

# Congressional Court Watcher: Circuit Splits from June 2026

July 8, 2026

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 June 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.

- **Criminal Procedure:** The Fifth Circuit rejected a criminal defendant’s challenge to jury instructions given at his trial, holding that the defendant invited error by proposing a jury instruction that was not materially different than the instruction he was challenging on appeal. Because the defendant invited the error, the court held that he had to show that the trial court’s jury instruction caused “manifest injustice” in order for his challenge to succeed. The court rejected the defendant’s argument that the invited error doctrine should apply only when a defendant intentionally waives a known right. By rejecting that argument, the Fifth Circuit split with the [Ninth Circuit](#), which has held that an invited error analysis must consider whether there was an intentional waiver. In the Ninth Circuit’s [view](#), a defendant who submitted an erroneous jury instruction, but did not intentionally waive the right to a different instruction, may challenge the instruction given

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to the jury under the plain error standard, rather than the manifest injustice standard (*United States v. James*).

- **Civil Procedure:** The Second Circuit held that a violation of the venue transfer provision in the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3004(b)(2), is not subject to harmless error review. The FDCPA prescribes procedures through which the Department of Justice can collect certain debts owed to the United States. Under 28 U.S.C. § 3004(b)(2), a debtor may request that certain FDCPA actions be transferred to the district in which he resides. If such a request is made, 28 U.S.C. § 3004(b)(2) provides that the action “shall be transferred.” The Second Circuit held that this statutory language means transfer is mandatory when a debtor timely requests it. Accordingly, the court concluded that the district court in this case erred by denying the debtor’s request to transfer the action and, because the statute made transfer mandatory, the error was not subject to harmless error review. The [Ninth Circuit](#) has come to similar conclusions about the mandatory language in the FDCPA’s venue transfer provision and the inapplicability of harmless error review. The Second Circuit split, however, with the [Sixth Circuit](#). That court has affirmed a district court’s erroneous decision to deny transfer under 28 U.S.C. § 3004(b)(2) because the error satisfied [Federal Rule of Criminal Procedure 52\(a\)](#)’s harmless error standard (*United States v. Liounis*).
- **Energy:** In consolidated cases, the Second Circuit held that the [Energy Policy and Conservation Act](#) (EPCA) did not preempt measures adopted by the State of New York and New York City barring the use of fossil-fuel-powered appliances in new buildings. A provision of EPCA, 42 U.S.C. § 6297(c), generally preempts state and local regulations “concerning the energy efficiency, energy use, or water use” of covered consumer products unless the regulations fall under listed exceptions. The circuit panel held that the state and municipal appliance restrictions were not covered by EPCA’s preemption provision because that provision generally preempts states and localities from setting standardized energy rules for consumer appliances, not rules on how those appliances might be used by consumers. The panel’s reasoning turned on EPCA’s definition of “energy use”—“the quantity of energy directly consumed by a consumer product at point of use, determined in accordance with test procedures”—which the panel understood to focus on an appliance’s standardized energy use under test conditions before it reached the consumer. The panel acknowledged a split with the [Ninth Circuit](#), which interpreted the definition’s reference to a product’s “point of use” to mean that the EPCA’s preemption provision applied to restrictions on consumer use of appliances as well. The panel contended that the Ninth Circuit’s interpretation conflicted with the surrounding statutory text and subsequent practice by Congress and regulators since EPCA’s enactment (*Ass’n of Contracting Plumbers of the City of New York, Inc. v. City of New York*).
- **Immigration:** The Seventh Circuit held that a federal statute foreclosed judicial review of a Department of Homeland Security (DHS) determination (and antecedent decisions leading to that determination) regarding the safety risks posed by a U.S. citizen husband to his alien spouse, which prevented the husband from sponsoring his wife for green-card status. The Immigration and Nationality Act [provides](#) that a U.S. citizen may petition for an alien spouse, child, or parent to be classified as an “immediate relative”—enabling the alien to [adjust to lawful permanent resident status](#) on the basis of that relationship. Amendments made by the [Adam Walsh Child Protection and Safety Act of 2006](#) (Adam Walsh Act) provide that U.S. citizens who have been convicted of specified offenses against a minor are [ineligible](#) to make such petitions unless the Secretary of DHS, “in the Secretary’s sole and unreviewable discretion, determines that the citizen poses no risk to

the alien” for whom the petition is filed. Splitting with the [D.C. Circuit](#) but joining several other circuits (the [Third](#), [Fourth](#), [Sixth](#), [Eighth](#), [Ninth](#), and [Eleventh](#)), the Seventh Circuit panel held that the Adam Walsh Act, along with other federal [statutes](#) barring [review](#) of the Secretary’s discretionary decisions, foreclosed review of most nonconstitutional claims relating to DHS’s risk determination, including the decisionmaking process that led to the determination. As to the constitutional claims raised by the plaintiffs regarding the risk determination, the Seventh Circuit disagreed with those courts, including the [Third Circuit](#), which treated such claims as reviewable. The Seventh Circuit generally agreed with those courts, including the [Fourth](#) and [Sixth](#) Circuits, that have held that the Adam Walsh Act and other statutes generally bar review of such claims except as part of a petition to review a subsequent order of removal against the alien. The panel held that constitutional claims brought by a U.S. citizen (including the U.S. citizen plaintiff in this case) were generally unreviewable, but left undecided whether review was barred even for the most serious constitutional claims (*Nobles v. Mullin*).

- **Immigration:** The Tenth Circuit issued a decision that widened a circuit split as to when an alien taken into immigration custody after having unlawfully entered the country years earlier may be detained without bond during the pendency of removal proceedings. In many cases under federal statute, an alien [may be released](#) from custody on bond or on his or her own recognizance during the pendency of removal proceedings. However, [8 U.S.C. § 1225\(b\)\(2\)\(A\)](#) directs that, except in narrow circumstances, “in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an *alien seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained [during removal proceedings]” (italics added). The Tenth Circuit joined the [Second](#), [Sixth](#), and [Eleventh](#) Circuits in holding that an “alien seeking admission” under Section 1225(b)(2)(A) is not synonymous with an “applicant for admission,” and that Section 1225(b)(2)(A) only directs the mandatory detention of those unlawfully present aliens who are actively seeking lawful admission into the country. The court split with the [Fifth](#) and [Eighth](#) Circuits, which have treated “applicant for admission” and “alien seeking admission” as synonymous terms, meaning that aliens present in the United States but not lawfully admitted are subject to mandatory detention under Section 1225(b)(2)(A) (*Santillan Quiroz v. Mullin*).
- **Separation of Powers:** Reviving a split with the [Sixth Circuit](#), the Fifth Circuit held that the enforcement provisions of the [Horseracing Integrity and Safety Act \(HISA\) of 2020](#), as amended, are facially unconstitutional because Congress impermissibly delegated government power to a private entity not accountable to the people. HISA established a private [Horseracing Integrity and Safety Authority](#) (Authority) with the power to issue regulatory rules, subject to oversight by the Federal Trade Commission (FTC). In 2022, the Fifth Circuit [held](#) that HISA violated the private nondelegation doctrine because HISA gave the FTC only limited review powers over the Authority’s proposed rules. Congress responded by [amending HISA](#) to provide the FTC with greater oversight authority. The [Sixth](#) and [Eighth](#) Circuits upheld the amended version of HISA, reasoning that Congress made the Authority sufficiently subordinate to the FTC in both its rulemaking and enforcement powers. By comparison, the Fifth Circuit [held](#) that, although the HISA amendments cured the nondelegation defect with respect to the Authority’s rulemaking powers, the statute impermissibly permitted the Authority to engage in enforcement actions—including conducting searches, issuing subpoenas, levying fines, and seeking injunctions—without adequate FTC supervision. In 2025, the Supreme Court vacated and remanded [all three cases](#) for reconsideration in light of the Court’s decision

in *Federal Communications Commission (FCC) v. Consumers' Research*, which upheld the FCC's delegation of certain authorities to a private organization. On remand, the Eighth Circuit has yet to render a decision, while the Sixth Circuit **concluded** that *Consumers' Research* supported its earlier analysis, and the Fifth Circuit maintained that the Authority's enforcement powers still violated the private nondelegation doctrine. The Fifth Circuit **reasoned** that, unlike the organization in *Consumers' Research* that acted only "as an aid" to the agency, the Authority is **effectively** "in charge of enforcing" HISA (*Nat'l Horsemen's Benevolent and Protection Ass'n v. Black*).

- **Speech:** A divided Seventh Circuit panel held that an Indiana law limiting public attendance at executions to persons invited by the offender does not violate the First Amendment when applied to exclude members of the media. The court rejected arguments that Indiana's law infringed multiple First Amendment rights, including the **right to access certain judicial proceedings**. When determining which proceedings this right of access attaches to, the Supreme Court has **considered** whether the proceeding has historically been open to the press and public and whether public access plays a "significant positive role" in the proceeding. The Seventh Circuit questioned whether this test applies to executions, explaining that in past cases it has applied the test only to court proceedings and related documents. The court concluded, however, that in any event executions do not satisfy, at a minimum, the historical prong of the test because U.S. history reflects a long-standing and sustained shift away from public executions. In so holding, the court split with the **Ninth Circuit**. Pointing to state laws that require the presence of official witnesses at executions, the Ninth Circuit has **concluded** that there is a historical tradition of "at least limited public access" to executions. The Ninth Circuit has also **held** that the public scrutiny made possible by the official witnesses plays a significant role in the proper functioning of capital punishment and, as a result, members of the public have a First Amendment right to view executions (*Associated Press v. Neal*).

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