

Court Tosses Convictions for Killing ICE Agent Abroad

February 6, 2020

In *United States v. Garcia Sota*, two defendants were each convicted on four counts under three different statutes—18 U.S.C. §§ 924(c), 1114, and 1116—for attacking a pair of U.S. Immigration and Customs Enforcement (ICE) agents in Mexico, killing one and wounding the other. A panel of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the defendants’ convictions under Section 1114, which outlaws killing federal officers while performing their duties, on the ground that the statute does not apply outside of the United States. The D.C. Circuit’s decision creates a conflict with decisions of two other federal appellate courts that the full D.C. Circuit, the Supreme Court, or Congress may be asked to resolve.

Background

Jose Garcia Sota and Juan Amezuca were [members](#) of a drug cartel hit squad tasked with stealing cars for the cartel. The squad ambushed an armored Chevrolet Suburban with diplomatic plates on a Mexican highway. The attack killed ICE Special Agent Jaime Zapata and wounded ICE Special Agent Victor Avila. Mexico extradited seven cartel members to the United States in connection with the attack. Five pleaded guilty to various federal charges.

Garcia Sota and Amezuca elected to go to trial. A jury convicted them of four offenses proscribed under three federal statutes. [Section 924\(c\)](#) outlaws using a firearm in furtherance of the commission of a crime of violence or drug trafficking. [Section 1114](#) outlaws murdering and attempting to murder federal officers or employees during the performance of their duties. [Section 1116](#) outlaws murdering or attempting to murder internationally protected officials. Only Agent Avila, who was wounded, enjoyed protected diplomatic status for purposes of Section 1116. Agent Zapata, who was murdered, did not.

First degree [murder](#) under Section 1114 is punishable by death or imprisonment for life. [Attempted murder](#) under Section 1114 or 1116 is punishable by imprisonment for not more than 20 years. Using a semiautomatic assault [weapon](#) in furtherance of drug trafficking where death results, as was the case here, is punishable by death or by imprisonment for any term of years or for life. The district court sentenced each defendant to two terms of life imprisonment.

On appeal, the defendants did not challenge their convictions under Section 1116 for the attempted murder of Agent Avila. They [argued](#) that their murder and attempted murder convictions under Section

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LSB10405

1114 and their firearms convictions under Section 924(c) should be overturned because those sections do not apply to violations committed outside of the U.S.

Section 1114

As a matter of statutory construction, courts presume that Congress intends federal criminal laws to apply only within the United States, unless Congress clearly indicates otherwise. The D.C. Circuit noted that “[i]n recent years the Supreme Court has applied th[is] canon with increased clarity and insistence.” With this as its starting point, the D.C. Circuit **observed** that, “[o]n its face, § 1114 does not speak to extraterritorial application one way or the other, thus leaving the presumption against extraterritoriality un rebutted.” The court also found that “context reinforces the case against extraterritorial application of § 1114.” **Specifically**, when Congress enacted the Antiterrorism and Effective Death Penalty Act (AEDPA) and revived the death penalty as a sentencing option for violations of Sections 1114 and 1116, it expressly **made** Section 1116 applicable overseas but **included “no such signal”** in Section 1114.

The D.C. Circuit rejected the government’s argument that the venerable Supreme Court decision in *United States v. Bowman* supports the extraterritorial application of Section 1114. The D.C. Circuit **explained** that, in *Bowman*, the Supreme Court had “permitted the extraterritorial application of a statute” even though Congress had not expressly done so because “‘to limit [its] locus to the strictly territorial jurisdiction would be greatly to curtail the scope and usefulness of the statute.’” Thus, the D.C. Circuit understood *Bowman* to mean that a court may find that “Congress intended extraterritorial application” when there was a “great likelihood that the outlawed conduct would occur abroad.” The D.C. Circuit concluded that this rationale did not apply to Section 1114 because it was not apparent that the federal officers covered by the statute would work “only (or even largely) overseas.”

The D.C. Circuit’s decision in *Garcia Sota* conflicts with the decisions of two other federal courts of appeal. Both the Second Circuit, in *United States v. Siddiqui*, and the Eleventh Circuit, in *United States v. Benitez*, held that **Section 1114** applies abroad. Contrary to the D.C. Circuit, both of these courts relied on *Bowman*’s “type-of-crime” rationale to conclude that Section 1114 applies extraterritorially.

Section 924(c)

Although the D.C. Circuit **held** that Section 1114 does not apply overseas, it concluded that Section 924(c) does apply extraterritorially under some circumstances. Section 924(c) creates an umbrella crime—the use of a firearm—that imposes liability only when the defendant commits a predicate offense, in this case, a “crime of violence” or a “drug trafficking crime.” In reaching its decision, the D.C. Circuit relied on the Supreme Court’s analysis of the extraterritorial application of another umbrella crime statute—the Racketeer Influenced and Corrupt Organizations Act (RICO)—in *RJR Nabisco v. European Community*. Among other things, the RICO **statute** outlaws conducting the affairs of a commercial enterprise through the patterned commission of a series of predicate offenses. The D.C. Circuit interpreted *RJR Nabisco* to permit the extraterritorial application of an umbrella crime statute only if two conditions are met: (1) the statutes establishing the predicate offenses apply extraterritorially and (2) there is “affirmative evidence of congressional intent that the umbrella crime itself (RICO there, § 924(c) here) should apply to conduct overseas.”

In the case before the D.C. Circuit, the court **noted** that Section 1116 qualifies as a crime of violence and contains an explicit extraterritoriality provision. Section 924(c)’s definition of drug trafficking specifically refers to the Controlled Substances Act, the Controlled Substances Import, and Export Act and the Maritime Drug Enforcement Act. The D.C. Circuit **“believe[d] these predicates provide the necessary textual indication that Congress meant § 924(c) to apply overseas ‘to the extent that the predicates alleged in a particular case themselves apply extraterritorially.’”**

Here too, the D.C. Circuit is somewhat at odds with decisions in the Second and Eleventh Circuits. The **Eleventh** Circuit in *United States v. Belfast* and the **Second** Circuit in *Siddiqui* each held that Section

924(c) applies overseas based solely on the presence of an extraterritorial predicate offense, without also considering the array of other extraterritorial predicate offenses found under Section 924(c)'s umbrella. Those decisions, however, came before *RJR Nabisco* and therefore did not have the benefit of its holding.

D.C. Circuit Resentencing

The D.C. Circuit disposed of the defendants' other challenges and returned the case to the district court for resentencing. The district court had sentenced each of the defendants to two terms of life imprisonment. The D.C. Circuit, however, vacated the defendants' convictions, and thus their sentences, under Section 1114. That left only the defendants' convictions under Section 1116, which carries a maximum prison term of 20 years, and Section 924(c), which carries a maximum penalty of imprisonment for life, which are insufficient to support the two life sentences levied by the district court on each defendant.

Congressional Options

Sections 924(c), 1114, and 1116 are each creatures of Congress. Thus, Congress is free to respond legislatively to the D.C. Circuit's decision, within the limits of Congress's constitutional powers. Congress might decide to amend the three sections so that they each expressly apply only within the United States. Alternatively, it might choose to amend Section 1114 and/or Section 924(c) to explicitly describe the circumstances under which those sections apply overseas. Congress also might opt to defer action to allow the courts—either all the judges of the D.C. Circuit sitting en banc or the Supreme Court—to address the issue.

Author Information

Charles Doyle
Senior Specialist in American Public Law

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