

Dan Siegel's
Federal Criminal Defense
Victory Newsletter

A weekly summary of newly filed,
defense-favorable, published federal decisions
Issue 30 of 2025, Mon., July 28, 2025

DC holds that: (1) where gov moves for detention; (2) and alleges lack of “community ties” in district where charges are filed; (3) DC may rely on D’s community ties in the district where he lives. U.S. v. Kilmar Armando Abrego Garcia, 2025 WL 2058825, No. 25-CR-115, M.D. Tennessee, Nashville Div., Crenshaw, Jr., July 23, 2025. DC collects conflicting cases on issue presented. Op. at *16.

Although CA4 overturns entry of judgment of acquittal under Rule 29, panel affirms grant of new trial under Rule 33. U.S. v. Ron Elfenbein, 2025 WL 1967611, No. 24-4048, CA4, July 17, 2025. Where: (1) gov’s case-in-chief was weak; but (2) the defense inadvertently cured those weaknesses in its *own* case; (3) DC acted within its discretion in granting a new trial based on the weaknesses in the gov’s case-in-chief. Op. at *12.

DC grants 2255 relief, orders new trial on gun and drug charges, finding that defense counsel rendered ineffective assistance in connection with motion to suppress. U.S. v. Adam Henry, 2025 WL 1927696, No. 19-CR-92, N.D. Indiana, Fort Wayne Div., Brady, J., July 10, 2025. Gun and drugs in D’s vehicle were discovered as the result of: (1) a warrantless traffic stop; (2) conducted by Airport Police; (3) beyond the perimeter of the airport; and (4) beyond the roads adjoining the airport. D counsel filed a motion to suppress, which was denied. In post-conviction proceedings, DC held that prior counsel was ineffective in failing to include, in the motion to suppress, a claim that: (1) the warrantless stop was unlawful; (2) because Airport Police captain exceeded state statutory jurisdiction; (3) when he conducted a traffic stop beyond the airport; and (4) beyond the roads “adjoining” the airport.

CA2 orders new trial in Etan Patz murder case, finding that: (1) AEDPA deference was overcome; (2) state court committed *Seibert* error when responding to a jury question; and (3) error was not harmless. Pedro Hernandez v. Donita McIntosh, 2025 WL 2025555, No. 24-1816, CA2, July 21, 2025. In *Seibert*, the S.Ct. held unconstitutional the then-common tactic of: (1) intentionally obtaining an inadmissible, un-*Mirandized* confession, (2) giving a *Miranda* warning after the suspect confessed, and then (3) asking the suspect to repeat the confession post-warning. Op. at *12. Because D presented the “voluntariness of confession” issue at trial, it was for the jury to apply the *Seibert* standard, and to determine whether D’s *Mirandized* confession was tainted by his previous un-*Mirandized* confession. The jury’s note to the judge asked for guidance on this standard, and the judge’s responsive instruction was erroneous under *Seibert*. Op. at 11-12.

In prosecution under the federal witness tampering statute, CA8 holds that: (1) evidence was insufficient to prove that state detainee; (2) acted with the intent to prevent testimony at an “official proceeding;” where (3) evidence did not support the inference; (4) that the detainee “specifically contemplated” an additional proceeding. U.S. v. Sharmake Mohamed Abdullahi, 2025 WL 2026639, No. 23-3144, CA8, July 21, 2025. D arrested on state kidnapping charge. While in custody, D called his sister and asked that she pay victim for her silence. Feds picked up case, charged D with kidnapping and attempted witness tampering. CA8 reverses conviction for attempted witness tampering. “[D] was in state custody on state charges, had been interrogated by a state officer, and had only been scheduled for state proceedings. [D] had not been told and did not know that he was under federal investigation, nor did he know that additional charges might be filed, whether state or federal. How could he have contemplated an additional proceeding that he did not know about?” Op. at *5, cites omitted.

CA8 remands for findings on “as applied” challenge to constitutionality of the “firearm possession by marijuana user” offense. U.S. v. Aldo Ali Cordova Perez, Jr., 2025 WL 2046897, No. 24-1553, CA8, July 22, 2025. “As to any factual findings on remand, [D] raises a legitimate concern that the jury, not the judge, must resolve factual disputes necessary to sustain his conviction.” Op. at *7, cite omitted. “[I]f such a finding requires resolving disputed facts inevitably bound up with evidence about the alleged offense itself, then a retrial may be necessary.” Op. at *7, text at n.11.

In felon-in-possession case, Dist. of Columbia Circuit orders re-consideration of motion to suppress, where: (1) gun was discovered during warrantless search of the home where D was staying; (2) police claimed that the homeowner, D’s sister, gave “voluntary consent” for the search; but (3) DC failed to consider whether the homeowner was merely “acquiescing” to a police claim of authority to search. U.S. v. Anthony Glover, 2025 WL 2045751, No. 23-3226, Dist. of Columbia Cir., July 22, 2025. Police secured arrest warrants for D and his brother. Police went to D’s sister’s house and asked for the brothers. Sister told police that her brothers weren’t there. Officer then told the sister that he had warrants and “needed” to see whether brothers were at the house. The sister said, “all right, that is fine.” Police searched the house, found D sleeping near his gun. Op. at *1. D moved to suppress the gun as fruit of an illegal search conducted without a search warrant. Gov relied on the “voluntary consent” exception to the fourth amendment warrant requirement. DC denied the motion to suppress. District of Columbia Circuit finds that lower court erred “by failing to consider whether [the officer’s] references to legal authority to conduct a search rendered [the sister’s] assent to a search mere acquiescence rather than voluntary consent.” Op. at *2.

CA1 orders re-sentencing where: (1) parties disputed minimal participant reduction; and (2) without resolving the dispute; (3) DC imposed sentence at high end of the guideline range that would have applied had D won her “minimal participant” argument. U.S. v. Nashalie Samary Rodriguez-Bermudez, 2025 WL 2092219, No. 23-1259, CA1, July 25, 2025. Relief ordered despite DC statement that its sentence was unaffected by guidelines. Op. at *7.

DC denies gov’s detention motion in case of the illegal alien who: (1) in violation of ICE judge’s order; (2) was removed from the U.S.; (3) to the super max prison in El Salvador; (4) and was returned months later; (5) only to face newly-filed charge that he transported illegal aliens back in 2022. U.S. v. Kilmar Armando Abrego Garcia, 2025 WL 2058825, No. 25-CR-115, M.D. Tennessee, Nashville Div., Crenshaw, Jr., J. July 23, 2025. “[T]he mere existence of an ICE detainer on [D] is insufficient, alone, to establish that he is a risk of nonappearance.” Op. at *14. “Nor is the Court persuaded that [D’s] unlawful removal from the United States now presents a risk that he will fail to appear in court to avoid similar treatment in the future.” Op. at *14. Also, DC gives little weight to agent’s testimony, at the detention hearing, that a confidential informant linked D to a gang murder: “[b]ecause [the agent] has done little to corroborate this statement, whether it be through additional evidence or other witnesses’ consistent statements, the Court cannot give this statement much weight.” Op. at *15, n.12.

DanSiegel@DanSiegelLaw.com