

2026-1 EDITION HIGHLIGHTS

United States v. Giraud (“*Giraud II*”), 160 F.4th 390 (3rd Cir. 2025), affirming *United States v. Giraud*, 795 F.Supp.3d 560, 2025 WL 2416737 (D.N.J. 2025): The Third Circuit Court of Appeals reviewed the history and purposes of the Federal Vacancies Reform Act (“FVRA”) and the appropriate procedures when a vacancy occurs, due to an ongoing presidential appointment and Senate confirmation (“PAS”) process, to appoint an individual to perform that officer’s duties in an acting capacity subject to time limitations. The FVRA includes specific restrictions in the case of temporarily filling vacant U.S. Attorney positions. The government’s manner and procedure in designating Alina Habba as an Acting U.S. Attorney by virtue of her appointment as a First Assistant U.S. Attorney—after the point in time when the FVRA permitted such a replacement—was prohibited by the FVRA’s exclusivity provision, and she was disqualified from serving as an Acting U.S. Attorney.

In re: Application of the United States for an Order Pursuant to 18 U.S.C. 2705(B) v. United States of America, 166 F.4th 173 (D.C. Cir. 2026): The Department of Justice served a subpoena and a non-disclosure order on Google, Inc., for a customer’s email address and telephone numbers from December 2016 to May 2017, and the non-disclosure order was renewed through 2023. When Google, Inc. thereafter informed the customer about the subpoena and non-disclosure order, he moved to unseal the applications requesting non-disclosure. The applications were ancillary grand jury materials that eliminated the common law or First Amendment rights of access. It was irrelevant that the grand jury investigation was closed and no compelling public interest would topple the restrictions of Federal Rules of Criminal Procedure 6(e).

United States v. Minkkinen, 168 F.4th 174 (4th Cir. 2026), reversing *United States v. Minkkinen*, 678 F.Supp.3d 778 (S.D. W.Va. 2023): The Fourth Circuit Court of Appeals ruled that the district court erred in concluding that the Due Process Clause would be violated where the government’s preindictment delay was the result of its lengthy investigation and not tainted by bad faith. The appellate court found that investigative delay, as opposed to intentional delay undertaken to gain tactical advantage, would not violate due process, and that courts cannot abort criminal prosecutions simply because they disagree with a prosecutor’s judgment as to when to seek an indictment. The government is entitled to refuse to seek an indictment until it is completely satisfied that it should prosecute and will be able promptly to establish guilt beyond a reasonable doubt as indicative of the standards of fair play and decency.

In re: Administrative Subpoena No. 25-1431-019, 800 F.Supp.3d 229 (D. Mass. 2025): The federal government used an administrative subpoena to investigate alleged False Claims Act violations that were said to be submitted to federal health care programs by a Massachusetts hospital, but the court found that the subpoena encompassed a vast inquiry seeking “an astonishingly broad array of documents that are virtually unlimited in scope” and unrelated to the investigation of fraudulent billing practices. The subpoena was part of the government’s policy of ending gender-affirming care (“GAC”) nationwide, but Massachusetts enforces the right to GAC, and the court found that the subpoena’s true purpose was to interfere with the state’s right to protect GAC within its borders and to use the subpoena power to go on a “fishing expedition”, thus further abusing the process of the subpoena. The court discussed the similarities and differences between grand jury subpoenas and administrative subpoenas in such scenarios.

United States v. Comey, 809 F.Supp.3d 396 (E.D.Va. 2025): The federal government, in its 2017 through 2025 investigations related to former director of the FBI James B. Comey, Jr. and Daniel Richman, a former Special Government Employee at the FBI and Comey’s attorney, committed several significant Fourth Amendment and attorney-client privilege violations in the manner in which it handled information seized pursuant to search warrants for four of Richman’s electronic devices. In light of the breadth of this investigation, the question of whether privileged material was compromised is notable. The one-day grand jury presentation and indictment process additionally was tainted by the prosecutor’s fundamental misstatements of the law in two areas and the presentation of two inconsistent indictments to the court. The court stated that the record “points to a disturbing pattern of profound investigative missteps” that were “purposeful, reckless, or negligent”, and that the defendant had a right to fully explore all of the grand jury materials in the case.

United States v. Stewart, 2025 WL 3237833 (D. D.C. 2025): The Stewart case provides a detailed explanation of the unique interplay between the Federal Rules of Criminal Procedure, which require an indictment filed in federal district courts to come from a grand jury sitting in the same district, and D.C. Code Section 11-1916(a) that permits the government to seek an indictment from a grand jury in the local non-federal Superior Court and return it in federal district court, as well as the reverse procedure. In *Stewart*, the court found no

impropriety when the government (1) failed to obtain an indictment from a federal grand jury, (2) then obtained an indictment from the local D.C. Superior Court grand jury for the same violation of criminal law, and (3) delivered the indictment to a federal magistrate judge. However, the court stated its concern about future “troubling” scenarios, which only Congress could remedy due to the combination of the two statutes in practice.

United States v. Maxwell, 2025 WL 3522378 (S.D.N.Y. December 9, 2025): In addition to Federal Rule of Criminal Procedure 6(e)’s specifically stated exceptions to the general rule protecting the secrecy of grand jury materials and the Second Circuit’s “special circumstances” doctrine, the United States Congress has the power to pass a law in a specific situation to override Rule 6(e). The Epstein Files Transparency Act, passed by a nearly unanimous vote (with one “nay” vote in the House of Representatives) mandated the Attorney General within 30 days to make publicly available all unclassified records, documents, communications, and investigative materials in the possession of the DOJ, FBI and United States Attorneys’ Offices that related to Ghislaine Maxwell and Jeffrey Epstein. Although the Act did not specify the release of grand jury materials, the court ruled that the Act textually covered them in this case. The court also ruled that the Act overrode Rule 6(e) because later statutes receive precedence over earlier statutes and specific statutes take precedence over more general statutes.