

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (Feb. 6–Feb. 12, 2023)

February 14, 2023

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 did not issue any opinions or agree to hear any new cases.

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.

- **Civil Rights:** A divided Third Circuit reversed in part a district court’s order dismissing claims brought by plaintiffs incarcerated for failing to pay child support who alleged that authorities had coerced them into providing dangerous labor during their detention. The plaintiffs alleged that county authorities conditioned their access to paid work release programs necessary to satisfy their civil contempt orders on first working at a privately owned recycling center for minimal pay. The Third Circuit held that the plaintiffs

Congressional Research Service

<https://crsreports.congress.gov>

LSB10918

adequately pled claims under the [Trafficking Victims Protection Act](#), [Fair Labor Standards Act](#), and Pennsylvania law against the county, local waste authority, and recycling center for abusing the work release program and violating the state and federal minimum wage, as well as a claim against the recycling center under the [Racketeer Influenced and Corrupt Organizations Act](#) (*Burrell v. Staff*).

- **Criminal Law & Procedure:** The Fifth Circuit reversed a district court's order dismissing criminal charges against defendants accused of facilitating a bribery scheme between U.S.-based businesses and Venezuelan officials. The Fifth Circuit held that the indictments sufficiently alleged that the defendants were "agents" of a domestic concern within the meaning of the [Foreign Corrupt Practices Act](#) and that the term "agent" is not unconstitutionally vague. The Fifth Circuit also held that money laundering charges may be brought under the extraterritoriality provision of [18 U.S.C. § 1956\(f\)](#) based on conduct that "occurs in part in the United States," even when the defendant is not physically present in the United States. The Fifth Circuit further concluded that the district court erred by refusing to toll a statute of limitations to account for obtaining foreign evidence under [18 U.S.C. § 3292](#) and by granting one defendant's motion to suppress certain evidence (*United States v. Rafoi*).
- **Criminal Law & Procedure:** The Eleventh Circuit held that Florida's registration and reporting requirements for sex offenders do not render those offenders "in custody" under [28 U.S.C. § 2254\(a\)](#), a prerequisite for seeking post-conviction relief under that federal habeas corpus statute. The court reasoned that Florida's requirements, while demanding, did not substantially limit the petitioner's actions or movements. For procedural reasons, the court did not consider separate state and local residency restrictions on sex offenders (*Clements v. Florida*).
- **Election Law:** A divided Eighth Circuit held that the [Federal Election Campaign Act \(FECA\)](#) did not preempt a civil investigative demand from the Minnesota Attorney General to political action committee WinRed Inc. regarding allegations that WinRed made misleading solicitations for donations to federal candidates during the 2020 election cycle. The Minnesota Attorney General alleged that WinRed violated Minnesota's consumer protection law, but WinRed argued that [52 U.S.C. § 30143](#) of FECA, which supersedes state law "with respect to election to Federal office," preempted Minnesota's investigation. The Eighth Circuit held that FECA did not expressly preempt the underlying state law and explained that, under a [Federal Election Commission regulation](#), Minnesota's law fit into a category of statutes not superseded by FECA for "false registration, voting fraud, theft of ballots, and similar offenses." The court also held that implied preemption did not apply, concluding that FECA's silence did not mean that Congress intended to preempt all federal-election-related consumer protections (*WinRed, Inc. v. Ellison*).
- **Energy:** The Tenth Circuit held that it lacked jurisdiction over New Mexico's challenge to an agency decision regarding spent nuclear fuel because the state was not a party to the relevant administrative proceedings. New Mexico sought to challenge the Nuclear Regulatory Commission's grant of a temporary license to a private company to store spent nuclear fuel near the state's border. The state argued that the court had jurisdiction under the combination of the [Hobbs Act](#) and [Atomic Energy Act](#) and, separately, under the [Nuclear Waste Policy Act](#). The court held that New Mexico merely submitted a comment to the Commission regarding the license and so was not an "aggrieved party" sufficient to trigger jurisdiction under the Hobbs Act and Atomic Energy Act. The court further held that the Nuclear Waste Policy Act did not trigger jurisdiction because the Act did not cover the temporary license at issue and, alternatively, because New Mexico

failed to utilize other available remedies (*New Mexico ex rel. Balderas v. U.S. Nuclear Regul. Comm'n*).

- **Environmental Law:** The Sixth Circuit granted a petition challenging the Environmental Protection Agency's (EPA's) 2020 removal of an air nuisance rule (ANR) from Ohio's State Implementation Plan for national ambient air quality standards under the [Clean Air Act](#). The court rejected the EPA's argument that the petitioners lacked standing to challenge the removal. On the merits, the EPA requested remand to the agency without vacatur. Intervenor Ohio opposed remand, and the petitioners sought remand with vacatur and additional conditions. The court granted the EPA's request and remanded without vacating EPA's removal of the ANR (*Sierra Club v. EPA*).
- **Environmental Law:** The Federal Circuit held that 2007 amendments to the [Magnuson-Stevens Fishery Conservation and Management Act](#) did not create compensable property rights in fishing permits or licenses that could support a Fifth Amendment takings claim. The plaintiffs sought compensation for limits placed on their harvesting and processing of fish by the [Coast Guard Authorization Act of 2018](#) and argued that the 2007 amendments overrode earlier court decisions holding that the Magnuson-Stevens Act did not create compensable property interests. The Federal Circuit disagreed and held that the Act neither explicitly nor implicitly created such rights in permits or licenses. The court also held that the plaintiffs lacked any other compensable property interest in using their fishing vessels to harvest and process fish in the areas restricted by the 2018 Act (*Fisherman's Finest, Inc. v. United States*).
- **Federal Courts:** The Eleventh Circuit joined a consensus among other circuits and held that [28 U.S.C. § 1961](#) provides a default rule for [post-judgment interest](#) in federal cases but does not prevent parties from contracting around that rule via clear, unambiguous, and unequivocal language. The Eleventh Circuit determined that the parties had not entered such an agreement and affirmed the district court's judgment concerning that and all other issues in the case (*Walker v. Life Ins. Co. of N.Am.*).
- **Immigration:** The Sixth Circuit held that it had jurisdiction to review an appeal denying a cancellation of removal by the Board of Immigration Appeals (BIA), because the appeal fell under the safe harbor provision in [8 U.S.C. § 1252\(a\)\(2\)\(D\)](#). Appellate courts have limited jurisdiction over immigration courts' decisions regarding alien eligibility for relief from removal, and the appellate courts are typically barred from reviewing factual findings underlying BIA decisions. The Sixth Circuit nevertheless determined that it had jurisdiction over the appeal and could review the underlying facts related to whether the petitioner, who was unlawfully present in the United States, satisfied the "good moral character" eligibility requirement for cancellation of removal. Adopting reasoning previously employed by the Eighth Circuit, the Sixth Circuit held that the statute's safe harbor provision allows a federal appeals court to review questions of law, including mixed questions of law and fact, and that appeals requesting review of cancellations of removal fall into this category (*Jorge Hernandez v. Merrick Garland*).
- **Immigration:** The Ninth Circuit agreed to rehear en banc a challenge to the Department of Homeland Security's (DHS's) attempt to end [Temporary Protected Status](#) (TPS) designations for Sudan, Nicaragua, Haiti and El Salvador. Certain aliens within the United States who might otherwise be subject to removal may remain in the country if DHS has designated those countries for TPS because of unstable or dangerous conditions within those countries. DHS announced it would end TPS designations for Sudan, Nicaragua, Haiti and El Salvador in 2017 and 2018, but plaintiffs challenged the orders on constitutional equal protection grounds and under the Administrative Procedure Act,

and a district court issued a [preliminary injunction](#) barring implementation of the TPS termination orders while litigation continued. In 2020, a [divided three-judge Ninth Circuit panel](#) reversed and vacated the preliminary injunction, and remanded the case to the lower court for further proceedings. However, the panel [did not issue](#) a directive to the district court to make the ruling effective, and the injunction has remained in place. Without addressing the underlying merits of the earlier panel decision, the en banc Ninth Circuit vacated the panel's ruling and agreed to rehear the case (*Ramos v. Wolf*).

- **Intellectual Property:** The Federal Circuit affirmed the Director of the U.S. Patent and Trademark Office's (Director's) denial of rehearing in two proceedings before the Patent Trial and Appeal Board (PTAB). In 2021, the Supreme Court held in *United States v. Arthrex, Inc.* that the Constitution's Appointments Clause requires the Director to review the PTAB's final patentability decisions. The Federal Circuit rejected the appellant's argument that the Director's review must occur within the [statutory deadlines](#) applicable to PTAB decisions. The Federal Circuit also held that the Director's delegation to the PTAB of statutory authority to extend a deadline when cases are joined did not violate the Appointments Clause (*CyWee Group Ltd. v. Google LLC*).
- **International Trade:** The Federal Circuit reversed the judgment of the U.S. Court of International Trade and upheld [Presidential Proclamation 9980](#), which raised tariffs on imports of steel derivative products (e.g., steel nails, tacks, and stranded wire) from certain countries. Then-President Trump proclaimed the tariff increases after the Secretary of Commerce reported a threat to national security under [Section 232 of the Trade Expansion Act of 1962](#). Section 232 empowers and directs the President to act to alleviate threats to national security from products imported into the United States. The Secretary found that steel imports were a threat to national security based on their contribution to unsustainably low levels of domestic steel production. The Federal Circuit concluded that steel derivatives were within Section 232's authorization of presidential action based on the Secretary's finding about steel imports (*PrimeSource Building Products, Inc. v. United States*).
- **Labor & Employment:** The Fourth Circuit affirmed a district court order granting summary judgment to Amtrak against a former employee's racial discrimination claim, but rejected Amtrak's argument that the [Railway Labor Act](#) (RLA) precluded the claim. Amtrak contended that the plaintiff's suit under [42 U.S.C. § 1981](#) depended on the interpretation and application of a collective bargaining agreement (CBA) and so was subject to mandatory arbitration under the RLA. The Fourth Circuit held that the plaintiff's claim did not depend on a right arising from the CBA or require interpretation of the CBA, but affirmed the district court's summary judgment ruling in Amtrak's favor on the substance of the claim (*Giles v. National R.R. Passenger Corp.*).

Author Information

Hannah-Alise Rogers
Legislative Attorney

Alexander H. Pepper
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.