U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General *Washington, DC 20530*

The Honorable JD Vance
President
United States Senate
Washington, DC 20510

September 11, 2025

Dear President Vance:

The Department of Justice (Department) is pleased to present for the consideration of Congress a legislative proposal to amend 18 U.S.C. § 3238. The proposal modernizes the venue statute established for the prosecution of offenses committed outside of the United States. It would abolish the requirement that defendants be prosecuted in the federal district where they are "arrested or first brought" and, instead, permit the prosecution of extraterritorial offenses in any of the 94 federal judicial districts. The proposed legislation would facilitate the prosecution of terrorists, members of transnational organized crime groups, drug trafficking organizations and others whose extraterritorial, criminal activities adversely impact U.S. citizens and interests, while saving the Department millions of dollars.

Currently, Section 3238 provides that persons who do not have a last known residence in the United States must be tried in the district where they are first brought or arrested. This requirement originated with piracy cases in the 18th century, when defendants were charged after they were apprehended on the high seas and brought to an American port. In modern cases involving extraterritorial offenses—including cases involving transnational criminal organization and large drug trafficking cartels—federal prosecutors must often conduct investigations and file criminal charges before the defendant is physically present in the United States. Most foreign countries require that criminal charges be filed as a prerequisite to the extradition, deportation, or other lawful surrender of offenders for trial in the United States, and prosecutors must file charges within the time allotted by applicable statutes of limitations. Thus, to ensure that venue is appropriate, the Department must take costly steps to ensure that defendants charged with extraterritorial offenses are "first brought" to—that is, they arrive in—the same judicial district where the criminal charges are already pending.

Ensuring that a defendant is "first brought" to a particular district can be difficult and extremely expensive, and it can lead to foreign relations issues. For example, often, the best itinerary for U.S. agents to transport a defendant to a particular district in the United States on a commercial flight may require a connecting flight in the United States. Making the connection, however, means that the district of arrival is not the same as the district where the defendant is charged. When defendants are transported to the United States from distant locations across the

globe, multiple international connections may be necessary to ensure that the place of arrival in the United States is the charging district. Such airline routings may require the United States to make one or more requests for authorization to transit through foreign countries with the defendant in custody. Transit authorization is discretionary, not guaranteed. Moreover, transits should be kept to a minimum because they can present opportunities to disrupt the onward transportation of the defendant if he attempts to seek asylum in the transit country. When the defendant is transported on a chartered or government aircraft — when a "first brought" commercial flight is not possible or in the case of the most dangerous defendants, such as those charged with terrorism and other violent offenses—the situation is even more complicated. The Departments of State and Justice frequently are required to expend considerable good will with foreign officials, including at the highest levels of government, to ensure the completion of a specific flight plan. Finally, mechanical and weather-related issues may affect a flight, requiring unforeseen landings for safety reasons in a U.S. judicial district other than the district where the defendant is charged. Under the current statutory scheme, all of these scenarios would threaten divesting the charging district of venue over extraterritorial offenses.

U.S. law enforcement agencies responsible for transporting defendants to the United States, such as the U.S. Marshals Service (USMS), Drug Enforcement Administration (DEA), and Federal Bureau of Investigation (FBI), have expended significant financial resources to guarantee arrivals in the charging districts solely to preserve venue for prosecutions.

During Fiscal Years (FY) 2015-2024, the U.S. Marshals Service Extradition Program handled 808 removals of defendants subject to the extraterritorial venue statute to ensure they were "first brought" to the districts where charges were pending. A great majority required chartered aircraft. In total, the U.S. Marshals Service estimates that it has spent approximately $22.9 million on these transports since FY 2015.

DEA has also incurred substantial costs resulting from extraordinary transportation arrangements intended to satisfy the first brought venue requirement. Between FY 2015 and FY 2024 alone, the DEA's Aviation Division directly supported the extradition of hundreds of individuals to face judicial prosecution for drug-related criminal offenses in the United States utilizing DEA aviation assets. A majority of these extraditions were complicated by the current "first brought" venue requirement. The cost of this support totaled approximately $9.5 million.

"First brought" jurisdiction is not only extremely resource intensive, it can also prevent the government from bringing some charges at all. Large-scale international drug traffickers often distribute their drugs in multiple parts of the country, leading to multiple, sometimes overlapping, investigations of the same drug trafficking organizations for different crimes, addressing different harms, with different witnesses, different evidence, and perhaps different investigative agencies and prosecutors. But a defendant can only be "first brought" to one district. Thus, when indictments charging the same defendants with extraterritorial offenses are pending in multiple districts, some of those overlapping cases may not be able to proceed depending on the one district in which the defendant is first brought. This proposal would provide flexibility for those cases to go forward in the districts in which they are charged, without regard for the place of the defendant's arrival.

Significantly, in 2018, Congress passed, and the President signed into law, amendments similar to the one proposed here with regard to the maritime drug statute in Title 46. It is also important to note that the language proposed to revise 18 U.S.C. § 3238 already exists in 18 U.S.C. § 3239, the venue statute for extraterritorial espionage and related offenses. The Department's legislative proposal would delete 18 U.S.C. § 3239, incorporate the language from 18 U.S.C. § 3239 into the general, extraterritorial venue provision at 18 U.S.C. § 3238, and apply that provision to all federal crimes that do not have their own venue-specific statute.

Thank you for the opportunity to present this proposal. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to the submission of this proposal to Congress. We appreciate your consideration of this proposal and would welcome the opportunity to address your questions and provide technical assistance on any language you might consider.

Sincerely,

Ronald J. Lampard
Deputy Assistant Attorney General

Enclosure

cc:

The Honorable Charles E. Grassley
President Pro Tempore
United States Senate
Washington, DC 20510

The Honorable John Thune
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
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