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Federal Defender Newsletter

January 2023

CALIFORNIA EASTERN DISTRICT CJA PANEL TRAINING

No January trainings scheduled.

REMOTE CJA PANEL TRAINING

The Federal [Defender Services Office - Training Division \(fd.org\)](#) continues to provide excellent remote training for CJA counsel. You can register for and access all fd.org training with your CJA username and password. You can also sign up to receive emails when fd.org is updated.

The Federal Defender Training Division also has a **telephone hotline** offering guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

[National Association of Criminal Defense Lawyers \(nacdl.org\)](#) and [NAPD \(publicdefenders.us\)](#) (which all CJA lawyers qualify to join) also offer excellent remote training, including self-study videos relevant to your criminal defense practice.

CJA Representatives

District's CJA Representative:

Kresta Daly, Sacramento,
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Backup CJA Representative:

Kevin Rooney, Fresno, (559) 233.5333,
kevin@hammerlawcorp.com.

TOPICS FOR FUTURE TRAINING

SESSIONS

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno: Peggy Sasso,

peggy_sasso@fd.org or Karen

Mosher, karen_mosher@fd.org

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SUPREME COURT CERT. GRANTS

Samia v. United States, No. 22-196, involved an international murder-for-hire. One codefendants, Stillwell, identified Samia as the person who pulled the trigger. Prosecutors redacted Stillwell's statement so it did not use Samia's name, and the presiding judge instructed the jury it could only consider Stillwell's statement in determining Stillwell's guilt. Samia was convicted. His certiorari petition asks the justices to decide whether admitting Stillwell's redacted statement, when it immediately incriminated Samia under "Stillwell's references to "another person" referred to Samia himself," violated Samia's right under the 6th Amendment to confront the witnesses against him.

Smith v. United States, No. 21-1576, involved a claim Smith hacked into a website to steal private information (the location of artificial fishing reefs --

information the company sold and apparently info fishermen do not share). The government tried Smith in the Northern District of Florida, which is where the company was located. (Smith was convicted and received an 18-month prison term and a year of supervised release). He challenged his conviction, arguing he was tried in the wrong place, because he lives in Alabama and the website's servers were in the Middle District of Florida. He seeks dismissal without a retrial. Govt concedes the wrong district issue, but says the remedy is retrial in the correct place.

Lora v. United States, 22-49

Whether 18 U.S.C. § 924(c)(1)(D)(ii), which provides that “no term of imprisonment imposed ... under this subsection shall run concurrently with any other term of imprisonment,” is triggered when a defendant is convicted and sentenced under 18 U.S.C. § 924(j).

United States v. Hansen, 22-179

In granting the Government's cert petition after losing at the 9th: Whether the federal criminal prohibition against “encouraging or inducing” unlawful immigration for commercial advantage or private financial gain, in violation of 8 U.S.C. § 1324(a)(1)(A)(iv) and (B)(i), is facially unconstitutional on 1st Amendment overbreadth grounds.

AFD Carolyn Wiggin will be arguing this case in the Supreme Court.

Could have implications for the January 6th House Committee's recommendations that persons be charged with 18 U.S.C. § 372: conspiracy to “to **induce** by (force, intimidation, or threat from discharging any duties thereof) any officer of the United States to leave the place, where his duties as an officer are required to be performed....”

NINTH CIRCUIT

US v. Nishida, No. 21-10070 (11-17-22)(Forrest w/Hawkins; dissent by R. Nelson). In a SR special conditions case, the 9th vacates SR conditions substance-abuse and mental health treatment conditions because the delegation of authority to the probation officer to determine the “location, modality,...and intensity” of treatment is overbroad. The probation officer could send the defendant to inpatient, somewhere else, for an open ended of time. This delegation to a nonjudicial officer the power to decide the “nature and extent of the punishment” is unconstitutional. The majority so finds under plain error. The majority remands so the district court can clarify authority delegated.

In so ruling, the 9th finds the appellate waiver does not bar the appeal because the district court said she could appeal. Also, the conditions can be found to be illegal.