

FIFTH CIRCUIT UPDATE 2023-2024

*RAFFI MELKONIAN*

June 7, 2024

1



2

Raffi Melkonian

@RMFIFTHCIRCUIT

Fifth Circuit Civil Opinions

2023

3

Outstanding OT2023 Merits Decisions

#	Docket #	Caption	Grant Date	From	Argue Date
21	22-448	CFPB v. Cnty. Fin. Serv's Ass'n of Am., Ltd.	2/27/2023	CA5	10/13/2023
22	22-807	Alexander v. S.C. Conf. of the NAACP	3/13/2023	D.S.C.	10/13/2023
23	22-704	Vidal v. Elster	6/2/2023	CA10	11/17/2023
24	22-901	United States v. Rahimi	6/20/2023	CA5	11/17/2023
25	22-6586	Brown v. United States	2/13/2023	CA11	11/27/2023
26	22-6640	Jackson v. United States	2/13/2023	CA11	11/27/2023
27	22-829	SEC v. Jarkey	6/20/2023	CA5	11/29/2023
28	22-124	Harrington v. Purdue Pharma L.P.	8/10/2023	CA2	12/1/2023
29	22-800	Moore v. United States	9/26/2023	CA9	12/12/2023
30	22-674	Campos-Chaves v. Garland	6/20/2023	CA5	1/9/2024
31	22-884	Garland v. Singh	6/20/2023	CA9	1/9/2024
32	22-1238	U.S. Tr. v. John Q. Hammons Fall 2006, LLC	9/29/2023	CA10	1/9/2024
33	22-890	Smith v. Arizona	9/29/2023	Ariz. App.	1/10/2024
34	22-1119	Relentless v. Dep't of Commerce	10/13/2023	CA1	1/17/2024
35	22-423	Loper Bright Enters. v. Raimondo	2/1/2023	CADC	1/17/2024
36	22-1008	Corner Post v. Bd. of Governors	9/29/2023	CAR	2/20/2024
37	22-277	Moody v. NetChoice, LLC	9/29/2023	CA11	2/26/2024
38	22-555	NetChoice, LLC v. Paxton	9/29/2023	CA5	2/26/2024
39	22-229	Centers v. Bank of America	10/13/2023	CA9	2/27/2024
40	22-976	Garland v. Carroll	11/2/2023	CA9	2/28/2024
41	22-3	Coldbase v. Suski	11/2/2023	CA9	2/28/2024
42	22-842	Nat'l Rifle Ass'n v. Vullo	11/2/2023	CA2	2/28/2024
43	22-411	Murthy v. Missouri	10/20/2023	CA5	2/28/2024
44	22-1079	Truck Ins. Ex. v. Kaiser Cymsum Co.	10/13/2023	CA4	2/29/2024
45	22-14	Diaz v. United States	11/13/2023	CA9	3/19/2024
46	115-07604	Texas v. New Mexico	1/22/2024	Original	3/20/2024
47	22-1025	Gonzalez v. Trevino	10/13/2023	CA5	3/20/2024
48	22-21	Harrow v. Dep't of Defense	12/18/2023	CA10	3/22/2024
49	22-250	Becerra v. San Carlos Apache Tribe	11/20/2023	CA9	3/22/2024
50	22-253	Becerra v. N. Apache Tribe	11/20/2023	CA10	3/22/2024
51	22-215	FDA v. Alliance for Hippocratic Medicine	12/13/2023	CA5	3/26/2024
52	22-216	Danco Labs. v. Alliance for Hippocratic Medicine	12/13/2023	CA5	3/26/2024
53	22-146	Connolly v. IRS	12/13/2023	CAR	3/27/2024
54	22-270	Erlinger v. United States	11/20/2023	CA7	3/27/2024
55	22-108	Snyder v. United States	12/13/2023	CA7	4/15/2024
56	22-29	Chilverini v. Napoleon	12/13/2023	CA9	4/15/2024
57	22-2272	Fischer v. United States	12/13/2023	CADC	4/16/2024
58	22-582	ThorneII v. Jones	12/13/2023	CA9	4/17/2024
59	22-118	Smith v. Spitzfiri	1/12/2024	CA9	4/22/2024
60	22-175	City of Grants Pass v. Johnson	1/12/2024	CA9	4/22/2024
61	22-214	Dep't of State v. Munoz	1/12/2024	CA9	4/23/2024
62	22-207	Starbucks Corp. v. McKinney	1/12/2024	CA9	4/23/2024
63	22-726	Wol v. United States	1/14/2024	CA9	4/24/2024
64	22-727	Ridha v. United States	1/14/2024	CA9	4/24/2024
65	22-209	Trump v. United States	2/28/2024	CADC	4/25/2024

National press has noticed issues

4

# Tips and Tricks

5

## Fifth Circuit Attorney's Toolbox

### Courts Can Adapt with Technology and Improve Practitioners' Experience

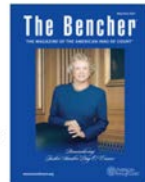
*The Bencher*—May/June 2024

By Raffi Melkonian, Esquire



The U.S. Court of Appeals for the Fifth Circuit has often found itself in the news this past year, whether it's for important decisions on fraught social issues (such as abortion medications and border crossings) or for its continued grappling with more local disputes (such as the spate of lawsuits about Louisiana's "overdetention" of prisoners past the end of their sentences).

All that aside, the court has been making technological advancements that improve the day-to-day practice of lawyers in the circuit. The court's example could be adopted by other courts throughout the country; courts may be loathe to make big changes, but they can still make incremental reforms to improve the judicial process.



The Fifth Circuit's new "Attorney Toolbox" is a wonderful example of the trend. The court has long offered its judges hyperlinked copies of briefs. After the litigants filed their briefs, an internal court program linked all cases cited by the parties to the Westlaw or LEXIS databases and all record citations to the Fifth Circuit's Record on Appeal. That way, judges could simply click on a case on their tablets or computer screens and be taken directly to the cited authority.

The Record on Appeal in turn was automatically generated by the court from the entire district court record: in the Fifth Circuit, you needn't worry about manually creating a voluminous appellate appendix the way you do in other courts. Instead, the district court produces a paginated PDF document that includes every document filed in the trial court.

As welcome as these systems were, however, many Fifth Circuit lawyers worried about exactly how the citations would appear in the internal documents the judges would review. For example, when they clicked on page 454 of the Record on Appeal—the page with the key contractual provision—would it go to the correct page or would the link be broken?

The court's filing system also had pitfalls for less-experienced lawyers. The court requires parties to file so-called "Record Excerpts," which is a short selection of record materials primarily intended for a screening panel to decide whether a case merits oral argument. But many novice counsel included the wrong documents in the excerpts, leading to their briefs being rejected. Such rejections can be embarrassing but also cost clients needless money.

All that has now changed with the toolbox. Once you're done writing, the court's own system will hyperlink your cases to a legal database of choice. The system will also hyperlink your brief to the Record on Appeal. This solves the concern about not being able to check the final product. Lawyers now will be able to see exactly what the Fifth Circuit judges see. In addition, the toolbox will automatically generate the required Record Excerpts. This automatic functionality should help reduce the number of record excerpts that are rejected by the court for failing to conform to the rules. And if all that fails, the Fifth Circuit has also relatively recently instituted an automatic three-day emergency extension. This gives you extra time if on a due date you find yourself unable to file because of technological problems.

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: U.S. Fifth Circuit Update

Also available as part of the eCourse

[2024 eConference on State and Federal Appeals](#)

First appeared as part of the conference materials for the  
34<sup>th</sup> Annual Conference on State and Federal Appeals session  
"U.S. Fifth Circuit Update"