

## Chapter 5

# Extraterritorial Maritime Jurisdiction Over Violent Crimes on Cruise Ships

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5.1	Introduction . . . . .	99
5.2	18 U.S.C. § 7(1) . . . . .	102
5.3	18 U.S.C. § 7(8) . . . . .	104
5.4	Navigating state and federal jurisdiction . . . . .	107

### 5.1 Introduction

The Cruise Vessel Security and Safety Act, codified at 46 U.S.C. § 3507 requires that vessels calling upon U.S. ports report the following criminal offenses to the FBI: homicide, suspicious death, missing U.S. national, kidnapping, assault with serious bodily injury, sex offenses found in 18 U.S.C. §§ 2241, 2242, 2243, and 2244, tampering with the vessel, and theft in excess of \$10,000. In practice, cruise lines often report more broadly, notifying the FBI of crimes involving U.S. nationals even when reporting is not mandatory

## CHAPTER 5. EXTRATERRITORIAL MARITIME JURISDICTION OVER VIOLENT CRIMES ON CRUISE SHIPS

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(for example, where the vessel does not call on a U.S. port or where the offense does not fall within the enumerated list above).

When a federal prosecutor receives a call regarding a potential crime on board a cruise ship, an initial analysis must be completed to determine whether the United States has jurisdiction over the offense, and if so, where the case should be venued. Initial questions to guide an analysis of jurisdiction and venue are based upon the requirements found in 18 U.S.C. § 7 and 18 U.S.C. § 3238 and should include:

- (1) the location of the vessel at the time of the offense,
- (2) the nationality of the perpetrator(s) and the victim(s),
- (3) the flag state of the vessel,
- (4) the ownership of the vessel (to include the name of the cruise company, the country of incorporation, and any corporate ties to the United States),
- (5) the points of embarkation and debarkation,
- (6) the possible criminal offenses at issue,
- (7) the last known U.S. residence of the perpetrator(s), and
- (8) whether the perpetrator is currently in custody and if so, where in the U.S. he will be first brought.

Venue for an extraterritorial offense on board a cruise ship is governed by 18 U.S.C. § 3238, which states that venue is appropriate in the district where the offender is first arrested or first brought, the last known residence of the offender, or in Washington, D.C. Depending upon the last known U.S. residence of the offender, federal prosecutors in any district may receive a duty call involving a crime on board a cruise ship. Thus, it is important for all prosecutors, not just those with a cruise terminal in their district, to have a basic understanding of the statute providing U.S. jurisdiction over cruise ships.

Special Maritime and Territorial Jurisdiction (SMTJ), codified at 18 U.S.C. § 7, is intended to “[extend] the jurisdiction of federal criminal laws to areas where American [interests] need protection” and are not effectively safeguarded by another government. *See, e.g., United States v. Corey*, 232 F.3d 1166, 1171 (9th Cir. 2000). The extraterritorial application of penal laws is within the constitutional powers of Congress, authorized by Article I § 8, clause 10 of the Constitution which authorizes Congress to “define and punish Piracies and Felonies committed on the high Seas, and Offenses against the

Laws of Nations,” and by Article III § 2 which vests the judiciary with authority over “all Cases of admiralty and maritime Jurisdiction.” U.S. CONST. art. I, § 1; art. III, § 2. While this chapter focuses on cruise ship crimes, the following provisions of the SMTJ statute apply to all types of vessels, to include fishing boats and cargo ships.

The SMTJ statute does not set forth any substantive offenses; rather, it extends federal criminal jurisdiction to crimes occurring in specific locations where the substantive statute expressly states as much, including but not limited to: arson (18 U.S.C. § 81); assault (18 U.S.C. § 113); maiming (18 U.S.C. § 114); theft (18 U.S.C. § 661); homicides (18 U.S.C. §§ 1111–1113); kidnapping (18 U.S.C. § 1201); damage to property (18 U.S.C. § 1363); and sexual abuse (18 U.S.C. §§ 2241–44, 2252).

There are three subsections of the SMTJ covering extraterritorial maritime jurisdiction, providing the United States with special jurisdiction over offenses committed on:

- (1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

18 U.S.C. § 7(1). Note: Unlike some other sections within the SMTJ statute, section 7(1) does not by its terms require that the victim or defendant are U.S. nationals.

- (7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

18 U.S.C. § 7(7). Note: This provision refers to “stateless” vessels, meaning vessels operating without a flag or registration and therefore not subject to the jurisdiction, or protection, of any nation. It is highly unlikely that a cruise vessel would ever be considered “stateless,” but it is possible that other vessels may fall into this category. For the United States to have jurisdiction pursuant to the SMTJ over a crime occurring on a stateless vessel, the victim or perpetrator must be a U.S. national. Other U.S. statutes, such

## CHAPTER 5. EXTRATERRITORIAL MARITIME JURISDICTION OVER VIOLENT CRIMES ON CRUISE SHIPS

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as the Maritime Drug Law Enforcement Act, contain provisions addressing stateless vessels but will not be discussed in this chapter.

- (8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

18 U.S.C. § 7(8).

### 5.2 18 U.S.C. § 7(1)

At the outset, it's worth mentioning that section 7(1) presents complicated questions of jurisdiction, and the case law surrounding the proper interpretation of the statute is not always consistent. The following is the interpretation most commonly used, both by the Human Rights and Special Prosecutions Section, which advises on these issues, and by the FBI.

To assert U.S. jurisdiction based upon section 7(1), the most important considerations are: the location of the vessel at the time of the offense and the ownership of the vessel. First, at the time of the offense, the vessel must be on the high seas or within the admiralty jurisdiction of the United States and outside the jurisdiction of any particular state. The word "state" has been interpreted to mean U.S. state, as opposed to a foreign nation state. *See United States v. Flores*, 289 U.S. 137 (1933). The admiralty jurisdiction of the United States includes the U.S. territorial sea and may extend to crimes committed on vessels of the United States while in the territorial waters of a foreign sovereign. *Id.* at 150.

"High seas means all waters seaward of the territorial sea baseline." 33 C.F.R. § 2.32(a). "[T]he territorial sea baseline is [ordinarily] the mean low water line along the coast of the United States." 33 C.F.R. § 2.20. Coastal U.S. states have jurisdiction over the waters between the shore and the territorial sea baseline, which are considered to be their internal waters. *See* 43 U.S.C. § 1301. These boundaries typically extend three nautical miles from the U.S. shore, with some exceptions. 43 U.S.C. § 1312. The territorial sea of the United States is 12 nautical miles, beginning seaward of the territorial sea baseline (that is, where the coastal state's internal waters end). 33 C.F.R. § 2.22(a)(1). Maritime charts delineating the internal waters of coastal U.S. states, as well as the baseline from which the U.S. territorial waters begin, are maintained by the U.S. National Oceanic and Atmospheric Administration (NOAA) and can be located at <https://www.gc.noaa.gov/>

gcil.maritime.html#internal. Countries who are signatories to the United Nations Convention on the Law of the Sea (UNCLOS), of which the United States is not, also use the measure of 12 nautical miles as a line of demarcation between their territorial waters and the high seas. *See* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397. The question of where the high seas begin is often straightforward, but it may become complicated where countries are close in proximity to each other or where particular countries claim a different measure of demarcation. In these instances, prosecutors can reach out to the Human Rights and Special Prosecutions Section for assistance.

An important part of this jurisdictional analysis is determining exactly where the vessel was when the crime (or at least a portion of the crime) occurred. Cruise captains keep detailed logs during a cruise voyage, to include the longitude and latitude of the vessel at proscribed times each day, and these logs should be obtained by the FBI during their investigation. If a victim is able to report the time at which an offense occurred, prosecutors can check the logs to determine exactly where the vessel was at that time. If the victim is unsure of the time of the offense, this may require additional investigation to circumstantially establish whether the vessel was on the high seas at the time of the offense.

Following a determination that the vessel was either on the high seas or within the admiralty jurisdiction of the United States when the crime occurred, the second requirement under section 7(1) is that the vessel belongs in whole or in part to the United States, any U.S. citizen, or any corporation created under the laws of the United States. Prosecutors should first determine where the vessel is flagged, which indicates where the vessel is registered/licensed. Cruise vessels very rarely fly the United States flag, as U.S. regulations are often considered to be more onerous than those in other countries. Common flag countries for cruise vessels are the Bahamas and Panama.

Because the vast majority of cruise vessels do not fly the U.S. flag, prosecutors will need to look elsewhere to establish U.S. ownership of the vessel. Many of the cruise companies calling on U.S. ports are registered corporations within the United States or within a particular state, such as Florida, and some are publically traded on the New York Stock Exchange (NYSE) or NASDAQ. Some foreign cruise companies may have U.S. shareholders, arguably resulting in partial ownership of their vessels by U.S. citizens. For example, in *United States v. Roberts*, in which an assault occurred on a Liberian-flagged Carnival ship on the high seas, the court noted that Carnival Corporation, which is a registered corporation in Panama, has its

## CHAPTER 5. EXTRATERRITORIAL MARITIME JURISDICTION OVER VIOLENT CRIMES ON CRUISE SHIPS

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corporate headquarters in the United States, is traded on the NYSE, and has shareholders who are United States citizens. 1 F. Supp. 2d 601, 605–08 (E.D. La. 1998). While the court found jurisdiction based upon section 7(8) and therefore did not ultimately decide whether U.S. jurisdiction was also proper under section 7(1), the language regarding U.S. shareholders lends authority to a prosecutor making such an argument in the future. Similarly, in *United States v. Pizdrint*, the court found that a Liberian-flagged Carnival ship was “at least partially owned” by a U.S. citizen, despite the defendant’s argument that the government could not determine what percentage of shareholders were U.S. citizens. 983 F. Supp. 1110, 1112 (M.D. Fla. 1997).

### 5.3 18 U.S.C. § 7(8)

To assert U.S. jurisdiction based upon section 7(8), prosecutors must show that the vessel was on a voyage when the crime occurred, that the vessel had a scheduled departure from or arrival to a U.S. port, and that the victim and/or defendant was a national of the United States. (Note: U.S. National is defined in 8 U.S.C. § 1101.) This section presents a straightforward jurisdictional analysis, as compared to section 7(1); therefore prosecutors are strongly encouraged to use this jurisdictional basis when charging a case with facts that may fit within both sections.

Voyage is not defined within the section, but at least one court has interpreted the term broadly to include the entire cruise itinerary, even encompassing crimes committed while within the port of call in a foreign nation. See *Thomas v. United States*, 443 F. App’x 501, 503–04 (11th Cir. 2011) (not precedential) (affirming jurisdiction over the sexual abuse of a U.S. national that occurred while cruise ship was docked in a foreign harbor as occurring “during a voyage” since it occurred at some point during the cruise which departed from and returned to Florida). Accordingly, if a prosecutor is presented with a crime that occurred while the vessel was within the territorial waters of another nation, charges should still be considered, based upon the *Thomas* decision as well as the international law principles discussed below. The easiest way to avoid questions regarding whether a prosecution is consistent with international law is to have evidence that the flag state consented to, or at least did not object to, the exercise of U.S. jurisdiction. Similarly, courts have been willing to find U.S. jurisdiction appropriate, and not inconsistent with international law, where the government has been able to show that the foreign nation is uninterested, unwilling, or unable to prosecute the offense. The value gained by conferring with DOJ and

FBI officials based in the relevant country cannot be overstated, as they can leverage their in-country law enforcement contacts to obtain a decision from the local authorities as to whether they object to U.S. prosecution of an offense committed within their territory. The Coast Guard and the State Department may also be able to assist in obtaining such a response.

It is important to note that section 7(8) uses the words “[t]o the extent permitted by international law” before laying out its jurisdictional elements. 18 U.S.C. § 7(8). International law recognizes five bases upon which a nation may exercise criminal jurisdiction over an offense committed outside of its territory:

- (1) The objective territorial principle—where the offense occurs outside of one country, but has effects within it;
- (2) The nationality principle—where the offender is a citizen of the prosecuting state;
- (3) The protective principle—where the offense offends the vital interests of the prosecuting state and jurisdiction is necessary to protect the nation’s security or integrity of its governmental functions;
- (4) The passive personality principle—where the victim is a citizen of the prosecuting state; and
- (5) The universality principle—where the offense, such as slave trade or piracy, is universally condemned by the international community, sometimes in a multilateral convention to which the United States is a signatory.

*See, e.g., United States v. Marino-Garcia*, 679 F.2d 1373, 1380–82 (11th Cir. 1982); *United States v. Smith*, 680 F.2d 255, 257–58 (1st Cir. 1982); *Rivard v. United States*, 375 F.2d 882, 885–86 (5th Cir. 1967); *United States v. Hill*, 279 F.3d 731, 739 (9th Cir. 2002); *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1205 (9th Cir. 1991).

Historically, a ship on the high seas was considered part of the exclusive territory of the sovereignty whose flag it flies. These principles, however, may constitute exceptions to this general rule that a vessel is under that country’s exclusive jurisdiction. The objective territorial principle and the passive personality principle are the bases most commonly invoked to support jurisdiction under section 7(8).

In *United States v. Roberts*, the court found jurisdiction pursuant to section 7(8) as proper where an assault occurred on a cruise ship approximately 63 miles off the coast of Mexico where its voyage originated and terminated

## CHAPTER 5. EXTRATERRITORIAL MARITIME JURISDICTION OVER VIOLENT CRIMES ON CRUISE SHIPS

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in the U.S and the victim was a U.S. citizen. 1 F. Supp. 2d at 605–08. The court referred to both the passive personality and objective territorial principle for support. *Id.* at 607. The passive personality principle supports prosecution by the state from which the victim was a national, in this case, the United States. The court reasoned:

Given the specific requirement that the vessel have a scheduled departure from or arrival in the United States, this statute expresses concern for United States nationals but limits jurisdiction to vessels that are most likely to have a connection to America. Indeed, in this case, the M/V CELEBRATION originates and terminates its voyage in the United States, and the majority of its passengers are American citizens. Further, Carnival Corporation has its corporate headquarters in this country and some of its shareholders are United States citizens. The Court must also add that the country whose flag the cruise ship flies under, Liberia, has little to no interest in the alleged offense because neither the victim nor the defendant are Liberian, the vessel does not operate in or around Liberian territory, and the vessel's owners center their corporate operations in the United States. In short, the Court finds that jurisdiction is reasonable in this case pursuant to § 7(8), and it is permitted by international law because it does not intrude upon another sovereign's interest, and it serves to protect America's nationals abroad.

*Id.*

The objective territorial principle, on the other hand, supports jurisdiction where foreigners committed acts outside the United States that produce effects within it. *See id.* at 607–08; *United States v. Baker*, 609 F.2d 134, 138 (5th Cir. 1980) (“The objective territorial principle has been asserted successfully where there was proof that defendant’s actions . . . produced some effect within the United States . . . .”); *Rivard*, 375 F.2d at 887 (““Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm . . . .” (quoting *Strassheim v. Daily*, 221 U.S. 280, 285 (1911))). In *Roberts*, the court found the assault had an effect in the United States and exercising jurisdiction would not be unreasonable since the company engaged in substantial business in the United States, regularly operated within its territory, originated and terminated its voyage in the U.S, and had a majority of passengers who were American citizens. 1 F. Supp. 2d at 608. Further, the offense caused



#### 5.4. Navigating state and federal jurisdiction

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the FBI to conduct an investigation and arrest the defendant. The victim would have to undergo psychiatric counseling in the United States, and no other country touched by the offense showed any interest in prosecuting the defendant who, while not required to have a connection to the United States, sometimes lived in Alabama when the ship was docked stateside. *Id.*

*United States v. Pizdrint*, featured an assault on a cruise ship owned by Carnival. 983 F. Supp. 1110 (M.D. Fla. 1997). In addition to finding jurisdiction under section 7(1), the court found the government's arguments under section 7(8) persuasive as well. Discussing the objective territorial exception to exclusive jurisdiction under the law of the flag, the court found the exercise of jurisdiction over the case reasonable under international law because the cruise liner conducted substantial business with the United States, regularly operated in U.S. territory, and originated and terminated its voyage in the United States. *Id.* at 1113. Additionally, the defendant and one of the victims were permanent residents of the U.S. while the other was a U.S. citizen, and the FBI was required to become involved. *Id.*

For other cases finding jurisdiction over foreign vessels during a voyage departing and/or arriving in a U.S. port when the offense is committed by or against a U.S. national. See *United States v. McGill*, 564 F. App'x 339 (9th Cir. 2014) (not precedential) (jurisdiction over a murder committed during a roundtrip cruise out of San Diego); *United States v. Neil*, 312 F.3d 419 (9th Cir. 2002) (finding exercise of extraterritorial jurisdiction over assault on a ship that departed from and arrived in the United States proper under the passive personality principle and the territorial principle where victim was an American citizen and the assault had effects in the United States).

#### 5.4 Navigating state and federal jurisdiction

In some instances, jurisdiction over criminal prosecution may be shared by federal and state governments while in others the very grant of federal jurisdiction is dependent on the state not having any. Historically, the federal government was barred from exercising place-based jurisdiction over offenses committed within the territorial jurisdiction of a state. See *United States v. Bevans*, 16 U.S. 336 (1818) (where a murder committed in Boston harbor was deemed outside federal admiralty jurisdiction because it was committed within the territory of Massachusetts). Now, however, the special maritime jurisdiction of the federal government does include some state territorial waters. See 18 U.S.C. § 7(2) (granting jurisdiction over "any [U.S.-] registered, . . . [or] enrolled vessels . . . [on] the Great Lakes, . . .

## CHAPTER 5. EXTRATERRITORIAL MARITIME JURISDICTION OVER VIOLENT CRIMES ON CRUISE SHIPS

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[their connecting waterways], or . . . the Saint Lawrence River where . . . [it] constitutes the International Boundary Line”).

Several courts have described section 7(1)'s grant of jurisdiction over vessels belonging to the United States, its citizens, or corporations to be limited to instances where there is no state jurisdiction given the phrase “out of the jurisdiction of any particular State.” 18 U.S.C. § 7(1). In *United States v. Tanner*, the Seventh Circuit, for instance, stated, “[s]ince the words ‘out of the jurisdiction of any particular state’ suggest that there can be no concurrent federal and state jurisdiction, a finding of state jurisdiction is conclusive.” 471 F.2d 128, 141 (7th Cir. 1972). In that case there was “little doubt,” the events took place within the jurisdiction of Illinois, precluding federal jurisdiction based on that theory. *Id.* Similarly, in *Casino Ventures v. Stewart*, citing the same language, the court noted “[t]he special maritime jurisdiction of the United States specifically excludes waters subject to the control of state authorities.” 183 F.3d 307, 311 (4th Cir. 1999).

As previously mentioned, case law interpreting section 7(1) is inconsistent. In at least two instances, courts have granted federal jurisdiction within a state's internal waters, which is arguably foreclosed by the “out of the jurisdiction of any particular state” language of section 7(1). 18 U.S.C. § 7(1). For example in, *Thompson v. United States*, the court held that section 7(1) granted jurisdiction over murders that occurred between 50 and 200 yards of Florida's coastline. 608 F. App'x 726, 729–30 (11th Cir. 2015) (not precedential). The defendant argued that “because he committed the crimes within three miles of shore, Florida [had] exclusive jurisdiction to prosecute him” since the statute concerns waters “out of the jurisdiction of any particular state” as required by section 7(1). *Id.* at 729; 18 U.S.C. § 7(1). The court found that while Florida had jurisdiction, it was not exclusive. *Thompson*, 608 F. App'x at 730 (citing *Murray v. Hildreth*, 61 F.2d 483, 485 (5th Cir. 1932) (noting that while *Murray* interpreted an earlier version of section 7, there was no reason to depart from its ruling since the relevant language of the provision had not materially changed)).

Prosecutors in Florida should be aware of a Florida Supreme Court decision which extended Florida's jurisdiction well into what would typically be considered exclusive federal jurisdiction. In *State v. Stepansky*, the defendant was charged with crimes occurring on board a Liberian cruise ship approximately 100 nautical miles from the Atlantic coastline of Florida (the high seas), outside the state's territorial jurisdiction. 761 So.2d 1027, 1029 (Fla. 2000). Importantly, neither the United States nor a foreign federal government attempted to prosecute the crime, though the U.S. federal government would have been able to exercise jurisdiction under section 7(8). *Id.*

#### 5.4. Navigating state and federal jurisdiction

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at 1030. The Florida Supreme Court held that the state statute giving Florida jurisdiction was constitutional, and the federal power to prosecute crimes on the high seas did not preclude states from also doing so when such acts violated the state's laws. *Id.* at 1033–35. The court made clear that Florida would not be entitled to exercise jurisdiction if the federal government, the flag state, or the state in whose territory the act occurred decided to prosecute. *Id.* at 1035. The court relied upon the effects doctrine, where conduct occurring outside the state has or is intended to have substantial effects within it, to support the state's authority. *Id.* The court found that the statute did not conflict with federal law or the federal exercise of jurisdiction. *Id.* Certiorari was denied. *Stepansky v. Florida*, 531 U.S. 959 (2000).