

You might remember that after the Deepwater Horizon blowout the Department of Interior issued a six-month moratorium on new deepwater exploratory drilling. An industry consortium challenged the moratorium, winning a preliminary injunction against its enforcement from District Judge Martin Feldman. (I criticized that decision [here](#).) Interior withdrew that first moratorium but subsequently issued a second, nearly identical in its terms. Industry again sought relief from Judge Feldman, who found Interior in contempt of his preliminary injunction and ordered the agency to pay \$530,000 for plaintiffs' costs and attorney fees.

At the time, I [described Judge Feldman's contempt ruling](#) as "beyond the pale," "wholly divorced from any reasonable reading of the law or the facts," and as evidencing "the judge's own contempt for the rule of law and the power of the executive branch as explicitly conferred by Congress."

The Fifth Circuit didn't use that kind of highly critical language, but late last month it did [reverse the contempt finding](#) and the order that Interior pay plaintiffs' attorney fees. The majority of the panel agreed with my analysis, noting that the preliminary injunction had been based on procedural flaws in issuing the first moratorium, not on any finding that the substance of the moratorium was unlawful. Issuing the second moratorium therefore did not violate the preliminary injunction

Our decision is a narrow one. We conclude that there is no clear and convincing evidence that Interior's actions after the injunction violated the clear terms of the injunction as drafted. Therefore, there was no civil contempt.

This being the Fifth Circuit, it shouldn't be too surprising that there was a dissent. Judge Jennifer Walker Elrod would have upheld the contempt ruling on the basis that Interior had somehow "ensured that the May Moratorium remained de facto in place," despite expressly rescinding that moratorium and ordering employees not to enforce it. Judge Elrod's opinion shows the same kind of activism and lack of respect for the executive branch as Judge Feldman's contempt ruling. Luckily, more reasonable minds prevailed.