*).
- **Immigration:** The Fourth Circuit affirmed a defendant's criminal convictions and sentence for fraudulently preparing immigration visa petitions under the [Violence Against Women Act of 1994](#) (VAWA). The petition applications submitted to the government included fraudulent or forged supporting documents, but the defendant had not signed the applications and therefore did not certify under penalty of perjury their accuracy. The Fourth Circuit upheld the defendant's convictions under multiple fraud-related statutes, including paragraph four of [18 U.S.C. § 1546\(a\)](#), which imposes criminal penalties on a person who "knowingly makes under oath, or as permitted under penalty of perjury ... knowingly subscribes as true, any false statement with respect to a material fact in any ... document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such ... document which contains any such false statement." Aligning with the [Second Circuit](#) but splitting with the [Third Circuit](#), the panel held that the oath requirement in Section 1546(a) applies only to the "knowingly makes" offense listed in that paragraph, and not to other listed offenses including the "knowingly presents" offense with which the defendant was charged (*United States v. Aborisade*).

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