3 DC Circ. Rulings Signal Shift In Search And Seizure Doctrine

By **Gregory Rosen** (January 8, 2026)

Gregory Rosen

The U.S. Supreme Court has long instructed that the Fourth Amendment protects the right "to be secure … against unreasonable searches and seizures."[1] Yet for decades, federal courts often interpreted that guarantee as largely concluding at the moment property was initially taken.

A trilogy of developments emerging from federal courts in Washington, D.C., in recent memory — 2024's Asinor v. District of Columbia, 2022's In re: Search of 26 Digital Devices, and the December 2025 decision in Richman v. U.S. — underscore a significant doctrinal shift: Continued government possession of a person's property may itself constitute a Fourth Amendment seizure, one that must remain reasonable for as long as it persists.

This shift carries particular significance in the digital era, where the government routinely retains and reuses copies of devices and cloud-based data long after the original investigation has concluded.

A Shift in Fourth Amendment Seizure Doctrine: Asinor

In Asinor v. District of Columbia, the U.S. Court of Appeals for the District of Columbia Circuit confronted a foundational question: Does the Fourth Amendment regulate only the initial act of seizure, or does it also govern the government's continued possession of property thereafter?[2]

The plaintiffs, who were arrested during D.C. protests in 2020 and released without charges, had personal property — including cellphones — seized incident to arrest and retained for months or even years.[3] After repeated but largely unsuccessful efforts to recover their belongings, the plaintiffs filed suit alleging violations of the Fourth and Fifth Amendments, as well as common-law conversion.[4]

The U.S. District Court for the District of Columbia dismissed the complaint, concluding that continued retention of property was governed exclusively by the Fifth Amendment and that the D.C. Code analogue to Rule 41(g) of the Federal Rules of Criminal Procedure provided "adequate process to recover their property."[5]

On appeal, the D.C. Circuit reversed in 2024. The court held that even where an initial seizure is lawful, the government's continued retention of property must remain reasonable under the Fourth Amendment.[6]

Rejecting the view that Fourth Amendment scrutiny ends at the moment of taking, the panel explained that the text, history and Founding-era understanding of seizure encompass not only the act of dispossession, but also the ongoing state of possession.[7]

Modern precedent, including the Supreme Court's 1984 decision in U.S. v. Jacobsen, confirmed that a seizure may become unreasonable in its duration or manner even if lawful at inception.[8] Accordingly, "[w]hen the government seizes property incident to a lawful arrest, the Fourth Amendment requires that any continued possession of such property

must be reasonable."[9]

This articulation, grounded in the protection of "possessory interests," transformed the retention and duration of such retention as greater Fourth Amendment concerns.[10]

The court further concluded that the Fourth Amendment provides the textual source of authority to "define the 'process that is due' for seizures of persons or property in criminal cases."[11]

While acknowledging the government's concerns about administrability and mass returns of property, the court emphasized that it did "not suggest that [the government] must always return the property instantaneously."[12] As the panel explained, "some delays that would be unreasonable as to persons may be reasonable as to effects."[13]

Nevertheless, the D.C. Circuit held that the district court's failure to recognize the Fourth Amendment's relevance to the return of seized property was an error, and dismissal of the Fourth Amendment claims could not stand.

The 2024 decision thus marked a departure from circuit authority that had confined Fourth Amendment analysis to the initial seizure and relegated prolonged retention challenges to the Fifth Amendment or to Rule 41(g) alone. In reversing, the D.C. Circuit made clear that the Fourth Amendment's prohibition on unreasonable seizures applies throughout the government's period of possession.

Retention and Digital Data: In the Matter of 26 Digital Devices

District court decisions preceding Asinor foreshadowed this reorientation, particularly in cases involving digital evidence. In re: Search of Twenty-Six (26) Digital Devices and Mobile Device Extractions and subsequent proceedings, including a government appeal, confronted whether law enforcement may obtain new warrants to search data extracted from digital devices long after the underlying investigation has closed.

Initially, U.S. Magistrate Judge G. Michael Harvey concluded in 2021 that "the government lacks an entitlement to retain possession of the devices and the data extractions" once an investigation has ended, reasoning that continued possession meaningfully interferes with both possessory and privacy interests.[14]

On review, then-Chief U.S. District Judge Beryl Howell reversed in part in 2022, granting the government's motion for new warrants to search the retained data and concluding that compliance with the warrant requirement adequately protected Fourth Amendment interests.[15]

In re: 26 Digital Devices underscored the novelty and difficulty of applying traditional seizure principles to digital copies and data extractions, particularly where retention enables new investigative uses disconnected from the original justification for seizure.

Continued Retention as an Ongoing Seizure: The Richman Case

The December 2025 decision in Richman v. U.S. by U.S. District Judge Colleen Kollar-Kotelly brings these doctrinal strands together in a modern digital context.

The petitioner, Daniel Richman, moved under Rule 41(g) for the return of copies of his computer and cloud-account data that had been seized during a 2017-2020 U.S.

Department of Justice investigation. He alleged that the government's continued retention — and later warrantless review — of those materials violated his Fourth Amendment rights.

Richman, a lawyer and friend of former FBI Director James Comey, had his digital materials seized in connection with the investigation of Comey and Comey's subsequent indictment in the U.S. District Court for the Eastern District of Virginia.

As Richman explained, during that prosecution "new facts emerged concerning ... the government's handling of Professor Richman's Files."[16] Despite explicit limitations governing the use of those materials, Richman and two different federal judges expressed concerns that the government undertook no meaningful diligence to ensure compliance with the governing warrants.

In his Nov. 17, 2025, opinion in U.S. v. Comey, U.S. Magistrate Judge William Fitzpatrick observed that the government's handling of the earlier warrants and materials warranted heightened scrutiny, noting that "the nature and circumstances surrounding the government's potential violations of the Fourth Amendment and court orders establish a reasonable basis to question whether the government's conduct was willful or in reckless disregard of the law."[17]

Richman argued that the government's overseizure and unilateral decision to search the previously retained materials without judicial authorization implicated his property interests in files stored in government custody.[18]

After Comey's indictment was dismissed based on the court's finding that the interim U.S. Attorney, Lindsey Halligan, was unlawfully appointed, Richman's Rule 41(g) proceeding followed.[19]

Judge Kollar-Kotelly adhered to Asinor's reasoning, concluding that the government's retention of the copied data constituted an ongoing Fourth Amendment seizure because it meaningfully interfered with Richman's possessory interests. Quoting Asinor, the court reiterated that "the Fourth Amendment requires that any continued possession of the property must … be reasonable," and that a seizure may become unreasonable in its length or manner, even if lawful at inception.[20]

Although the court found that retention prior to 2025 was reasonable so long as the data was not accessed, the government's warrantless review of the copies in September 2025 — years after the original investigation concluded — constituted an unreasonable search and seizure.[21]

The court further held that the government's failure to safeguard the retained data against warrantless access compounded the possessory intrusion, rendering continued retention unreasonable. As equitable relief, the court granted Richman's motion and ordered the government to return the data.[22]

Judge Kollar-Kotelly described the government's conduct as "reflect[ing] a callous disregard" for Richman's property rights and emphasized that the "Government ha[d] not implemented effective safeguards to protect copies of the files from unlawful access while they remain[ed] in the Government's custody and control."[23] This included, according to the court, the government's failure to assess or even attempt to justify whether its 2025 review complied in any respect with the 2019 and 2020 warrants.[24]

The court squarely addressed the operative question: "To what extent does a person have a

'possessory interest' in copies of electronic files if other copies saved elsewhere remain available?"[25]

Drawing on Asinor and In re: 26 Digital Devices, the court cautioned against "any change in circumstances that makes unreasonable the government's ongoing interference with possessory property interests."[26] Richman, the court concluded, "maintained a possessory interest" in "the 'right to exclude'" others from accessing his files.[27] His earlier consent to limited searches pursuant to warrants did not diminish "his right to decide who could access the files and on what terms."[28]

After concluding that equitable relief was authorized, the court exercised its equitable jurisdiction to order the return of the digital property.

Judge Kollar-Kotelly recognized the "extraordinary scope and sensitivity of data available on personal digital devices,"[29] emphasizing that" the [g]overnment's intrusions into ... sensitive files risk irreparably burdening both ... personal privacy and ... professional reputation."[30]

While ordering the return of the data, the court declined to bar its future use in a criminal prosecution.[31] Instead, it permitted preservation of a complete copy in the court's custody, allowing potential future access only with appropriate authority and supervision.[32]

Implications for Digital Evidence and Retention Policies

The progression from In re: 26 Digital Devices through Asinor and Richman signals a broader doctrinal shift in the D.C. Circuit: Retention of digital evidence is no longer constitutionally neutral once the original investigatory justification dissipates.

A seizure that is lawful at inception may become unreasonable if the government retains data without adequate safeguards, absent continuing justification, or if it reaccesses that data without new judicial authorization. This reasserts the Fourth Amendment's protection of possessory interests and imposes meaningful constitutional accountability on evidence-retention practices.

Practitioners should take note of several basic principles and concepts.

Retention policies matter.

Whether data resides on servers or in physical storage, the government must justify retention and access over time under a dynamic Fourth Amendment standard.

Individuals should monitor the status of seized devices and document efforts to recover property in accordance with local practice.

Rule 41(g) remains vital.

Motions for return of property under Rule 41(g) or its state-level equivalent can provide meaningful relief where retention or later access has become unreasonable, particularly in the absence of a valid warrant authorizing subsequent use.

Care must be taken, however, not to inadvertently revive dormant investigations. Seeking return of property without thinking through the status of any potential investigation could

trigger additional scrutiny.

This isn't to say one shouldn't seek the rightful return of property, but be cautious about how hard to push on framing the legal issues.

Warrant discipline is essential.

Subsequent use of retained data should generally be preceded by fresh judicial authorization. Prosecutors must understand and scrupulously adhere to district-specific scoping and segregation procedures to avoid constitutional violations and claims of taint.

Conclusion

The D.C. Circuit's property rights inflection point — from Asinor's recognition that continued possession must remain reasonable, to Richman's application in the digital realm — extends Fourth Amendment analysis beyond the moment of initial seizure.

For digital evidence retention and reuse, this development creates new opportunities for defense counsel and new compliance obligations for prosecutors and investigators alike. In text, history and modern application, the Fourth Amendment's reach grows.

Gregory P. Rosen is a shareholder at Rogers Joseph O'Donnell PC. He previously served as an assistant U.S. attorney, chief of the Capitol Siege Section, and chief of the Federal Major Crimes Section in the U.S. Attorney's Office for the District of Columbia.

Disclosure: Rosen served as the lead litigator for the government in In re: Search of Twenty-Six (26) Digital Devices and Mobile Device Extractions.

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[1] U.S. Const. amend. IV.

[2] Asinor v. District of Columbia, 111 F.4th 1249 (D.C. Cir. 2024).

[3] Id. at 1251-52.

[4] Id.

[5] Id. at 1252.

[6] Id.

[7] Id,

[8] Id. at 1255.

[9] Id, at 1252.

[10] Id. at 1253.

[11] Id. at 1259 (internal citations omitted).

[12] Id. at 1261.

[13] Id.

[14] In re: Search of Twenty-Six (26) Digital Devices and Mobile Device Extractions That Are Currently in the Possession of Law Enforcement in Washington, D.C., 21-sw-233-GMH, 2021 WL 5822583, at *25 (Nov. 30, 2021).

[15] In re: Search of Twenty-Six (26) Digital Devices and Mobile Device Extractions That Are Currently in the Possession of Law Enforcement in Washington, D.C., 21-sw-233-GMH-BAH, 2022 WL 998896, at *15-16 (Mar. 14, 2022).

[16] Richman v. United States, 25-mc-170-CKK, 2025 WL 3461033 (D.D.C. Nov. 26, 2025).

[17] United States v. Comey, 25-cr-272-MSN-WEF, 2025 WL 3202693, at *10 (E.D.Va. Nov. 17, 2025).

[18] Id. at *6.

[19] Richman, at *3.

[20] Id. at *11.

[21] Id. at *14-15.

[22] Id. at *17.

[23] Id. at *1-2.

[24] Id. at *14.

[25] Id. at *11 (internal punctuation omitted).

[26] Id. at *13 (internal punctuation omitted).

[27] Id.

[28] Id.

[29] Id. at *14.

[30] Id. at *17.

[31] Id. at *20-21.

[32] Id. at *21.