

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Dec. 20–Dec. 26, 2021)

December 27, 2021

The federal courts issue hundreds of decisions every week in cases involving diverse legal disputes. This Sidebar series selects decisions from the past week that may be of particular interest to federal lawmakers, focusing on orders and decisions of the [Supreme Court](#) and precedential decisions of the courts of appeals for the [thirteen federal circuits](#). Selected cases typically involve the interpretation or validity of federal statutes and regulations, or constitutional issues relevant to Congress’s lawmaking and oversight functions.

Some of the cases identified in this Sidebar, or the legal questions they address, are examined in other CRS general distribution products. Members of Congress and congressional staff may contact the authors to subscribe to the *CRS Legal Update* newsletter and receive regular notifications of new products published by CRS attorneys.

Decisions of the Supreme Court

The Supreme Court scheduled oral arguments for January 7, 2022, to consider challenges to two federal Coronavirus Disease 2019 (COVID-19) vaccination policies.

One set of arguments concerns an Occupational Safety and Health Administration (OSHA) emergency temporary standard (ETS) issued in November 2021 that directs employers with 100 or more workers to adopt a COVID-19 vaccine-or-testing policy. A divided Sixth Circuit panel lifted a stay that had prevented the ETS from going into effect after concluding that plaintiffs were unlikely to prevail in their legal challenges to the mandate. The petitioners have asked that the stay on the ETS be reinstituted while litigation proceeds (*Nat’l Fed. of Independent Business v. Dep’t of Labor*; *Ohio v. Dep’t of Labor*).

The other set of arguments focus on an interim rule by the Centers for Medicare & Medicaid Services (CMS) in November 2021, which generally requires certain types of health care entities participating in the Medicare and Medicaid programs to ensure staff are vaccinated against COVID-19 unless an individual is exempted for religious, medical, or other prescribed reasons. Three district courts have

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LSB10674

issued preliminary injunctions of varying scope against the rule that, collectively, have halted its implementation in 25 states. The Biden Administration has asked the Supreme Court to stay two of these preliminary injunctions while litigation concerning the validity of the interim rule continues (*Biden v. Missouri*; *Becerra v. Louisiana*).

Lower court proceedings regarding both mandates are discussed in an earlier edition of the *Congressional Court Watcher*.

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases where the appellate court's controlling opinion recognizes 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.

Arbitration: The Federal Arbitration Act (FAA) permits parties to contract for arbitration of disputes and, in so doing, forfeit their rights to sue in court over matters covered by the arbitration agreement. The FAA does not apply to employment agreements with certain workers, including transportation workers “engaged in foreign or interstate commerce.” The Ninth Circuit held that the FAA’s exemption applies to delivery drivers of local franchises of a national pizza chain. The panel characterized the national pizza chain as involved in the procurement and delivery of goods in interstate commerce, and the delivery drivers’ transportation of those goods to their final destination as the final leg of the interstate transport of those goods (*Carmona v. Domino’s Pizza, LLC*).

- **Civil Liability:** The Trafficking Victims Protection Reauthorization Act (TVPRA) permits a human trafficking victim to seek civil remedies against both the trafficker and those who knowingly benefited from the trafficking venture. In the course of affirming a lower court’s dismissal of plaintiff’s TVPRA claim against hotel chains that allegedly profited from human trafficking at their locations, the Eleventh Circuit held that, for civil liability to attach, plaintiffs must show that defendants (1) knowingly benefited (2) from taking part in a common undertaking or enterprise involving risk and potential profit, (3) that this undertaking violated the TVPRA as to plaintiffs, and (4) the defendants had constructive or actual knowledge that the undertaking or enterprise violated the TVPRA. The court based these four elements on the plain meaning of the TVPRA’s text. The court joined at least one other circuit in declining to interpret the scope of the TVPRA’s civil liability provision as narrowly as a criminal provision in the TVPRA that also addresses participation in trafficking ventures (*Doe #1 v. Red Roof Inns, Inc.*).
- ***Civil Rights:** A divided Sixth Circuit panel affirmed a lower court’s dismissal of a plaintiff’s suit against the City of Detroit under Title II of the Americans with Disabilities Act (ADA) and § 505 of the Rehabilitation Act. The plaintiff claimed that the city should be found vicariously liable for conduct of city police officers. The panel majority observed that the remedies available under Title II of the ADA are, by cross-reference, the same as those in § 505 of the Rehabilitation Act, which are in turn defined in cross-reference to Title VI of the Civil Rights Act. The majority held that none of these three statutes permits claims premised on vicarious liability. While the majority observed that its interpretation generally paralleled rulings from other appellate courts, it noted a split with one circuit court that had recognized a vicarious liability claim under Title II of the ADA (*Jones v. Detroit*).
- **Immigration:** Under 8 U.S.C. § 1101(g), an alien is considered to have been “deported or removed” once he or she has been (1) “ordered deported or removed” and (2) “left the United States.” Applying the rule of lenity and affording the government’s interpretation

Chevron deference, the Eleventh Circuit held that an alien is only considered to have been removed under § 1101(g) if the alien departs the United States *after* the issuance of a removal order, and not if the alien departs beforehand (*Romero v. Secretary, U.S. Dep't of Homeland Security*).

- **Immigration:** The Violence Against Women Act (VAWA) allows qualifying victims of domestic violence who have been ordered removed from the United States to have their cases reopened upon filing a motion within one year of the removal order's issuance. In certain circumstances, this one-year filing deadline may be waived by the Attorney General as a matter of discretion. The Third Circuit held that the Immigration and Nationality Act's jurisdiction-stripping provisions, which generally bar judicial review of decisions statutorily committed to the Attorney General's discretion, prevented the court from reviewing petitioner's claim that he should have been granted a waiver from VAWA's one-year filing deadline (*Yasin v. Attorney General*).
- **Labor & Employment:** The Sixth Circuit joined other circuits in holding that a state's National Guard, in its capacity as an employer and supervisor of dual-service technicians, is an executive agency under the Federal Service Labor-Management Relations Statute. The panel confirmed the Federal Labor Relations Authority's (FLRA) jurisdiction over the Guard and the technicians after looking to legislative history to confirm Congress's efforts to ensure that dual-status technicians, in their civilian capacity, have collective bargaining rights that members of the uniformed services do not have. (*Ohio Adjutant General's Department v. FLRA*).
- **National Security:** The DC Circuit affirmed in part and reversed in part a lower court's determination that an appellant family of U.S. citizens lacked Article III standing to pursue its claim of violations of the Fourth and Fifth Amendments and of the Administrative Procedure Act resulting from domestic and international airport security screenings that plaintiffs allege were connected to a terrorist watchlist. The panel found that the family established the requisite imminent threat of future injury to pursue its prospective claims for relief, except against the individual agents carrying out the government procedures. (*Jibril v. Mayorkas*).

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