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Legal Sidebar

Congressional Court Watcher: Recent Appellate Decisions of Interest to Lawmakers (March 18–March 24, 2024)

March 25, 2024

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 issued two opinions:

- **Federal Courts:** Resolving a disagreement among the circuit courts, a unanimous Supreme Court held that a plaintiff's challenge to his inclusion in the Terrorist Screening Database and placement on the No Fly List was not rendered moot after he was removed from the List and the government averred that he would not be placed back on the List based on currently available information. The Court had previously held, in *Friends of the Earth, Inc. v. Laidlaw Environmental Servs. (TOC), Inc.,* that a defendant's voluntary cessation of a challenged practice moots that challenge only when the defendant shows that the practice cannot "reasonably be expected to recur." Here, the Court held that the government's representation did not speak to the likelihood that it will add plaintiff to the List in the future, and therefore the case was not moot (*Fed. Bureau of Investigation v. Fikre*).

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LSB11130

- **Immigration:** In a 6-3 decision, the Supreme Court held that an immigration judge's "exceptional and extremely unusual" hardship determination for purposes of cancellation of removal under 8 U.S.C. § 1229b is a mixed question of law and fact not precluded from judicial review by 8 U.S.C. § 1252, which allows for review of "questions of law." The Court had held in *Guerrero-Lasprilla v. Barr* that a mixed question of law and fact falls within "questions of law" as used in the statute, even when the question is primarily factual. Here, the Court held that the determination of whether a set of established facts constitutes "exceptional and extremely unusual hardship" requires the application of a statutory standard to a set of facts and is therefore a question of law for purposes of the statute (*Wilkinson v. Garland*).

The Supreme Court also took action in response to emergency applications:

- **Immigration:** On March 19, 2024, a divided Supreme Court declined to vacate the Fifth Circuit's administrative stay of a district court order enjoining enforcement of a new state immigration law, S.B. 4. That law would permit the state to arrest, criminally sanction, and remove aliens who are believed to have crossed into the United States illegally. The district court's order would have prevented S.B. 4 from going into effect, while the Fifth Circuit order (which the Supreme Court left in place) would have allowed Texas to enforce S.B. 4 while litigation about S.B. 4 made its way through the federal courts. On the same day the Supreme Court issued its order, however, the Fifth Circuit lifted its administrative stay. As a result, the district court order remains in effect and Texas remains enjoined from enforcing S.B. 4 (*U.S. v. Texas*).

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:** Joining the Fourth Circuit, the Sixth Circuit held that Section 1 of the Federal Arbitration Act (9 U.S.C. § 1) does not apply to arbitration clauses in contracts between corporate entities. Section 1 exempts from enforcement under the Act arbitration clauses in "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Affirming the lower court, the Sixth Circuit held that contracts between two motor carrier corporations are not "contracts of employment" for purposes of the Act, and arbitration clauses in those contracts are therefore enforceable under the Act (*Tillman Transp., LLC v. MI Bus. Inc.*).
- **Bankruptcy:** The Ninth Circuit held that in a Chapter 7 bankruptcy involving distributable assets, no part of a debt that is not properly scheduled or noticed is dischargeable. A creditor failed to receive notice of the debtors' Chapter 7 bankruptcy because the debtors listed an incorrect mailing address for the creditor. The debtors argued that the debt to the creditor was nevertheless discharged except for the portion the creditor would have received had it timely filed a claim in the bankruptcy. Distinguishing "non-asset" bankruptcies, in which creditors need not submit claims, the court held that the plain language of 11 U.S.C. § 523(a)(3)(A) barred any discharge of the debt because the creditor lacked proper notice or actual knowledge of the bankruptcy petition, as required under the statute (*In re Licup*).
- ***Criminal Law & Procedure:** The Fourth Circuit held that a federal district court has discretion to reduce sentences for both covered and noncovered offenses under Section 404 of the First Step Act if it concludes the sentences function as a package. The

court held that the sentencing package doctrine—which authorizes a district court to reconsider any rulings from the initial sentencing following a circuit court order vacating part of a sentence and remanding the case for resentencing—applies to resentencing determinations under the First Step Act. In so doing, the Fourth Circuit joined the Seventh and Eighth Circuits and split with the Second, Tenth, and Eleventh Circuits. Concluding that the district court was in the best position to determine whether the defendant's sentences function as a package, the Fourth Circuit vacated and remanded the case with instruction that the district court could apply the sentencing package doctrine when considering whether to reduce the defendant's sentence (*U.S. v. Richardson*).

- **Environmental Law:** The Fifth Circuit held that the U.S. Environmental Protection Agency (EPA) exceeded its statutory authority under the Toxic Substances Control Act (TSCA) when it prohibited a company from manufacturing or processing long-chain perfluoroalkyls (commonly known as "PFAS" or "forever chemicals") during its fluorination process. EPA had issued the orders pursuant to Section 5 of TSCA, which allows the agency to regulate the use of new chemical substances and significant new uses of chemical substances. The company had been using its fluorination process since 1983, but EPA discovered in 2022 that the process led to the creation of PFAS. The court concluded that a "new" use refers to when a use is first used, rather than when EPA becomes aware of the use. Accordingly, the court held that EPA could not regulate the company's fluorination process as a significant "new" use under TSCA and vacated the orders. The court observed that EPA could still regulate the use under Section 6 of TSCA, which applies to all uses of chemical substances but requires a cost-benefit analysis to account for the effect any regulation may have on existing manufacturers (*Inhance Techs., L.L.C v EPA*).
- **Firearms:** The Ninth Circuit held that pretrial release conditions under the Bail Reform Act, temporarily barring two individuals from possessing firearms while awaiting trial on multiple felony charges, do not violate the Second Amendment. The Bail Reform Act gives courts authority to impose conditions—including restrictions on firearm possession—on defendants released pending trial, but requires those conditions be "the least restrictive" way to protect the safety of individuals and the community and to prevent flight. Applying the framework that the Supreme Court established in *New York State Rifle & Pistol Association v. Bruen*, the Ninth Circuit first held that the criminal defendants, who have not been convicted of a felony, are among the "people" protected by the Second Amendment. The court then held that the pretrial release firearm condition, as applied to these two defendants, is analogous to historical firearm regulations and therefore does not violate the Second Amendment (*U.S. v. Perez-Garcia*).
- **Immigration:** The Ninth Circuit held that its "on the merits" exception to the jurisdictional bar established in 8 U.S.C. § 1252(a)(2)(C) is abrogated by recent Supreme Court precedent. Section 1252(a)(2)(C) bars judicial review of a final removal order "against an alien who is removable by reason of having committed" covered criminal offenses. The Ninth Circuit's "on the merits" exception, which had been based on Circuit precedent interpreting "removable by reason of having committed" in Section 1252(a)(2)(C), allowed judicial review of final removal orders where an alien has committed a covered offense but is ordered removed for another reason. However, the Ninth Circuit held that this rule was irreconcilable with the Supreme Court's reasoning in *Nasrallah v. Barr*, under which a court may not review factual challenges to a final removal order or any prior orders that merged into it. In this case, the Ninth Circuit held that petitioner's challenges, which relied on the Ninth Circuit's "on the merits exception," merged with her final removal order and were therefore unreviewable (*Coria v. Garland*).

- **Speech:** The Fifth Circuit upheld a Food and Drug Administration (FDA) rule requiring certain textual and photographic warnings on cigarette packages and advertisements against a First Amendment challenge. The court first concluded that the test the Supreme Court established in *Zauderer v. Office of Disciplinary Counsel* specified the appropriate level of scrutiny to apply to the warnings because the text and images were "purely factual and uncontroversial." The court held that a factual statement in commercial speech compelled by law is uncontroversial where the truth of the statement is settled and the statement does not raise a contentious political dispute. *Zauderer* requires that the compelled speech be "reasonably related" to the government's interest and "not unjustified or unduly burdensome." The court joined several other circuits in holding that the *Zauderer* standard extends to any legitimate state interest, not only the interest first recognized in that case: preventing consumer deception. The court concluded that FDA's interest in increasing public awareness of the risks of smoking qualifies as a sufficient government interest. The court then determined that the warnings reasonably relate to FDA's interest and that neither their content nor their size—50% of the front and back of any package and 20% of any advertisement—is unduly burdensome on the cigarette manufacturer plaintiffs. In reversing the district court's judgment, the court remanded for consideration of the plaintiffs' separate claim that the rule violated the Administrative Procedure Act (*R.J. Reynolds Tobacco Co. v. FDA*).
- ***Tax:** The Third Circuit held that a collection due process proceeding, in which a taxpayer challenged the Internal Revenue Service's (IRS's) levy of her property to pay a disputed 2010 tax liability, was not moot. The Tax Court had dismissed the taxpayer's challenge as moot after the IRS withheld the taxpayer's 2013, 2014, 2015, 2016, and 2019 tax refunds, which the IRS claimed set off the 2010 tax liability. The Third Circuit agreed with the taxpayer that this offset did not eliminate the underlying case or controversy over whether the 2010 tax liability existed. Although 26 U.S.C. § 6402 permits the IRS to use a tax refund to set off a taxpayer's unpaid tax debt, the Third Circuit held that neither that statute nor common law permitted the agency to employ setoffs where the underlying debt was disputed. Parting ways from the Fourth Circuit and D.C. Circuit, the circuit panel also held that there may sometimes be a live case or controversy even if the IRS withdraws the proposed levy based on its withholding of refunds, and that the Tax Court has jurisdiction to declare the existence or amount of a taxpayer's underlying liability (*Zuch v. Comm'r*).
- ***Torts:** The Fifth Circuit held that the postal-matter exception to the Federal Tort Claims Act's (FTCA's) waiver of U.S. sovereign immunity does not apply to intentional acts by employees of the U.S. Postal Service (USPS). The FTCA generally waives sovereign immunity to allow claims against the United States for alleged torts, with certain exceptions. The postal-matter exception (28 U.S.C. § 2680(b)) applies to claims "arising out of the loss, miscarriage, or negligent transmission of letters of postal matter." The Plaintiff brought a claim under the FTCA alleging that USPS employees intentionally withheld her mail for two years because of her race. The lower court dismissed this claim on the ground that the postal-matter exception applied and that the court therefore lacked jurisdiction. The Fifth Circuit held that an intentional failure to deliver mail does not qualify as a "loss, miscarriage, or negligent transmission" of mail and therefore the claims were not barred. The court noted that this decision is at odds with the First, Second, and Eighth Circuits, which have held that the postal-matter exception bars suits for intentional conduct. The court reversed the district court's dismissal of the FTCA claim and remanded the case for further proceedings (*Konan v. U.S. Postal Serv.*).

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