On Appeal

January 2026 – Vol. XX, No. 1

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Or visit us at: www.thirdcircuitbar.org

The Third Circuit Bar Association Welcomes Judges Bove and Mascott to the Court

3CBA Welcomes Judge Emil J. Bove to the Court

By Anthony R. Holtzman, Managing Attorney, The Fairness Center

Judge Bove joins the Third Circuit from the U.S. Department of Justice, where, in 2025, he served as an Acting Deputy Attorney General and Principal Associate Deputy Attorney General.

Judge Bove received his B.A. from the University at Albany, SUNY in 2003 and his J.D. from the Georgetown University Law Center in 2008.

After graduating from law school, Judge Bove completed two judicial clerkships: one for Judge Richard J. Sullivan of the U.S. District Court for the Southern District of New York, from 2008-2009, and the other one for Judge Richard C. Wesley of the U.S. Court of Appeals for the Second Circuit, from 2009-2010.

Following his clerkships, Judge Bove worked as a lawyer in private practice, based in New York City, from 2010-2012.

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3CBA Welcomes Judge Emil J. Bove to the Court

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Judge Bove, in turn, was hired by the U.S. Attorney's Office for the Southern District of New York, where he served as an Assistant U.S. Attorney from 2012-2021. In that capacity, he functioned as the Acting Deputy Chief for the Office's Narcotics Unit in 2019 and the Co-Chief of its Terrorism and International Narcotics Unit from 2019-2021.

Judge Bove then undertook another stint as a lawyer in private practice. In doing so, he was based in Roseland, New Jersey from 2022-2023 and New York City from 2023-2025. From there, he was appointed to serve in the DOJ, as mentioned previously, where he served until he was appointed to the Third Circuit.

The Third Circuit Bar Association congratulates Judge Bove and welcomes him to the Court.

3CBA Welcomes Judge Jennifer L. Mascott to the Court

By Ryan Shymansky, Associate, Marcus & Shapira LLP

Judge Jennifer L. Mascott joins the Third Circuit after a career spent across academia, private practice, and high-level service in the executive branch. She was confirmed by the United States Senate on October 9, 2025, and received her commission the next day.

Immediately prior to her appointment, Judge Mascott served as senior counsel to the President in the White House Counsel's Office, building on more than two years of experience in the Office of Legal Counsel at the Department of Justice as deputy assistant attorney general and associate deputy attorney general from 2019–2021.

Judge Mascott began her legal career after graduating *summa cum laude* from George Washington University Law School, where she earned the highest cumulative GPA in the school's history. She clerked first for then-Judge Brett M. Kavanaugh on the D.C. Circuit and then for Justice Clarence Thomas on the Supreme Court. She followed both clerkships with time in private practice, fellowships, and professorships at George Washington University Law School, George Mason University Antonin Scalia Law School, Georgetown University Law Center, and Columbus School of Law at Catholic University. Her scholarship on the Constitution's structure—including administrative law, separation-of-powers principles, and the Appointments Clause, to name a few—has appeared in leading law journals and has been repeatedly cited by the Supreme Court.

Now, Judge Mascott brings that breadth of experience to the Third Circuit. In her confirmation hearing, she reflected on what the role means to her, describing it as "an unbelievable honor to enter judicial service." The Third Circuit Bar Association joins in welcoming Judge Mascott to the court and looks forward to her contributions in the years ahead.

The Third Circuit Bar Association and the Allegheny County Bar Association Federal Court Section presented *Unlocking the Art of Oral Argument* CLE

Renee Pietropaolo
Supervisory Attorney, Appeals, Federal Public Defender for the Western District of Pennsylvania

The Third Circuit Bar Association and the Allegheny County Bar Association Federal Court Section presented *Unlocking the Art of Oral Argument: A Hands-On Experience for Appellate Practitioners* on December 2, 2025 at the Joseph F. Weis Jr. U.S. Courthouse in Pittsburgh. Distinguished appellate advocates Michelle Kallen (Steptoe) and Christina Manfredi McKinley (Blank Rome) guided attendees through the anatomy of an effective oral argument using a real case involving ratification of the Equal Rights Amendment as the backdrop.

Moderator Paige Forster set the stage by interviewing the advocates separately to identify key points each aimed to communicate and questions each hoped to avoid. The advocates then delivered a dynamic mock argument before a hot bench composed of Judges Thomas M. Hardiman, Peter J. Phipps, Cindy K. Chung, and D. Michael Fisher. Following argument, the group engaged in a candid critique of what worked, what didn't, and how counsel navigated the panel's toughest questions.

The program closed with practical, experience-driven guidance from both advocates and the judges on preparing for oral argument, managing difficult questions, and delivering a focused rebuttal—providing attendees a rare opportunity to see appellate advocacy deconstructed and reassembled in real time. Michelle Kallen reflected: "The event provided an invaluable opportunity to connect the bench and the bar. I cannot think of a better format to sharpen oral argument skills and hear from the judges themselves." Christina McKinley agreed: "The unique format of this CLE provided behind-the-scenes engagement with the bench and the advocates that would be difficult to replicate in another setting. It was an enjoyable event for all and one worth repeating."

The Third Circuit holds that Article III adjudication is required for H-2A enforcement actions seeking civil penalties and back wages

***Sun Valley Orchards, LLC v. United States Department of Labor*, 148 F.4th 121 (3d Cir. 2025)**

Natalie Simmons
Kirkland & Ellis, Washington D.C.

In *Sun Valley Orchards, LLC v. DOL*, the Third Circuit held that that the Department of Labor's ("DOL") H-2A enforcement proceedings against an employer farm violated Article III of the United States Constitution because the case required adjudication of private rights that must be resolved in federal court rather than through an agency tribunal.

Background

Sun Valley Orchards, a New Jersey farm, participated in the H-2A nonimmigrant visa program, which allows U.S. employers to temporarily hire foreign laborers for seasonal agricultural work. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(a). The program, administered jointly by the DOL and the Department of Homeland Security ("DHS"), requires employers to obtain labor certification and to offer domestic workers the same benefits, wages, and working conditions as H-2A workers. The required benefits include, *inter alia*, no-cost housing, access to a kitchen or meal plan, and transportation to the work site. These terms are memorialized in a "job order," which functions as a work contract that the DOL is authorized to enforce by imposing civil penalties and back wages on noncompliant employers. When the DOL initiates enforcement, the employer may request a hearing before an Administrative Law Judge ("ALJ"), whose decision becomes final unless reviewed by the Administrative Review Board ("ARB").

That is exactly what happened with Sun Valley. According to the DOL, Sun Valley violated several of its job order provisions. Following a 2015 investigation, the DOL sought over $200,000 in civil penalties and nearly $370,000 in back wages. Sun Valley timely requested a hearing before an ALJ to contest this assessment. The ALJ affirmed in part and modified in part, reducing the total amount by about $30,000. Sun Valley then petitioned the ARB for review, which affirmed the ALJ's decision in its entirety.

Sun Valley appealed in federal court, challenging the decision under the Administrative Procedure Act ("APA"), raising constitutional and statutory objections. The District Court dismissed Sun Valley's claims. Sun Valley appealed once more.

Third Circuit's Decision and Analysis

On appeal, the Third Circuit reversed. Framing its holding as "[f]ollowing the Supreme Court's recent decision in *SEC v. Jarkesy*, 603 U.S. 109 (2024)," the Court "beg[a]n and end[ed] with Sun Valley's Article III argument," holding that Sun Valley was entitled to adjudication by a federal court rather than through in-house agency proceedings. Judge Hardiman, writing for the panel, framed the central issue as whether the DOL's enforcement action could constitutionally be adjudicated by an agency tribunal or whether Article III required resolution in federal court. Put differently: did the DOL's action concern public rights—allowing adjudication outside Article III—or private rights—requiring common law suit—and did Sun Valley waive its right to Article III adjudication by participating in the agency process?

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The Third Circuit holds that Article III adjudication is required for H-2A enforcement actions seeking civil penalties and back wages

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Private Rights Versus Public Rights

The Court determined that the DOL's action was "made of the stuff of the traditional actions at common law" and, therefore, federal court adjudication was required under Article III. Drawing from the principles considered in *Jarkesy*, the Court reasoned that the DOL's enforcement action was, in substance, a suit for breach of contract. Sun Valley did not pen a separate agreement with its employees, so the job order functioned as a "work contract" between them. The DOL framed its action like a contractual dispute and sought traditional legal remedies (civil penalties and back wages). Even the ALJ's decision reflected this contractual treatment.

The Court emphasized the limits of the public rights exception to Article III, rejecting the DOL's contention that the case "is really about immigration . . . traditionally a matter of public rights." Although the nation has a history of treating immigration as "largely immune from judicial control," history "also suggests limitations." The Court distinguished between cases directly involving the admission or exclusion of noncitizens—where the political branches have plenary power and administrative adjudication is historically sanctioned—and cases like Sun Valley's, which primarily concern employment law and the protection of domestic workers' wages and conditions. True, the H-2A program serves immigration-related goals, but the specific labor certification regulations at issue are designed to protect domestic labor markets, not to regulate the movement of noncitizens. The DOL's enforcement action, therefore, simply did not fit within the historic core of the public rights exception.

Finally, the Court disposed of the DOL's "last-ditch" preservation and exhaustion arguments. On preservation, Sun Valley had no meaningful choice about the forum for adjudication and was not made aware of any right to refuse the agency process. And on exhaustion, the Court declined to address the merits, holding that, even if Sun Valley did not properly exhaust its Article III claim before the agency, the Court could still hear it because the DOL forfeited its failure-to-exhaust defense by not raising it below.

Implications and Takeaways

The Third Circuit's decision in *Sun Valley* clarifies that, following the Supreme Court's ruling in *Jarkesy*, agencies cannot use administrative proceedings to impose penalties for conduct akin to common law claims—these matters must be adjudicated in federal court unless they fall within the recognizably narrow public rights exception. The decision draws a clear line between administrative enforcement of public regulatory schemes and the adjudication of private rights, particularly where the remedies sought are punitive or compensatory in nature. It also highlights the importance of careful analysis of the historical pedigree of agency adjudication in context. And applying this rule to immigration, the scope of administrative control lies in the action's core concern—tangential relation is not enough. The decision is a reminder that, even within complex regulatory schemes, the structural protections of Article III remain a vital check on the exercise of governmental power.

The Third Circuit vacates preliminary injunction against NCAA's junior-college eligibility rule, reinforcing the importance of fact-specific market analyses in antitrust cases

Elad v. NCAA, 160 F.4th 407 (3d Cir. 2025)

Matt Kaminer
Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY

The Supreme Court's 2021 decision in *National Collegiate Athletic Association v. Alston*, 594 U.S. 69, ushered in rapid and widespread changes to the world of college athletics, particularly with respect to compensation of student athletes for use of their name, image, and likeness ("NIL"). Among those changes was a sharp uptick in federal antitrust lawsuits by student athletes, alleging that the NCAA's rules governing compensation and student-athlete eligibility unreasonably restrain competition. The Third Circuit's recent precedential decision in *Elad v. NCAA* marks a major development in this area. The Court vacated a preliminary injunction blocking the NCAA from enforcing certain of its eligibility rules, which had allowed Rutgers football player Jett Elad to participate in the 2025-26 season. The decision clarifies that student-athlete eligibility rules are not categorically immune from antitrust scrutiny, and it gives district courts clearer guidance for how to approach market definition in athlete-labor cases post-*Alston*.

Background

Under the NCAA's Division I bylaws governing player eligibility, student athletes are limited to four seasons of competition, which must be played within a five-year period. Seasons played at junior colleges ("JUCOs")—which are not NCAA institutions—count toward that cap. That provision, known as the "JUCO Rule," was the subject of this appeal.

From 2019 to 2024, Jett Elad played two seasons of college football at Ohio University (Division I), one season at Garden City Community College (a JUCO), and one season at University of Nevada, Las Vegas (Division I). In other words, Elad had played only three seasons of football at NCAA Division I schools, but four total seasons including JUCO. So, the JUCO Rule barred Elad from a fourth year of Division I play.

At first, Elad accepted that result and shifted his focus toward a career in the NFL. However, in December 2024, the U.S. District Court for the Middle District of Tennessee granted a preliminary injunction to Vanderbilt quarterback Diego Pavia—who had played two seasons of JUCO football—in his antitrust lawsuit challenging the JUCO Rule, which prohibited the NCAA from enforcing the Rule against Pavia while the case proceeded and allowed him to play another season. *See Pavia v. NCAA*, 760 F. Supp. 3d 527 (M.D. Tenn. 2024). The court there found that Pavia was likely to succeed on the merits of his claim, reasoning that the JUCO Rule improperly restrained the labor market for college football athletes.

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The Third Circuit vacates preliminary injunction against NCAA's junior-college eligibility rule, reinforcing the importance of fact-specific market analyses in antitrust cases

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Optimistic that he might be eligible to play another season in light of the *Pavia* ruling, Elad entered the NCAA transfer portal and was signed by Rutgers University. That agreement included an NIL deal worth over $500,000. But when Rutgers sought a rules waiver on Elad's behalf in January 2025, the NCAA denied the request. Shortly thereafter, Elad filed this Sherman Act lawsuit in the U.S. District Court for the District of New Jersey and moved for a preliminary injunction that would allow him to play the 2025-2026 season. The district court granted the preliminary injunction allowing Elad to play. The NCAA appealed.

The Third Circuit's decision

The Third Circuit—in a unanimous opinion written by Judge Montgomery-Reeves and joined by Judges Bibas and Ambro—vacated the preliminary injunction and remanded for further proceedings. The panel principally addressed two issues: (i) whether the JUCO Rule is "commercial" such that the Sherman Act applies; and (ii) whether the district court adequately defined the relevant market for its analysis of anticompetitive effect.

First, the panel agreed with the district court that the JUCO Rule is not categorically immune from Sherman Act scrutiny merely because the NCAA labels it an "eligibility rule." Of note, the Third Circuit had previously held, in *Smith v. NCAA*, 139 F.3d 180 (1998), that the Sherman Act "does not apply to the NCAA's promulgation of eligibility requirements" because such eligibility rules were "not related to the NCAA's commercial or business activities." However, the panel explained that *Smith* cannot be read consistently with the Supreme Court's subsequent decision in *Alston*, which recognized that the market for collegiate athletics has changed substantially over the years, and that if "market realities change, so may the legal analysis" or precedent.

The panel reasoned that it could no longer "*per se* exclude all NCAA-labeled eligibility rules from Sherman Act scrutiny without first asking whether the specific rule at issue is commercial." Because the JUCO Rule affects Elad's ability to participate in and profit from the college-football labor market—an area long recognized as implicating commercial restraints on labor—the panel concluded that the Sherman Act's threshold "commercial" requirement was satisfied.

Second, the panel held that the district court erred by failing to define the relevant market through a fact-specific analysis grounded in "actual market realities." Rather than making factual findings regarding the market, the district court simply recited the market definition proposed by Elad's expert—"the labor market for college football athletes in general and NCAA Division I football specifically." That was wrong, the panel reasoned, because Third Circuit precedent requires a fact-specific analysis of the relevant market where the parties dispute its definition.

Moreover, Elad's expert did not conduct any economic analysis to support his opinions, but instead simply used the market definition that was accepted in *Alston*. That too was error, the panel explained, because courts cannot simply import a market definition that has been accepted in other cases without re-assessing whether that definition fits the circumstances and market realities of the case at bar. The flaws of that approach were evident in this case: *Alston* involved an *uncontested* market definition for a *narrower* set of athletes (only a specific subset of NCAA Division I football and basketball players), and Elad's expert failed to supply economic evidence reflecting post-*Alston* NIL-driven shifts in the college-sports marketplace. The panel emphasized that

The Third Circuit vacates preliminary injunction against NCAA's junior-college eligibility rule, reinforcing the importance of fact-specific market analyses in antitrust cases

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plaintiffs bear the burden of defining the relevant market with evidence and that reliance on "static" pre-*Alston* market assumptions is "antithetical to antitrust legal principles."

Because Elad failed to show a likelihood of success on the merits without a properly supported market definition, the panel concluded that the preliminary injunction was an abuse of discretion and had to be vacated. The panel further advised that, on remand, the district court must conduct a robust market analysis that "tease[s] out the changing market realities" it had identified and then proceed, as appropriate, through the rule-of-reason analysis under the Sherman Act, mindful that these steps are not a "rote checklist."

Third Circuit addresses application of appellate waiver provision in settlement agreement in collateral order doctrine appeal

***Bobrick Washroom Equip., Inc. v. Scranton Prods.*, 152 F.4th 507 (3d Cir. 2025)**

Conor T. Daniels
K&L Gates, Harrisburg, PA

Competitors Scranton Products and Bobrick Washroom Equipment executed a settlement agreement to resolve a false advertising dispute. As part of the agreement, the parties waived their rights to appeal any court order arising out of the agreement or any motion to enforce it. Notwithstanding the waiver, Bobrick challenged the District Court's decision to seal certain documents related to subsequent enforcement motions. In a September 2025 decision involving mootness, the collateral order doctrine, waiver, and writs of mandamus, the Third Circuit found that it had jurisdiction to consider the challenge but ultimately rejected Bobrick's attempt to circumvent the appellate waiver.

Factual Background

In 2014, Scranton sued Bobrick for false advertising, alleging Bobrick's claims that Scranton's products failed to comply with certain fire standards were false and misleading. In 2016, Bobrick countersued, alleging Scranton's products were in fact not in compliance and that Scranton's advertising to the contrary was false and misleading. The parties agreed to resolve their dispute and drafted a settlement agreement. The agreement provided, in relevant part, that all court orders arising out of the agreement or any enforcement motion "shall be non-appealable," and the parties affirmatively "waive[d] any and all rights to appeal any such decision or order." The U.S. District Court for the Middle District of Pennsylvania approved the agreement, dismissed the case, and retained jurisdiction for purposes of enforcing the agreement.

In 2021, the District Court held a six-day public evidentiary hearing as it considered a series of enforcement motions brought pursuant to the agreement. Following the hearing, a dispute arose about documents Bobrick filed on the public docket which Scranton believed should be protected from public disclosure. The District Court issued two relevant orders. The first order temporarily sealed the hearing transcripts and the related filings subject to further consideration of the enforcement motions. Following additional briefing and resolution of the enforcement motions, the second order sealed the same materials indefinitely unless the parties were to agree otherwise in the future. Bobrick appealed both sealing orders.

The Third Circuit's Decision

In an opinion authored by Judge Arianna Freeman and joined by Judges Patty Shwartz and D. Brooks Smith, the Third Circuit initially considered whether it had jurisdiction to review either sealing order. With respect to the first order, the Court concluded that it lacked jurisdiction because the first order was only temporary in nature and because the issuance of the second order resulted in the expiration of the first order. The Court explained that it "ha[d] no ability to order relief from a sealing order that is no longer in effect," and declared the appeal of the first order moot.

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Third Circuit addresses application of appellate waiver provision in settlement agreement in collateral order doctrine appeal

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As to the second order, the Court held that it had jurisdiction to consider the appeal under the collateral order doctrine. In order to be covered by the doctrine, a decision must (1) finally and conclusively determine the disputed question, (2) resolve an important issue entirely separate from the merits of the case, and (3) be effectively unreviewable on appeal from a final judgment. The parties disputed only the finality requirement. Scranton argued that the second order could not be final because it left open the possibility that the parties could later reach an agreement to unseal some of the records. The Court rejected this argument. The second order was final, the Court reasoned, because while it is possible that the parties may eventually reach an agreement with respect to unsealing, it is also possible that they may not. And the Court "will not condition the finality of a district court's post-judgment sealing order on contingencies that may never happen."

The Court nevertheless declined to exercise jurisdiction over the appeal of the second order in light of the settlement agreement's explicit appellate waiver. Without the parties' enforcement motions, the Court explained, there would have been no hearing transcript or post-hearing filings, and therefore no order sealing those materials. Thus, since the second order arose out of enforcement motions filed pursuant to the agreement, the appellate waiver applied. The Court rejected both of Bobrick's arguments to the contrary. While it is beyond dispute that the public has a right to access judicial records, the Court found that Bobrick was seeking to vindicate its own private rights which were unambiguously waived in the agreement. Further, the Court held that the agreement's appellate waiver is to be applied irrespective of an order's merits. "For an appellate waiver to have any force," the Court explained, "it must cover appeals of orders that are legally correct and those that are erroneous."

Finally, the Court refused to exercise its discretion to grant Bobrick a writ of mandamus, finding that Bobrick's waiver of the regular appeals process was not reason to grant such an extreme remedy. The Court, therefore, affirmed the District Court's second sealing order.

Takeaways

The Third Circuit's decision underscores that parties to settlement agreements should carefully craft the scope of any waiver language to ensure that the right to appeal decisions on ancillary matters of particular relevance—such as the sealing of documents—is preserved if desired.

Rodriguez moments: Third Circuit clarifies the constitutional "boundaries" of roadside "small talk" during a police stop

***United States v. Ross*, 151 F.4th 487 (3d Cir. 2025)**

Cassidy Eckrote
Reed Smith LLP, Pittsburgh, PA

Background

Officers Smart and Foreman were patrolling an area in Philadelphia known for violent crime and narcotics sales when they pulled over Raphael Ross for driving a car with tinted windows, in violation of state law. The officers approached Ross, explained the reason for the stop, and asked for his license, registration, and proof of insurance. Almost immediately, the officers observed signs of anxiety and nervousness in Ross. His hands were shaking, his voice stammering, his lips quivering, and he refused to make eye contact. Ross began rummaging around the cabin of his vehicle and shifting his jacket from the passenger seat to his lap and over the center console. He claimed he was looking for his license, despite previously telling the officers that he left his license at home.

Officer Smart complimented Ross on the Rolex watch he was wearing and subsequently asked him where he worked. Ross thanked Officer Smart and told him that he owned a home health aide business. Officer Smart returned to his patrol car to verify Ross's information.

Officer Smart ran the usual database checks to verify Ross's identity and license status. The database revealed Ross's lengthy rap sheet, including a recent arrest for firearm possession and fighting with the arresting officers. Officer Smart called for backup. Once backup arrived, the officers found a semi-automatic pistol and 136 packets of fentanyl and heroin hidden in Ross's center console.

Based on the contraband found in his vehicle, Ross was charged with: (1) possession of a firearm as a felon; (2) possession with intent to distribute a controlled substance; and (3) possession of a firearm in furtherance of a drug trafficking crime. Ross filed a motion to suppress the contraband on the basis that it was discovered in violation of the Fourth Amendment and *Rodriguez v. United States*, 575 U.S. 348 (2015), which held that a police stop exceeding the time needed to handle the matter for which the stop was made violated the Fourth Amendment. Namely, Ross argued that the officers impermissibly extended the duration of the stop when Officer Smart complimented his watch and asked him about his employment.

The district court denied Ross's motion and held that the watch-and-job exchange was mere "small talk" designed to "calm [Ross] down" and did not amount to a Fourth Amendment violation. Ross appealed to the Third Circuit.

The Third Circuit's Decision

The Third Circuit, in an opinion written by Judge Krause, affirmed the district court's denial of Ross's motion to suppress—and in so doing brought "clarity" to the "boundaries" of constitutional roadside "small talk" after the Supreme Court's decision in *Rodriguez*.

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Rodriguez moments: Third Circuit clarifies the constitutional "boundaries" of roadside "small talk" during a police stop

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As the Court explained, traffic stops are seizures under the Fourth Amendment and must "be reasonable under the circumstances." In the context of a traffic stop, the reasonableness of police inquiries is determined by the "dual mission" of addressing the traffic violation that warranted the stop and attending to related safety concerns. Small talk, infraction-related inquiries, and safety-related inquiries pass constitutional muster. However, police inquiries that are "off-mission" – such as those that divert from the infraction-and-safety-based mission of the stop to investigate other criminal conduct – and "measurably prolong a stop" are sometimes called *Rodriguez* moments. A *Rodriguez* moment is an unconstitutional seizure under the Fourth Amendment unless it is supported by independent reasonable suspicion.

The Court noted that determining which category police questioning falls into – small talk, infraction-related inquiries, safety-related inquiries, or off-mission inquiries – is a fact dependent and context specific analysis. For example, a driver may voluntarily provide information about his occupation, prompting reasonable follow-up questions that could otherwise be labeled as off-mission. Other details can influence the Court's analysis, including whether the officer was outnumbered by the occupants of the vehicle, the occupant's behavior, or at which point during the stop the officer asked the question.

The Third Circuit rejected Ross's argument that Officer Smart's question regarding his employment was a *Rodriguez* moment. Rather, the Court held that under the circumstances, the watch-and-job exchange constituted safety-related dialogue. The Court noted that, if viewed in isolation, the exchange could appear to be investigative. That is, expensive items, such as Ross's Rolex, which lack a legitimate explanation, can be circumstantial evidence of drug dealing. However, the crux of the Fourth Amendment is reasonableness, and with that in mind, the Court emphasized the facts and circumstances surrounding the stop.

First, the Court explained that Officer Smart had "objectively reasonable safety concerns." Ross was visibly nervous, and Officer Foreman testified that Ross was one of the top five most nervous drivers with whom she's ever interacted. Ross was also making abnormal hand movements and "erratically shifting his jacket" around the vehicle. Second, Officer Smart articulated a non-investigatory reason for his interaction: he uses small talk to calm nervous motorists. The interaction could reasonably be viewed as an attempt to build rapport, diffuse a tense situation, and could lead to clues pertaining to safety, such as nervous or evasive responses. Finally, Officer Smart did not prolong the stop by asking repetitive, intrusive, or in-depth questions. The watch-and-job exchange lasted mere seconds, and the officers did not follow up on Ross's answers. Thus, Officer Smart's compliment and question were within the bounds of a safety-related inquiry incidental to the traffic stop.

Takeaways

The Court's decision in *Ross* shows that questions that appear on their face to be unrelated to the underlying traffic stop or officer safety may constitute on-mission, safety-related inquiries when: (1) the officer has an articulable basis for safety concerns grounded in observable facts; (2) considering the context of the situation, the questions can be reasonably understood as relating to those safety concerns; and (3) the officer does not prolong the stop with unrelated follow up inquiries. And it reinforces that "reasonableness" is the heart of

Rodriguez moments: Third Circuit clarifies the constitutional "boundaries" of roadside "small talk" during a police stop

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Fourth Amendment issues. There is no one-size-fits-all approach and details are crucial in assessing a Fourth Amendment claim.

President's note

Matthew Stiegler
Law Office of Matthew Stiegler, Philadelphia, PA

In a year filled with extraordinary legal developments, one of the most disturbing has been the rise in violent threats against federal judges. From chillingly detailed death threats to their chambers to menacing fake pizza deliveries to their homes, federal judges are in the crosshairs and our rule of law is under attack.

Five years ago, an aggrieved lawyer went to the home of D.N.J. Judge Esther Salas and murdered her son when he answered the door. In the years since that horrifying attack, federal judges nationwide have faced a surging avalanche of serious threats. In fiscal year 2022, the United States Marshals reported over 400 threats against judges. This past year, there were 564—over 15% of all federal judges were targeted.

Judges and former judges are sounding the alarm as best they can. For example, retired Pennsylvania federal judges Robert Cindrich and John Jones III co-wrote a newspaper op-ed in September, warning, "Threats against judges and their families have become blatant attempts to intimidate those serving in the judiciary, shaking their morale and damaging the public's confidence in its courts." And Judge Salas herself has shown astonishing courage in speaking out with clarity and urgency.

As lawyers, what can we do about it? We're not subject to the same ethical limits on political speech and conduct that constrain judges, so we can reach policymakers and the public to bring attention and demand action in ways that judges cannot. I believe we have a responsibility to speak up. This should not be a partisan issue, and we have insight into the nature and gravity of the crisis that the public needs.

Conversely, we also can make an extra effort to avoid feeding into it ourselves. Substantively criticizing opinions is one thing; baselessly accusing judges of corruption or treason is quite another.

I don't see any quick and easy end to this crisis, but I believe we can do our part. And as the year ends and a new one begins, it seems to me that strengthening the bonds between judges and practitioners, though bar groups like ours, has never been more important.

/s/ Matthew Stiegler
Matthew Stiegler
matt.stiegler@gmail.com

3CBA membership note

The Third Circuit Bar Association is committed to promoting excellence in federal appellate practice by attracting members from every corner of the Circuit, every type of background, and every level of experience. Membership is open to attorneys in good standing in the Court of Appeals or any District Court within the Circuit, as well as the Justice of the Supreme Court of the United States assigned to the Court of Appeals and all federal judges, magistrate judges, law clerks, and judicial staff within the Circuit. We hope that you will join us and become an active member of our Association.

Membership is a bargain at just $60 and only $30 for government and public interest lawyers, lawyers admitted to the bar for less than five years, and academics. (Judges, law clerks, court staff, law students, and attorneys admitted to the bar 50 years or more are exempt from dues.) This modest investment will yield significant dividends. If you are interested in improving the quality of your practice and practice before the Third Circuit generally, if you want to understand and provide input on the Court's rules of practice and procedure, if you are looking for CLE credits, or if you would like to network with other appellate practitioners, judges, and staff and enhance bench/bar relations, this is the organization for you.

To continue and expand on the good we have already accomplished, we need involved members. You can join online by submitting a membership form. Please join or renew your membership in the 3CBA and get involved. Join one or more of our Committees. Suggest new program or article ideas or other initiatives. And recruit others to join you in supporting our mission. Please reach out to any of our officers or other Board members with questions.

Clerk's Office notices

Notice to all CJA Attorneys: All attorney users are required to use login.gov with multi-factor authentication to access eVoucher. Additional information and training materials can be found here.

The Court of Appeals adopts format standards and procedures for the submission of audio and video files.

Filing Deadlines: Pursuant to 3rd Cir. L.A.R. 26.1 and Misc. 113.3(c) documents received after **5:00 p.m.** ET on the **final day for filing** will not be considered timely. A motion to file out of time will be required unless one of the limited exceptions applies.

Audio of Oral Arguments Live Streamed via YouTube. The live stream for arguments scheduled in the Maris and Seitz Courtrooms is made available several minutes before the start of argument. Audio, in full or in part, from any proceeding may not be recorded, broadcast, posted or reproduced in any form.

New Compliance Screening for Briefs. On January 5, 2026, the Third Circuit implemented a program that checks opening, response, and reply briefs for compliance pursuant to federal and local rules. The program will run in the background once a brief is uploaded in CM/ECF using the "Check PDF Document" option and users are strongly encouraged to check their briefs using the tool. A template including all required sections for principal briefs will be provided, and its use is strongly recommended to avoid non-compliance orders. Electronically filed documents must be in PDF text format – not scanned to PDF. Detected deficiencies will not prevent users from completing an event, but correcting deficiencies before completion is strongly recommended to avoid non-compliance orders. Users can help improve the program by emailing feedback to the CM/ECF Help Desk at ecf_helpdesk@ca3.uscourts.gov

Save the Date for 2026 Third Circuit Bench and Bar Conference, May 6-8 in Hershey

SAVE THE DATE

2026 Third Circuit Bench and Bar Conference

Up to 12 CLE, including 2 Ethics, pending approval

May 6-8, 2026

Hershey Lodge & Conference Center, Hershey, PA

Registration Information to Follow

Save the Date for Appellate Judges Education Institute Summit, November 12-15, 2026 in Philadelphia

The Appellate Judges Education Institute (AJEI) will be hosting its 2026 Summit, open to all judges and lawyers, in the Third Circuit this year in Philadelphia, Pennsylvania. The multiday conference gathers federal and state appellate judges from across the country and invites all lawyers to join them for practical, cutting-edge, educational programming. Presenters include leading practitioners from private and government practice, outstanding law professors, and experienced appellate judges and court attorneys. The four-day format also affords numerous opportunities for bench-bar networking.

More information to come at https://www.judges.org/appellate_judges_edu/2026-summit/.

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