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The United States Courts of Appeals: Background and Circuit Splits from 2023

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The United States Courts of Appeals: Background and Circuit Splits from 2023

SUMMARY

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The United States 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, the Court issued final decisions in 68 argued cases in its 2022 Term (66 through signed opinions and two through per curiam opinions) and in 70 argued cases in its 2021 Term (63 through signed opinions and seven 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 thirteen "circuits"—issue thousands of precedential decisions every year. The most current data available from the U.S. Courts reveal that in FY2023 and FY2022, the appellate courts for the twelve "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, 3,165 and 3,424 signed 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.

This Report provides insight into the substantial, and often decisive, role played by the U.S. Courts of Appeals in applying and developing federal law. The Report offers a brief description of the historical development and current organization of the federal judiciary as a whole. It 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" on the application and evolution of federal law. After offering some considerations for Congress, it concludes by cataloguing 97 circuit splits that arose or widened within the federal courts of appeals in 2023 that were identified by the *Congressional Court Watcher*, a weekly CRS Legal Sidebar series tracking notable federal appellate court decisions of potential interest to Congress.

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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 thirteen 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 97 circuit splits that arose or deepened within the federal courts of appeals in 2023, and which were identified by the *Congressional Court Watcher*, a weekly 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, three circuit courts, and thirteen 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 (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; 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. 12, 2024)); 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. 12, 2024)). 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] 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 thirteen 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 (last visited Jan. 12, 2024) [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, 139 S. Ct. 1743, 1746 (2019).

[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 (last visited Jan. 12, 2024) [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 (last visited Dec. 21, 2023).

[8] *See* 28 U.S.C. § 41.

[9] *See* "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 twelve-month period ending March 31, 2023, for example, roughly 10.9% of all filings in the twelve regional U.S. Courts of Appeals involved appeals of agency administrative decisions, 79% of which were appeals of immigration decisions by the Board of Immigration Appeals. U.S. Courts, *Federal Judicial Caseload Statistics 2023*, https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2023 (last visited Jan. 12, 2024).

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 thirteen 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 Ninth Circuit encompasses the most states and territories, 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 twelve regional U.S. Courts of Appeals.

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] However, that limited geographic reach belies 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 thirteenth 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

[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 with 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 (last visited Jan. 12, 2024) [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.

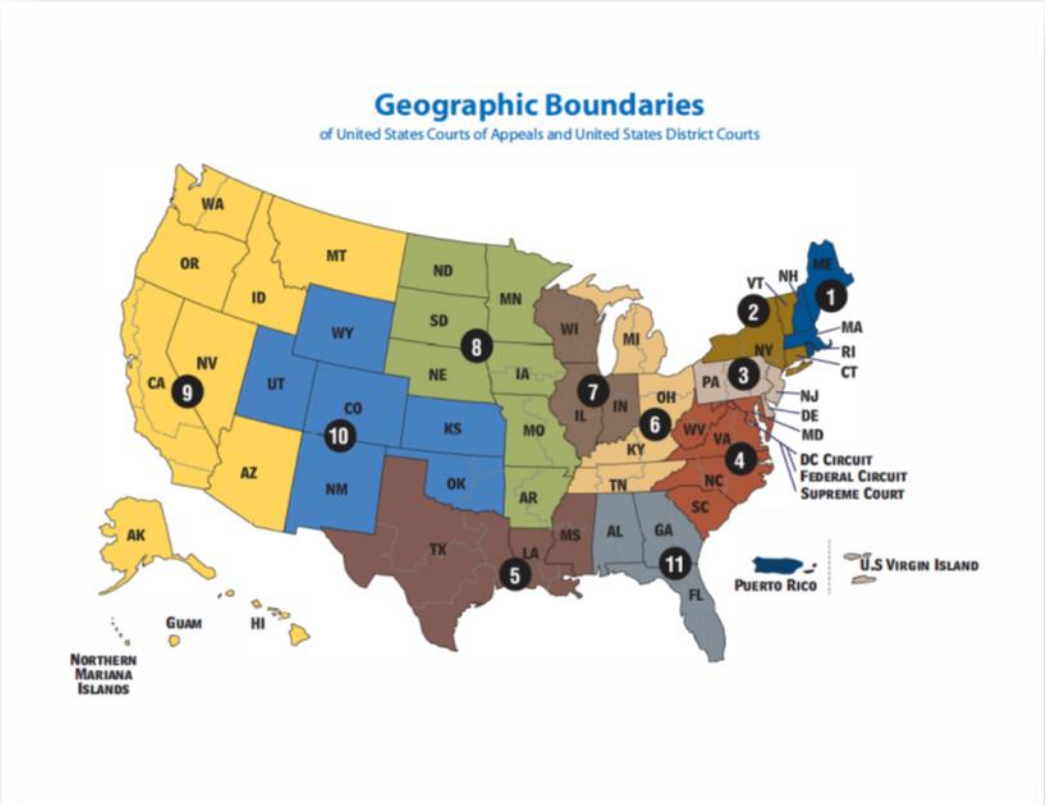
[20] 17 U.S.C. § 803(d)(1).

[21] 10 U.S.C. § 950g(a).

[22] Statistics & Reports: Judicial Business, U.S. Courts of Appeals—Judicial Business 2023, U.S. Court of Appeals for the Federal Circuit, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/statistics-reports/us-courts-appeals-judicial-business-2023 (last visited March 27, 2024) [hereinafter Judicial Business 2023—Federal Circuit]; *Differences Between Circuits*, *supra* note 18.

Federal 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 claims 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 (last visited Jan. 12, 2024).

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 U.S.

[23] 28 U.S.C. § 1295(a)(1)–(5); *Judicial Business 2023—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, http://m.uscourts.cavc.gov/About.php (last visited Jan. 12, 2024).

[25] *See* Sentilles v. Inter-Caribbean Shipping Corp., 361 U.S. 107, 112 (1959) (Frankfurter, J., dissenting) (noting that (continued...)

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, the Court issued final decisions in 68 cases argued in its 2022 Term (66 through signed opinions and two through per curiam opinions) and in 70 cases in its 2021 Term (63 through signed opinions and seven through per curiam opinions).[27] (The total number of cases filed in the Supreme Court during those years was 4,159 in 2022 and 4,900 in 2021.[28])

By contrast, the most recent data available from the Administrative Office of the U.S. Courts indicate that in FY2023 and FY2022 the twelve regional federal circuits (i.e., all of the federal courts of appeals other than the Federal Circuit) published, respectively, 3,165 and 3,424 precedential written, signed opinions.[29] Overall, the twelve regional U.S. Courts of Appeals collectively issued 26,391 appellate opinions or orders in cases terminated on the merits after oral hearing or submission on briefs in FY2023, and 28,504 such opinions or orders in FY2022.[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]

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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.

[27] Hon. John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary* 8 (Dec. 31, 2023), https://www.supremecourt.gov/publicinfo/year-end/2023year-endreport.pdf (last visited Jan. 12, 2024) [hereinafter *Federal Judiciary 2023 Year-End Report*]; Hon. John G. Roberts, Jr., *2022 Year-End Report on the Federal Judiciary* 5 (Dec. 31, 2022), https://www.supremecourt.gov/publicinfo/year-end/2022year-endreport.pdf (last visited Jan. 12, 2024). 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.

[28] *2023 Year-End Report on the Federal Judiciary*, *supra* note 27 . Besides several dozen "merits" decisions issued by the Court each year after full briefing and oral argument, the 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 Legal Sidebar LSB10637, *The "Shadow Docket": The Supreme Court's Non-Merits Orders*, by Joanna R. Lampe.

[29] *Judicial Facts and Figures 2023* Table 2.5—Type of Opinion or Order Filed in Cases Terminated on the Merits, ADMIN. OFFICE OF THE U.S. COURTS, https://www.uscourts.gov/statistics-reports/judicial-facts-and-figures-2023 (last visited March 27, 2024). This table shows similar numbers for cases terminated on the merits by the U.S. Courts of Appeals in other years.

[30] *Id.*

[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, P.L. 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 twelve 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 twelve 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, 140 S. Ct. 582, 586 (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 two or more of the thirteen 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] This difference results in the non-uniform treatment of similarly situated litigants, depending on the circuit that hears their case, and also may lead to greater uncertainty for litigants in the circuits that have not yet addressed the issue.[47]

Circuit splits can arise only when the Supreme Court has not resolved the question, leaving the federal courts of appeals without mandatory precedent to follow.[48] 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 that decision will then be binding on all federal trial courts within the jurisdiction of that circuit.[49] What is more, all federal courts of appeals follow the "law of the

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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 thirteen 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. 35 (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) (internal quotation marks omitted).

[46] Circuit Split, LEGAL INFO. INST., https://www.law.cornell.edu/wex/circuit_split (last visited Jan. 12, 2024) [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] *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.

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

[49] 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 (continued...)

circuit doctrine."[50] 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.[51] If the Supreme Court decides a legal question that was the subject of a circuit split or Congress resolves the question through legislation, all thirteen federal courts of appeals are bound to apply those directives, ensuring nationwide uniformity on the issue.[52]

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.[53] Commenters have observed that the Supreme Court appears to fill the majority of its docket—often around 70%—with cases involving apparent conflicts.[54] A court of appeals will often expressly indicate 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.[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 until the Supreme Court grants certiorari to resolve it.[58] In many instances, moreover, the Supreme Court might not grant review, leaving the federal courts of appeals as the final decision-makers on many of those questions.[59]

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

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").

[50] Sassman, *supra* note 49, at 1406.

[51] *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).

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

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

[54] Sassman, *supra* note 49, at 1421. *See also* Stephen M. Shapiro, et al., SUPREME COURT PRACTICE §§ 4.3, 4.4 (11th ed. 2013).

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

[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 49, at 1447–50.

[58] *See* Sassman, *supra* note 49, 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 49, at 1405 ("[T]he open secret is that the Supreme Court cannot possibly resolve all of the conflicts generated by the courts of appeals.").

challenging for an individual Member or their staff to monitor judicial developments relevant to their work.[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) weekly *Congressional Court Watcher* series, published as part of the CRS Legal Sidebar product line. The *Congressional Court Watcher* briefly recaps decisions of the Supreme Court (including grants of petitions for a writ of certiorari) and precedential decisions of the courts of appeals for the thirteen federal circuits. Selected cases typically involve the interpretation or validity of federal statutes, the

[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 Commerce, 854 F.3d 106, 117 (1st Cir. 2017).

[66] *See id.* (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."); *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.").

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 2023, 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 2023 on Topics of Congressional Interest

Table 1 below identifies 97 appellate court decisions from 2023 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. The Supreme Court subsequently resolved the circuit split addressed in one case and vacated that decision.[68] **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.[69]

Identified cases are organized into twenty-five topics:

- Arbitration (3 cases)
- Bankruptcy (2 cases)
- Civil Liability (1 case)
- Civil Procedure (7 cases)
- Civil Rights (11 cases)
- Consumer Protection (2 cases)
- Criminal Law & Procedure (30 cases)
- Education (1 case)
- Election Law (1 case)
- Employee Benefits (1 case)
- False Claims Act (1 case)
- Federal Courts (1 case)
- Financial Regulation (1 case)
- Firearms (4 cases)
- Health (3 cases)
- Immigration (13 cases)

[68] In *Pulsifer v. United States*, No. 22-340, 2024 WL 1120879 (U.S. Mar. 15, 2024), the Supreme Court resolved a circuit split over the meaning of the First Step Act's "safety valve" provision found in 18 U.S.C. § 3553(f)(1)). It subsequently vacated and remanded a Fourth Circuit decision listed in **Table 1** that was premised on a conflicting interpretation of that provision. United States v. Jones, 60 F.4th 230 (4th Cir. 2023), *cert. granted and judgment vacated*, No. 23-46 (U.S. Mar. 25, 2023).

[69] For example, in *Mayes v. Biden*, 67 F.4th 921, 926 (9th Cir. 2023), the Ninth Circuit split with three other circuits, allowing enforcement of an executive order mandating that federal contractors ensure their workforces are vaccinated against COVID-19. That ruling was subsequently vacated on mootness grounds after the contractor mandate was rescinded, and after the Supreme Court vacated three judgments in similar vaccine mandate cases on mootness grounds. *See* Mayes v. Biden, 89 F.4th 1186 (9th Cir. 2023).

- Intellectual Property (1 case)
- International Law (1 case)
- Labor & Employment (4 cases)
- Property (1 case)
- Securities (1 case)
- Tax (4 cases)
- Torts (1 case)
- Transportation (2 cases)

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 in order of publication in the *Federal Reporter*. Each case is accompanied by a brief summation 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.

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, 2023, and summarized those 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** also omits conflicting decisions from other circuits if those decisions were subsequently abrogated.[70] **Table 1** also does not include citations to circuit court rulings that are mentioned in a controlling opinion as *agreeing* with its position in a circuit split.

[70] For example, in July 2023, a three-judge Fifth Circuit panel issued a decision in *Argueta-Hernandez v. Garland*, 73 F.4th 300, 570 (5th Cir. 2023) ("*Argueta-Hernandez I*"), that was cited by several courts as reflecting a growing circuit split over when an alien subject to a reinstated removal order may seek judicial review of a later administrative denial of that alien's eligibility to pursue withholding of removal. *See, e.g.*, Martinez v. Garland, 86 F.4th 561, 570 (4th Cir. 2023) (agreeing with the Fifth Circuit's decision in *Argueta-Hernandez I*); Alonso-Juarez v. Garland, 80 F.4th 1039, 1049 (9th Cir. 2023) (disagreeing with the Fifth Circuit's conclusion in *Argueta-Hernandez I*). In December 2023, the panel withdrew *Argueta-Hernandez I* and substituted a new opinion that, in effect, resulted in the court switching sides in the circuit split. Argueta-Hernandez v. Garland, 87 F.4th 698 (5th Cir. 2023). Because *Argueta-Hernandez I* was withdrawn, **Table 1** does not list it among the cases cited by a listed case as evidence of a circuit split.

Table 1 does not attempt to present an exhaustive list of all circuit splits that emerged or widened in 2023. 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 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 statute.[71]

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 that conflict with the approach taken by other circuits, but where the controlling opinion does not specifically acknowledge this difference in approach.[72] **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.

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.[73] 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.[74] **Table 1**'s inclusion of citations to referenced cases allows readers to review the cases themselves and make an independent assessment.

[71] *See, e.g.*, In re White, 64 F.4th 302, 309–10 (D.C. Cir. 2023), *cert. denied sub nom*. Hilton Hotels Ret. Plan v. White, 144 S. Ct. 487 (2023) (observing diverging views among the circuits over the appropriateness of judicial certification of a "fail-safe class"—that is, a class defined in terms of the injuries suffered by its members).

[72] For example, **Table 1** includes *Williams ex rel. L.W. v. Skrmetti*, 73 F.4th 408, 421 (6th Cir. 2023), in which the court granted an emergency stay of a lower court's preliminary injunction against a state law restricting certain medical treatments for transgender minors, and it disagreed with other circuits that have applied heightened constitutional scrutiny to transgender-based classifications. In contrast, it does not include *L. W. by & through Williams v. Skrmetti*, 83 F.4th 460 (6th Cir. 2023), a decision issued by the same panel two months later reversing the lower court's injunction and applying similar reasoning as the earlier panel decision, but not explicitly observing disagreement with other circuits over the appropriate level of constitutional scrutiny.

[73] *See, e.g.*, Clary Hood, Inc. v. Comm'r, 69 F.4th 168, 173-75 (4th Cir. 2023) (noting disagreement by the judicial circuits as to the best approach for assessing when compensation paid to a corporate executive is a "reasonable" business expense that may be deductible for tax purposes by the corporation).

[74] For example, in United States v. Zheng, 87 F.4th 336, 343 (6th Cir. 2023), the Sixth Circuit wrote that to prove the criminal offense of harboring unlawfully present aliens for commercial gain, the government need not prove the defendant "knowingly" harbored such persons. The majority considered that statement to be in conflict with the Eleventh Circuit. Judge Kethledge wrote separately, however, characterizing that statement as non-binding dictum. *Id.* at 347.

Table 1. Circuit Splits Recognized in 2023

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Arbitration	First Circuit	Fraga v. Premium Retail Servs., Inc., 61 F.4th 228 (1st Cir. 2023)	The First Circuit declined to adopt the Second Circuit's position on the scope of the exemption from the Federal Arbitration Act (FAA) for transportation workers engaged in foreign or interstate commerce. In 2022, the Supreme Court held in *Southwest Airlines Co. v. Saxon* that the exception is based on a worker's actual duties, and that merely working in a transportation industry is not sufficient to qualify. Applying Saxon in *Bissonnette v. LePage Bakeries*, the Second Circuit held that, while employment in a transportation industry is not sufficient to qualify for the exception, it is a necessary condition. The First Circuit rejected this approach because, under circuit precedent, people who do not work for the transportation business, such as "last-mile drivers" employed by online retailer Amazon, may still qualify for the exemption.	Second Circuit (Bissonnette v. LePage Bakeries Park St., LLC, 49 F.4th 655 (2d Cir. 2022), *cert. granted*, Bissonnette v. LePage Bakeries Park St., No. 23-51, 144 S. Ct. 479 (2023))
Arbitration	First Circuit	Green Enters., LLC v. Hiscox Syndicates Ltd., 68 F.4th 662 (1st Cir. 2023)	The First Circuit split with the Second Circuit after it considered the interplay between Puerto Rico law, a federal statute, and a U.S. treaty when affirming a district court's order to compel arbitration in an insurance dispute. The panel held that a provision in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards directing courts to channel covered disputes to arbitration was self-executing, meaning it was enforceable by U.S. courts without need for implementing legislation.	Second Circuit (Stephens v. Am. Int'l Ins. Co., 66 F.3d 41 (2d Cir. 1995))
Arbitration	Ninth Circuit	Forrest v. Spizzirri, 62 F.4th 1201 (9th Cir. 2023), *cert. granted sub nom*. Smith v. Spizzirri, 144 S. Ct. 680 (2024)	The Ninth Circuit held that a district court has discretion to dismiss a suit after determining that the claims it raises are arbitrable. The panel reaffirmed its alignment with the First, Fifth, and Eighth Circuits and disagreement with the Second, Third, Sixth, Seventh, Tenth, and Eleventh Circuits. The other side of the circuit split holds that Section 3 of the Federal Arbitration Act requires the court to stay rather than dismiss the case while arbitration is pending.	Second Circuit (Katz v. Cellco P'ship, 794 F.3d (2d Cir. 2015)) Third Circuit (Lloyd v. HOVENSA, LLC, 369 F.3d 263 (3d Cir. 2004)) Sixth Circuit (Arabian Motors Grp. W.L.L. v. Ford

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Motor Co., 19 F.4th 938 (6th Cir. 2021)) Seventh Circuit (Cont'l Cas. Co. v. Am. Nat'l Ins., 417 F.3d 727, 732 n. 7 (7th Cir. 2005)) Tenth Circuit (Adair Bus Sales, Inc. v. Blue Bird Corp., 25 F.3d 953 (10th Cir.1994)) Eleventh Circuit (Bender v. A.G. Edwards & Sons, Inc., 971 F.2d 698, 699 (11th Cir.1992) (per curiam)) Note: The Ninth Circuit did not identify the specific Third, Seventh, Tenth, and Eleventh Circuit cases that took a different approach, but cited the Second Circuit's opinion in *Katz* that referenced these cases.
Bankruptcy	Second Circuit	*In re* Purdue Pharma L.P., 69 F.4th 45 (2d Cir.), *cert. granted sub nom.* Harrington v. Purdue Pharma L.P., 144 S. Ct. 44 (2023)	Joining most circuits, the Second Circuit held that two provisions of the Bankruptcy Code—11 U.S.C. §§ 105(a) and 1123(b)(6)—jointly provide a basis for a bankruptcy court to approve a Chapter 11 bankruptcy plan allowing nonconsensual, third-party releases of direct claims against nondebtors. The case here involved Purdue Pharma's filing for bankruptcy after costly civil litigation over its introduction of the opioid OxyContin into the pharmaceutical	Fifth Circuit (Bank of N.Y. Tr. Co. v. Official Unsecured Creditors' Comm., 584 F.3d 229 (5th Cir. 2009))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			market. The bankruptcy court authorized the release of many civil litigation claims against the Sackler family, which owned and operated Purdue Pharma for decades, contingent upon the family's agreeing to contribute billions to the company's bankruptcy estate to fund settlements with both private litigants and the federal government. The circuit court set forth a multifactor test for when the nonconsensual, third-party release of direct claims against nondebtors may be permitted, and concluded that those factors were satisfied in this case.	Ninth Circuit (Resorts Int'l, Inc. v. Lowenschuss, 67 F.3d 1394 (9th Cir. 1995)) Tenth Circuit (Landsing Diversified Props.-II v. First Nat'l Bank and Tr. Co. of Tulsa, 922 F.2d 592 (10th Cir. 1990))
Bankruptcy	Tenth Circuit	Miller v. United States, 71 F.4th 1247 (10th Cir. 2023), *petition for cert. filed*, No. 23-824 (U.S. Jan. 31, 2024)	The Tenth Circuit held that the government's waiver of sovereign immunity in § 106(a) of the Bankruptcy Code extends to claims by a trustee proceeding under § 544(b)(1) to void a transfer of property—here tax payments to the Internal Revenue Service—under state law. The court found the plain language of the waiver broadly extended to state law claims that formed the "applicable law" under § 544. The decision widens a circuit split, with the Tenth Circuit agreeing with the Fourth and Ninth Circuits' reasoning and departing from the analysis of the Seventh Circuit.	Seventh Circuit (In re Equip. Acquisition Res., Inc., 742 F.3d 743 (7th Cir. 2014))
Civil Liability	Second Circuit	Horn v. Med. Marijuana, Inc., 80 F.4th 130 (2d Cir. 2023), *petition for cert. filed*, No. 23-365 (U.S. Oct. 5, 2023)	The Second Circuit, disagreeing with the approach taken by the Sixth Circuit, held that the civil-action provision of the Racketeer Influenced and Corrupt Organizations Act (RICO) does not bar a suit for damages simply because those damages flow from a personal injury. The plaintiff consumed a hemp-derived product that was marketed as free from tetrahydrocannabinol (THC), then lost his job following a positive drug test for THC. The plaintiff sued the product's marketers under RICO for damages, including lost wages. The district court had granted summary judgment for the defendants on the grounds that RICO only permits recovery for injury "to business or property." The Second Circuit reversed, holding that lost earnings resulting from a personal injury are potentially recoverable.	Sixth Circuit (Jackson v. Sedgwick Claims Mgmt. Servs., Inc., 731 F.3d 556 (6th Cir. 2013) (en banc))
Civil Procedure	Fifth Circuit	Raskin *ex rel.* JD1 & JD2 v. Dall. Indep. Sch.	The Fifth Circuit held that 28 U.S.C. § 1654—which allows parties to pursue "their own cases" pro se in federal court—does not establish an absolute bar against parents proceeding pro se on	Second Circuit (Cheung v. Youth Orchestra Found. of

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
		Dist., 69 F.4th 280 (5th Cir. 2023)	behalf of their minor children, a holding the court recognized conflicts with those of 10 other circuits. While the controlling opinion recognized that § 1654 did not abrogate the common-law rule that typically barred parents from representing their children pro se, the panel majority concluded that this rule does not apply if a federal or state law designated a child's case as belonging to the parent.	Buffalo, Inc., 906 F.2d 59 (2d Cir. 1990)) Third Circuit (Osei-Afriyie ex rel. Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876 (3d Cir. 1991)) Fourth Circuit (Myers v. Loudoun Cnty. Pub. Schs., 418 F.3d 395 (4th Cir. 2005)) Sixth Circuit (Shepherd v. Wellman, 313 F.3d 963 (6th Cir. 2002)) Seventh Circuit (Navin v. Park Ridge Sch. Dist. 64, 270 F.3d 1147 (7th Cir. 2001)) Eighth Circuit (Crozier ex rel. A.C. v. Westside Cmty. Sch. Dist., 973 F.3d 882 (8th Cir. 2020)) Ninth Circuit (Johns v. Cnty. of San Diego, 114 F.3d 874 (9th Cir. 1997)) Tenth Circuit (Meeker v. Kercher, 782 F.2d 153, 154

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				(10th Cir. 1986) (per curiam)) Eleventh Circuit (Devine v. Indian River Cnty. Sch. Bd., 121 F.3d 576 (11th Cir. 1997), *overruled in part on other grounds*, Winkelman ex rel. Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007))
Civil Procedure	Seventh Circuit	Schmees v. HC1.com, Inc., 77 F.4th 483 (7th Cir. 2023)	The Seventh Circuit held that district courts may construe new allegations raised in a party's brief, here a response to a motion for summary judgment, as a constructive motion to amend. The court widened a circuit split on the authority of district courts to infer a motion to amend a complaint. The court found no blanket prohibition in the Federal Rules of Civil Procedure, and it further stated that district courts are in the best position to rule on whether such a constructive motion satisfies the standard for obtaining leave to amend.	Fifth Circuit (Cutrera v. Bd. of Supervisors of Louisiana State Univ., 429 F.3d 108 (5th Cir. 2005)) Sixth Circuit (Bridgeport Music, Inc. v. WM Music Corp., 508 F.3d 394 (6th Cir. 2007)) Eleventh Circuit (White v. Beltram Edge Tool Supply, Inc., 789 F.3d 1188 (11th Cir. 2015)) Note: The Seventh Circuit did not identify the specific Sixth and Eleventh Circuit cases that took a different approach but cited a Tenth Circuit case, *Adams v. C3 Pipeline Const. Inc.*, 30 F.4th 943, 971 & n.12 (10th Cir.

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				2021), that specifically identified the diverging cases.
Civil Procedure	Ninth Circuit	Ernest Bock, LLC v. Steelman, 76 F.4th 827 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 554 (2024)	The Ninth Circuit reversed a district court's stay issued pursuant to the Supreme Court's decision in *Colorado River Water Conservation District v. United States* (*Colorado River*). Under *Colorado River*, federal courts can stay a federal case in "exceptional circumstances" during the pendency of state court litigation on related claims. The court, acknowledging conflicting authority from at least one circuit, joined other circuits in holding that a *Colorado River* stay cannot issue when there is substantial doubt as to whether the state proceedings would resolve the federal action. In this case, federal litigation would only be resolved if the parallel state court proceedings end in one of several possible outcomes, which the court held was too uncertain to justify a stay.	Seventh Circuit (Loughran v. Wells Fargo Bank, N.A., 2 F.4th 640 (7th Cir. 2021))
Civil Procedure	Ninth Circuit	Isaacson v. Mayes, 84 F.4th 1089 (9th Cir. 2023)	The Ninth Circuit found that obstetricians/gynecologists who regularly performed abortions in cases involving fetuses with genetic abnormalities had standing to seek an injunction to block the enforcement of an Arizona law criminalizing the performance of such abortions. The panel decided that plaintiffs identified actual and imminent injuries based on lost revenues for abortions they could not perform and the imminent threat of criminal prosecution. Disagreeing with the framework employed by the Eleventh Circuit, the panel held that contrary to the lower court's ruling upon remand, the plaintiffs did not need to tie their economic injury to a constitutional right to establish standing, but only had to show an injury to their business activity fairly traceable to the statute, which they did. The panel reversed the lower court and remanded for it to consider plaintiffs' motion for a preliminary injunction on the merits.	Eleventh Circuit (Bankshot Billiards, Inc. v. City of Ocala, 634 F.3d 1340 (11th Cir. 2011))
Civil Procedure	Tenth Circuit	Black v. Occidental Petrol. Corp., 69 F.4th 1161 (10th Cir. 2023)	The Tenth Circuit joined nearly every other circuit court as to the procedural standard for certifying an "issue class"—that is, for treating part of a case as a class action when class certification is not warranted for the case as a whole. The court held that issue certification under Federal Rule of Civil Procedure 23(c)(4) is	Third Circuit (Russell v. Educ. Comm'n for Foreign Med. Graduates, 15 F.4th 259 (3d Cir. 2021))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			appropriate if the issue class itself satisfies Rule 23(a), which imposes requirements of numerosity, commonality, typicality, and adequacy, and Rule 23(b)(3), which requires a showing that common issues predominate over individual issues. This standard deviates from the Third Circuit, which takes additional steps to certify an issue class.	
Civil Procedure	Eleventh Circuit	Iriele v. Griffin, 65 F.4th 1280 (11th Cir. 2023)	The Eleventh Circuit joined several other circuits in holding that 28 U.S.C. § 1654, which allows individuals to represent themselves (i.e., proceed pro se) in federal court, does not allow an executor to proceed pro se on behalf of an estate where there are additional beneficiaries. The Eleventh Circuit held that the plaintiff was not legally authorized to represent the estate but that the district court erred by not providing an opportunity for the plaintiff to obtain counsel. The panel noted a disagreement with the Eighth Circuit over whether to adopt a "nullity rule," which would have prohibited the plaintiff from amending the initial pro se complaint.	Eighth Circuit (Jones ex rel. Jones v. Corr. Med. Servs., Inc., 401 F.3d 950 (8th Cir. 2005))
Civil Procedure	Eleventh Circuit	Positano Place at Naples I Condo. Ass'n v. Empire Indem. Ins. Co., 84 F.4th 1241 (11th Cir. 2023)	A divided Eleventh Circuit held that a district court order compelling an appraisal in an insurance contract dispute and staying proceedings pending the appraisal is an interlocutory order not immediately appealable under 28 U.S.C. § 1292(a)(1). The majority disagreed with a Seventh Circuit decision, which had found appellate jurisdiction over an appraisal order without conducting a jurisdictional analysis. The majority further held that an order compelling an appraisal is not immediately appealable under the Federal Arbitration Act. Assuming that the order compelling an appraisal pertained to an arbitration, the court found no appellate jurisdiction because the order was not a final decision.	Seventh Circuit (Hayes v. Allstate Ins. Co., 722 F.2d 1332 (7th Cir. 1983))
Civil Rights	Second Circuit	Eisenhauer v. Culinary Inst. of Am., 84 F.4th 507 (2d Cir. 2023)	Deepening a circuit split, a divided Second Circuit held that establishing a "factor other than sex" defense to a disparate pay claim under the Equal Pay Act requires proving only that the pay disparity resulted from a differential based on any factor other than sex. The controlling opinion rejected the argument that a defendant must also prove that the differential is job related.	Sixth Circuit (Equal Emp. Opportunity Comm'n v. J.C. Penney Co., 843 F.2d 249 (6th Cir. 1988))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Ninth Circuit (Rizo v. Yovino, 950 F.3d 1217 (9th Cir. 2020)) Tenth Circuit (Riser v. QEP Energy, 776 F.3d 1191 (10th Cir. 2015)) Eleventh Circuit (Glenn v. Gen. Motors Corp., 841 F.2d 1567 (11th Cir. 1988))
Civil Rights	Fourth Circuit	Laufer v. Naranda Hotels, LLC, 60 F.4th 156 (4th Cir. 2023)	The Fourth Circuit deepened a circuit split in ruling that a plaintiff met constitutional standing requirements to sue a hotel under the Americans with Disabilities Act (ADA) and its regulations for failing to provide information and reservations for accessible rooms on its internet booking platforms. The court reasoned that the plaintiff had standing, whether or not she intended to visit the hotel, because she alleged that the hotel denied her the information required by ADA hotel regulations to facilitate meaningful choices for travel. Including this opinion, at least six circuits have now issued precedential decisions in similar cases in the last three years, with the First, Fourth, and Eleventh Circuits concluding that constitutional standing requirements were satisfied, and the Second, Fifth, and Tenth Circuits holding that they were not.	Second Circuit (Harty v. W. Point Realty, Inc., 28 F.4th 435 (2d Cir. 2022)) Fifth Circuit (Laufer v. Mann Hosp., L.L.C., 996 F.3d 269 (5th Cir. 2021)) Tenth Circuit (Laufer v. Looper, 22 F.4th 871 (10th Cir. 2022)) Note: The Supreme Court agreed to review a case that would enable it to resolve this circuit split, but after the plaintiff sought to voluntarily dismiss the case, the Court instead remanded the case with instructions to dismiss as moot. Laufer v. Acheson

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Hotels, LLC, 50 F.4th 259, 263 (1st Cir. 2022), *cert. granted*, 143 S. Ct. 1053 (2023), *and vacated and remanded*, 144 S. Ct. 18 (2023).
Civil Rights	Fourth Circuit	Bulger v. Hurwitz, 62 F.4th 127 (4th Cir. 2023)	The Fourth Circuit disagreed with another federal appeals court as to whether prison officials may be liable for monetary damages for failing to protect prisoners from attack by fellow inmates. The plaintiff, representing the estate of former inmate James "Whitey" Bulger, sued for violations of the Eighth Amendment in a claim brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*. In *Bivens*, the Supreme Court recognized an implied cause of action for persons seeking monetary damages for constitutional violations committed by certain federal officials. A *Bivens* remedy, however, is available only in a narrow set of circumstances. In disagreeing with the Third Circuit's decision to allow a similar lawsuit to go forward, the Fourth Circuit ruled that Eighth Amendment failure-to-protect claims are not a recognized *Bivens* context.	Third Circuit (Bistrian v. Levi, 912 F.3d 79 (3d Cir. 2018))
Civil Rights	Fifth Circuit	Armstrong v. Ashley, 60 F.4th 262 (5th Cir. 2023)	The Fifth Circuit added to a circuit split over the elements required to prove the constitutional tort of malicious prosecution. The court held that the Supreme Court's 2022 decision in *Thompson v. Clark*, which recognized the constitutional tort, did not resolve the circuit split as to whether a plaintiff must make a showing of malice. The Fifth Circuit panel held that *Thompson* overruled an en banc decision of the Fifth Circuit and reinstated an earlier Fifth Circuit decision that made malice a necessary component of a malicious prosecution claim.	First Circuit (Nieves v. McSweeney, 241 F.3d 46 (1st Cir. 2001)) Third Circuit (Gallo v. City of Philadelphia, 161 F.3d 217 (3d Cir. 1998)) Fourth Circuit (Brooks v. City of Winston-Salem, N.C., 85 F.3d 178 (4th Cir. 1996))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Civil Rights	Fifth Circuit	United States v. Mississippi, 82 F.4th 387 (5th Cir. 2023)	In a suit brought by the United States against the State of Mississippi, the Fifth Circuit reversed a lower court ruling that the state's mental health care system violated Title II of Americans with Disabilities Act (ADA). The lower court held that the system placed adults with severe mental illness at risk of unjustified institutionalization in contravention of the ADA's mandate—reflected in ADA regulations and caselaw—that persons with disabilities be placed in the most integrated setting possible. As a remedy, the lower court ordered the state to expand its community-based mental health services. The Fifth Circuit held that unspecified persons' possible "risk" of unjustified institution does not give rise to a concrete harm under Title II of the ADA. In reaching this conclusion, the court split with other circuits that deferred to a Department of Justice guidance document that concluded a serious risk of institutionalization is enough to establish a claim. The Fifth Circuit also held that the lower court's injunction was too broad and required far more than necessary for the state to comply with Title II.	Second Circuit (Davis v. Shah, 821 F.3d 231 (2d Cir. 2016)) Fourth Circuit (Pashby v. Delia, 709 F.3d 307 (4th Cir. 2013)) Sixth Circuit (Waskul v. Washtenaw Cnty. Cmty. Mental Health, 979 F.3d 426 (6th Cir. 2020)) Seventh Circuit (Steimel v. Wernert, 823 F.3d 902 (7th Cir. 2016)) Ninth Circuit (M.R. v. Dreyfus, 663 F.3d 1100 (9th Cir. 2011), *opinion amended and superseded on denial of reh'g*, 697 F.3d 706 (9th Cir. 2012))
Civil Rights	Sixth Circuit	Chambers v. Sanders, 63 F.4th 1092 (6th Cir. 2023)	The Sixth Circuit held that children seeking redress for the wrongful incarceration of a parent, absent state action against the children themselves, do not have a claim under 42 U.S.C. § 1983, which creates a private cause of action if a state actor violates rights established by the Constitution. The court held that the claim at issue failed because, even assuming that the children had a right to family integrity under the Fourteenth Amendment, they did not prove the state acted with the intent to disrupt their family integrity. The case creates a circuit split with at least the Ninth	Ninth Circuit (Smith v. City of Fontana, 818 F.2d 1411 (9th Cir. 1987), *overruled on other grounds by* Hodgers-Durgin v. de la Vina, 199 F.3d 1037 (9th Cir. 1999))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			Circuit, which allows children to sue for harm caused by the wrongful incarceration of a parent without additional state action.	
Civil Rights	Seventh Circuit	M.C. ex rel. A.C. v. Metro. Sch. Dist., 75 F.4th 760 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 683 (2024)	The Seventh Circuit upheld preliminary injunctions allowing transgender boys to use boys' bathrooms and locker rooms in their schools. The court declined to overrule a prior decision that equated discrimination based on gender identity to sex discrimination. Recognizing a circuit split in cases with substantially similar facts, the court held, among other things, that the plaintiffs were likely to succeed on their claims alleging sex discrimination in violation of Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the Fourteenth Amendment.	Eleventh Circuit (Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty., 57 F.4th 791 (11th Cir. 2022) (en banc))
Civil Rights	Eighth Circuit	Klossner v. IADU Table Mound MHP, LLC, 65 F.4th 349 (8th Cir.), *cert. denied*, 144 S. Ct. 328 (2023)	A divided panel of the Eighth Circuit held that landlords are not required to accept government housing vouchers that they would not otherwise accept as a "reasonable accommodation" under the Fair Housing Amendments Act (FHAA). The FHAA generally requires landlords to make reasonable accommodations when necessary to afford an individual with a disability equal opportunity to use and enjoy a dwelling. The majority held that a reasonable accommodation under the FHAA must directly ameliorate the effects of a disability, which does not include ameliorating economic hardships. The Eighth Circuit, joining the Second and Seventh Circuits, split with the Ninth Circuit, which has held that reasonable accommodations sometimes extend to the individual's economic circumstances	Ninth Circuit (Giebeler v. M & B Associates, 343 F.3d 1143 (9th Cir. 2003))
Civil Rights	Ninth Circuit	Sinclair v. City of Seattle, 61 F.4th 674 (9th Cir.), *cert. denied*, 144 S. Ct. 88 (2023)	In a parent's civil rights action against the City of Seattle following the 2020 death of her son in the Capitol Hill Occupied Protest zone, the Ninth Circuit added to a circuit split by recognizing a Fourteenth Amendment substantive due process right to companionship with one's adult children. The court joined the Tenth Circuit in recognizing a constitutional right to companionship; however, the Tenth Circuit grounded that right in the First Amendment's freedom of association. Despite recognizing this substantive due process right, the Court affirmed the district court's dismissal of the parent's civil rights case because the city's actions were not directed at the deceased.	First Circuit (Valdivieso Ortiz v. Burgos, 807 F.2d 6 (1st Cir. 1986)) Third Circuit (McCurdy v. Dodd, 352 F.3d 820 (3d Cir. 2003))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Seventh Circuit (Russ v. Watts, 414 F.3d 783 (7th Cir. 2005)) Tenth Circuit (Trujillo v. Bd. of Cnty. Comm'rs of Santa Fe Cnty., 768 F.2d 1186 (10th Cir. 1985)) Eleventh Circuit (Robertson v. Hecksel, 420 F.3d 1254 (11th Cir. 2005)) D.C. Circuit (Butera v. District of Columbia, 235 F.3d 637 (D.C. Cir. 2001))
Civil Rights	Eleventh Circuit	Campbell v. Universal City Dev. Partners, 72 F.4th 1245 (11th Cir. 2023)	In a case challenging a waterpark's refusal to allow a person with one natural hand to use a water ride, the Eleventh Circuit held that the park had not shown it complied with the Americans with Disabilities Act (ADA). The ADA generally bars a public accommodation from excluding someone with a disability except when "necessary." The water park argued its eligibility requirements were "necessary" because they were compelled by state law. Acknowledging disagreement with the Sixth Circuit, the court held that compliance with state law is not "necessary" under the ADA, which preempts conflicting state requirements. The court remanded for further proceedings on whether the refusal was "necessary" because of actual safety concerns.	Sixth Circuit (Brickers v. Cleveland Bd. of Educ., 145 F.3d 846 (6th Cir. 1998))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Civil Rights	Eleventh Circuit	Stanley v. City of Sanford, 83 F.4th 1333 (11th Cir. 2023), *petition for cert. filed*, No. 23-997 (U.S. Mar. 12, 2024)	The Eleventh Circuit reaffirmed an earlier decision holding that Title I of the Americans with Disabilities Act does not permit a former employee to sue for discrimination based on post-employment distribution of fringe benefits. The plaintiff sued her former employer under Title I for terminating the health insurance subsidy she had received when she retired for qualifying disability reasons, but the court concluded that a Title I plaintiff must hold or seek a position with the defendant at the time of the allegedly discriminatory act. This decision reaffirmed the Eleventh Circuit's alignment with the Sixth, Seventh, and Ninth Circuits in a circuit split on the issue with the Second and Third Circuits.	Second Circuit (Castellano v. City of New York, 142 F.3d 58 (2d Cir. 1998)) Third Circuit (Ford v. Schering-Plough Corp., 145 F.3d 60 (3d Cir. 1998))
Consumer Protection	Second Circuit	CFPB v. Law Offices of Crystal Moroney, P.C., 63 F.4th 174 (2d Cir. 2023), *petition for cert. filed*, No. 22-1233 (U.S. Jun. 23, 2023)	The Second Circuit affirmed a district court's decision to grant a Consumer Financial Protection Bureau (CFPB) petition to enforce a civil investigative demand (CID). The CFPB served plaintiff a CID for documents related to an investigation. Plaintiff argued, among other things, that the CID could not be enforced because the CFPB's funding structure violates the Constitution's Appropriations Clause, and Congress violated the nondelegation doctrine when it created the CFPB's funding structure in the Consumer Financial Protection Act (CFPA) because it did not articulate an intelligible principle to guide the President. Declining to follow a 2022 Fifth Circuit decision on the same issue, the Second Circuit rejected plaintiff's arguments and affirmed the district court's decision to enforce the CID. The court explained that, contrary to the Fifth Circuit, it could not find any support in the text or history of the Appropriations Clause (or Supreme Court precedent) to support the conclusion that the CFPB's funding structure was impermissible.	Fifth Circuit (Cmty. Fin. Servs. Ass'n of Am., Ltd. v. Consumer Fin. Prot. Bureau, 51 F.4th 616 (5th Cir. 2022), *cert. granted*, 143 S. Ct. 978 (2023))
Consumer Protection	Ninth Circuit	Brown v. Transworld Sys., Inc., 73 F.4th 1030 (9th Cir. 2023)	The Ninth Circuit joined other circuits in holding that every claim made under the Fair Debt Collection Practices Act (FDCPA) has its own one-year statute of limitations, and that certain acts taken in a meritless debt-collection lawsuit can give rise to distinct FDCPA claims. In an FDCPA suit challenging a debt-collection lawsuit, the controlling opinion held that service and filing may give rise to distinct FDCPA claims when service occurs before filing. The majority expressed disagreement with a Tenth Circuit decision	Tenth Circuit (Johnson v. Riddle, 305 F.3d 1107 (10th Cir. 2002))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			characterized as treating service and filing as components of a single actionable wrong.	
Criminal Law & Procedure	First Circuit	United States v. Munera-Gomez, 70 F.4th 22 (1st Cir. 2023), *petition for cert. filed*, No. 23-485 (U.S. Nov. 8, 2023)	The First Circuit declined to apply the Ninth Circuit's standard for prosecutorial misconduct based on the denial of use immunity for defense witnesses. Use immunity protects witnesses from having their testimony used as evidence against them in court. The First Circuit held that the "effective defense theory," under which a strong need for exculpatory testimony can override the government's objection to use immunity, is not good law in that circuit. Instead, the court applied First Circuit precedent, whereby the government may defeat a challenge to the denial of use immunity by offering a plausible reason for denying such immunity. The court found plausible the government's position that it wanted to avoid potential obstacles to prosecuting the defense witness in question on pending federal charges.	Ninth Circuit (United States v. Westerdahl, 945 F.2d 1083 (9th Cir. 1991))
Criminal Law & Procedure	First Circuit	United States v. Vaquerano Canas, 81 F.4th 86 (1st Cir. 2023), *petition for cert. filed*, No. 23-6131 (U.S. Nov. 29, 2023)	The First Circuit held that a sentencing enhancement for the use or attempted use of a minor in the commission of a crime is valid as applied to defendants aged 18 to 21, joining most circuits that have considered the issue. In the Violent Crime Control and Law Enforcement Act of 1994, Congress directed the United States Sentencing Commission to create a minor-use enhancement in the United States Sentencing Guidelines for defendants "21 years of age or older." The Commission's broader proposed enhancement—which did not contain the 21-years-of-age threshold—took effect after Congress did not revise or disapprove the proposal during the applicable review period. The First Circuit held that the Commission acted under its general statutory powers in proposing the enhancement and that the enhancement does not conflict with the congressional directive, explaining that the enhancement still applies to defendants aged 21-and-over and that the Commission has the discretion to implement the directive in a broader manner.	Sixth Circuit (United States v. Butler, 207 F.3d 839 (6th Cir. 2000))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Criminal Law & Procedure	Third Circuit	Clark v. United States, 76 F.4th 206 (3d Cir. 2023), *petition for cert. filed*, No. 23-5950 (U.S. Nov. 3, 2023)	The Third Circuit held that a federal defendant who obtains habeas relief under 28 U.S.C. § 2255 but wishes to appeal the district court's choice of remedy under that provision must obtain a certificate of appealability (COA) in accordance with 28 U.S.C. § 2253(c). If a district court determines that a defendant's sentence is unlawful under § 2255, it then selects between discharging the defendant, resentencing, granting a new trial, or correcting the sentence. In holding that a COA is required to appeal a district court's choice among these options, the Third Circuit aligned with the Eleventh Circuit but rejected the contrary position of the Fourth and Sixth Circuits.	Fourth Circuit (United States v. Hadden, 475 F.3d 652 (4th Cir. 2007)) Sixth Circuit (Ajan v. United States, 731 F.3d 629 (6th Cir. 2013))
Criminal Law & Procedure	Third Circuit	United States v. Porat, 76 F.4th 213 (3d Cir. 2023), *petition for cert. filed*, No. 23-832 (U.S. Feb. 2, 2024)	The Third Circuit upheld a defendant's conviction for wire fraud and conspiracy to commit wire fraud. The court rejected the defendant's argument that the federal wire fraud statute, 18 U.S.C. § 1343, requires a scheme to personally obtain property, agreeing instead with the Second Circuit that a scheme to obtain property for a third party suffices for purposes of the statute. Acknowledging a break with the Ninth Circuit, the court also joined six other circuits in rejecting the argument that the federal wire fraud statute requires "convergence," that is, a requirement that the party deceived by the defendant must also be the party defrauded of property.	Ninth Circuit (United States v. Lew, 875 F.2d 219 (9th Cir. 1989))
Criminal Law & Procedure	Fourth Circuit	United States v. Jones, 60 F.4th 230 (4th Cir. 2023), *cert. granted and judgment vacated*, No. 23-46 (U.S. Mar. 25, 2023)	The Fourth Circuit added to a circuit split over the meaning of 18 U.S.C. § 3553(f), the "safety valve" exception for mandatory minimum sentences available for certain drug trafficking and unlawful possession offenses. Section 3553(f), as amended by the First Step Act, provides that the exception may apply to persons convicted of covered offenses who do "not have—(A) more than 4 criminal history points ... ; (B) a prior 3-point offense ... ; and (C) a prior 2-point offense." The Fourth Circuit disagreed with the Fifth, Sixth, Seventh, and Eight Circuits, which have held the word "and" between subsections (B) and (C) should be read distributively, so that defendants are ineligible if they fail any of the three conditions. The Fourth Circuit joined the Ninth and Eleventh Circuits in holding	Fifth Circuit (United States v. Palomares, 52 F.4th 640 (5th Cir. 2022)) Sixth Circuit (United States v. Haynes, 55 F.4th 1075 (6th Cir. 2022)) Seventh Circuit (United States v. Pace, 48 F.4th 741 (7th Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			that defendants are eligible so long as they do not meet all three conditions. The Supreme Court resolved this circuit split when it subsequently decided *Pulsifer v. United States*, No. 22-340, 2024 WL 1120879 (U.S. Mar. 15, 2024). The Supreme Court disagreed with the position of the Fourth Circuit here.	Eighth Circuit (United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022))
Criminal Law & Procedure	Fourth Circuit	In re Graham, 61 F.4th 433 (4th Cir. 2023)	The Fourth Circuit held that 28 U.S.C. § 2244(b)(1), which requires dismissal of "[a] claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application," does not apply to federal prisoners. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), a person imprisoned pursuant to the judgment of a state court may apply for post-conviction relief under 28 U.S.C. § 2254, while a person imprisoned pursuant to the judgment of a federal court may apply under § 2255. Joining the Sixth and Ninth Circuits, and rejecting the reasoning from several other circuits, the Fourth Circuit held that the requirement in § 2255(h) for a federal appellate court to certify a second or successive application "as provided in section 2244" incorporates only the filing requirements set forth in § 2244(b)(3), but not the criteria for dismissal in § 2244. The Fourth Circuit held that § 2244(b)(1), by its plain text, applies only to state claims under § 2254, and such a reading was consistent with the policy purposes of AEDPA.	Second Circuit (Gallagher v. United States, 711 F.3d 315 (2d Cir. 2013)) Third Circuit (United States v. Winkelman, 746 F.3d 134 (3d Cir. 2014)) Fifth Circuit (In re Bourgeois, 902 F.3d 446 (5th Cir. 2018)) Seventh Circuit (Taylor v. Gilkey, 314 F.3d 832 (7th Cir. 2002)) Eighth Circuit (Winarske v. United States, 913 F.3d 765 (8th Cir. 2019)) Eleventh Circuit (In re Baptiste, 828 F.3d 1337 (11th Cir. 2016))
Criminal Law & Procedure	Fifth Circuit	Gomez Barco v. Witte, 65 F.4th 782 (5th Cir.	The Fifth Circuit added to a circuit split in holding that habeas corpus petitioners may not recover attorneys' fees against the United States under the Equal Access to Justice Act (EAJA). The	Second Circuit (Vacchio v. Ashcroft, 404 F.3d 663 (2d Cir. 2005))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
		2023), *cert. denied*, 144 S. Ct. 553 (2024)	court reasoned that the EAJA is a limited waiver of sovereign immunity against the United States in specific civil actions. Habeas corpus actions, the court ruled, are not purely civil actions, but are a hybrid, with characteristics indicative of both civil and criminal actions.	Ninth Circuit (In re Petition of Hill, 775 F.2d 1037 (9th Cir. 1985))
Criminal Law & Procedure	Fifth Circuit	United States v. Vargas, 74 F.4th 673 (5th Cir. 2023) (en banc), *cert. denied*, No. 23-5875 (U.S. Feb. 20, 2024)	A divided en banc Fifth Circuit held that engaging in multiple drug conspiracies counts as committing multiple drug crimes, qualifying the defendant for harsher sentences under the United States Sentencing Guidelines. The majority deferred to the Sentencing Commission's official commentary to the Guidelines, which provides that a controlled substance offense for purposes of the career offender guideline includes drug conspiracies. In finding the official commentary authoritative and entitled to a high degree of deference, the Fifth Circuit joined the First, Second, Fourth, Seventh, and Tenth Circuits, in contrast with the Third, Sixth, Ninth, and Eleventh Circuits, which accord lesser deference to the commentary.	Third Circuit (United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)) Sixth Circuit (United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)) Ninth Circuit (United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)) Eleventh Circuit (United States v. Dupree, 57 F.4th 1269 (11th Cir. 2023) (en banc)) Note: The Fifth Circuit described itself as agreeing with the position taken by the Fourth Circuit in *United States v. Moses*, 23 F.4th 347 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 640 (2023), but also observed that its position differed from the view taken by the Fourth Circuit in *United*

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				States v. Campbell, 22 F.4th 438 (4th Cir. 2022), decided shortly before *Moses*. United States v. Vargas, 74 F.4th 673, 682-83 (5th Cir. 2023) (en banc) (agreeing with *Moses*); *id*. at 686 (disagreeing with *Campbell*).
Criminal Law & Procedure	Sixth Circuit	United States v. Woolridge, 64 F.4th 757 (6th Cir. 2023)	The Sixth Circuit upheld the denial of a motion to suppress incriminating statements under the Fifth Amendment, where *Miranda* warnings were provided "midstream," or in the middle of the defendant's statements. The court applied an objective standard to determine the admissibility of statements made after "midstream" warnings, under which the court probed whether a reasonable suspect under the circumstances would believe that they had a genuine choice to speak to law enforcement after the warnings. The court held that such a genuine choice existed here, pointing to the defendant's eagerness to speak to the officers and the officers' relative disinterest in having the defendant talk. The court acknowledged that other circuits weigh subjective considerations, particularly the intent of the officers, in assessing the admissibility of post-warning statements.	Second Circuit (United States v. Capers, 627 F.3d 470 (2d Cir. 2010)) Third Circuit (United States v. Naranjo, 426 F.3d 221 (3d Cir. 2005)) Fourth Circuit (United States v. Khweis, 971 F.3d 453 (4th Cir. 2020)) Fifth Circuit (United States v. Fernandez, 48 F.4th 405 (5th Cir. 2022)) Eighth Circuit (United States v. Magallon, 984 F.3d 1263 (8th Cir. 2021)) Ninth Circuit (United States v. Williams, 435 F.3d 1148 (9th Cir. 2006))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Tenth Circuit (United States v. Guillen, 995 F.3d 1095 (10th Cir. 2021)) Eleventh Circuit (United States v. Street, 472 F.3d 1298 (11th Cir. 2006))
Criminal Law & Procedure	Sixth Circuit	United States v. West, 70 F.4th 341 (6th Cir. 2023), *cert. denied*, No. 23-5698 (U.S. Feb. 26, 2024)	The Sixth Circuit reversed a district court's order granting compassionate release to a prisoner under the First Step Act. The district court determined that the prisoner's sentence was unconstitutional under the Supreme Court's decision in *Apprendi v. New Jersey* and granted the prisoner's motion for release. The Sixth Circuit held that a sentencing error is not an "extraordinary and compelling" reason for compassionate release under the First Step Act and instead can only be corrected by way of a federal habeas petition. In so holding, the Sixth Circuit joined four other circuits, while the First Circuit has stated that a sentencing error might provide a reason for compassionate release.	First Circuit (United States v. Trenkler, 47 F.4th 42 (1st Cir. 2022))
Criminal Law & Procedure	Sixth Circuit	United States v. Jones, 81 F.4th 591 (6th Cir. 2023), *cert. denied*, 144 S. Ct. 611 (2024)	Widening a circuit split, the Sixth Circuit held that the definition of "controlled substance offense" for purposes of applying a sentencing enhancement to a defendant who commits a firearms offense after a felony conviction for a "controlled substance offense" includes a prior conviction for a state-law controlled substance offense. The Second, Fifth, and Ninth Circuits have limited the definition of "controlled substance offense" by looking only to substances criminalized by the federal Controlled Substances Act. Relying mainly on a textual analysis, however, the Sixth Circuit agreed with the Third, Fourth, Seventh, Eighth, and Tenth Circuits that the enhancement incorporates both state and federal controlled substance offenses.	Second Circuit (United States v. Townsend, 897 F.3d 66 (2d Cir. 2018)) Fifth Circuit (United States v. Gomez-Alvarez, 781 F.3d 787 (5th Cir. 2015)) Ninth Circuit (United States v. Bautista, 989 F.3d 698 (9th Cir. 2021))
Criminal Law & Procedure	Sixth Circuit	United States v. Rogers, 86 F.4th 259 (6th Cir. 2023)	The Sixth Circuit held that an "intervening arrest" under the Sentencing Guidelines means a custodial arrest that is part of a criminal investigation, and does not include a traffic stop in which a defendant is issued a citation. Under the Sentencing Guidelines,	Seventh Circuit (United States v. Morgan, 354 F.3d 621 (7th Cir. 2003))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			when a defendant is sentenced on the same day for multiple offenses, they are counted as separate convictions to determine whether a recidivist penalty applies if the offenses were separated by an "intervening arrest." This decision aligned with the Third, Ninth, and Eleventh Circuits in a circuit split on the issue with the Seventh Circuit.	
Criminal Law & Procedure	Seventh Circuit	United States v. Hatley, 61 F.4th 536 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 545 (2024)	Adding to a circuit split, the Seventh Circuit held that a prior conviction for a Hobbs Act robbery qualifies as a predicate "violent felony" for purposes of enhanced sentencing under the Armed Career Criminal Act (ACCA). The court reasoned that a Hobbs Act robbery is a "violent felony" within the meaning of the ACCA because this crime entails the use of force against persons or property. The court observed that its holding is broadly consistent with interpretations adopted by the Fifth, Ninth, and Tenth Circuits and acknowledged that the Fourth and Sixth Circuits have taken a different approach.	Fourth Circuit (United States v. Gardner, 823 F.3d 793 (4th Cir. 2016), *overruled on other grounds by* United States v. Dinkins, 928 F.3d 349 (4th Cir. 2019)) Sixth Circuit (Raines v. United States, 898 F.3d 680 (6th Cir. 2018) (per curiam))
Criminal Law & Procedure	Seventh Circuit	United States v. Snyder, 71 F.4th 555 (7th Cir.), *cert. granted*, 144 S. Ct. 536 (2023)	The Seventh Circuit affirmed the conviction of a former mayor for, inter alia, federal bribery, in violation of 18 U.S.C. § 666(a)(1)(B). The former mayor argued that the statute applies only to bribes and not gratuities, which are rewards for actions the payee has already taken or is already committed to take. The court examined the statute's text, which does not mention gratuities, and found that the language on "influenced or rewarded" encompassed both briberies and gratuities. The court was not persuaded by the holdings of other circuits that had found § 666 did not apply to gratuities.	First Circuit (United States v. Fernandez, 722 F.3d 1 (1st Cir. 2013)) Fifth Circuit (United States v. Hamilton, 46 F.4th 389 (5th Cir. 2022))
Criminal Law & Procedure	Eighth Circuit	United States v. Lung'aho, 72 F.4th 845 (8th Cir. 2023)	The Eighth Circuit held that the federal crime of arson, 18 U.S.C. § 844(f)(1), is not subject to a sentencing enhancement as a "crime of violence" under 18 U.S.C. § 924(c)(3) because it does not contain, as an element, the use of physical force against the property of another. Section 844(f)(1) defines arson as "maliciously damag[ing] or destroy[ing]" a vehicle owned or possessed by an entity receiving federal funding, and the court interpreted	Sixth Circuit (United States v. Harrison, 54 F.4th 884 (6th Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			"maliciously" as a willful disregard of the likelihood that property will be damaged or destroyed. The court considered the Supreme Court's holding in *Borden v. United States*, which ruled that any crime that can be committed recklessly does not have, as an element, the use of physical force. The court acknowledged that circuit courts have disagreed about how to apply *Borden* to criminal statutes that use mental states, like malice, and concluded that *Borden* required a crime of violence to contain an element of "targeting" conduct at someone or something, which the mental state of malice lacks.	
Criminal Law & Procedure	Ninth Circuit	United States v. Lillard, 57 F.4th 729 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 575 (2024)	Adding to a circuit split, the Ninth Circuit held that a district court commits plain error and violates a defendant's substantial rights when it imposes a sentence for violating supervised release that exceeds the applicable statutory maximum, regardless of whether the illegal sentence is shorter than, or equal to, a valid sentence that is to be served concurrently with the illegal sentence. The district court sentenced defendant to an illegally excessive sentence of 36 months for a supervised release violation to be served concurrently with a valid sentence of 196 months incarceration for conspiracy to commit bank fraud. The government argued that the defendant's substantial rights were not impacted because he would still have to serve a longer sentence for the conspiracy conviction. The Ninth Circuit disagreed, pointing to the potential collateral consequences of the additional excessive sentence.	Eighth Circuit (United States v. Bossany, 678 F.3d 603 (8th Cir. 2012))
Criminal Law & Procedure	Ninth Circuit	Duarte v. City of Stockton, 60 F.4th 566 (9th Cir.), *cert. denied*, 143 S. Ct. 2665 (2023)	The Ninth Circuit added to a circuit split in holding that the Supreme Court's decision in *Heck v. Humphrey* does not preclude a 42 U.S.C. § 1983 claim by a plaintiff who pleaded no contest to, but was ultimately not convicted of, a crime. *Heck* held that § 1983 does not permit claims that would necessarily require a plaintiff to prove the unlawfulness of a conviction. The Ninth Circuit held that *Heck* did not bar a plaintiff's § 1983 claims when the plaintiff pleaded no contest but completed the conditions of an agreement with prosecutors before the court entered an order finding him guilty of the charge to which he pleaded. According to the Ninth Circuit, *Heck* requires an actual judgment of conviction, not its functional equivalent. The court declined to follow the Third Circuit's decision	Third Circuit (Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005)) Fifth Circuit (DeLeon v. City of Corpus Christi, 488 F.3d 649 (5th Cir. 2007))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			in *Gilles v. Davis*, which, according to the Ninth Circuit, appeared to apply *Heck* to non-final criminal charges.	
Criminal Law & Procedure	Ninth Circuit	United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)	The Ninth Circuit vacated a defendant's sentence for conspiracy to distribute methamphetamine where the district court had labeled conspiracy a "controlled substance offense" under § 4B1.2 of the U.S. Sentencing Guidelines (USSG). The court confronted the issue of whether to follow the text of § 4B1.2, which did not provide for inchoate offenses, and the USSG commentary to § 4B1.2 (Application Note 1), which did. The court declined to defer to the Application Note 1, reasoning that § 4B1.2 unambiguously does not include inchoate offenses. The court relied on the Supreme Court's decision in *Kisor v. Wilkie*, which held that courts may not defer to agency interpretations of their own regulation if the court determines the regulation is not ambiguous. The Ninth Circuit joins most, but not all, circuit courts that have declined to defer to Application Note 1 in the aftermath of *Kisor*.	First Circuit (United States v. Lewis, 963 F.3d 16 (1st Cir. 2020), *cert. denied*, 141 S. Ct. 2826 (2021)) Second Circuit (United States v. Richardson, 958 F.3d 151 (2d Cir. 2020)) Seventh Circuit (United States v. Smith, 989 F.3d 575 (7th Cir. 2021)) Eighth Circuit (United States v. Jefferson, 975 F.3d 700 (8th Cir. 2020), *cert. denied*, 141 S. Ct. 2820 (2021)) Tenth Circuit (United States v. Lovato, 950 F.3d 1337 (10th Cir. 2020), *cert. denied*, 141 S. Ct. 2814 (2021))
Criminal Law & Procedure	Ninth Circuit	Pinson v. Carvajal, 69 F.4th 1059 (9th Cir. 2023), *petition for cert. filed*, No. 23-488 (Nov. 8, 2023)	The Ninth Circuit affirmed the dismissal of two habeas corpus petitions challenging the petitioners' conditions of confinement. The court held that prisoners may not bring such claims under the federal habeas corpus statute, 28 U.S.C. § 2241. The court reasoned that, under Ninth Circuit precedent, challenges to the conditions of a sentence's execution, but not the conditions of the inmate's	Third Circuit (Hope v. Warden, 972 F.3d 310 (3d Cir. 2020))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			confinement, may be brought under § 2241. The court also conducted a review of the history and purpose of habeas corpus and concluded that conditions-of-confinement claims are not at the "core of habeas corpus." The Ninth Circuit disagreed with multiple other circuits that appear to have held that seeking release from confinement is the necessary attribute of a claim's sounding in habeas. Instead, the Ninth Circuit held, the key inquiry is the petitioner's argument why release from confinement is legally required to remedy a constitutional violation.	Sixth Circuit (Wilson v. Williams, 961 F.3d 829 (6th Cir. 2020))
Criminal Law & Procedure	Ninth Circuit	Eldridge v. Howard, 70 F.4th 543 (9th Cir. 2023)	A divided Ninth Circuit panel held that it had jurisdiction to review a district court's denial of the appellant's habeas petition even without a certificate of appealability (COA), where the petition related to a sentence imposed by the D.C. Superior Court. Under 28 U.S.C. § 2253(c)(1), a COA must be obtained before a habeas petitioner may appeal a federal district court's denial of a petition "in which the detention complained of arises out of process issued by a State court." Splitting with other circuits, the panel majority held that requirement did not apply here, because the D.C. Superior Court is not a "state court" under § 2253(c)(1). The majority then concluded that the district court erred in dismissing the petition on other grounds and remanded for the lower court to consider the petition's merits.	Third Circuit (Wilson v. U.S. Parole Comm'n, 652 F.3d 348 (3d. Cir. 2011)) Seventh Circuit (Sanchez-Rengifo v. Caraway, 798 F.3d 532 (7th Cir. 2015)) Tenth Circuit (Eldridge v. Berkebile, 791 F.3d 1239 (10th Cir. 2015)) D.C. Circuit (Madley v. U.S. Parole Comm'n, 278 F.3d 1 (D.C. Cir. 2002))
Criminal Law & Procedure	Ninth Circuit	United States v. Roper, 72 F.4th 1097 (9th Cir. 2023)	The Ninth Circuit held that district courts may consider non-retroactive changes in post-sentencing decisional law, or law made by judges, when considering whether a defendant has shown extraordinary and compelling reasons for a sentencing reduction under 18 U.S.C. § 3582. The court found support in its prior decision *United States v. Chen*, where it held that district courts may consider non-retroactive changes made by statutory sentencing law. Here, the court held that the logic underpinning *Chen* also applied to cases where the relevant change in sentencing law is decisional. While some circuits have "kept the door open" to motions for	Sixth Circuit (United States v. McCall, 56 F.4th 1048 (6th Cir. 2022) (en banc)) Seventh Circuit (United States v. Brock, 39 F.4th 462 (7th Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			sentence reductions based on decisional law, the Ninth Circuit's affirmative holding is in conflict with several circuits that rejected such motions.	Eighth Circuit (United States v. Crandall, 25 F.4th 582 (8th Cir.), *cert. denied*, 142 S. Ct. 2781 (2022)) D.C. Circuit (United States v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022))
Criminal Law & Procedure	Ninth Circuit	United States v. Scheu, 75 F.4th 1126 (9th Cir.), *opinion amended and superseded on denial of reh'g,* 83 F.4th 1124 (9th Cir. 2023)	The Ninth Circuit issued a revised opinion, reaffirming its view that, pursuant to the Supreme Court's ruling in *Kisor v. Wilkie*, courts may defer to the U.S. Sentencing Commission's official commentary interpreting the U.S. Sentencing Guidelines only if the court determines that the relevant Guideline is genuinely ambiguous and the court has exhausted all traditional tools of construction. The court acknowledged that the Sixth Circuit shares its view. In contrast, the Fourth Circuit has taken the opposite approach, holding that, under the Supreme Court's ruling in *Stinson v. United States*, the Commission's official commentary is binding, unless it is plainly erroneous, inconsistent with the Guideline provision itself, or violates the Constitution. The Ninth Circuit reasoned that *Kisor* effectively modified the cases on which *Stinson* was based, limiting the scope of the deference announced in *Stinson*.	Fourth Circuit (United States v. Moses, 23 F.4th 347 (4th Cir. 2022))
Criminal Law & Procedure	Ninth Circuit	United States v. Fortenberry, 89 F.4th 702 (9th Cir. 2023)	The Ninth Circuit reversed a former Member of Congress's criminal conviction under 18 U.S.C. § 1001(a)(2) for making false statements to federal agents, deciding that the venue for his criminal trial was improper. As part of an investigation into whether the Member had received illegal campaign contributions from a foreign national through conduit donors in Los Angeles, the Member was interviewed at his home in Nebraska and his lawyer's office in Washington, DC. The Member was charged under Section 1001(a)(2) with making false statements to federal agents during those interviews. Although the case was brought in the Central District of California rather than either of the locations where the allegedly false statements were made, the trial court held that the venue was proper because the statements had an effect on a federal	Second Circuit (United States v. Coplan, 703 F.3d 46 (2d Cir. 2012)) Fourth Circuit (United States v. Oceanpro Indus., Ltd., 674 F.3d 323 (4th Cir. 2012))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			investigation occurring within the district. The circuit court decided that this effects-based test for venue was inconsistent with the text of Section 1001(a)(2) and constitutionally invalid. The circuit panel's reversal of the Member's conviction was without prejudice to a possible retrial in a proper venue.	
Criminal Law & Procedure	Tenth Circuit	Sumpter v. Kansas, 61 F.4th 729 (10th Cir. 2023)	The Tenth Circuit, in reversing a district court's grant of habeas relief, held that a habeas petitioner seeking to cross-appeal from the portion of a district court's order partially denying his habeas petition is required to obtain a certificate of appealability (COA) from the district court. The statute establishing the prerequisites for an appeal in a habeas proceeding, 28 U.S.C. § 2253(c), states that "[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals." Recognizing that all but one circuit court to address this question has applied the COA requirement to claims arising from a prisoner's cross-appeal, the Tenth Circuit denied the COA and dismissed the cross-appeal for lack of jurisdiction.	Seventh Circuit (Szabo v. Walls, 313 F.3d 392 (7th Cir. 2002))
Criminal Law & Procedure	Tenth Circuit	United States v. Booker, 63 F.4th 1254 (10th Cir. 2023)	Adding to a circuit split, the Tenth Circuit held that, under 18 U.S.C. § 3583(e), a sentencing court may not take into account retributive considerations when modifying or revoking a term of supervised release. The court observed that several other circuits permit retributive considerations, at least so long as they are not the main or predominant justification for the sentence modification.	Third Circuit (United States v. Young, 634 F.3d 233 (3d Cir. 2011)) Fourth Circuit (United States v. Webb, 738 F.3d 638 (4th Cir. 2013)) Fifth Circuit (United States v. Sanchez, 900 F.3d 678 (5th Cir. 2018)) Seventh Circuit (United States v. Phillips, 791 F.3d 698 (7th Cir. 2015))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
				Ninth Circuit (United States v. Simtob, 485 F.3d 1058 (9th Cir. 2007))
Criminal Law & Procedure	Tenth Circuit	United States v. Maloid, 71 F.4th 795 (10th Cir. 2023), *cert. denied*, No. 23-6150 (U.S. Mar. 4, 2024)	The Tenth Circuit widened a circuit split by holding that commentary from the U.S. Sentencing Commission is generally entitled to deference even after the Supreme Court's decision in *Kisor v. Wilkie*. In *Kisor*, the Supreme Court held that courts may not defer to agency interpretations of their own regulation if the court determines the regulation is not ambiguous. The circuit courts have split on whether *Kisor* abrogated an earlier Supreme Court decision providing for broad deference to the Sentencing Commission's commentary. The Tenth Circuit declined to extend *Kisor* and reduce deference to the Sentencing Commission absent clear direction from the Supreme Court. The Tenth Circuit thus affirmed the defendant's sentence based in part on Sentencing Commission commentary providing that conspiracies to commit crimes of violence count as crimes of violence for sentencing purposes.	Third Circuit (United States v. Nasir, 17 F.4th 459 (3d Cir. 2021) (en banc)) Sixth Circuit (United States v. Riccardi, 989 F.3d 476 (6th Cir. 2021)) Ninth Circuit (United States v. Castillo, 69 F.4th 648 (9th Cir. 2023)) Eleventh Circuit (United States v. Dupree, 57 F.4th 1269 (11th Cir. 2023) (en banc))
Criminal Law & Procedure	Eleventh Circuit	United States v. Ware, 69 F.4th 830 (11th Cir. 2023), *petition for cert. filed*, No. 23-5946 (Nov. 2, 2023)	The Eleventh Circuit affirmed the convictions and sentencing of a defendant convicted of Hobbs Act robbery and associated firearms offenses for his involvement in the robbery of nine businesses. As to sentencing, the court affirmed a sentencing enhancement based on bodily restraint for three of the nine robberies. The court declined to follow a Third Circuit decision that would have counseled against applying the enhancement because that case directly conflicted with Eleventh Circuit precedent.	Third Circuit (United States v. Bell, 947 F.3d 49 (3d Cir. 2020))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Criminal Law & Procedure	Eleventh Circuit	United States v. Gonzalez, 71 F.4th 881 (11th Cir. 2023), *cert. denied*, 144 S. Ct. 552 (2024)	The Eleventh Circuit held that a defendant imprisoned for violating conditions of supervised release is eligible for a sentence reduction under the First Step Act of 2018 when the underlying crime for which supervised release was imposed qualifies for a reduction under the Act. The court further held that the district court did not abuse its discretion in denying a sentence reduction without first calculating the new sentencing guidelines range. The Eleventh Circuit added that, in some instances, determining the new guidelines range may be the "better practice," but the court declined to adopt the Seventh Circuit's categorical approach that a district court must always first recalculate the guidelines range before considering whether a sentence reduction is appropriate under the First Step Act.	Seventh Circuit (United States v. Corner, 967 F.3d 662 (7th Cir. 2020))
Criminal Law & Procedure	Eleventh Circuit	United States v. Talley, 83 F.4th 1296 (11th Cir. 2023)	The Eleventh Circuit joined a circuit split as to whether a federal criminal defendant sentenced under 18 U.S.C. § 3853 to a period of supervised release following imprisonment may have the supervised release period tolled if he absconds. The court decided that neither the text of § 3853 nor circuit caselaw supported applying the judicially crafted "fugitive tolling doctrine" to those who violate the conditions of their supervision and abscond. The Eleventh Circuit joins the First Circuit in this view, while the Second, Third, Fourth, and Ninth Circuits apply the fugitive tolling doctrine to terms of supervised release.	Second Circuit (United States v. Barinas, 865 F.3d 99 (2d Cir. 2017)) Third Circuit (United States v. Island, 916 F.3d 249 (3d Cir. 2019)) Fourth Circuit (United States v. Buchanan, 638 F.3d 448 (4th Cir. 2011)) Ninth Circuit (United States v. Murguia-Oliveros, 421 F.3d 951 (9th Cir. 2005))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Criminal Law & Procedure	Eleventh Circuit	United States v. Pate, 84 F.4th 1196 (11th Cir. 2023) (en banc)	A divided, en banc Eleventh Circuit held that a former civil servant is not an "officer or employee of the United States" under 18 U.S.C. § 1114 and § 1521, splitting with the Fifth Circuit. Section 1521 makes it a crime to file a retaliatory false lien against the property of an "individual described in" § 1114, which criminalizes the killing of "any officer or employee of the United States" "engaged in" or "on account of" their performance of official duties. The defendant in the case had been convicted of filing false liens against the property of former civil servants in retaliation for a tax dispute. Focusing on the statutory text, context, and structure, the court rejected the government's argument that §§ 1114 and 1521 cover former federal officers and employees so long as the defendant retaliated against the victims "on account of" their prior performance of official actions.	Fifth Circuit (United States v. Raymer, 876 F.2d 383 (5th Cir. 1989))
Education	Fourth Circuit	Sanchez v. Arlington Cnty. Sch. Bd., 58 F.4th 130 (4th Cir. 2023)	The Fourth Circuit added to a circuit split in holding that, in a standalone complaint for attorney's fees under the Individuals with Disabilities Education Act (IDEA), the court will apply the statute of limitations from the state statute implementing the IDEA. The court explained that the IDEA does not contain an express statute of limitations for attorney's fees actions and that, when a federal statute omits a limitations period, federal courts "borrow" the statute of limitations from the most analogous state law claim. The Fourth Circuit deemed the shorter limitations period from the state IDEA analogue more appropriate, as plaintiffs in an IDEA action already have retained counsel, an administrative decision has been issued, and federal policy supports the quick resolution of IDEA matters. The court disagreed with the Ninth and Eleventh Circuits, which apply the statute of limitations from state statutes governing general civil actions, rather than looking to IDEA-implementing statutes specifically.	Ninth Circuit (Meridian Joint Sch. Dist. No. 2 v. D.A., 792 F.3d 1054 (9th Cir. 2015)) Eleventh Circuit (Zipperer By & Through Zipperer v. Sch. Bd. of Seminole Cty., Fla., 111 F.3d 847 (11th Cir. 1997))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Election Law	Fifth Circuit	Vote.org v. Callanen, 89 F.4th 459 (5th Cir. 2023)	A divided Fifth Circuit reversed the lower court and upheld a Texas law requiring an original signature on a voter registration form. Before reaching the merits, the court held that the plaintiffs had standing to bring suit, joining the Third and Eleventh Circuits and splitting with the Sixth Circuit in deciding that private parties could file suit under 42 U.S.C. § 1983 to enforce the "materiality provision" of the Civil Rights Act of 1964. That provision provides that the right to vote shall not be denied because of an immaterial error or omission in a voter registration form or other voting records. On the merits, circuit panel majority held that given the totality of the circumstances, the requirement was a material voting qualification permitted under the Civil Rights Act. The majority also rejected the plaintiffs' First Amendment claim, deciding that the state's interests in ensuring voting integrity outweighed the minimal burden that the signature requirement placed on persons' electoral participation.	Sixth Circuit (McKay v. Thompson, 226 F.3d 752 (6th Cir. 2000))
Employee Benefits	Second Circuit	Cunningham v. Cornell Univ., 86 F.4th 961 (2d Cir. 2023), *cert. petition filed*, No. 23-1007 (U.S. Mar. 13, 2024)	The Second Circuit held that, to state a claim under 29 U.S.C. § 1106(a)(1)(C) alleging a prohibited transaction in violation of the Employee Retirement Income Security Act of 1974 (ERISA), a complaint must allege that a plan fiduciary caused an employee benefit plan to compensate a service provider for unnecessary services or to pay unreasonable compensation. The court observed disagreement among the circuits on when a prohibited transaction claim may be raised under § 1106(a)(1)(C), but only expressly disagreed with the approach taken by the Eighth Circuit, which holds that a prohibited transaction claim under § 1106(a)(1)(C) may be stated by alleging merely that the plan paid compensation for services. The Second Circuit reasoned that requiring a complaint to allege that compensation was unnecessary or unreasonable would limit plan mismanagement claims under § 1106(a)(1)(C) to the offensive conduct the statute discourages, and avoid encompassing the vast array of routine transactions that are not prohibited.	Eighth Circuit (Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir. 2009))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
False Claims Act	Sixth Circuit	United States ex rel. Martin v. Hathaway, 63 F.4th 1043 (6th Cir.), *cert. denied*, 144 S. Ct. 224 (2023)	The Sixth Circuit upheld the dismissal of a case brought under the False Claims Act and the Anti-Kickback Statute by interpreting "remuneration" in the latter statute to include only payments or other transfers of value, rather than including any act that may benefit the recipient. The court also held that a plaintiff must show but-for causation between a kickback scheme and the false claim presented—that is, that the service for which the defendant sought government reimbursement would not have occurred but for the kickback scheme. The court joined a circuit split on the causation issue, with the Eighth Circuit requiring but-for causation and the Third Circuit requiring only that the claim at issue covered items or services that involved illegal kickbacks.	Third Circuit (United States ex rel. Greenfield v. Medco Health Sols., Inc., 880 F.3d 89 (3d Cir. 2018))
Financial Regulation	Third Circuit	Jaludi v. Citigroup, 57 F.4th 148 (3d Cir. 2023)	The Third Circuit held that two provisions of the Sarbanes-Oxley Act—its statute of limitations and its exhaustion requirement—are procedural and not jurisdictional. The Third Circuit explained that courts have discretion to excuse violations of procedural provisions and that such violations will not automatically result in dismissal. The court rejected the Second Circuit's 2019 contrary interpretation of the exhaustion requirement but stated that the Second Circuit's approach is outdated in light of subsequent Supreme Court caselaw. The Third Circuit concluded that dismissal here was nonetheless appropriate because the administrative complaint was filed years after the 180-day deadline and amending the complaint would have been futile.	Second Circuit (Daly v. Citigroup Inc., 939 F.3d 415 (2d Cir. 2019))
Federal Courts	Third Circuit	Prater v. Dep't of Corr., 76 F.4th 184 (3d Cir. 2023)	The Third Circuit created a circuit split as to the scope of a magistrate judge's jurisdiction under the Federal Magistrates Act, 28 U.S.C. § 636. Disagreeing with the Sixth and Tenth Circuits, the court held that magistrate judges maintain jurisdiction to deny motions to proceed in forma pauperis (IFP) because such denials are non-dispositive pre-trial matters. The court reasoned that IFP motions do not appear on the § 636(b) list of matters that the statute carves out of magistrate judge jurisdiction. Acknowledging that § 636(b) is an illustrative list, not an exhaustive one, the court also looked to § 636(b)(1)(A) and (B), which allow magistrate judges to hear prisoner petitions challenging the conditions of their	Sixth Circuit (Woods v. Dahlberg, 894 F.2d 187 (6th Cir. 1990)) Tenth Circuit (Lister v. Dep't of Treasury, 408 F.3d 1309 (10th Cir. 2005))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			confinement and to rule on IFP motions that accompany those petitions. The court also found support in Federal Rule of Civil Procedure 72(b), which carves out "dispositive" matters from a magistrate judge's jurisdiction.	
Firearms	First Circuit	United States v. Pérez-Greaux, 83 F.4th 1 (1st Cir. 2023)	The First Circuit vacated a criminal defendant's conviction under 18 U.S.C. § 924(c)(1)(B)(ii) for possessing a machine gun in furtherance of a drug trafficking crime and remanded the case for retrial on that count, after concluding jury instructions improperly conveyed that the defendant need not have known the firearm was a machine gun. Splitting from other circuits, the court ruled that the government must prove the defendant had knowledge that the firearm had the characteristics of a machine gun as a necessary element of the offense.	Eleventh Circuit (United States v. Haile, 685 F.3d 1211 (11th Cir. 2012)) D.C. Circuit (United States v. Burwell, 642 F.3d 1062 (D.C. Cir. 2011), *reh'g en banc granted, judgment vacated* (Oct. 12, 2011), *opinion reinstated and aff'd*, 690 F.3d 500 (D.C. Cir. 2012))
Firearms	Fifth Circuit	Cargill v. Garland, 57 F.4th 447 (5th Cir.) (en banc), *cert. granted*, 144 S. Ct. 374 (2023)	Sitting en banc, a divided Fifth Circuit held that a nonmechanical bump stock is not a machinegun within the meaning of 18 U.S.C. § 921(a)(24). In a 2018 final rule, the Bureau of Alcohol, Tobacco, Firearms, and Explosives classified bump stocks, an accessory that attaches to a semiautomatic weapon to increase the rate of fire, as machineguns for purposes of the National Firearms Act and the federal statutory ban on the possession or transfer of new machineguns. Of the 16 members of the court, 13 agreed that an act of Congress is required to prohibit bump stocks. A 12-member majority of the court agreed that even if the current statutory language were ambiguous, the rule of lenity would require the court to interpret the law against imposing criminal liability. (Eight of the sixteen members of the court viewed the regulation as contrary to the plain meaning of the statutory definition of machinegun, and therefore in violation of the Administrative Procedure Act, because a bump stock does not fire a weapon automatically and by a single function of the trigger.) The court reversed the judgment of the district court and remanded with instructions to enter judgment against the government and determine the appropriate remedy.	Tenth Circuit (Aposhian v. Barr, 958 F.3d 969 (10th Cir. 2020)) D.C. Circuit (Guedes v. ATF, 920 F.3d 1 (D.C. Cir. 2019))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Firearms	Sixth Circuit	Hardin v. Garland, 65 F.4th 895 (6th Cir. 2023), *petition for cert. filed*, No. 23-62 (U.S. July 21, 2023)	Adding to a circuit split, a Sixth Circuit panel held that the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) lacked statutory authority to promulgate a 2018 rule classifying bump-stock type devices—defined by the ATF as devices that automatically shoot more than one shot by a single function of the trigger—as a "machinegun." The designation rendered bump-stock possession a criminal offense under the Gun Control Act of 1968, which bars persons from possessing a machinegun. The court determined that the agency's definition of a "machinegun" as applied to bump stocks is ambiguous, declined to defer to the ATF's definition, and concluded that the rule of lenity applicable to criminal offenses required the court to interpret the term narrowly.	Tenth Circuit (Aposhian v. Barr, 958 F.3d 969 (10th Cir. 2020)) D.C. Circuit (Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives, 920 F.3d 1 (D.C. Cir. 2019) (per curiam))
Firearms	Eighth Circuit	United States v. Sitladeen, 64 F.4th 978 (8th Cir. 2023)	The Eighth Circuit upheld the constitutionality of 18 U.S.C. § 922(g)(5)(A), which provides that any alien unlawfully present in the United States is prohibited from possessing a firearm. The appellant argued that § 922(g)(5)(A) violates the Second Amendment, among other things. The court disagreed, holding that under circuit precedent, illegally present aliens are not part of "the people" covered by the Second Amendment. The Eighth Circuit's decision places it in tension with the Seventh Circuit, which has held that at least some unlawfully present aliens can be considered part of "the people" protected by the Second Amendment.	Seventh Circuit (United States v. Meza-Rodriguez, 798 F.3d 664 (7th Cir. 2015))
Health	Second Circuit	MSP Recovery Claims, Series LLC v. Hereford Ins. Co., 66 F.4th 77 (2d Cir. 2023)	The Second Circuit held that a Medicare Advantage (MA) plan's report under § 111 of the Medicare Secondary Payer Act (the Act) did not amount to an admission of liability by the plan. Section 111 requires that MA plans report to the Centers for Medicare and Medicaid Services (CMS) certain claims they receive so that CMS may make an appropriate determination concerning the coordination of benefits. The court relied on the "not ambiguous" text of § 111 to hold that a report signifies only a plan's determination that a claimant is entitled to benefits under the Act, not a determination as to which entity must pay those benefits. The court disagreed with an Eleventh Circuit opinion that interpreted a § 111 report as demonstrating a plan's knowledge that it owed payments under the Act.	Eleventh Circuit (MSP Recovery Claims, Series LLC v. ACE American Insurance Co., 974 F.3d 1305 (11th Cir. 2020))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Health	Fifth Circuit	Gonzalez v. Blue Cross Blue Shield Ass'n, 62 F.4th 891 (5th Cir.), *cert. denied*, 144 S. Ct. 99 (2023)	The Fifth Circuit held that a federal employee failed to state a claim against OPM for denying health insurance benefits for a treatment that she was no longer seeking. Under the Federal Employees Health Benefits Act (FEHBA), OPM is responsible for regulating health insurance plans for federal employees. In this case, an insurance company, on behalf of OPM, made an "advance benefit determination" denying coverage for a certain cancer treatment; the employee therefore chose a different, covered treatment that eliminated her cancer but allegedly caused severe side effects. Breaking with the Tenth Circuit, the court held that the employee's claim against OPM was not barred by sovereign immunity, reasoning that OPM regulations could not narrow 5 U.S.C. § 8912, which waives federal sovereign immunity for "a civil action or claim ... founded on [FEHBA]." The court nevertheless found that the employee could not state a valid claim for benefits under OPM's regulations, which it held allow relief only to the extent an employee seeks coverage for medical bills that she actually did or could yet incur.	Tenth Circuit (Bryan v. Off. of Pers. Mgmt., 165 F.3d 1315 (10th Cir. 1999))
Health	Sixth Circuit	Williams ex rel. L.W. v. Skrmetti, 73 F.4th 408 (6th Cir. 2023), *petition for cert. filed*, No. 23-477 (U.S. Nov. 6, 2023)	The Sixth Circuit granted an emergency stay of a lower court's preliminary injunction against a Tennessee law restricting certain medical treatments, including hormone therapy and puberty blockers, for transgender minors. The circuit panel ruled that Tennessee was likely to prevail in its appeal of the injunction, and the panel expedited review of that appeal. At this stage, the panel held that the state-wide injunction was likely overbroad and unnecessary to remedy the plaintiffs' alleged injuries. On the merits, the panel held that the plaintiffs were unlikely to succeed in their arguments that the law violated parents' constitutional due process right to control their children's medical care. The court also held that plaintiffs were unlikely to show that the law violated constitutional equal protection principles, and the panel expressed disagreement with other circuits that have applied heightened constitutional scrutiny to transgender-based classifications.	Fourth Circuit (Grimm v. Gloucester Cnty. Sch. Bd., 972 F.3d 586 (4th Cir. 2020)) Eighth Circuit (Brandt ex rel. Brandt v. Rutledge, 47 F.4th 661, 670 (8th Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Immigration	First Circuit	Bazile v. Garland, 76 F.4th 5 (1st Cir. 2023)	The First Circuit held that judicial venue for appellate review of a final order of removal is determined by the location of the administrative venue in which removal proceedings are commenced, absent any formal change in administrative venue. Under 8 U.S.C. § 1252(b)(2), a petition for review of a final order of removal must be filed with the court of appeals for the circuit within which "the immigration judge completed the proceedings." Removal proceedings commence with a filing with an administrative control immigration court, but may include a separate designated hearing location and remote hearings with participants in various locations. The First Circuit held that appellate review of the order of removal was appropriately filed with the First Circuit, as opposed to the Fifth Circuit, because the proceedings were initiated in the Boston immigration court, even though the Immigration Judge was physically present in Fort Worth, TX. Acknowledging that other circuits have reached a variety of conflicting results, the First Circuit held that an immigration judge completes the removal proceedings at the administrative venue of the proceedings.	Fourth Circuit (Herrera-Alcala v. Garland, 39 F.4th 233 (4th Cir. 2022))
Immigration	Second Circuit	Garcia v. Garland, 64 F.4th 62 (2d Cir. 2023)	Contributing to a circuit split, the Second Circuit joined the Sixth Circuit in holding, among other things, that the Department of Justice's (DOJ's) regulations regarding whether an immigration judge may "administratively close" a case are ambiguous. The court observed that the Third, Fourth, and Seventh Circuits have concluded that DOJ's regulations unambiguously authorize such administrative closure decisions. The Second Circuit disagreed, finding that the regulations did not provide general authority for administrative closure. The court held that the former Attorney General's then-controlling interpretation of the regulations—that they do not authorize administrative closure except in limited circumstances—was reasonable and therefore entitled to judicial deference.	Third Circuit (Arcos Sanchez v. Attorney General, 997 F.3d 113 (3d Cir. 2021)) Fourth Circuit (Romero v. Barr, 937 F.3d 282 (4th Cir. 2019)) Seventh Circuit (Meza Morales v. Barr, 973 F.3d 656 (7th Cir. 2020))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Immigration	Second Circuit	Ud Din v. Garland, 72 F.4th 411 (2d Cir. 2023)	The Second Circuit added to a circuit split as to whether an immigration judge may deny adjustment of status to an applicant who had filed a frivolous, but untimely, asylum application. Generally, a person who knowingly files an asylum application containing false, material statements is considered to have filed a frivolous application and is permanently barred from immigration benefits. The court disagreed with the Third Circuit and held that an asylum application can be found frivolous even if it was untimely filed. The court explained that the federal statute on frivolous asylum applications contains no clear statement that the asylum application filing deadline is jurisdictional, thus requiring immigration judges to consider an application's timeliness before analyzing for frivolousness. The court determined that the filing of an asylum application, timely or otherwise, is the only precondition to triggering a frivolousness inquiry.	Third Circuit (Luciana v. Att'y Gen., 502 F.3d 273 (3d Cir. 2007))
Immigration	Third Circuit	Madrid-Mancia v. Att'y Gen., 72 F.4th 508 (3d Cir. 2023)	The Third Circuit held that an alien may not be removed in absentia if the original notice to appear (NTA) for removal proceedings lacked the date and time of the proceedings as required under 8 U.S.C. § 1229(a)(1), even if a supplemental notice issued pursuant to §1229(a)(2) later supplied the missing information. The circuit panel cited the Supreme Court's decision in *Pereira v. Sessions*, which held that the issuance of an NTA that lacked the date and time of an alien's removal proceedings was not an NTA under § 1229(a)(1), and therefore did not cut off the required period of continuous presence for cancellation of removal. The Third Circuit determined that, as in *Pereira*, the government's two-step process of supplying only some information in an NTA and providing a supplemental notice with the date and time later did not comport with the requirements of either § 1229(a)(1) or § 1229(a)(2). The decision widens a circuit split on whether § 1229(a)(2) provides a basis for this two-step process.	Sixth Circuit (Santos-Santos v. Barr, 917 F.3d 486 (6th Cir. 2019)) Eleventh Circuit (Dacostagomez-Aguilar v. Att'y Gen., 40 F.4th 1312 (11th Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Immigration	Fourth Circuit	Lazo-Gavidia v. Garland, 73 F.4th 244 (4th Cir. 2023), *petition for cert. filed*, No. 23-628 (U.S. Dec. 11, 2023)	A divided Fourth Circuit held that an alien may move to rescind a removal order issued in absentia if the original notice to appear (NTA) for removal proceedings lacked the date and time of the proceedings required under 8 U.S.C. § 1229(a)(1), even if a supplemental notice ultimately supplied the missing information. The majority also disagreed with circuits that have held that the government's failure to include the time and place of a removal hearing in an NTA is remedied if the alien later fails to update the Department of Homeland Security on a change of address. The Supreme Court granted certiorari in June 2023 in another case to consider this issue.	Fifth Circuit (Gudiel-Villatoro v. Garland, 40 F.4th 247 (5th Cir. 2022)) Eleventh Circuit (Dacostagomez-Aguilar v. U.S. Att'y Gen., 40 F.4th 1312 (11th Cir. 2022))
Immigration	Fourth Circuit	Cela v. Garland, 75 F.4th 355 (4th Cir. 2023), *petition for cert. filed*, No. 23-686 (U.S. Dec. 27, 2023)	A divided Fourth Circuit panel held that an alien whose asylum status was terminated following criminal convictions was ineligible to apply for adjustment of status to lawful permanent resident under 8 U.S.C. § 1159(b). The court interpreted § 1159(b), which permits aliens granted asylum to seek adjustment of status, as requiring the alien to have a cognizable "status" to "adjust." The panel interpreted "status" as referring to an alien's current or present condition. The court rejected the petitioner's argument that prior status was sufficient for purposes of § 1159(b) because it does not contain a "non-termination" requirement. The panel disagreed with a Fifth Circuit decision that held an alien need not maintain their asylum status to apply for adjustment of status.	Fifth Circuit (Siwe v. Holder, 742 F.3d 603 (5th Cir. 2014))
Immigration	Fourth Circuit	Solis-Flores v. Garland, 82 F.4th 264 (4th Cir. 2023), *petition for cert. filed*, No. 23-913 (U.S. Feb. 22, 2024)	The Fourth Circuit affirmed the Board of Immigration Appeals' (BIA's) decision that a conviction for receipt of stolen property is a crime of moral turpitude if knowledge that the goods were stolen is an element of the offense. On that basis, the court held that the conviction rendered the petitioner ineligible for cancellation of removal under 8 U.S.C. §§ 1229b(b)(1)(C) and 1227(a)(2)(A)(i). The Second, Third, Fifth, Seventh, Eighth, Tenth, and Eleventh Circuits have come to the same conclusion as the Fourth Circuit on this point. In contrast, the Ninth Circuit has held the receipt of stolen property is a crime of moral turpitude only if it requires proof of intent to permanently deprive the owner of the property. The Fourth Circuit also held that the BIA erred by declining to remand	Ninth Circuit (Castillo-Cruz v. Holder, 581 F.3d 1154 (9th Cir. 2009))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			the case for a new grant of voluntary departure. The court explained that 8 C.F.R. § 1240.26(c)(3)(i) unequivocally requires an Immigration Judge to inform an alien of a bond amount and the deadline for posting the bond before granting voluntary departure, which the judge had not done here.	
Immigration	Fourth Circuit	Martinez v. Garland, 86 F.4th 561 (4th Cir. 2023)	The Fourth Circuit issued the latest ruling in a growing circuit split over when an alien subject to a reinstated removal order may seek judicial review of a later administrative denial of that alien's eligibility to pursue withholding of removal. Under 8 U.S.C. § 1252(b)(1), a "final" order of removal may be appealed to a U.S. circuit court within 30 days of the date of the order. Joining the Second Circuit, but disagreeing with the Sixth, Ninth, and Tenth Circuits, a majority of the Fourth Circuit panel held that the 30-day clock is tied to the earlier reinstatement of removal order, not the later relief proceedings.	Sixth Circuit (Kolov v. Garland, 78 F.4th 911 (6th Cir. 2023)) Ninth Circuit (Alonso-Juarez v. Garland, 80 F.4th 1039 (9th Cir. 2023)) Tenth Circuit (Arostegui-Maldonado v. Garland, 75 F.4th 1132 (10th Cir. 2023))
Immigration	Sixth Circuit	Kolov v. Garland, 78 F.4th 911 (6th Cir. 2023)	In rejecting an alien's challenge to a Board of Immigration Appeals (BIA) decision, the Sixth Circuit acknowledged a growing circuit split over when an alien subject to a reinstated removal order may seek judicial review of the BIA's subsequent denial of the alien's petition for withholding of removal. The Immigration and Nationality Act permits an alien to appeal to a U.S. circuit court for review of a "final" order of removal within 30 days of the order. The question before the court was whether the 30-day clock for the petitioner, who sought to challenge the BIA's denial of his claim for withholding of removal, was linked to the completion of those proceedings or to the earlier reinstatement of the alien's removal order. Relying on circuit precedent, the Sixth Circuit held that the 30-day clock was tied to the completion of the withholding-of-removal proceedings, and therefore found it had jurisdiction to review the petitioner's claim. Still, the court upheld the BIA's determination that the petitioner did not present a credible claim for relief.	Second Circuit (Bhaktibhai-Patel v. Garland, 32 F.4th 180 (2d Cir. 2022))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
Immigration	Sixth Circuit	United States v. Zheng, 87 F.4th 336 (6th Cir. 2023), *petition for cert. filed*, No. 23-928 (U.S. Feb. 27, 2024)	The Sixth Circuit joined the Third, Fifth, and Eighth Circuits in holding that "harboring" aliens in violation of 8 U.S.C. § 1324(a)(1)(A)(iii) encompasses conduct that tends to substantially facilitate those persons remaining in the country illegally and prevent authorities from detecting their presence. The controlling opinion characterized the court's approach as differing from that taken by the Second, Seventh, and Ninth Circuits, which have held that a defendant must act intentionally or purposefully for liability to attach, and the Eleventh Circuit, which requires a "knowing" mens rea.	Second Circuit (United States v. Vargas-Cordon, 733 F.3d 366 (2d Cir. 2013)) Seventh Circuit (United States v. McClellan, 794 F.3d 743 (7th Cir. 2015)) Ninth Circuit (United States v. You, 382 F.3d 958 (9th Cir. 2004)) Eleventh Circuit (United States v. Dominguez, 661 F.3d 1051 (11th Cir. 2011)
Immigration	Ninth Circuit	Alonso-Juarez v. Garland, 80 F.4th 1039 (9th Cir. 2023)	The Ninth Circuit considered when an alien subject to a reinstated removal order may seek judicial review of a later administrative denial of that alien's eligibility to pursue withholding of removal. Under 8 U.S.C. § 1252(b)(1), a "final" order of removal may be appealed to a U.S. circuit court not later than 30 days of the date of the order. Acknowledging a circuit split on this question, the Ninth Circuit held that the 30-day clock was triggered by the completion of the later relief proceedings and not the earlier reinstatement of the removal order.	Second Circuit (Bhaktibhai-Patel v. Garland, 32 F.4th 180 (2d Cir. 2022))
Immigration	Tenth Circuit	Velazquez v. Garland, 88 F.4th 1301 (10th Cir. 2023), *petition for cert. filed*, No. 23-929 (U.S. Feb. 27, 2024)	The Tenth Circuit held that an alien who is ordered removable has 60 days from that order during which the alien may be permitted to voluntarily depart the United States or file an administrative motion to reopen the proceedings. 8 U.S.C. § 1229c(b)(2) provides that an immigration judge may issue an order granting the alien the ability to voluntarily depart the country instead of ordering removal and that the voluntary departure period may last up to 60 days. The Tenth Circuit held that this period may not exceed 60 calendar days from the date of service of the voluntary departure order. The court	Ninth Circuit (Meza-Vallejos v. Holder, 669 F.3d 920 (9th Cir. 2012))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			expressed its disagreement with the Ninth Circuit, which the Tenth Circuit panel described as holding that a voluntary departure period extended to the next business day when the 60th day falls on a federal holiday or weekend.	
Immigration	Eleventh Circuit	Bouarfa v. Sec'y, Dep't of Homeland Sec., 75 F.4th 1157 (11th Cir. 2023), *petition for cert. filed*, No. 23-583 (Nov. 30, 2023)	The Eleventh Circuit held that a district court lacked subject-matter jurisdiction to hear a complaint about the revocation of approval for a visa petition. The court applied 8 U.S.C. § 1252's bar on judicial review of certain discretionary immigration decisions to the decision to revoke approval of a visa petition under 8 U.S.C. § 1155. The court added to the majority position in a circuit split by holding that a revocation of a visa petition is one such discretionary decision.	Sixth Circuit (Jomaa v. United States, 940 F.3d 291 (6th Cir. 2019)) Ninth Circuit (ANA Int'l Inc. v. Way, 393 F.3d 886 (9th Cir. 2004))
Intellectual Property	Fourth Circuit	Prudential Ins. Co. v. Shenzhen Stone Network Info. Ltd., 58 F.4th 785 (4th Cir. 2023)	The Fourth Circuit affirmed a district court ruling that Shenzhen Stone, a Chinese internet company, violated the Anticybersquatting Consumer Protection Act (ACPA) by registering a domain name, PRU.COM, identical to Prudential's distinctive mark. Under the ACPA, an entity that "registers" a domain identical or confusingly similar to a distinctive trademark with a "bad faith intent to profit" is liable to the owner of the trademark. The Fourth Circuit determined that Shenzhen Stone was not entitled to the benefit of the ACPA's safe harbor provision, as it could not have had a "reasonable belief" that its use of the domain name was lawful. Although Shenzhen Stone was not the initial registrant of the domain name at issue, the Fourth Circuit employed reasoning endorsed by the Third and Eleventh Circuits—but not the Ninth Circuit—in holding that the term "registration" applies not only to the initial registration of the mark but also to subsequent re-registrations.	Ninth Circuit (GoPets Ltd. v. Hise, 657 F.3d 1024 (9th Cir. 2011))
International Law	First Circuit	United States v. Dávila-Reyes, 84 F.4th 400 (1st Cir. 2023) (en banc), *petition for cert. filed*, No. 23-6910 (Mar. 6, 2024)	A divided First Circuit, sitting en banc, affirmed two foreign nationals' convictions—obtained through unconditional plea agreements—under the Maritime Drug Law Enforcement Act (MDLEA) for trafficking drugs on the high seas using a stateless vessel. A three-judge panel of the First Circuit had previously held that the MDLEA's application to "vessels without nationality" exceeded Congress's constitutional authority because the provision	Fifth Circuit (United States v. Bustos-Useche, 273 F.3d 622 (5th Cir. 2001))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			covered some foreign vessels not considered stateless under international law. The en banc court vacated the panel's decision and affirmed the defendants' convictions on narrower, non-constitutional, record-based grounds. In reaching its holding, the en banc court rejected the defendants' argument that the MDLEA's stated application to vessels "subject to the jurisdiction of the United States" limits the subject-matter jurisdiction of federal courts under Article III of the Constitution. The court held instead that this language limits only the substantive reach of the MDLEA. In so holding, the First Circuit deepened a split among the federal courts of appeals on this interpretive question.	Eleventh Circuit (United States v. Tinoco, 304 F.3d 1088 (11th Cir. 2002)) D.C. Circuit (United States v. Miranda, 780 F.3d 1185 (D.C. Cir. 2015))
Labor & Employment	Sixth Circuit	Clark v. A&L Homecare & Training Ctr., 68 F.4th 1003 (6th Cir. 2023)	The Sixth Circuit announced a rule on when a district court should facilitate notice to "similarly situated" current and former workers that might allow them to join a plaintiff's suit for unpaid wages under the Fair Labor Standards Act. The circuit court held that for a district court to facilitate notice, the plaintiff must show a strong likelihood that those employees are similarly situated. The court characterized this standard as more stringent than the standard adopted by many district courts, under which the plaintiff must first make only a modest factual showing that the employees are similarly situated. The panel also described the announced standard as less stringent than the standard endorsed by the Fifth Circuit, which requires a showing by a preponderance of evidence that others are similarly situated.	Fifth Circuit (Swales v. KLLM Transport Services, L.L.C., 985 F.3d 430 (5th Cir. 2021))
Labor & Employment	Sixth Circuit	Milman v. Fieger & Fieger, P.C., 58 F.4th 860 (6th Cir. 2023)	The Sixth Circuit reversed a district court's dismissal of a plaintiff's claim for retaliation under the Family and Medical Leave Act (FMLA). The plaintiff alleged that her employer fired her after she made a request for FMLA leave, but did not allege that she was entitled to or took the requested leave. The Sixth Circuit, acknowledging inconsistent precedent within the Sixth Circuit and among other circuits, held that FMLA retaliation claims can be brought under 29 U.S.C. § 2615(a)(1), rather than only under § 2615(a)(2). The court further held that inquiring about and requesting FMLA leave may be protected activity under the FMLA,	Eighth Circuit (Lovland v. Emp'rs Mut. Cas. Co., 674 F.3d 806 (8th Cir. 2012)) Tenth Circuit (Metzler v. Fed. Home Loan Bank of Topeka, 464 F.3d 1164 (10th Cir. 2006))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			and thus provide the basis of a retaliation claim, even if an employee is not entitled to such leave.	
Labor & Employment	Ninth Circuit	Crowe v. Wormuth, 74 F.4th 1011 (9th Cir. 2023)	The Civil Service Reform Act of 1978 allows federal employees to appeal to the Merit Systems Protection Board (MSPB) for review of any of five "particularly serious" adverse employment actions, including a removal. Splitting from the Eighth Circuit, the Ninth Circuit held that when a federal employee seeking MSPB review for removal adds discrimination claims for actions that are not expressly listed as adverse employment actions, the employee must separately file those claims with their agency's Equal Employment Opportunity office, even when the removal is factually related to the discrimination claims. The court reasoned, in part, that Congress intended to limit the MSPB's jurisdiction to only the five adverse employment actions listed in 5 U.S.C. § 7512.	Eighth Circuit (McAdams v. Reno, 64 F.3d 1137 (8th Cir. 1995))
Labor & Employment	Ninth Circuit	Bugielski v. AT&T Servs., Inc., 76 F.4th 894 (9th Cir. 2023)	The Ninth Circuit held in part that § 406(a)(1)(C) of the Employee Retirement Income Security Act (ERISA) establishes a per se rule that classifies even arm's-length service transactions between a plan and a party in interest as "prohibited transactions" which may be permissible under certain statutory exemptions. The Ninth Circuit declined to follow the reasoning of the Third Circuit, which has held that a plaintiff must plead factual allegations that support an element of intent to benefit a party in interest in order to state a prohibited-transaction claim. The Ninth Circuit also rejected a similarly limited reading of the scope of § 406(a)(1)(C) adopted by the Seventh Circuit.	Third Circuit (Sweda v. Univ. of Pennsylvania, 923 F.3d 320 (3d Cir. 2019)) Seventh Circuit (Albert v. Oshkosh Corp., 47 F.4th 570 (7th Cir. 2022))
Property	Fifth Circuit	Baker v. City of McKinney, 84 F.4th 378 (5th Cir. 2023)	In a circuit split, the Fifth Circuit declined to adopt a rule that a state's actions are not a taking for purposes of the Takings Clause when the state acts pursuant to its police power instead of its eminent domain power. The court instead held more narrowly that the Takings Clause does not require governments to provide compensation for damaged property when such damage is objectively necessary for law enforcement officers to prevent imminent harm to people. The plaintiff sued the defendant city for compensation after law enforcement officers severely damaged her home in responding to an armed fugitive who was holding a child	Federal Circuit (AmeriSource Corp. v. United States, 525 F.3d 1149 (Fed. Cir. 2008)) Seventh Circuit (Johnson v. Manitowoc Cnty., 635 F.3d 331 (7th Cir. 2011))e

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			hostage inside. The court concluded that history, tradition, and historical precedent established a necessity exception to the Takings Clause and required dismissal of the plaintiff's claim for compensation.	
Securities	Ninth Circuit	Lee v. Fisher, 70 F.4th 1129 (9th Cir. 2023) (en banc)	Sitting en banc, a divided Ninth Circuit affirmed the dismissal of a putative derivative action filed in federal court against The Gap, Inc. and its directors (Gap) because a forum-selection clause in Gap's bylaws provided that the Delaware Court of Chancery was the sole and exclusive forum for any derivative action. The majority rejected the plaintiff's arguments that the forum-selection clause violated the antiwaiver provision of the Securities Exchange Act of 1934, federal public policy, and § 115 of the Delaware General Corporation Law. The majority acknowledged that its holdings created a circuit split with the Seventh Circuit.	Seventh Circuit (Seafarers Pension Plan on behalf of Boeing Co. v. Bradway, 23 F.4th 714 (7th Cir. 2022))
Tax	D.C. Circuit	Optimal Wireless LLC v. IRS, 77 F.4th 1069 (D.C. Cir. 2023)	The D.C. Circuit widened a circuit split concerning whether a provision of the Affordable Care Act (ACA) constitutes a "tax" within the meaning of the Anti-Injunction Act, 26 U.S.C. § 7421(a). The ACA provision imposes an exaction on large employers for failing to provide health insurance coverage or providing noncomplying coverage, 26 U.S.C. § 4980H. The Anti-Injunction Act prohibits lawsuits to restrain the assessment or collection of a tax. The D.C. Circuit held that the § 4890H exaction is a tax under the Anti-Injunction Act, reasoning that Congress referred to the exaction as a tax multiple times within § 4980H. The court also held that Congress's other references to the exaction in § 4890H as an "assessable payment" and "penalty" did not conflict with the term "tax."	Fourth Circuit (Liberty Univ., Inc. v. Lew, 733 F.3d 72 (4th Cir. 2013)) Seventh Circuit (Korte v. Sebelius, 735 F.3d 654 (7th Cir. 2013))
Tax	Fourth Circuit	Clary Hood, Inc. v. Comm'r, 69 F.4th 168 (4th Cir. 2023)	The Fourth Circuit affirmed the U.S. Tax Court's partial disallowance of a corporation's business deduction for bonuses paid to the company's CEO because the bonuses exceeded the reasonable allowance for compensation in 26 U.S.C. § 162(a)(1). The court joined most circuits in applying a multifactor approach that assesses the reasonableness of compensation under the totality of the circumstances. In so holding, the court declined to adopt the Seventh Circuit's independent investor test, which establishes a	Seventh Circuit (Menard, Inc. v. Comm'r, 560 F.3d 620 (7th Cir. 2009))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			rebuttable presumption that an executive's compensation is reasonable if shareholders are receiving a sufficiently high rate of return on their equity investment. The court concluded that the multifactor test is more in line with the Internal Revenue Service (IRS) regulations that limit compensation deductions to what is "reasonable under all the circumstances" and that the independent investor test was too narrow.	
Tax	Fourth Circuit	Pond v. United States, 69 F.4th 155 (4th Cir. 2023)	The Fourth Circuit added to a circuit split over the relationship between the common-law mailbox rule, which involves presumptions related to the timeliness and delivery of documents sent by U.S. mail, and the statutory mailbox rule specific to tax filings in 26 U.S.C. § 7502. While deciding that a taxpayer could proceed in a suit seeking a federal tax refund, the court joined the Second and Sixth Circuits in deciding that § 7502 supplanted the common-law rule for tax filings. This position contrasts with that of the Eighth and Tenth Circuit, which held that § 7502 supplements the common-law rule.	Eighth Circuit (Est. of Wood v. Comm'r, 909 F.2d 1155 (8th Cir. 1990)) Tenth Circuit (Sorrentino v. IRS, 383 F.3d 1187 (10th Cir. 2004))
Tax	Eighth Circuit	Connelly *ex rel.* Connelly v. United States, 70 F.4th 412 (8th Cir.), *cert. granted*, 144 S. Ct. 536 (2023)	The Eighth Circuit decided that the IRS assessment of the fair market value of a closely held corporation properly identified the corporation's life insurance policy on a deceased shareholder as an asset, when policy proceeds were used to redeem the decedent's shares. Characterizing its decision as consistent with governing law and customary valuation principles, the court acknowledged a split with the Eleventh Circuit, which held in a similar case that life insurance proceeds should not be added to the value of a corporation for tax purposes.	Ninth Circuit (Estate of Cartwright v. Commi'r, 183 F.3d 1034 (9th Cir. 1999)) Eleventh Circuit (Estate of Blount v. Comm'r', 428 F.3d 1338 (11th Cir. 2005))
Torts	Seventh Circuit	Sargeant v. Barfield, 87 F.4th 358 (7th Cir. 2023)	A divided Seventh Circuit held that a federal prisoner could not bring an action alleging an Eighth Amendment failure-to-protect claim pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics,* where the Supreme Court recognized an implied cause of action for persons seeking monetary damages for constitutional violations committed by certain federal officials. The circuit panel majority affirmed the dismissal of the plaintiff's complaint, which alleged that prison officials retaliated against him for making complaints against a prison official by housing him with	Third Circuit (Bistrian v. Levi, 912 F.3d 79 (3d Cir. 2018))

Subject	Circuit	Citation	Ruling	Acknowledged Circuit Split on Controlling Issue
			violent inmates. Agreeing with the Fourth Circuit, and disagreeing with the Third, the majority explained that a failure-to-protect claim is not one of the recognized *Bivens* causes of action, and thus it is for Congress to determine whether to create a remedy for such a claim.	
Transportation	D.C. Circuit	Norfolk S. Ry. Co. v. Surface Transp. Bd., 72 F.4th 297 (D.C. Cir. 2023), *petition for cert. filed*, No. 23-577 (Nov. 29, 2023)	The D.C. Circuit recognized a circuit split concerning the scope of appellate jurisdiction over decisions of the Surface Transportation Board (STB) under the Hobbs Act, 28 U.S.C. §§ 2341-51. The Hobbs Act, along with 28 U.S.C. § 2321, confers appellate courts with jurisdiction to review all final STB orders; however, 28 U.S.C. § 1336 vests a district court with exclusive jurisdiction to review questions it certifies to the STB. Here, the D.C. Circuit held that where a district court certifies a question to the STB, an appellate court has jurisdiction to review any additional issues decided by the STB.	Third Circuit (Union Pac. R.R. Co. v. Ametek, Inc., 104 F.3d 558 (3d Cir. 1997)) Seventh Circuit (Ry. Lab. Execs.' Ass'n v. ICC, 894 F.2d 915 (7th Cir. 1990)) Eighth Circuit (R.R. Salvage & Restoration, Inc. v. STB, 648 F.3d 915 (8th Cir. 2011))
Transportation	Seventh Circuit	Ye v. GlobalTranz Enters., 74 F.4th 453 (7th Cir. 2023), *cert. denied*, 144 S. Ct. 564 (2024)	The Seventh Circuit, aligning itself with the Eleventh Circuit, held that the express preemption provision in the Federal Aviation Administration Authorization Act forecloses a common law negligent hiring claim against a freight broker based on a motor carrier's involvement in a fatal collision. In disagreement with the Ninth Circuit, the court further held that Congress did not intend for the exception to preemption for a state's motor vehicle safety laws to excuse laws imposing obligations on brokers from preemption. The court reasoned, in part, that brokers are listed in the express preemption provision but are not mentioned in the exception or the statutory definition of "motor vehicle."	Ninth Circuit (Miller v. C.H. Robinson Worldwide, Inc., 976 F.3d 1016 (9th Cir. 2020))

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