

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Nov. 21–Nov. 27, 2022)

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

Decisions of the Supreme Court

Last week, the Supreme Court granted certiorari in one case:

- **Intellectual Property:** The Supreme Court agreed to hear a trademark dispute from the Ninth Circuit between Jack Daniel’s and a company that manufactures humorous dog toys that resemble bottles of Jack Daniel’s whiskey. The Court is asked whether this use of a trademark violates the [Lanham Act](#) or the [Trademark Dilution Revision Act](#), including whether a humorous use of a trademark should receive heightened protection under the First Amendment (*Jack Daniel’s Properties, Inc. v. VIP Products, LLC*).

The Supreme Court also took action in response to one emergency application:

- **Separation of Powers:** On November 22, 2022, the Court rejected an emergency request by former President Trump to stay the release of his federal tax returns to the House Ways and Means Committee. As reported in a previous [Congressional Court Watcher edition](#), the D.C. Circuit earlier this year affirmed the district court’s decision finding that

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[26 U.S.C. § 6103\(f\)\(1\)](#) permits the Ways and Means Committee to review former President Trump's federal tax returns from 2015 to 2020 (*Trump v. Committee on Ways and Means*).

Decisions of the U.S. Courts of Appeals

Topic headings marked with an asterisk (*) indicate cases in which 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.

- **Criminal Law & Procedure:** A divided Fifth Circuit panel vacated a defendant's conviction under [18 U.S.C. § 2250\(a\)](#) for failing to register as a sex offender pursuant to the federal [Sex Offender Registration and Notification Act \(SORNA\)](#). The defendant and the government both argued that the defendant's conviction should be vacated because the defendant had no obligation to register under Texas state law and, in their view, a state-law duty to register is a prerequisite to the federal crime. The Fifth Circuit majority rejected that construction, holding that SORNA sets federal registration requirements that are independent of state law. Nonetheless, the majority ordered that the defendant's conviction must be vacated because the 15-year SORNA registration requirement applicable to the defendant's sexual offense had expired three years before his federal indictment for failing to register (*United States v. Navarro*).
- **Criminal Law and Procedure:** Joining the D.C. Circuit, a divided Ninth Circuit panel ruled that a National Transportation Safety Board (NTSB) investigation is a "proceeding" as that term is used in a federal criminal obstruction statute. That statute, [18 U.S.C. § 1505](#), makes it a crime to "influence, obstruct or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States." The Ninth Circuit majority held that, although the NTSB cannot enforce or adjudicate any violations of law, NTSB investigations are "proceedings" subject to the criminal penalties for obstruction contained in Section 1505 because the Board has the power to subpoena evidence and compel testimony under oath (*United States v. Kirst*).
- **Employee Benefits:** The Ninth Circuit held that a district court committed clear error by basing its decision to affirm an [Employee Retirement Income Security Act \(ERISA\)](#) plan administrator's denial of benefits based on rationales not considered by the plan administrator. The court reasoned that, in so doing, the district court had contravened [ERISA's requirement](#) that the claimant receive an opportunity for a "full and fair review" of the denial of her benefits claim. The court held that this standard obliges the district court to determine whether the plan administrator's decision is supported by the record, not to consider new arguments to which the claimant did not have a chance to respond during the administrative process (*Collier v. Lincoln Life Assurance Co. of Boston*).
- **Environmental Law:** The D.C. Circuit issued a writ of mandamus enforcing the court's 2017 decision ordering the Environmental Protection Agency (EPA) to comply with the Endangered Species Act's (ESA's) requirement to determine whether registering the pesticide cyantraniliprole may affect endangered and threatened species (listed species) or their critical habitats. [Section 7 of the ESA](#) requires federal agencies to consult with the National Marine Fisheries Service or U.S. Fish and Wildlife Service if their proposed actions may adversely affect listed species or their critical habitats. Registering a pesticide for use pursuant to the [Federal Insecticide, Fungicide, and Rodenticide Act](#) qualifies as such a federal agency action under the ESA. The court ruled that, as it found in 2017, EPA has a clear statutory duty to conduct an effects determination before

approving the registration of cyantraniliprole, and that EPA failed to do so even after the court ordered it to make such a finding. The court ordered EPA to complete the effects determination by September 2023 and to submit progress reports every 60 days (*In re Center for Biological Diversity*).

- **Immigration:** Joining the Fifth, Eighth, and Eleventh Circuits, the Second Circuit held that the state action requirement for protection under the United Nations Convention Against Torture (CAT) is satisfied when any public official exercising official authority performs or acquiesces in likely future torture. Article III of the CAT, as implemented by the United States at 8 C.F.R. § 1208.16(c)(2), prevents an alien's removal to a particular country if the alien can show, among other things, that sufficient state action is involved in any likely future torture of the alien in that country. The Second Circuit held that the CAT's state-actor requirement refers to any public official at any level of government so long as that official, in performing or acquiescing in likely future torture, is exercising power by virtue of state law rather than engaging in personal pursuits (*Garcia-Aranda v. Garland*).
- ***Immigration:** Under 8 U.S.C. § 1226(a) and its implementing regulations, 8 C.F.R. § 236.1(c)(8) and 8 C.F.R. § 236.1(d)(1), an alien detained by Immigration and Customs Enforcement (ICE) is entitled to at least *two custody hearings*—one before an ICE official and, if requested, another before an immigration judge whose decision can be appealed to the Board of Immigration Appeals. Section 1226(a)'s implementing regulations also provide for an additional custody hearing before an immigration judge whenever an alien's circumstances materially change, 8 C.F.R. § 1003.19(e). Breaking with the First and Second Circuits and joining the Third and Fourth Circuits, a divided Ninth Circuit panel held that the Fifth Amendment's Due Process Clause does not require additional process not already provided by Section 1226(a) and its implementing regulations. Specifically, the panel majority held that the Due Process Clause does not require a second bond hearing before an immigration judge at which the government bears the burden of proof by clear and convincing evidence when an alien has been detained for a prolonged period pursuant to Section 1226(a). The court cautioned, however, that its ruling does not foreclose future constitutional challenges to Section 1226(a) under different factual circumstances (*Rodriguez Diaz v. Garland*).
- ***Indian Law:** Breaking with the D.C. Circuit, the Ninth Circuit ruled that the *Indian Self-Determination and Education Assistance Act* (ISDEAA) requires the Indian Health Service (IHS) to pay the administrative costs associated with providing health care funded by payments from third-party health insurers. The ISDEAA creates a program whereby federally recognized Indian tribes can contract with the IHS to receive federal funds to operate their own health care services, including the authority to bill third-party insurers directly and keep any revenue from billing so long as the revenue is spent on providing additional health care. The ISDEAA, 25 U.S.C. § 5325(a)(3)(A), requires the IHS to fund any direct program expenses or administrative or other expenses associated with carrying out the health care services required by contract or the provisions of the ISDEAA. In finding that the IHS must cover the administrative costs of providing health care funded by third-party revenues, the court reasoned that it need not determine whether those costs are direct or indirect since the ISDEAA requires the IHS to fund both. The court further decided that, to the extent the ISDEAA does not clearly cover these costs, the Indian canons of construction require the court to resolve any statutory ambiguity in favor of the tribe (*San Carlos Apache Tribe v. Becerra*).
- **Labor & Employment:** A divided Second Circuit panel applied the reasoning of the Supreme Court's decision in *NLRB v. Catholic Bishop of Chicago* to hold that a parochial

school teacher could not pursue duty-of-fair representation claims against his labor union under the [National Labor Relations Act of 1935](#) (NLRA), as amended by the [Labor Management Relations Act](#) (LMRA). In *Catholic Bishop*, the Supreme Court held that the National Labor Relations Board could not bring an administrative enforcement action against Roman Catholic dioceses on behalf of teachers employed in diocese schools because teachers in church-operated schools are not covered by the NLRA as amended by the LMRA. The Second Circuit majority held that the plaintiff similarly could not bring claims against his union under the Acts, rejecting the plaintiff's argument that subsequent decisions had undermined *Catholic Bishop* (*Jusino v. Fed'n of Catholic Teachers*).

- **Transportation:** A divided Ninth Circuit held that class action claims by truck drivers for alleged violations of California's meal and rest break rules are barred by the Federal Motor Carrier Safety Administration's (FMCSA's) decision to preempt those rules. After the truck drivers filed suit, the FMCSA issued a decision pursuant to the [Motor Carrier Safety Act of 1984](#) that preempted California's rules. The Ninth Circuit [previously held](#) that the FMCSA's decision was lawful, but left open the question of how the decision would affect pending lawsuits. In this case, the Ninth Circuit majority determined that Congress intended for the FMCSA to have the power to halt enforcement of state laws and that the FMCSA intended for this particular preemption decision to apply to pending lawsuits (*Valiente v. Swift Transp. Co.*).

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