



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Updates in Federal Agency Adjudication

November 2022

ACUS is an independent federal agency within the executive branch that develops recommendations to improve administrative processes, including adjudication, and arranges for the interchange of information to carry out its mission. The ACUS Office of the Chairman issues monthly *Updates* to share adjudication-related developments with agencies, Congress, and the public. For additional resources, visit www.acus.gov/adjudication.

This resource is for informational purposes only. Except as noted, these updates do not represent the position of ACUS or the federal government. New developments, feedback, and corrections are welcome at info@acus.gov.

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ACCESSIBILITY

Identifying and Reducing Burdens in Administrative Processes (ACUS).

ACUS is undertaking a project to recommend best practices, such as public engagement and data analysis, that agencies can use to identify unnecessary burdens that members of the public face when they engage with administrative programs or participate in administrative processes, including adjudication. It will also recommend strategies agencies can use to reduce unnecessary burdens, such as streamlining processes and digitizing services. Pamela Herd (Georgetown), Donald Moynihan (Georgetown), and Amy Widman (Rutgers) are serving as consultants.



ADJUDICATORS

[National Association of Immigration Judges Seeks Recertification](#) (D.C. Cir., Nov. 17). In [oral argument](#) before the court, the NAIJ is seeking to overturn a 2020 decision by the Federal Labor Relations Authority that eliminated NAIJ's status as a federal employee union—as well as a 2022 FLRA ruling that upheld its earlier decision.

ADMINISTRATIVE REVIEW

[Precedential Decision Making in Agency Adjudication](#) (ACUS). The ACUS Committee on Adjudication approved [proposed recommendations](#) regarding the use of precedential decision in agency adjudication. The ACUS Assembly will consider the committee's proposed recommendations at the [78th Plenary Session](#) on December 15.

CASELOAD MANAGEMENT

[Default Provisions for Hearings](#) (DEA, Nov. 14). The Drug Enforcement Administration issued a final rule amending its regulations by adding and revising provisions which enable it to hold registrants or applicants in default when they fail to timely request a hearing, or otherwise fail to participate in hearings.

CONGRESS

[Patents for Humanity Act of 2022](#) (U.S. Senate, Nov. 28). The Senate passed a bill that would allow the U.S. Patent and trademark office to award certificates that can be redeemed to accelerate certain proceedings to entities submitting patent applications addressing humanitarian issues. The House then [concurred](#) with a Senate amendment to the bill.

CONSTITUTIONALITY

[Issues of Jurisdiction on Constitutionality of Agency Adjudication](#) (U.S. Supreme Court, Nov. 7). The U.S. Supreme Court heard two cases raising questions of federal district court jurisdiction to hear constitutional challenges to agency structures, procedures, and existence. In [Axon Enterprise, Inc. v. FTC](#), the question raised was whether such challenges must first be raised in the administrative proceeding. In [SEC v. Cochran](#), the question raised was whether a



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the Exchange Act implicitly stripped district courts of jurisdiction to hear challenges to ongoing Securities and Exchange Commission enforcement proceedings.

COVID-19

[GAO Audit Examines Remote Service Delivery During COVID-19 \(SSA\)](#).

GAO examined the Social Security Administration's efforts to provide services remotely following the closure of its offices in 2020. The report recommended, among other things, that SSA enable claimants to apply for supplemental security income online.

JUDICIAL REVIEW

[Supplemental Rules for Social Security Litigation Take Effect \(U.S.](#)

Supreme Court, Dec. 1). An amendment to the *Federal Rules of Civil Procedure* to establish supplemental rules for Social Security litigation took effect December 1. The amendment, which had been adopted by the U.S. Supreme Court, [implements a recommendation](#) put forward by ACUS.

[San Antonio Winery, Inc. v. Jiaxing Micarose Trade Co., Ltd. \(9th Cir., Nov.](#)

14). In a case of first impression, the court held that the Lanham Act, which allows a person to serve notice of administrative proceedings on a foreign entity through the U.S. Patent and Trademark Office (USPTO), also allows a person to serve notice of court proceedings through the USPTO.

PROCEDURAL RULES

[Final DACA Rule Takes Effect \(DHS, Oct. 31\).](#) The Department of Homeland Security's [final rule](#), issued August 30, that, among other things, established procedures for adjudicating requests for deferred action under the Deferred Action for Childhood Arrivals policy, went into effect. DHS began limited implementation of the rule.

TECHNOLOGY

[Online Filing for Asylum Applications \(USCIS, Nov. 9\).](#) The U.S. Citizenship and Immigration Services made its application for asylum available to file online.



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The online form is only available for certain applicants, who must be physically present in the United States.

Audit of EOIR’s Electronic Case Management System Procurement Awards (DOJ). The Department of Justice’s Inspector General reviewed EOIR’s acquisition planning team’s oversight of contractors’ performance in replacing its electronic case management system.

Online Processes in Agency Adjudication (ACUS). ACUS is undertaking a project to identify best practices for developing online processes by which participants in agency adjudications, including private parties and representatives can file forms, evidence, and briefs; view case materials and status information; receive notices and orders; and perform other common tasks required for participation in adjudication. ACUS Attorney Advisor Matthew Gluth is conducting research for this project.