



Congressional Court Watcher: Circuit Splits from February 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 February 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.

- **Civil Rights:** The Third Circuit revived a racial discrimination [Equal Protection Clause](#) claim brought by parents of children denied admission to four selective high schools. The schools’ newly adopted admissions policy favored applicants from six zip codes with predominantly Black or Hispanic populations; the plaintiffs alleged that the policy had a discriminatory purpose toward and discriminatory impact upon the admission of White and Asian applicants. Based on the procedural posture of the case, under which the appellate court viewed the record in a light most favorable to the plaintiffs, the circuit panel determined a reasonable factfinder might conclude that the policy had a discriminatory purpose and impact, and it sent the case back to the trial court. In so doing, the Third Circuit disagreed with appellate courts that upheld similar admission policies against equal protection challenges. The Third Circuit disagreed with the [Fourth](#)

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and [Second](#) Circuits' disparate impact analyses, which compared racial groups' aggregate success rate before and after the schools used the challenged admission policy (e.g., considering whether Asian applicants had proportionally fewer admissions than other groups after the policy was issued). Instead, the circuit panel joined the [First Circuit](#) in deciding that while evidence of a discriminatory impact against a racial *group* may satisfy the constitutional inquiry, so can a showing that an *individual* member of that group had been harmed by a policy that was enacted with a discriminatory purpose (*Sargent v. Sch. Dist. of Philadelphia*).

- **Criminal Law & Procedure:** The First Circuit affirmed a criminal defendant's conviction and sentence for health care fraud under [18 U.S.C. § 1347](#), rejecting the defendant's challenges to certain evidentiary rulings and the application of sentencing enhancements under the United States Sentencing Guidelines (U.S.S.G.). Among other things, the circuit panel agreed with the lower court that the submission of false insurance claims by the defendant—a licensed health care professional—was subject to an enhancement under [U.S.S.G. § 3B1.3](#) for abusing “a position of public or private trust ... in a manner that significantly facilitated the commission or concealment of the offense.” The First Circuit held that the sentencing enhancement applied because health care professionals exercise significant discretion in determining appropriate treatments and insurance companies rely on that discretion in considering insurance claims. The court's ruling aligns with decisions of the [Second](#), [Third](#), [Fourth](#), [Fifth](#), [Ninth](#), and [D.C.](#) Circuits, but parts ways with the [Eleventh Circuit](#), which has held that health care professionals do not occupy a position of trust with respect to insurance companies and only come under U.S.S.G. § 3B1.3 if acting as a fiduciary of the victim (*United States v. Yoon*).
- **Immigration:** The Third Circuit decided that the [Equal Access to Justice Act](#) (EAJA) authorized awarding fees in habeas corpus actions challenging immigration detention. After obtaining release from immigration detention, the plaintiff filed a motion in federal district court for attorneys' fees under the EAJA. The EAJA authorizes fees in “any civil action,” with some exceptions, and the panel ruled that habeas proceedings unambiguously fell under the statute's scope. The panel noted its split with the [Fourth](#) and [Fifth](#) Circuits, which decided that the EAJA applies to purely civil actions and not habeas proceedings, which may arise in both the civil and criminal context. The panel also observed that its decision aligned with rulings by the [Second](#), [Ninth](#), and [Tenth](#) Circuits, though the court said that unlike those circuits, its ruling was not informed by the legislative purposes of the EAJA and focused primarily on the statute's text (*Michelin v. Warden Moshannon Valley Corr. Ctr.*).
- **Speech:** The Third Circuit affirmed a lower court's dismissal of constitutional challenges brought against a New Jersey statute restricting the distribution of digital instructions on how to construct 3D-printed firearms. Among other rulings, the court decided that the plaintiffs had not pleaded sufficient facts to support their [First Amendment](#) challenge to the law. The circuit panel decided that computer code can be protected by the First Amendment if that code serves to express or communicate ideas, but that the First Amendment is not implicated by purely functional code with no expressive purpose, use, or intent. Here, the Third Circuit held that the plaintiffs failed to plead sufficient facts to assess whether the coded computer files that plaintiffs sought to distribute were expressive or purely functional. The Third Circuit also observed that its First Amendment analysis differed somewhat from the [Second](#), [Sixth](#), and [Ninth](#) Circuits, in particular because the Third Circuit would not assume that code was inherently expressive solely because code has the capacity to communicate (*Defense Distributed v. Att'y Gen. of New Jersey*).

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