

WE HAVE TURBULENCE: NAVIGATING THE JURISDICTION OF DOMESTIC INTRA-FLIGHT CRIMES FOR POINT-IN-TIME OFFENSES

Grace I. Schroder*

The Sixth Amendment of the Constitution of the United States guarantees a defendant the right to be tried in the district where they committed the crime. This principle of venue is deeply embedded in the due process rights that were important to the Framers, and courts have abided by it for centuries. With the advent of modern airplanes and the rise in air travel, there has been an increase in crimes being committed while cruising 30,000 feet in the air. This has created tension between the Constitution and the practicalities of prosecuting intra-flight crimes. Many of these offenses can be classified as “continuous,” which means they can be prosecuted in any district where the offense was started, continued, or completed. It is not so simple for crimes classified as “point-in-time” offenses, which include offenses like battery and assault. Courts across the United States have taken a myriad of approaches, but charges are most commonly brought in the district where the plane lands. While Congress and the Department of Justice have given some guidance, courts are still left with more questions than answers. This Note argues the landing district is an unconstitutional venue for point-in-time offenses committed intra-flight, as there is no connection between that district and the crime in issue.

TABLE OF CONTENTS

INTRODUCTION	860
I. FRAMEWORK FOR FEDERAL CRIMINAL VENUE	863
A. The Purpose of Venue and the Constitution.....	863
B. Guidance from the Supreme Court.....	864
C. Statutory Analysis & Interpretations	865
II. POINT-IN-TIME OFFENSES VS. CONTINUOUS OFFENSES.....	868
A. Easy Classifications: Continuous Offenses.....	869

* J.D. Candidate, University of Arizona James E. Rogers College of Law, 2026. I am deeply grateful to Professor Jordan Blair Woods for supervising this Note and for providing me with such incredible feedback. I also thank *Arizona Law Review* and the diligent editing team who propelled this Note to 30,000 feet. Finally, thank you to my friends and family for their love and encouragement.

B. Easy Classifications: Point-in-Time Offenses.....	869
C. More Difficult Classifications: Continuous or Point-in-Time?	870
D. A Brief Remark on State Venue Statutes and Transportation.....	871
III. UP IN THE AIR: DIFFERENT APPROACHES TO VENUE FOR INTRA-FLIGHT CRIMES	871
A. The First Approach: Venue is Proper Where the Offense Occurred.....	872
B. The Second Approach: Venue is Proper Anywhere.....	873
1. The Eleventh Circuit.....	873
2. The Tenth Circuit	874
3. The Ninth Circuit.....	874
IV. WHY <i>LOZOYA</i> GOT IT RIGHT THE FIRST TIME	875
A. § 3237(a) Does Not Apply to Assault or Point-In-Time Offenses.....	876
B. Districts Include Airspace	877
V. PROPOSED SOLUTION & ADDRESSING THE IMPRACTICABILITY ARGUMENTS...878	
A. Flyover Districts May Be More Practical Than the Current Broad Holding	878
B. Eyes In the Sky: Security Cameras on Commercial Aircraft	879
C. Virtual Court Hearings	881
VI. CONGRESSIONAL ACTION	881
CONCLUSION	882

INTRODUCTION

Crimes committed intra-flight pose a serious risk to passenger safety. In 2021, the Federal Aviation Administration (“FAA”) reported a record number of violent and unruly passengers,¹ and the rate of sexual assault aboard aircraft has also been on the rise.² While the rate of unruly passengers has declined since 2021, the FAA still reported over 2,000 incidents in 2024.³ Congress has proclaimed that “[t]he United States Government has exclusive sovereignty of airspace of the United States;” thus, these types of crimes fall under federal jurisdiction.⁴ Federal law applies “from the moment all external doors are closed following boarding” and includes all aircraft in flight within the United States.⁵ Therefore, courts must grapple with the question of where proper venue lies, and the Constitution is at the

1. *What’s Behind All These Cases of Unruly Aircraft Passengers*, USA FACTS (Aug. 15, 2023), <https://usafacts.org/articles/whats-behind-all-these-cases-of-unruly-aircraft-passengers/> [https://perma.cc/VZ8B-RW8S]. The FAA uses the term “unruly passengers” when referring to passengers who have disrupted flights with threatening or violent behavior. See Federal Aviation Administration, *Unruly Passenger Statistics*, FED. AVIATION ADMIN., <https://www.faa.gov/unruly> [https://perma.cc/KWZ6-T4LC] (last visited Aug. 23, 2025).

2. Laura Eimiller, *FBI Raises Awareness About Sexual Assaults on Airplanes*, FBI (Apr. 25, 2024), <https://www.fbi.gov/contact-us/field-offices/losangeles/news/fbi-raises-awareness-about-sexual-assaults-on-airplanes> [https://perma.cc/SN4J-BXVG].

3. FED. AVIATION ADMIN., *supra* note 1.

4. Sovereignty and Use of Airspace, 49 U.S.C. § 40103(a)(1) (1994); see Application of Certain Criminal Laws to Acts on Aircraft, 49 U.S.C. § 46506 (1994).

5. 49 U.S.C. § 46501(1).

heart of answering this question, as the Sixth Amendment expressly requires a trial to be held “wherein the crime shall have been committed.”⁶

People commit varying degrees of offenses on airplanes. The most common include verbal outbursts,⁷ sexual assaults,⁸ and physical altercations.⁹ In April 2023, a man on a Southwest flight became angry because there was a crying baby on the flight, so he began screaming at a flight attendant, demanding they do something about the baby.¹⁰ In July 2022, a minor woke up to a 46-year-old man with his hands and face under her clothes.¹¹ In January 2023, a passenger assaulted a flight attendant by striking her with his hand.¹² There are countless examples of incidents like these occurring in the skies—often causing planes to divert from their intended destinations to make emergency landings.¹³ Further, there is only about a 6% chance of a domestic flight having an air marshal onboard.¹⁴ This makes it increasingly difficult to control crimes committed on airplanes, and often flight attendants bear the brunt of keeping everyone safe.¹⁵

6. U.S. CONST. amend. VI.

7. See, e.g., Bethany Sexton, *American Airlines Plane Forced to Make Surprise Landing After Passenger Outburst*, DAILY MAIL (Sept. 4, 2024, at 15:55 EDT), <https://www.dailymail.co.uk/news/article-13812451/american-airlines-flight-diverted-disruptive-passenger.html> [<https://perma.cc/44D2-4G6U>].

8. See, e.g., *In-Flight Sexual Assault is on the Rise*, NAT’L SEXUAL VIOLENCE RES. CTR. (Aug. 5, 2024), <https://www.nsvrc.org/blogs/flight-sexual-assaults-need-more> [<https://perma.cc/82MZ-V39W>].

9. See, e.g., Jillian Sykes, *American Airlines Plane Diverted After Passenger Punches Flight Attendant, Court Documents Show*, CNN (Jan. 5, 2024, at 20:53 EST), <https://www.cnn.com/2024/01/05/us/american-airlines-flight-punch-diverted/index.html> [<https://perma.cc/4D9F-XG3R>].

10. GMA Team, *Southwest Passenger’s Outburst Over Crying Baby Caught on Camera*, ABC NEWS (Apr. 20, 2023, at 08:40 MST), <https://abcnews.go.com/GMA/Travel/southwest-passengers-outburst-crying-baby-caught-camera/story?id=98717836> [<https://perma.cc/229Z-DX3N>].

11. *West Chester Man Pleads Guilty to Abusive Sexual Contact on an Aircraft*, U.S. ATT’Y’S OFF. (May 21, 2024), <https://www.justice.gov/usao-edpa/pr/west-chester-man-pleads-guilty-abusive-sexual-contact-aircraft> [<https://perma.cc/93MH-5EQP>].

12. *Nebraska Man Sentenced for Assaulting a Flight Attendant*, U.S. ATT’Y’S OFF. (Feb. 6, 2023), <https://www.justice.gov/usao-ak/pr/nebraska-man-sentenced-assaulting-flight-attendant> [<https://perma.cc/C5CP-3E2F>].

13. See, e.g., Mario Gonzalez, *American Airlines Flight Diverted to Tulsa due to Unruly Passenger*, KFOR (Sep. 4, 2024, at 05:17 CDT), <https://kfor.com/news/local/american-airlines-flight-diverted-to-tulsa-due-to-unruly-passenger/> [<https://perma.cc/LM39-SGGZ>].

14. Luke Bodell, *Is There an Air Marshal Present on Every Flight?*, SIMPLE FLYING (June 29, 2024), <https://simpleflying.com/is-there-an-air-marshal-on-every-flight/> [<https://perma.cc/GJ3B-FRK2>]; see Ron Nixon, *Scandals and Investigations, but Few Arrests, for Air Marshals Program*, N.Y. TIMES (Apr. 25, 2018), <https://www.nytimes.com/2018/04/25/us/politics/air-marshals-scandals-investigations.html> [<https://perma.cc/E3WS-EU46>].

15. See Carlos Castañeda, *Frontier Airlines Passenger Assaults Flight Attendants, DOJ Alleges; SFO-Bound Plane Diverted to Ontario*, CBS NEWS (Sept. 17, 2024, at 11:17 PDT), <https://www.cbsnews.com/sanfrancisco/news/frontier-airlines-passenger-assault-flight-attendants-sfo-sna-ont/> [<https://perma.cc/E3DM-H2JG>] (“As the flight attendant and

These types of offenses are traumatizing for victims, but the law is not clear as to *where* offenders should be held accountable for their actions. Once offenders are caught, we must then properly determine the geographic location where they will be charged and where their case will be heard. According to the Constitution, venue is proper in the district where the crime was committed,¹⁶ but this straightforward principle becomes increasingly complicated when a point-in-time crime is committed intra-flight.

Crimes committed intra-flight are unique and Congress has not made it clear where such crimes should be prosecuted, leading federal courts to take varying approaches.¹⁷ The Supreme Court has also failed to address the issue.¹⁸

As part of the venue analysis, courts must confront the question of whether an in-flight assault is categorized as a point-in-time offense or a continuing offense.¹⁹ A point-in-time offense is a crime “consisting of a single noncontinuing act” that is committed “in the district where the act is performed.”²⁰ Continuing offenses “are not unitary but instead span space and time” and “may be prosecuted in any district in which such offense was begun, continued, or completed.”²¹ It is much easier to establish venue for crimes that are classified as continuous offenses, because venue would be considered proper in various districts.²²

This Note argues that the courts have provided an unconstitutional solution to venue determinations where a point-in-time offense is committed aboard an aircraft. Limiting venue promotes “both fairness and public confidence in the criminal justice system.”²³ This was extraordinarily important to the Framers, as the Constitution states twice that venue is proper in the place where that crime was committed.²⁴ Interpreting criminal venue broadly opens the door to abuse in the administration of criminal justice.²⁵ Therefore, courts must not interpret venue in light of convenience, but must instead follow the language of the Constitution.

This Note proceeds as follows. Part I gives an overview of the current framework for how criminal federal venue is determined based on the Constitution, caselaw, and statutes. Part II discusses how point-in-time and continuous offenses

others tried to restrain [defendant], he allegedly grabbed the lanyard around the flight attendant’s neck and tried to choke her with it . . .”).

16. U.S. CONST. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . .”).

17. See *infra* Part III.

18. See generally *Lozoya v. United States*, 142 S. Ct. 128 (2021) (denying cert).

19. *United States v. Lozoya*, 982 F.3d 648, 665–66 (9th Cir. 2020) (Ikuta, J., concurring in part and dissenting in part).

20. *United States v. Pace*, 314 F.3d 344, 350 (9th Cir. 2002) (quoting *United States v. Corona*, 34 F.3d 876, 879 (1994)); see Emily C. Byrd, Comment, *When Does the Clock Stop? An Analysis of Point-in-Time and Continuing Offenses for Venue Purposes*, 11 LOY. MAR. L.J. 175, 179 (2012).

21. *Pace*, 314 F.3d at 350 (internal quotation marks omitted).

22. 18 U.S.C. § 3237.

23. *United States v. Salinas*, 373 F.3d 161, 164 (1st Cir. 2004).

24. U.S. CONST. art. III, § 2, cl. 3; U.S. CONST. amend. VI.

25. *United States v. Johnson*, 323 U.S. 273, 275 (1944).

are classified. Part III gives an overview and analysis of the different approaches courts have taken when deciding where venue is proper for offenses committed intra-flight. Part IV discusses why the courts are wrong and why venue is proper in the district where the offense was committed. Part V addresses why using flyover districts is a practical solution with the advent of modern technology. Finally, Part VI recognizes that Congress could fix this dispute by passing a specific venue provision for point-in-time offenses committed intra-flight.

I. FRAMEWORK FOR FEDERAL CRIMINAL VENUE

A. *The Purpose of Venue and the Constitution*

Venue is entrenched in the principle of due process, and it was a salient issue for the Framers when they crafted the Constitution.²⁶ Determining venue in criminal cases requires considering more than mere legal procedure and instead raises “deep issues of public policy in the light of which legislation must be construed.”²⁷

The Framers wrote the venue provision to prevent the government from abusing its power by “manipulat[ing] the geographical location of a trial.”²⁸ Before the American Revolution, British Parliament revived a statute allowing for colonists to be extradited to England or another colony for trial.²⁹ In the Declaration of Independence, Thomas Jefferson criticized King George III “for transporting us beyond Seas to be tried for pretended offenses.”³⁰ Thus, scholars have speculated the Framers included a venue provision to protect the accused from being brought to trial in an unfamiliar place where there are no witnesses and the defendant does not have the support of family, support of friends, or “knowledge of local counsel.”³¹

Article III of the Constitution sets forth the right to proper venue, providing that a trial “shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.”³² The Sixth Amendment also discusses venue, stating “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed”³³ The Framers envisioned this guarantee—that defendants would be prosecuted where the crime was committed—as a mechanism to facilitate a defendant’s fundamental right to due process.³⁴

Rule 18 of the Federal Rules of Criminal Procedure is built upon the foundation of the Constitution, stating that “the government must prosecute an

26. See Christopher Thomson, Comment, *Off on a Technicality: The Proper Remedy for Improper Venue*, 73 SMU L. REV. 667, 671 (2020).

27. *Johnson*, 323 U.S. at 276.

28. See Todd Lloyd, *Stretching Venue Beyond Constitutional Recognition*, 90 J. CRIM. L. & CRIMINOLOGY 951, 954–55 (2000).

29. *Id.* at 953.

30. *Id.* (citing THE DECLARATION OF INDEPENDENCE para. 20 (U.S. 1776)).

31. *Id.* at 955.

32. U.S. CONST. art. III § 2, cl. 3.

33. U.S. CONST. amend. VI.

34. See *id.*

offense in a district where the offense was committed.”³⁵ This rule is grounded in the notion that the district where the crime was committed is likely the most convenient for the defendant, the victim, and the witnesses.³⁶ But the Framers likely never imagined there would be 819.3 million passengers on domestic flights per year,³⁷ or that it would even be possible for crimes to be committed 30,000 feet in the air.

B. Guidance from the Supreme Court

The Supreme Court has been trying to reconcile Article III and the Sixth Amendment with the rise of interstate crimes for nearly a century. Foundational to this analysis is *United States v. Johnson*,³⁸ where the Court dealt with criminal venue in the context of the Federal Denture Act—which outlawed the transportation of denture casts taken by someone who lacked a dentistry license.³⁹ The Supreme Court grappled with whether it was constitutional to prosecute “in any federal district through which an offending denture was transported.”⁴⁰

The *Johnson* Court was concerned the use of the continuous offense doctrine would lead to the appearance that prosecutors would bring charges in a venue that would be more favorable to them and cause hardship to the defendant.⁴¹ The Court determined the offense was completed the moment the dentures were mailed, and therefore venue would be restricted to the district where the dentures were mailed.⁴² This decision hinged on the constitutional principle that crimes must be charged in the district where the offense was committed.⁴³ Additionally, the Court noted there was no venue provision guiding the inquiry and “[i]t is significant that when Congress desires to give a choice of trial, it does so by specific venue provisions giving jurisdiction to prosecute in any criminal court of the United States”⁴⁴

In response to the *Johnson* decision, Congress revised § 3237(a) by clarifying that “[a]ny offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense” and can be “prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.”⁴⁵ Thus the Court announced a broad rule for determining venue that

35. See FED. R. CRIM. P. 18.

36. See *id.*

37. Michele Majidi, *Domestic Passenger Enplanements on U.S. Airlines from 2004 to 2024 (In Millions)*, STATISTA RSCH. DEP’T (June 20, 2025), <https://www.statista.com/statistics/197790/us-airline-domestic-passenger-enplanements-since-2004/> [<https://perma.cc/2J5M-9PQ4>].

38. 323 U.S. 273, 274 (1944).

39. 18 U.S.C. § 1821.

40. *Johnson*, 323 U.S. at 274.

41. *Id.* at 275.

42. *Id.*

43. *Id.* at 274–76.

44. *Id.* at 276.

45. CHARLES DOYLE, CONG. RSCH. SERV., RL33223, VENUE: A LEGAL ANALYSIS OF WHERE A FEDERAL CRIME MAY BE TRIED 9 n.68 (2018); see *infra* Section II.C.

involved mail and interstate commerce.⁴⁶ Although the Court's decision in *Johnson* is no longer law,⁴⁷ it still provides insight into how the Court may address criminal venue issues where Congress has not yet spoken.

Courts have also grappled with whether venue is proper "in any district in which the crime's effects are felt."⁴⁸ A line of circuit court cases suggests "that venue might be predicated upon the impact of the crime within a particular district, especially when the offense involved other 'substantial contacts' with the district of victimization."⁴⁹ The Court expressly declined to decide this issue in *United States v. Rodriguez-Moreno*,⁵⁰ and as a result, little guidance exists for courts.

C. Statutory Analysis & Interpretations

Two federal statutes are central to this discussion, and courts have had trouble reconciling whether they apply to the intra-flight venue analysis. The first statute is 18 U.S.C. § 3237, which provides:

Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed. Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.⁵¹

Judges and legal scholars disagree on what it means for an offense to "involve" interstate commerce.⁵² Justice Kennedy's concurrence in *Ashcroft v. ACLU* provides a brief look at how § 3237(a) may be interpreted and applied.⁵³ Justice Kennedy concluded that a violation of the Child Online Protection Act qualified as an offense "involving interstate commerce" because the Act included interstate commerce as an element.⁵⁴ Though the majority opinion did not discuss

46. *Johnson*, 323 U.S. at 276.

47. *United States v. Canal Barge Co., Inc.*, 631 F.3d 347, 354 (6th Cir. 2011) ("In response to *Johnson*, Congress added the second paragraph of § 3237(a), which 'removes all doubt as to the venue of continuing offenses and makes unnecessary special venue provisions except in cases where Congress desires to restrict the prosecution of offenses to particular districts.'").

48. DOYLE, *supra* note 45, at 8.

49. *Id.* (citing *United States v. Reed*, 773 F.2d 477, 484–86 (2d Cir. 1985)).

50. *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 n.2 (1999) ("[b]ecause this case only concerns the locus delicti, we express no opinion as to whether the Government's assertion is correct.") (alteration in original).

51. 18 U.S.C. § 3237(a).

52. *See infra* Part III.

53. 535 U.S. 564, 601–02 (2002) (Kennedy, J., concurring).

54. *Id.*

venue, Justice Kennedy's opinion indicated an act "involved interstate commerce" only where it is an element of the crime.⁵⁵

The second statute at issue is 18 U.S.C. § 3238, which only applies to offenses committed while out to sea and states "[t]he trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender, or any one of two or more joint offenders, is arrested or is first brought"⁵⁶ There is disagreement as to whether airspace is part of a district, which leads to different interpretations of how § 3238 applies. Those who believe states have claim over airspace believe the statute does not apply, because the crime is not committed "elsewhere out of the jurisdiction of any particular State," while others believe § 3238 applies because intra-flight crimes are "not committed within any State."⁵⁷

There is also a third statute, although now repealed, that directly addressed venue for intra-flight crimes.⁵⁸ The Federal Aviation Act of 1958 included a venue provision stating "[t]he trial of any offense under this Act shall be in the district in which such offense is committed" Alternatively, if "upon the high seas, or out of the jurisdiction of any particular State or district, the trial shall be in the district where the offender may be found or into which he shall be first brought."⁵⁹ This was codified in 49 U.S.C. § 1473(a), and courts relied on it when dealing with questions of venue for intra-flight crimes.⁶⁰ Further, there is speculation Congress intended § 1473(a) to apply to point-in-time offenses.⁶¹ The language of § 1473(a) was very similar to § 3237, but it lacked the language on interstate commerce.⁶² In 1990 Congress repealed § 1473(a) and thus left courts with only § 3237 and § 3238.⁶³

The Department of Justice Criminal Resource Manual—last updated in 1999 and now archived—discussed how to interpret these statutes and determine venue in specific circumstances involving intra-flight crimes.⁶⁴ According to the manual, in circumstances where a defendant's conduct was so disruptive the plane made an emergency landing, "the interference offense is deemed to continue, and

55. *Id.*

56. 18 U.S.C. § 3238.

57. *Compare* United States v. Lozoya, 982 F.3d 648, 655 (9th Cir. 2020) (holding § 3238 does not apply), *with id.* at 660 (Ikuta, J., concurring in part and dissenting in part) (arguing § 3238 applies).

58. *See* 49 U.S.C. § 1473(a) (repealed 1990).

59. Federal Aviation Act of 1958, Pub. L. No. 85-726, § 903(a), 72 Stat. 731, 786 (1958).

60. *See* United States v. Basic, 549 F.2d 252, 255 (2d Cir. 1977) (applying § 1473(a) in determining venue for the hijacking of an aircraft); *see also* United States v. Hall, 691 F.2d 48, 49–50 (1st Cir. 1982) (applying § 1473(a) in determining venue for the assault of flight crew and other passengers).

61. Philip J. Duggan, *Venue Above the Clouds: Prosecuting In-Flight Crimes by Creating a "High Skies" Law*, 106 CORN. L. REV. 247, 268–69 (2020) ("Indeed, the political and legislative history behind 49 U.S.C. § 1473(a) also suggests that Congress intended that statute to reach 'point-in-time' offenses 'with a minimum of technical barriers.'").

62. *Id.*

63. *Id.* (citing H.R. REP. NO. 103-180, at 587 tbl. 2A (1990), *as reprinted in* 1994 U.S.C.C.A.N. 818, 1404).

64. U.S. Dep't of Just., U.S. Att'ys' Manual § 1406 (1999).

the defendant may be prosecuted in the district of the airport at which the aircraft lands, even if he does not commit any disruptive act within that district.”⁶⁵ The manual went on to say if a flight continues to the scheduled destination then the defendant may only be prosecuted in the destination district “provided that there is evidence of the interference continuing to the destination.”⁶⁶ Further, “[i]f there is no such evidence, a court could hold that venue lies only in the district over which the aircraft was flying at the time of the incident.”⁶⁷ Although the Criminal Resource Manual is outdated, it provides insight into how these statutes have been analyzed since they were enacted.

There is a newer version from the Department of Justice that interprets the federal venue statutes, titled the “Justice Manual” and most recently updated in January 2020.⁶⁸ It states that “[p]rosecution is always proper in the district over which the aircraft was flying when the interference took place, if that can be determined.”⁶⁹ Similar to the now archived Criminal Justice Manual, it maintains that if the plane is diverted, if the interfering actions continue, or if the crew continues to be concerned about the offender’s possible future actions, then venue may be proper in the landing district.⁷⁰ Additionally, the manual “advocates [for] prosecution in the district where the aircraft lands and the defendant is deboarded and arrested” in cases where the place of the offense cannot be determined.⁷¹ Although the Department of Justice supports an interpretation that venue is proper in the landing district, it is doing so only in the circumstances where the location of the offense is truly difficult to determine.⁷² This guidance is solely a recommendation for prosecutors, and it is certainly not legally binding.⁷³ Additionally, it appears this language only applies to crimes committed against flight crew members.⁷⁴

* * *

The Framers intended venue to be proper in the district where the crime was committed. The Supreme Court has upheld this important principle but has failed to address the more complicated questions about venue determinations. Statutory interpretation also plays an important role in determining venue, but courts have consistently disagreed on when and how these statutes apply.

65. *Id.*

66. *Id.*

67. *Id.* (citing H.R. Rept. No. 87-958, 1961 U.S.C.C.A.N. 2563, 2578).

68. U.S. Dep’t of Just., Just. Manual § 9-63.110 (2020).

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.* (“The statute applies to any ‘individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties.’”).

73. *Id.* § 1-1.200 (2024) (“The Justice Manual provides internal DOJ guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal.”).

74. *Id.* § 9-63.110.

II. POINT-IN-TIME OFFENSES VS. CONTINUOUS OFFENSES

In *Toussie v. United States*, the Court set out a two-pronged test for distinguishing a point-in-time offense from a continuous offense.⁷⁵ An offense is considered to be continuous if (1) “the explicit language of the substantive criminal statute compels such a conclusion,” or (2) “the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.”⁷⁶ Determining venue for continuous offenses is simple, as the Court held “where a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done”⁷⁷ But the Court noted that the doctrine of continuing offenses for venue purposes should be used sparingly and applied in limited circumstances.⁷⁸ In contrast, a point-in-time offense is one “consisting of a single noncontinuing act” and should be prosecuted in the district where that single act occurred.⁷⁹

Another important part of this analysis is the *locus delicti* test.⁸⁰ *Locus delicti* translates to “[t]he place where an offense was committed; the place where the last event necessary to make the actor liable occurred.”⁸¹ The *locus delicti* of the charged offense is ascertained from the nature of the crime and the location of the act or acts.⁸² A court analyzes this by first identifying the conduct that constitutes the alleged offense and then by looking at the location where those acts occurred.⁸³

However, if a crime consists of distinct acts in different locations, the crime may be tried in any of the locations where the acts can be proven to have occurred.⁸⁴ The Supreme Court has rejected the idea of the “verb test,” concluding that the inquiry should look to the “conduct elements comprising the crime through a wider-angled lens,” rather than the verbs in the statute.⁸⁵ Additionally, venue is not proper in the district where a “circumstance element” occurred after an offense had already been completed.⁸⁶ For point-in-time offenses—like assault—it would reasonably follow that a court would identify the location where the conduct of the assault occurred and bring charges in that venue.⁸⁷

75. 397 U.S. 112, 115 (1970).

76. *Id.*

77. *United States v. Lombardo*, 241 U.S. 73, 77 (1916).

78. *Toussie*, 397 U.S. at 115.

79. *United States v. Lozoya*, 982 F.3d 648, 666 (Ikuta, J., concurring) (quoting *United States v. Pace*, 314 F.3d 344, 350 (2002)).

80. *Locus delicti*, BLACK’S LAW DICTIONARY (12th ed. 2024).

81. *Id.*

82. *United States v. Salinas*, 373 F.3d 161, 164 (1st Cir. 2004) (quoting *United States v. Anderson*, 328 U.S. 699, 703 (1946)).

83. *United States v. Rodriguez-Moreno*, 526 U.S. 275, 279 (1999).

84. *United States v. Lombardo*, 241 U.S. 73, 77 (1916).

85. *Rodriguez-Moreno*, 526 U.S. at 280 (analyzing the two elements of kidnapping, a unitary charge, and finding venue to be proper “for the whole charge where any part can be proved to have been committed.”).

86. *See id.* at 285 n.4.

87. *See id.* at 275–76.

A. Easy Classifications: Continuous Offenses

In some cases, it is easy for a court to decide whether it is dealing with a continuous offense or a point-in-time offense. In *Rodriguez-Moreno*, the Supreme Court found kidnapping to be a continuous offense because “[a] kidna[p]ping, once begun, does not end until the victim is free,” and it does not make sense to discuss the offense in “discrete geographic fragments.”⁸⁸ Another classic example of a continuous offense is conspiracy, as it would be “a perversion of natural thought and of natural language to call such continuous co-operation a cinematographic series of distinct conspiracies, rather than to call it a single one.”⁸⁹

Further, Congress has expressly classified certain offenses as continuous, including the failure to pay child support, unlawful possession of a firearm, false statements, mail fraud, wire fraud, bank fraud, violent crimes in aid of racketeering, and possession of controlled substances with the intent to distribute.⁹⁰

B. Easy Classifications: Point-in-Time Offenses

Typically, the simplest example of point-in-time offenses is assault because it is complete within a matter of minutes or even seconds and occurs in one distinct location.⁹¹ Another example is battery: it transpires “at the moment when a perpetrator’s closed fist makes contact with the victim’s body” and the harm of the offense “cease[s] when the perpetrator removes his fist.”⁹²

In *Toussie v. United States*, the Court held that the offense of failing to register for the draft was a point-in-time offense, even if there is a “continuing duty” for someone to register.⁹³ Additionally, the Court provided “there is also nothing inherent in the act of registration itself which makes failure to do so a continuing crime.”⁹⁴ Another example is passport fraud, which the First Circuit held to be a point-in-time offense because it is completed “at the moment an applicant makes a knowingly false statement in an application.”⁹⁵ Looking to the statutory elements of passport fraud, the court rejected the argument that the offense was not completed until the false statement was communicated to a person who had the authority to approve the application.⁹⁶ Along these same lines, the Court of Appeals of Oregon held that failing to register as a sex offender after ten days of changing residence is a point-in-time offense because the crime “occurs precisely at midnight on the tenth day after a change in residence, it is not a crime that occurs at any other point in time.”⁹⁷

88. *Id.* at 281.

89. *See* *United States v. Kissel*, 218 U.S. 601, 607–09 (1910).

90. DOYLE, *supra* note 45, at 7–8.

91. *See* Jeffrey R. Boles, *Easing the Tension Between Statutes of Limitations and the Continuing Offense Doctrine*, 7 NW. J. L. & SOC. POL’Y 219, 227 (2012) (“As its name implies, an instantaneous offense is a ‘discrete act’ that occurs at a single, immediate period of time.”).

92. *Id.* at 228.

93. *Toussie v. United States*, 397 U.S. 112, 119–20 (1970).

94. *Id.* at 122.

95. *United States v. Salinas*, 373 F.3d 161, 165 (1st Cir. 2004).

96. *Id.* at 166.

97. *State v. Ribas*, 554 P.3d 280, 282 (Or. Ct. App. 2024).

C. More Difficult Classifications: Continuous or Point-in-Time?

While some offenses are easy to classify, courts are most often faced with offenses that are not so simple. For example, in *United States v. Cores*, the Court held it is a continuous offense for someone to willfully remain in the United States after a landing permit has expired.⁹⁸ Although it was argued the offense was committed the moment the permit expired, the Court looked at the policy reasoning behind the statute in making its decision.⁹⁹ The Court considered it a continuous offense because “it is hardly likely that . . . Congress would create the new sanction only to strip it of much of its effectiveness by compelling trial in the district where the crewman was present when his permit expired,” especially because that location would be nearly impossible to prove.¹⁰⁰

Going back to *United States v. Rodriguez-Moreno*, while the Court did not struggle with classifying kidnapping, it did struggle with classifying the offense of “using or carrying a firearm during and in relation to any crime of violence.”¹⁰¹ In *Rodriguez-Moreno*, the defendant began the kidnapping in Texas and continued it through New York, New Jersey, and Maryland, but only took possession of the gun once in Maryland.¹⁰² The Court still held that the gun offense could be prosecuted in New Jersey because of the predicate kidnapping offense.¹⁰³ In the dissent, Justice Scalia and Justice Stevens stated that it was improper to prosecute the crime of using a gun during a kidnapping in a place “where all agree he did not use a gun during a kidnapping.”¹⁰⁴

Courts have also distinguished some of these classifications by looking at the purpose for which the court was trying to classify the offense.¹⁰⁵ In *Canal Barge*, the Sixth Circuit distinguished cases where the classification involved a question of statute of limitations and not venue.¹⁰⁶ The court looked at how the analysis may change due to different consequences attached to classifying an offense as continuous instead of as a point-in-time offense.¹⁰⁷ In *Canal Barge*, the court’s purpose in classifying the offense was to decide venue; thus the court distinguished cases dealing with questions of statute of limitations because “interpreting a crime as a continuing offense for statute of limitations purposes has more serious consequences”¹⁰⁸ Based on this distinction and the “less serious

98. *United States v. Cores*, 356 U.S. 405, 409 (1958).

99. *Id.*

100. *Id.* at 409–10.

101. 526 U.S. 275, 276 (1999) (internal quotation marks omitted); *see supra*

Section I.A.

102. *Rodriguez-Moreno*, 526 U.S. at 276.

103. *Id.*

104. *Id.* at 282–85 (Scalia, J., dissenting).

105. *United States v. Canal Barge Co., Inc.*, 631 F.3d 347, 353 (6th Cir. 2011).

106. *Id.*

107. *Id.* (“[I]f the crime is a continuing offense for statute of limitation purposes, the defendant may be prosecuted after a time at which he would otherwise have no exposure whatsoever.”); Boles, *supra* note 91, at 221 (“Not surprisingly, the government frequently tries to categorize offenses as continuing to avoid the running of the statute of limitations.”).

108. *Canal Barge Co., Inc.*, 631 F.3d at 353.

consequences,” the court held the failure to notify the Coast Guard of a hazardous condition to be a continuous offense for the purposes of venue.¹⁰⁹

There are many different considerations courts have taken into account when classifying a crime as either continuous or point-in-time, but there is not a perfect formula for courts to follow.

D. A Brief Remark on State Venue Statutes and Transportation

Point-in-time offenses committed on trains and cars are not limited to federal jurisdiction like certain intra-flight crimes are.¹¹⁰ Therefore, many states have their own statutes regulating venue for point-in-time offenses that are committed in cars, on trains, or while using other methods of transportation. For example, Nebraska has a statute stating if an offense is committed in the state on a method of transportation, then “the accused may be tried in any county through, on, or over which the vessel . . . passes in the course of its voyage . . . or in the county in which the voyage or trip terminates.”¹¹¹ Ohio has a similar statute that specifies:

When the offense or any element of the offense was committed in an aircraft, motor vehicle, train, watercraft, or other vehicle, in transit, and it cannot reasonably be determined in which jurisdiction the offense was committed, the offender may be tried in any jurisdiction through which the aircraft, motor vehicle, train, watercraft, or other vehicle passed.¹¹²

Arizona also has a venue statute that states “[w]here part of a river, watercourse, highway, road or street is the boundary line between two counties, the courts of each of the counties shall have concurrent jurisdiction in actions over such parts of the river, watercourse, highway, road or street.”¹¹³

It is often easier to know what county you are driving in when a crime occurs than which district you are flying over. Thus, there are not usually issues with determining venue for point-in-time offenses that occur on other modes of transportation. Nonetheless, it is interesting that many states have adopted venue provisions for point-in-time offenses involving transportation, while the federal courts are left to their own devices.

**III. UP IN THE AIR: DIFFERENT APPROACHES TO VENUE FOR
INTRA-FLIGHT CRIMES**

Only the Ninth, Tenth, and Eleventh Circuits have directly addressed the issue of where venue is proper for intra-flight offenses, and all have ultimately held venue is proper in the landing district. Without much binding authority, district courts across the country have taken various approaches. The two main approaches are finding proper venue (1) based on the point in space where the offense occurred, or (2) in the takeoff district, any of the flyover districts, or the landing district.

109. *Id.* at 354.

110. U.S. Dep’t of Just., *supra* note 64, § 1406.

111. NEB. REV. ST. § 29-1301.02.

112. OHIO. REV. CODE ANN. § 2901.12(B).

113. ARIZ. REV. STAT. ANN. § 12-401(19).

A. The First Approach: Venue is Proper Where the Offense Occurred

The first approach courts take when dealing with proper venue for point-in-time offenses committed intra-flight is that venue is proper in the exact district where the offense occurred.¹¹⁴ In July of 2015, Monique Lozoya flew on a Delta Airlines flight from Minneapolis to Los Angeles.¹¹⁵ Cruising above the Great Plains, Lozoya attempted to sleep, but was continuously jostled by Oded Wolff, the person sitting behind her.¹¹⁶ After asking Wolff to stop jostling her seat, the altercation became heated and, in an attempt to push Wolff away, Lozoya slapped him across the face, allegedly causing his nose to bleed.¹¹⁷ The following month, Lozoya received formal notice charging her with assault in the landing district, which was the Central District of California.¹¹⁸ On appeal, the Ninth Circuit created a circuit split by concluding proper venue to be in the district whose airspace the assault occurred.¹¹⁹

The court considered the *locus delicti* of the crime, concluding the only essential conduct element was the assault, and that occurred prior to the flight entering the Central District of California's airspace.¹²⁰ The court then considered both of the federal statutes at issue.¹²¹ The court found 18 U.S.C. § 3237(a) did not apply because assault is not a continuous offense that occurs in multiple districts.¹²² Furthermore, the government failed to satisfy its burden of proof that any part of the assault occurred in the Central District of California.¹²³

The government argued 18 U.S.C. § 3237(a) applied because the assault “involved transportation in interstate commerce,” and therefore it should be considered a continuing offense for the purposes of the statute.¹²⁴ The court rejected this argument, stating “the offense itself did *not* implicate interstate or foreign commerce” because transportation was not a required component of committing the assault.¹²⁵ The court also declined to apply the district court's application of 18 U.S.C. § 3238 and instead relied on prior Ninth Circuit precedent stating the navigable airspace above a district is considered to be part of that district¹²⁶ and is

114. United States v. Lozoya, 920 F.3d 1231, 1233 (9th Cir. 2019), *rev'd en banc*, 982 F.3d 648 (9th Cir. 2020).

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.* at 1234.

119. *Id.* at 1243.

120. *Id.* at 1239.

121. *See supra* Section I.C.

122. Lozoya, 920 F.3d at 1239.

123. *Id.*

124. *Id.* at 1240.

125. *Id.* (citing United States v. Morgan, 393 F.3d 192, 200 (D.C. Cir. 2004)) (finding the receipt of stolen property does not involve transportation in interstate commerce, because transportation is not required to commit the offense).

126. *Id.* at 1241 (citing United States v. Barnard, 490 F.2d 907, 911 (9th Cir. 1973)).

not considered to be “out of the jurisdiction of a particular state.”¹²⁷ The court also noted that practical concerns are not enough to overcome the Constitution.¹²⁸

In 2020, the Ninth Circuit reheard the case en banc, where it realigned itself with its sister circuits and broadly held that the Constitution does not limit venue to the district below where the in-flight crime occurred, but rather in the takeoff district, the landing district, or any of the flyover districts.¹²⁹

B. The Second Approach: Venue is Proper Anywhere

The second approach taken by courts when dealing with offenses committed intra-flight is finding venue to be proper in the takeoff district, any of the flyover districts, or the landing district.¹³⁰

1. The Eleventh Circuit

In January 2001, fourteen-year-old A.B. and her sister were approached by Russell Breitweiser while they waited to board their flight from Houston to Atlanta.¹³¹ Breitweiser boarded the plane after the sisters and proceeded to ask if he could sit in the empty seat beside A.B., to which the sisters agreed.¹³² Throughout the entire flight, Breitweiser acted inappropriately by asking the girls personal questions, telling them to hold hands with each other, rubbing his hand on A.B.’s inner thigh, and taking one of her crayons and putting it in his mouth.¹³³ A.B. later testified that she believed Breitweiser to be masturbating at some point during the flight.¹³⁴ Breitweiser was charged in the Northern District of Georgia with abusive sexual contact with a minor and simple assault of a minor.¹³⁵

Breitweiser argued that venue was improper, but the Eleventh Circuit affirmed the district court and held venue to be proper in the Northern District of Georgia—the landing district.¹³⁶ The court found the involvement of interstate commerce alone was sufficient to establish venue, and that the government had met its burden of proof by showing that Breitweiser committed the crimes on an airplane that eventually landed in Georgia.¹³⁷ Breitweiser argued the government must prove the crime was committed in the airspace of the Northern District of Georgia.¹³⁸ But the court rejected Breitweiser’s argument, reasoning that it would be impossible to pinpoint the location of the crime.¹³⁹ The court relied on 18 U.S.C. § 3237(a) as a

127. 18 U.S.C. § 3238.

128. *Lozoya*, 920 F.3d at 1242.

129. *United States v. Lozoya*, 928 F.3d 648, 657 (9th Cir. 2020).

130. *United States v. Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004); *United States v. Cope*, 676 F.3d 1219, 1225 (10th Cir. 2012).

131. *Breitweiser*, 357 F.3d at 1251–52.

132. *Id.* at 1252.

133. *Id.*

134. *Id.*

135. *Id.* at 1251–52.

136. *Id.* at 1253–54.

137. *Id.* at 1253.

138. *Id.*

139. *Id.*

“catchall provision designed to prevent a crime which has been committed in transit from escaping punishment for lack of venue.”¹⁴⁰

2. *The Tenth Circuit*

Relying on *Breitweiser* eight years later, the Tenth Circuit held that 18 U.S.C. § 3237(a) applies to crimes committed aboard aircraft because “the crime took place on a form of transportation in interstate commerce.”¹⁴¹ In December 2009, Aaron Cope was the copilot of a commercial flight from Austin to Denver.¹⁴² Robert Obodzinski was the captain on the flight, and he suspected Cope to be under the influence of alcohol during the flight.¹⁴³ Once the flight arrived to the Denver airport, Obodzinski escorted Cope to a breath testing facility where his blood alcohol content was determined to be 0.094.¹⁴⁴ Cope was eventually indicted in the District of Colorado for operating a common carrier of interstate commerce while under the influence of alcohol.¹⁴⁵

Like in *Breitweiser*, Cope argued venue was improper because there was no evidence he committed a crime in the District of Colorado.¹⁴⁶ The court rejected this argument, reasoning “[b]ecause he was operating a common carrier in interstate commerce, it is immaterial whether he was ‘under the influence of alcohol’ in Colorado.”¹⁴⁷ The Tenth Circuit signed on to the Eleventh Circuit’s broad rule and ultimately held venue to be proper “in any district through which Mr. Cope traveled on the flight, including the District of Colorado.”¹⁴⁸ However, it is worth noting that Mr. Cope was continuously intoxicated and operating a commercial airliner throughout the entire flight, making it a continuous offense.¹⁴⁹

3. *The Ninth Circuit*

On rehearing in December 2020, the Ninth Circuit completely departed from its first decision of *Lozoya* and joined the Tenth and Eleventh Circuits in their application of 18 U.S.C. § 3237(a).¹⁵⁰ The court disagreed with the contention that a district includes the airspace above it, claiming that neither Article III nor the Sixth Amendment state that airspace is included.¹⁵¹ Because of this, the court concluded venue under these circumstances is ultimately up to Congress.¹⁵² The court cited to the Framers’ purpose of the venue provisions and the fact that limiting venue to a

140. *Id.* at 1253–54.

141. *United States v. Cope*, 676 F.3d 1219, 1225 (10th Cir. 2012).

142. *Id.* at 1221.

143. *Id.*

144. *Id.* at 1222.

145. *Id.*

146. *Id.* at 1224.

147. *Id.* at 1225.

148. *Id.*

149. *Id.*

150. *United States v. Lozoya*, 982 F.3d 648, 653 (9th Cir. 2020).

151. *Id.* at 652.

152. *Id.* (“[V]enue shall be at such Place or Places as the Congress may by Law have directed” (internal quotation marks omitted)).

flyover district would be the exact unfairness and hardship the Framers were trying to avoid.¹⁵³

The court subscribed to the Tenth and Eleventh Circuit's holding that § 3237(a) applies to all intra-flight crimes because the offense "took place on a form of transportation in interstate commerce."¹⁵⁴ By using the "plain meaning" of the word "involve," the court concluded Lozoya's crime did indeed involve transportation in interstate commerce, and Lozoya could not have committed the assault but for the interstate transportation.¹⁵⁵ Thus, the court concluded venue is proper in the landing district, but the court acknowledged venue is also technically proper in the takeoff district or in any of the flyover districts.¹⁵⁶ To justify this broad holding, the court stated that it is "virtually unheard of" to prosecute in any other place but the landing district, and its decision is consistent with the "near-universal practice of landing district prosecution."¹⁵⁷ The court also claimed the landing district to be the most sensible venue, because it is where the arrest is made and where the witnesses were interviewed.¹⁵⁸

Additionally, the court found 18 U.S.C. § 3238 to be inapplicable because the offense was not committed on the high seas and airspace is not considered to be "outside the United States."¹⁵⁹ The court noted that "states routinely assert jurisdiction over crimes committed in airspace,"¹⁶⁰ which seemingly contradicts its previous statement in declining to hold that airspace is included in a district for the purpose of applying 18 U.S.C. § 3237(a).¹⁶¹

* * *

When deciding where venue is proper for intra-flight crimes, courts have considered two differing approaches. The first is that proper venue lies in the district whose airspace the offense occurred in, and the second is that venue is proper in the takeoff district, any of the flyover districts, or the landing district.

IV. WHY *LOZOYA* GOT IT RIGHT THE FIRST TIME

The Ninth Circuit was correct the first time it decided *Lozoya*, because the Constitution mandates crimes to be prosecuted in the district where they occurred.¹⁶² Defendants are entitled to the constitutional restrictions of where venue can be set. On rehearing, the court noted that prosecution in flyover districts is virtually unheard of because of the "near-universal practice of landing district prosecution."¹⁶³ Just

153. *Id.*

154. *Id.* at 653.

155. *Id.*

156. *Id.* at 654 n.8.

157. *Id.* at 654.

158. *Id.*

159. *Id.* at 655.

160. *Id.* at 656.

161. *See id.* at 652 ("Neither Article III nor the Sixth Amendment says that a state or district includes airspace, and there is, of course, no indication that the Framers intended as such.").

162. U.S. CONST. art. III § 2, cl. 3.

163. *Lozoya*, 982 F.3d at 654.

because it is a “universal practice” does not mean that it is inherently constitutional or correct.

On rehearing, the *Lozoya* en banc panel also stated that its new holding is consistent with both the Tenth and Eleventh Circuit,¹⁶⁴ but failed to address the distinctions in the types of cases. In both *Breitweiser* and *Cope*, the offenses involved were continuous.¹⁶⁵ Although classifying offenses can be a complicated process, the crimes in both *Breitweiser* and *Cope* lasted throughout the duration of the entire flight.¹⁶⁶ These incidents were not instantaneous acts and were unlike the slap that occurred in *Lozoya*.¹⁶⁷ It does not make sense for the *Lozoya* en banc panel to rely on *Breitweiser* and *Cope* as completely different crimes were at issue.

A. § 3237(a) Does Not Apply to Assault or Point-In-Time Offenses

The plain language of this statute solely concerns continuing offenses that occur in multiple districts.¹⁶⁸ The en banc panel in *Lozoya* gets around this by finding that, because the assault occurred on an airplane, it implicates interstate commerce; therefore the statute applies.¹⁶⁹ The en banc panel’s majority opinion states that “[b]ut for the interstate transportation, *Lozoya* could not have committed the crime.”¹⁷⁰ This sets a dangerous precedent for how courts should decide whether a crime relates to or involves interstate commerce. The concurrence explained that “it is rare that a crime does not involve circumstances in which a person or instrumentality related to the crime has not passed through interstate commerce,” and this reading of the statute “will swallow the Venue Clause.”¹⁷¹

Classifying discrete offenses as continuous just because they may relate to or affect interstate commerce will have a widespread effect.¹⁷² This classification allows for point-in-time offenses to be prosecuted in the district the plane took off, any of the flyover districts, or the landing district.¹⁷³ In rationalizing its decision, the en banc panel stated that “no court . . . has prohibited venue in the landing district.”¹⁷⁴ The court acknowledged its holding as broad but stated “we are not aware of any cases where the government prosecuted an in-flight crime in a flyover district with which the defendant had no ties,” and if the landing district is ultimately inconvenient or unfair, then the defendant can request a transfer.¹⁷⁵ Although this is

164. *Id.* at 653 (“We join the Tenth and Eleventh Circuits and conclude that the second paragraph of 18 U.S.C. § 3237(a) applies to federal crimes committed on commercial aircraft within the special aircraft jurisdiction of the United States.”).

165. *See supra* Section III.B.

166. *See supra* notes 134–36, 144–46 and accompanying text.

167. *See supra* notes 134–36, 144–46 and accompanying text.

168. 18 U.S.C. § 3237(a).

169. *Lozoya*, 982 F.3d at 653.

170. *Id.*

171. *Id.* at 667 (Ikuta, J., concurring in part and dissenting in part) (internal quotations omitted).

172. *Id.*

173. *See supra* Part II.

174. *Lozoya*, 982 F.3d at 654.

175. *Id.* at 654 n.8.

true, it does not take away from the fact that § 3237(a) should not be applied under these circumstances.

The original Ninth Circuit opinion in *Lozoya* disqualified the application of § 3237(a) stating that “although the assault occurred on a plane, the offense itself did *not* implicate interstate or foreign commerce.”¹⁷⁶ The court reasoned that committing an assault does not require transportation to carry out the offense.¹⁷⁷ Additionally, the fact the offense “occurred on an aircraft does not convert the offense to one that involves transportation in interstate commerce, and even if it could be so construed, it would not be a *conduct* element of the offense, but instead a mere ‘circumstance element’ that does not support venue.”¹⁷⁸ This interpretation is more closely aligned with the Constitution. The court acknowledged the “creeping absurdity in [its] holding” but stated, “[h]owever valid these questions and the practical concerns that underlie them might be, they are insufficient to overcome the combined force of the Constitution, *Rodriguez-Moreno*, and our own caselaw.”¹⁷⁹

B. Districts Include Airspace

The second *Lozoya* court holds that a state or district does not include the airspace above it, because there is “no indication that the Framers intended as such.”¹⁸⁰ However, in 1973, the Ninth Circuit held that the navigable airspace above a district is part of that district.¹⁸¹ The en banc panel distinguished this case in a footnote, stating that the court did not interpret Article III or the Sixth Amendment in coming to that conclusion, but the court did not expressly overrule or reverse the decision.¹⁸² The first time the court decided *Lozoya*, it relied on the precedent stating navigable airspace is part of that district.¹⁸³

Additionally, it has been established that state courts have jurisdiction over criminal offenses that occur in the airspace above that state.¹⁸⁴ In *Grace v. MacArthur*, a district court held that an aircraft flying over a state is within the borders and limits of that state, and therefore, assertions of jurisdiction “are valid where they do not conflict with controlling federal legislation”¹⁸⁵ The *Lozoya* en banc panel recognized that “states routinely assert jurisdiction over crimes committed in airspace” but used this to write off the application of § 3238 and failed to extend this logic to federal districts.¹⁸⁶

Courts routinely do not apply § 3238 in these situations, because they do not believe airspace is outside “of the jurisdiction of any particular State or

176. United States v. *Lozoya*, 920 F.3d 1231, 1240 (9th Cir. 2019).

177. *Id.* at 1239–40.

178. *Id.* at 1240 (alteration in original) (internal quotation marks omitted).

179. *Id.* at 1242.

180. United States v. *Lozoya*, 982 F.3d 648, 652 (9th Cir. 2020).

181. United States v. *Barnard*, 490 F.2d 907, 911 (9th Cir. 1973).

182. *Lozoya*, 982 F.3d at 652 n.3.

183. United States v. *Lozoya*, 920 F.3d 1231, 1239 (9th Cir. 2019).

184. See *Grace v. MacArthur*, 170 F. Supp. 442, 445 (E.D. Ark. 1959).

185. *Id.* at 444–45 (deciding whether a person traveling in a commercial aircraft “was within the ‘territorial limits’ of the state and thus amenable to service under federal rule”).

186. *Lozoya*, 982 F.3d at 656.

district.”¹⁸⁷ At face value this makes sense, but if it is not considered to be out of the jurisdiction, then how can a court simultaneously hold that a district does not include the airspace above it? The *Lozoya* en banc panel was correct in not applying § 3238, but—for the purposes of analyzing venue for intra-flight crimes—it does not make sense to operate under the assumption that airspace is out of the jurisdiction of a district. The court had no reason to stray from its original holding that the district did include the airspace above it for jurisdictional purposes.

Furthermore, while the FAA has authority over the airspace of states and has passed regulations governing drones,¹⁸⁸ states also have their own laws with more specific regulations on how drones may be used in that state’s airspace.¹⁸⁹ This further supports the theory that the airspace above a state is in fact part of that state and therefore that district.

V. PROPOSED SOLUTION & ADDRESSING THE IMPRACTICABILITY ARGUMENTS

When facing a question of venue for point-in-time intra-flight crimes, courts must hold venue to be proper in the district whose airspace the offense occurred. Convenience is not a justification for straying away from the Constitution, and holdings like *Lozoya* create a slippery slope for courts to make decisions purely based on public policy. The rise in intra-flight crimes poses a serious threat to passenger safety, and there must be a consistent solution in determining venue for point-in-time offenses committed on airplanes.

A. Flyover Districts May Be More Practical Than the Current Broad Holding

A narrower rule for venue determinations with intra-flight point-in-time offenses would make them much easier and more efficient for courts and prosecutors. The Ninth, Tenth, and Eleventh Circuits all rationalize landing districts as proper venue, because it is sensible and is “often the defendant’s residence or travel destination.”¹⁹⁰ This is not a convincing argument, especially since most of these incidents lead to emergency landings at random airports, and not the intended destination.¹⁹¹ There are also many instances where the landing district may actually

187. 18 U.S.C. § 3238.

188. See 49 U.S.C. § 40103(b) (“The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.”); *Drones*, FED. AVIATION ADMIN., <https://www.faa.gov/uas> [<https://perma.cc/SFM4-XSAD>] (last visited June 18, 2025).

189. Hannah Hilst, *Drone Laws by State*, FINDLAW (Apr. 11, 2025), <https://www.findlaw.com/consumer/consumer-transactions/drone-laws-by-state.html#:~:text=Federal%20Laws%20vs.,State%20Laws,t%20fly%2C%20is%20limited> [<https://perma.cc/D5XN-PETM>].

190. *Lozoya*, 982 F.3d at 654.

191. See Mario Gonzalez, *American Airlines Flight Diverted to Tulsa Due to Unruly Passenger*, KFOR (Sept. 4, 2024, at 17:17 CDT), <https://kfor.com/news/local/american-airlines-flight-diverted-to-tulsa-due-to-unruly-passenger/> [<https://perma.cc/37GS-U6EJ>]. If a plane is forced to divert from its intended path and make an emergency landing as a result

be where the defendant and the passengers have a layover.¹⁹² While it is important to recognize the Constitution's protection of the accused from being brought to an inconvenient venue,¹⁹³ any district could present hardship or unfairness, so that principle should not be the basis for deciding whether it is constitutional to prosecute someone in a certain venue.

Using GPS technology to determine what district an intra-flight point-in-time offense occurred is feasible with modern technology, and there are lower courts who are already doing it. In 2021, an Indiana man pled guilty to engaging in sexual contact with a sleeping woman while on a flight from Indianapolis to Colorado.¹⁹⁴ The victim had taken a photo of the defendant after waking up and that photo was used to pinpoint the geographic location of where the crime occurred.¹⁹⁵ The geolocation data associated with the photo indicated the plane was flying above Hastings, Nebraska, leading charges to be brought in the District of Nebraska.¹⁹⁶

The *Lozoya* en banc panel expressed concern that a flyover district may “unreasonably burden the victims of in-flight crimes and the interests of justice,” and “a flyover venue rule could mean no prosecution at all” because proving the exact time of an assault could be impossible and there may not always be witnesses.¹⁹⁷ In stating this, the court side-steps the letter of the law and grounds the decision in what it deems to be more favorable public policy. Because the court is worried about the practicalities of its decision, it has created a precedent that directly conflicts with the Constitution. Aside from that, with a few regulatory changes and the help from modern technology, it would not be as impossible as the court says to pinpoint the location of point-in-time offenses.

B. Eyes In the Sky: Security Cameras on Commercial Aircraft

The technological infrastructure required for using a flyover district as the venue for prosecuting intra-flight crimes already exists. With the advent of the Global Positioning System, pilots have access to exact location information while en route.¹⁹⁸ In 2020, the FAA required most aircraft flying in U.S. airspace to be

of an unruly passenger, then it is likely no passenger will have any ties to that landing district at all.

192. For example, if I am flying from Phoenix to Boston, it is likely I will have a layover. Let's say I am on the first leg of my trip going from Phoenix to Salt Lake City and a passenger during the flight assaults another passenger. That passenger will be arrested in Salt Lake City, regardless of whether they have any ties to the landing district. It's likely that neither the passenger nor the victim intended their final destination to be Salt Lake City, but now the case will be prosecuted there. The courts have argued landing districts make the most sense because of convenience, but this is not always true.

193. See *supra* Section IV.A.

194. *Indiana Man Pleads Guilty to Sexual Offense Onboard Commercial Aircraft*, U.S. DEP'T JUST. (Sept. 22, 2021), <https://www.justice.gov/opa/pr/indiana-man-pleads-guilty-sexual-offense-onboard-commercial-aircraft> [https://perma.cc/Y6CW-FLSR].

195. *Id.*

196. *Id.*

197. *United States v. Lozoya*, 982 F.3d 648, 654–55 (9th Cir. 2020).

198. *Satellite Navigation - GPS - User Segment - Aviation*, FED. AVIATION ADMIN. (Nov. 27, 2024), https://www.faa.gov/about/office_org/headquarters_offices/ato/service

equipped with a system called Automatic Dependent Surveillance-Broadcast, also known as ADS-B.¹⁹⁹ Planes who have ADS-B “send a signal at least once per second, providing the aircraft’s position and other information”²⁰⁰

In conjunction with geographic location data, video cameras in the cabins of planes can assist in pinpointing the exact time of the offense. In 2002, JetBlue became the first U.S. airline to install surveillance cameras inside the cabin.²⁰¹ Although these cameras are now installed in most planes, they merely “direct live, unrecorded footage to the cockpit”²⁰² With the rise of in-flight crime, it seems like it would be reasonable for airlines to start recording the footage that is being captured.²⁰³ If an incident occurs, the geographic location of the plane can then be compared to the time stamp on the recorded footage.²⁰⁴ People have raised concerns about cameras on planes, complaining that they are a violation of privacy,²⁰⁵ but these cameras are no different than the security cameras that exist throughout the United States already. Accordingly, “[t]he average city has 11 surveillance cameras per 1,000 people.”²⁰⁶ These surveillance cameras are used throughout society to manage traffic, enhance public safety, maintain city infrastructure, and even assist in disaster response for first responders.²⁰⁷ Thus, using surveillance cameras on commercial airplanes is no different. Further, people have reduced expectations of privacy while traveling, and they cannot expect to be afforded full Fourth Amendment privacy protections on planes.²⁰⁸

units/techops/navservices/gnss/gps/usersegments/aviation#enroute [https://perma.cc/D5TG-ECTV].

199. *NextGen Annual Report*, FED. AVIATION ADMIN. 21 (2023), <https://www.faa.gov/nextgen/NextGen-Annual-Report-2023.pdf> [https://perma.cc/L9MY-8SGV].

200. *Id.*

201. Alex Bresler, *Your Airplane Cabin May Have More Cameras Than You Expect*, MATADOR NETWORK (Apr. 22, 2024), <https://matadornetwork.com/read/airplane-cameras/> [https://perma.cc/A8N9-S8MZ].

202. *Id.*

203. This could potentially lead to higher conviction rates and it would likely deter intra-flight crimes, making air travel safer for passengers.

204. *Cf.* U.S. DEP’T JUST., *supra* note 194 (“The geolocation data associated with the photograph indicated that the plane was flying over Hastings, Nebraska.”).

205. Christine Negroni, *There Are Probably Cameras on Your Flight, but Relax, They’re Not On (Yet)*, N.Y. TIMES (Apr. 2, 2019), <https://www.nytimes.com/2019/04/02/business/airlines-cameras-privacy.html> [https://perma.cc/PL22-THL6] (“‘I think it’s just outrageous,’ said Senator Jeff Merkley, Democrat of Oregon, who sent the letter along with Senator John Kennedy, Republican of Louisiana. ‘I don’t want a camera staring at me, and I don’t think most passengers do.’”).

206. Paul Bischoff, *CCTV Surveillance in the Most Populated Cities in the United States*, COMPARITECH (Jan. 8, 2024), <https://www.comparitech.com/blog/vpn-privacy/us-surveillance-camera-statistics/> [https://perma.cc/H3NJ-LZ52].

207. See Monica Gonzalez, *Smart Cities and Video Surveillance: A Guide for Municipal Agencies*, SECURITY101 (Jan. 24, 2024), <https://www.security101.com/blog/smart-cities-and-video-surveillance-a-guide-for-municipal-agencies> [https://perma.cc/8ARR-DMXF].

208. See George T. Lyons III, *The Current State of American Air Travel: Checking Your Baggage and Dignity at the Gates*, 84 MISS. L.J. SUPRA 1, 8–9 (2015).

C. Virtual Court Hearings

The Ninth, Tenth, and Eleventh Circuits claimed to be concerned about the inconvenience of upholding the flyover district as proper venue, because it “would unreasonably burden the victims of in-flight crimes and the interests of justice.”²⁰⁹ However, as discussed above, any venue is at risk of being inconvenient when it comes to prosecuting intra-flight crimes.²¹⁰

Additionally, with the advent of modern technology, many courtrooms have the capability to conduct proceedings virtually.²¹¹ During the COVID-19 pandemic, courts held proceedings virtually, and parties appeared through videoconference or teleconference.²¹² The use of virtual courtrooms assists with judicial efficiency, but they can also “improve defendant access to the courtroom” by decreasing travel costs.²¹³ There are, of course, concerns about the constitutionality of virtual hearings in criminal cases,²¹⁴ but I am not suggesting they be used to prosecute all intra-flight crimes. They are merely a possibility in cases where a defendant may prefer to attend court virtually from another state. Virtual hearings could also be especially helpful when there are witnesses who live in different states. However, this is subject to constitutional limitations—more specifically, the *Crawford* Confrontation Clause.²¹⁵

VI. CONGRESSIONAL ACTION

All this debate could be laid to rest if Congress decided to pass a statute specifically addressing where point-in-time offenses committed intra-flight should be prosecuted. Congress has already enacted many specific venue provisions for certain offenses.²¹⁶ These provide guidance on venue for murder,²¹⁷ immigration offenses,²¹⁸ falsely stamped gold or silver,²¹⁹ flight to avoid prosecution,²²⁰ maritime

209. United States v. Lozoya, 982 F.3d 648, 654 (9th Cir. 2020).

210. See *supra* Section V.A.

211. Amy Petkovsek, *A Virtual Path to Justice: Paving Smoother Roads to Courtroom Access*, ABA: HUM. RTS. MAG. (June 3, 2024), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/technology-and-the-law/a-virtual-path-to-justice/ [https://perma.cc/T85W-VLWK].

212. Deniz Ariturk, William E. Crozier & Brandon L. Garrett, *Virtual Criminal Courts*, U. CHI. L. REV.: ONLINE ESSAY, <https://lawreview.uchicago.edu/online-archive/virtual-criminal-courts> [https://perma.cc/92TN-8ANL] (last visited Mar. 13, 2025).

213. *Id.*

214. *Id.* (“To ensure that all defendants have access to a fair trial, courts will need to offer appropriate accommodations for people who cannot access virtual hearings due to financial or technological limitations, just as they offer appropriate accommodations in in-person settings, such as for the disabled or to address language barriers.”).

215. *Id.*

216. See, e.g., DOYLE, *supra* note 45, at 12.

217. 18 U.S.C. §§ 3235, 3236.

218. 8 U.S.C. § 1329.

219. 15 U.S.C. § 298.

220. 18 U.S.C. § 1073.

drug enforcement offenses,²²¹ and obstruction of justice.²²² Other provisions match Rule 18 of the Federal Rules of Criminal Procedure and state the crime must be prosecuted in the district where it occurred.²²³ These provisions apply to securities offenses,²²⁴ natural gas offenses,²²⁵ and falsely labeled dairy or food products.²²⁶

To create consistency, Congress could enact legislation specifying where point-in-time offenses committed intra-flight must be prosecuted. Some scholars have resolved that Congress could add substantive information to § 3238 and create a “High Skies Clause” making venue proper where the offender “is arrested or is first brought.”²²⁷ Additionally, Congress could also alter § 3237 and add language specifying the statute applies to offenses committed intra-flight.²²⁸ Finally, Congress could also acknowledge that 49 U.S.C. § 1473(a) was used for determining venue for point-in-time intra-flight crimes prior to it being repealed.²²⁹

However, Congress has not indicated it will enact or revise these statutes any time soon. In the meantime, courts must work with what is available and make decisions based on the Constitution and current caselaw.

CONCLUSION

The Constitution is clear: those who are accused of a crime enjoy the right to be prosecuted in the district where the crime was committed.²³⁰ In the absence of clear direction from Congress, courts do not have license to simply create what they deem to be good public policy and find that venue is proper where it is the most convenient. Point-in-time offenses aboard aircraft create a unique venue problem, but it is one that legal scholars and politicians have been grappling with for a very long time.²³¹ Further, historical interpretations of venue and Congressional venue provisions support this conclusion that venue is limited to the flyover district where the crime is not considered to be continuous.²³²

While it is true that limiting venue to flyover districts may be slightly more inconvenient than the landing district, modern technology has come a long way and makes it feasible for the accused to be prosecuted in the district where they committed the offense. The Ninth Circuit’s original decision in *Lozoya* was

221. 21 U.S.C. § 959(d).

222. 18 U.S.C. § 1512(i).

223. DOYLE, *supra* note 45, at 14.

224. 15 U.S.C. § 78aa.

225. *Id.* § 717u.

226. 21 U.S.C. § 17.

227. Duggan, *supra* note 61, at 267 (“Of course, §1338 already governs many types of in-flight crimes, including those that occur outside of the United States or over the High Seas.”); 18 U.S.C. § 3238.

228. See Jordan Couey, Note & Comment, *When the Friendly Skies Are Not So Friendly: The Proper Venue for Prosecuting In-Flight Crime*, 99 OR. L. REV. 239, 269–70 (2020) (“Congress needs to amend the language of the substantive statutes to ensure that charged offenses committed on in-flight airplanes can be prosecuted in the landing district.”).

229. See *supra* Section II.C.

230. U.S. CONST. amend. VI.

231. See *supra* Section II.C.

232. See *supra* Section II.C; U.S. Dep’t of Just., *supra* note 64, § 1406.

intentional and careful to protect the Constitution, even when it led to a result that some deemed undesirable. While “common-sense” may lead to the conclusion that venue should be proper in the takeoff, landing, or flyover district, proper jurisprudence requires more than just a “common-sense” analysis.²³³ The courts must determine criminal venue in accordance with the Constitution, and policymaking must be left up to Congress.²³⁴

233. *United States v. Lozoya*, 920 F.3d 1231, 1242 (9th Cir. 2019) (“The dissent contends that common sense supports the positions of the Tenth and Eleventh Circuits, as well as its own conclusion.”).

234. *Id.* at 1243 (“Congress can—consistent with constitutional requirements, of course—enact a new statute to remedy any irrationality that might follow from our conclusion.”).