



Civilian Extraterritorial Jurisdiction Act: Federal Contractor Criminal Liability Overseas

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Summary

The United States government uses hundreds of thousands of civilian contractors and employees overseas. They and their dependants are often subject to local prosecution for the crimes they commit abroad. Whether by agreement, practice, or circumstance—sometimes they are not. The Military Extraterritorial Jurisdiction Act (MEJA) permits federal prosecution of certain crimes committed abroad by Defense Department civilian employees, contractors, or their dependants. The Civilian Extraterritorial Jurisdiction Act (CEJA; H.R. 2136) (Representative Price of North Carolina) and S. 1145 (Senator Leahy) would permit federal prosecution for certain crimes committed abroad by the civilian employees, dependants, or contractors of other federal agencies.

The bills would supplement rather than replace MEJA or other provisions of federal extraterritorial jurisdiction. The crimes covered would include various federal violent, corruption, and trafficking offenses. The Attorney General would be responsible to ensure the availability of personnel and other resources necessary for investigation and prosecution of such offenses.

Otherwise applicable statutes of limitation would be suspended during the absence of a suspect from the United States. Prosecutors would be afforded the additional option of trying cases under CEJA in the district in which the employing or contracting agency maintained its headquarters.

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Introduction

The United States government utilizes the services of hundreds of thousands of employees and contractors overseas.¹ In some instances, U.S. agreements with the host nation preclude local prosecution of the crimes they commit.² Federal law, as now written, does not always permit federal prosecution.³ The Civilian Extraterritorial Jurisdiction Act (H.R. 2136 and S. 1145) would fill some of the perceived gaps. The House bill, introduced by Representative Price, and the Senate bill, introduced by Senator Leahy and approved with amendments by the Senate Judiciary Committee, are very similar but not identical. They each address objections voiced concerning comparable proposals passed by the House during the 110th Congress.

Background

Criminal law is usually territorial. In some instances, however, a nation's interests and responsibilities permit the extraterritorial application of its law to matters beyond its borders.⁴ So it is with the crimes of those associated with the United States government's activities overseas. The Uniform States Code of Military Justice (UCMJ) applies to crimes committed by members of the United States Armed Forces, wherever they may be.⁵ The Military Extraterritorial Jurisdiction Act (MEJA) applies to certain felonies committed by those employed by or accompanying the

¹ At one point, the Defense Department, State Department and USAID employed over 200,000 contractor personnel in Iraq and Afghanistan alone, Government Accountability Office, *Contingency Contracting: DOD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan: Report to Congressional Committees*, 6-7 (GAO-09-19) (Oct. 2008); see also, Williams, *The Case for Overseas Article III Courts: The Blackwater Effect and Criminal Accountability in the Age of Privatization*, 44 UNIVERSITY OF MICHIGAN JOURNAL OF LAW REFORM 45, 47 (2010) (“[W]e can conservatively estimate that nearly 500,000 civilian employees, dependents, and contractors of the U.S. government currently enjoy de facto immunity from meaningful criminal accountability.... Of this number, approximately 340,000 are Americans ...”).

² See generally, CRS Report RL34531, *Status of Forces Agreement (SOFA): What Is It, and How Has It Been Utilized?*, by R. Chuck Mason.

³ *Holding Criminals Accountable: Extending Criminal Jurisdiction for Government Contractors and Employees Abroad: Hearing Before the Senate Comm. on the Judiciary*, 112th Cong., 1st sess. (2011)(statement of Ass't Att'y Gen. Lanny A. Breuer) (“Since MEJA’s passage in 2000, we have aggressively enforced MEJA against Department of Defense employees, contractors, and individuals accompanying them. We have also investigated a number of matters involving non-Department of Defense persons when we can establish that their employment relates to supporting the mission of the department of Defense overseas or where we had extra-territorial jurisdiction under other statutes. However, under the current law, certain U.S. Government employees can commit crimes overseas without been prosecuted”).

⁴ See generally, *The Extraterritorial Application of American Criminal Law*, CRS Rept. 94-166.

⁵ 10 U.S.C. 802. Until 2007, the UCMJ applied to civilians “in time of war” with respect to those “serving with or accompanying an armed force in the field,” 10 U.S.C. 802(a)(10)(2006 ed.). The limitation apparently reflected the fact that the Supreme Court had been reluctant to allow application of military law to civilians, *United States ex rel. Toth v. Quarles*, 350 U.S. 11, 23 (1955)(holding that an airman, charged with a murder committed while he was serving with the Air Force, could not constitutionally be tried by court martial after his discharge); *Reid v. Covert*, 354 U.S.1, 39-40, 64, 77-8 (1957)(holding that military dependents, accompanying the armed forces overseas and charged with murdering their husbands, could not be tried by courts martial); *Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 249 (1960)(holding such a dependent, charged the noncapital killing of her husband, could not tried by court martial). In 2007, Congress enlarged the provision to apply to those serving with or accompanying an armed force in the field, “in time of declared war or a contingency operation,” P.L. 109-364, §552, Stat. (2007), codified at 10 U.S.C. 802(a)(10).

Armed Forces abroad.⁶ The USA PATRIOT Act amended the federal criminal code to make portions of it applicable to crimes committed by Americans within federal facilities and residences overseas.⁷ Legislation in 2006 established extraterritorial jurisdiction over Mann Act and human trafficking offenses, when committed by those employed by or accompanying the federal government overseas.⁸

Events in Iraq in 2007 raised questions about whether these provisions are sufficient to apply to allegations of misconduct by contractors employed by agencies other than the Department of Defense.⁹ The House responded with passage of H.R. 2740 (110th Congress), which, among other things, would have made MEJA applicable to employees of any contractor for “any department or agency of the United States, where the work under such contract is carried out in an area, or in close proximity to an area (as designated by the Department of Defense), where the Armed Forces is conducting a contingency operation.”¹⁰

At the time, the Administration objected that the bill

- was vague;¹¹
- would afford a sweeping number of offenses extraterritorial application;¹²
- would impermissibly direct FBI overseas activities;¹³ and
- would burden the Defense Department with implementation responsibilities.¹⁴

⁶ 18 U.S.C. 3261.

⁷ 18 U.S.C. 7(9).

⁸ 18 U.S.C. 3271 applies to violations of 18 U.S.C. chs. 77 (peonage, slavery, and trafficking in persons) and 117 (transportation for illegal sexual activity).

⁹ H.Rept. 110-352 (2007).

¹⁰ H.R. 2740 (110th Cong.), §2(a)(1), reprinted in H.Rept. 110-352, at 2 (2007). The bill passed the House on October 4, 2007, 153 *Cong. Rec.* 26632-639 (2007). The 110th Congress adjourned without Senate action on H.R. 2740.

¹¹ “First, the jurisdictional scope of criminal prohibitions would depend on vague notions of ‘proximity’ to potentially poorly defined regions, making unclear the circumstances when those who assist the United States government would be subject to the bill’s criminal sanctions and raising significant Due Process concerns. The Administration is very concerned that, if enacted, this bill will give rise to extensive litigation on jurisdictional issues,” Office of Management and Budget (OMB), *Statement of Administration Policy: H.R. 2740 – MEJA Expansion and Enforcement Act of 2007* (Oct. 3, 2007), available at www.cq.com/graphics/hotdocs/27131-sapon-hr2740-10307.pdf.

¹² “Second, the bill broadly expands criminal jurisdiction extraterritorially for most felony offenses in the U.S. Code. The Administration is concerned that this sweeping expansion of extraterritorial jurisdiction would create Federal jurisdiction overseas in situations where it would be impossible or unwise to extend it. The bill would have unintended and intolerable consequences for crucial and necessary national security activities and operations,” *id.*

¹³ “Third, the bill would affirmatively mandate that particular investigative activities of the Federal Bureau of Investigation be conducted overseas. It would upend a time-honored system of responsible law enforcement personnel allocating scarce law enforcement resources to the Nation’s greatest needs. By attempting to set statutory requirements to investigate not only reports of fatalities, but also reports that merely raise suspicion of misconduct by personnel, the legislation would intrude on decisions the Constitution reserves to the Executive Branch,” *id.*

¹⁴ “Fourth, the bill would place inappropriate and unwarranted burdens on the Department of Defense. In addition to their overriding responsibility to conduct military operations, the Armed Forces would be required to undertake significant duties for the handling and detention of non-DOD contractors covered by the bill. The bill further would obligate DOD – in the middle of ongoing armed conflicts in theaters of war – to support criminal investigations undertaken by the FBI,” *id.*

The Senate took no action on the House-passed bill in the 110th Congress. Modified proposals were reintroduced in the 111th Congress. Witnesses at congressional hearings discussed the matter, but no further legislative activity occurred.¹⁵

H.R. 2136 and S. 1145 (112th Congress)

Constitutional Considerations

“[T]he Federal ‘Government is acknowledged by all to be one of enumerated powers,’ which means that ‘every law enacted by Congress must be based on one or more of’ those powers.”¹⁶ Nevertheless, the Constitution is particularly generous in the powers which it grants the federal government, and consequently the Congress, with regard to matters overseas. It designates the President commander in chief of the armed forces of the United States and empowers Congress to make rules for their government and regulation.¹⁷ It vests in the President the power to receive foreign ambassadors, and with the advice and consent of the Senate, to make treaties and appoint ambassadors.¹⁸ It grants Congress an array of enumerated powers that includes the power to define and punish felonies on the high seas and contrary to the law of nations, to regulate commerce with foreign nations, and to pass laws to carry into effect any of the powers which the Constitution vests in it, in the President, in the federal government, or in any federal officer or department.¹⁹ Such limitations as may exist must be found in the scope of the enumerated powers themselves or in constitutional prohibitions—either explicit restrictions, such the ban on ex post facto laws, or implicit restrictions, such as those that follow from the due process clause.

Curtiss-Wright provides some support for the proposition that where Congress’s enumerated powers are wanting, extraterritorial jurisdiction may be based on sovereignty.²⁰ Its exercise of that power is limited by law of nations as well as by due process.²¹

MEJA has recently withstood constitutional challenges which argued that it exceeded Congress’s enumerated powers.²² In *Green*, the Sixth Circuit also rejected the argument that expanding the circumstances under which executive branch officials might enforce a criminal statute constituted

¹⁵ H.R. 4567 (111th Cong.) (Rep. Price); S. 2979 (111th Cong.) (Sen. Leahy).

¹⁶ *United States v. Comstock*, 130 S.Ct. 1949, 1956 (2010), quoting *McCulloch v. Maryland*, 4 Wheat. (17 U.S.) 316, 405 (1819), and *United States v. Morrison*, 529 U.S. 598, 607 (2000), respectively.

¹⁷ U.S. Const. Art. II, §2; Art. I, §8, cl.14.

¹⁸ U.S. Const. Art. II, §3, §2, cl.2.

¹⁹ U.S. Const. Art. I, §8, cls. 10, 3, 18.

²⁰ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 315-16, 318 (1936) (“The broad statement that the federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect to our internal affairs.... It results that the investment of the federal government with the powers of external sovereignty did not depend upon the affirmative grants of the Constitution”).

²¹ *Id.* at 318 (“[O]perations of the nation in such [foreign] territory must be governed by treaties, international understandings and compacts, and the principles of international law.... [T]he court recognized, and in each of the cases cited [involving the authority of the United States a sovereign] found, the warrant for its conclusions ... in the law of nations”).

²² *United States v. Green*, 654 F.3d 637 (6th Cir. 2011); *United States v. Williams*, 722 F.Supp. 2d 1313 (M.D.Ga. 2010).

violation of a separation of powers principles.²³ In the absence of encroachment of one branch upon the powers of another the Court could find no separation of powers infirmity.²⁴ Green argued in addition that trying him under MEJA while trying his coconspirators under the UCMJ denied him equal protection of the law. Green who had been discharged and his coconspirators who had not were not similarly situated. Green's equal protection argument thus turned upon evidence of purely arbitrary or malicious official conduct, neither of which he had shown, the court found.²⁵ Nor could the court find that Green's discharge and subsequent prosecution under MEJA so shocked the conscience of the court as to constitute a violation of due process.²⁶

The district court in *Williams* greeted the argument that MEJA exceeded Congress's enumerated powers with the assertion that, "there is no constitutional bar to the extraterritorial application of penal laws."²⁷ The court then declared that, "[b]efore finding the MEJA to be a proper exercise of Congress' extraterritorial power, however, the Court must 'consider whether [giving extraterritorial effect to the penal statute] would violate general principles of international law.'"²⁸ It is unclear whether the court felt this consideration was necessary (1) to confirm the intent of Congress; (2) to bring the statute within the reach of Congress's power as sovereign or under Article I, §8, cl. 10, to define and punish offenses under the law of nations; or (3) to a guide a due process analysis. As for confirming congressional intent, the cases which the court cites address the question of whether a statute, silent as to its extraterritorial application, was intended to apply overseas.²⁹ The overseas application of MEJA, however, is explicit and so reference to international law to discern congressional intent seems unnecessary.

The court initially suggested that it might view the principles of international law as indicative of the scope of Congress's sovereign power or its power to define and punish offenses under the law of nations pursuant to Article I, §8, cl. 10. It described the pertinent principles of international law as the "law of nations," "[t]he law of nations permits the exercise of criminal jurisdiction by a nation under five general principles: (1) the objective territorial, (2) the national, (3) the protective, (4) the universal, and (5) the passive personality."³⁰ Yet, the court went on to find application of MEJA in the case before it consistent with each of the five principles—other than universal principle—the one principle that it characterized as embodying the law of nations.³¹

Were the timing different, the district court might have been mindful of the Eleventh Circuit's observation that, "[i]n determining whether an extraterritorial law comports with due process,

²³ *United States v. Green*, 654 F.3d at 645-50.

²⁴ *Id.*

²⁵ *Id.* at 650-52.

²⁶ *Id.* at 652-53.

²⁷ *United States v. Williams*, 722 F.Supp.2d at 1317.

²⁸ *Id.* at 1318, quoting *United States v. MacAllister*, 160 F.3d 1304, 1308 (11th Cir. 1998), and citing *United States v. Vasquez-Velasco*, 15 F.3d 833, 839 (9th Cir. 1994).

²⁹ *United States v. MacAllister*, 160 F.3d at 1306 ("This is a question of statutory interpretation"); *United States v. Vasquez-Velasco*, 15 F.3d at 839 ("In determining whether a given statute should have extraterritorial application in a specific case, courts look to congressional intent").

³⁰ *United States v. Williams*, 722 F.Supp.2d at 1318.

³¹ *Id.* at 1319, 1318 n. 9 (portions of the court's footnote in brackets)("The Court finds that extraterritorial jurisdiction is permitted by all but the 'universal' principle of international law. [... the universality principle permits a State to prosecute an offender of any nationality for an offense committed outside of that State and without contacts to that State, but only for the few, near-unique offenses recognized by the 'civilized nations' as an offense against the 'Law of Nations'").

appellate courts often consult international law principles.”³² In any event, the court found “that the MEJA is a proper application of Congress’s extraterritorial power, ... [b]ecause Congress clearly intended the MEJA to be applied extraterritorially, and because such extraterritorial application of the MEJA would not offend international law.”³³

The House Judiciary Committee report on MEJA indicates that constitutional authority to enact its provisions may be found in: Article I, section 8, clauses 10 [“To define and punish ... Offenses against the Law of Nations”], 14 [“To make Rules for the Government and Regulation of the land and naval Forces”], 16 [“To provide ... for governing such Part of [the militia] as may be employed in the Service of the United States”], and 18 [“To make all Laws ... necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in [the President] ... ”].³⁴

Congress may rely upon a wider range of its enumerated powers to enact the bills’ proposals, based on the legislative authority for (1) the contracts or employment of those covered by the proposals, (2) the offenses covered by the proposals, or (3) the location of the offenses. The Constitutional Authority Statement for H.R. 2136 identifies three constitutional justifications: the power to tax and spend for the common defense and general welfare,³⁵ the power to define and punish offenses against the law of nations,³⁶ and the power “to legislate with respect to matters outside U.S. boundaries ... based on national sovereignty in foreign affairs.”³⁷

Who

The House and Senate bills in the 112th Congress supplement rather than amend MEJA. They would establish a new section 3272 outlawing conduct outside the United States by anyone “employed by or accompanying any department or agency of the United States other than the Department of Defense,” when the conduct would be criminal if committed within the United States or within its special maritime and territorial jurisdiction.³⁸ The bills identify those “employed by” or “accompanying” as employees, contractors, subcontractors, grantees, subgrantee as well as their dependants, family members, and members of their households.³⁹ They would exclude nationals and ordinary residents of the host country and encompass only

³² *United States v. Ibarquen-Mosquera*, 634 F.3d 1370, 1378 (11th Cir. 2011).

³³ *United States v. Williams*, 722 F.Supp.2d at 1319.

³⁴ H.Rept. 106-778, at 14 (2000).

³⁵ U.S. Const. Art. I, §1, cl.1.

³⁶ U.S. Const. Art. I, §8, cl.10.

³⁷ 157 *Cong. Rec.* H4035 (daily ed. June 3, 2011).

³⁸ H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(a); S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3272(a).

³⁹ H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(e)(1); S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3272(d)(1): “The term ‘employed by any department or agency of the United States other than the Department of Defense’ means – (A) employed as a civilian employee, a contractor (including a subcontractor at any tier), an employee of a contractor (or a subcontractor at any tier), a grantee (including a contractor of a grantee or a subgrantee or subcontractor at any tier), or an employee of a grantee (or a contractor of a grantee or a subgrantee or subcontractor at any tier) of any department or agency of the United States other than the Department of Defense; (B) present or residing outside the United States in connection with such employment; (C) in the case of such a contractor, contractor employee, grantee, or grantee employee, such employment supports a program, project, or activity for a department or agency of the United States; and (D) not a national of or ordinarily resident in the host nation.” The text of the definition of “accompanying” appears in the following footnote.

employees, contractors, and their attendants whose presence abroad is attributable to support of a federal, non-Defense Department program, project, or activity.⁴⁰

The definitions are comparable to those found in MEJA.⁴¹ MEJA, however, does not specifically mention grantees, family members or household members.⁴² The bills do.⁴³ The bills would also reach the crimes of a wider range of non-Defense Department employees, contractors, and attendants than MEJA. MEJA reaches the crimes of a few. Its limited scope extends to various crimes committed by the employees and contractors of “any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas.”⁴⁴ An incident in Iraq triggered concerns that contractors assigned to such tasks as traffic control for a State Department motorcade may not be engaged in activities relate “to supporting the mission the Department of Defense.”⁴⁵

Where MEJA looks to crimes committed by those engaged in activities relating to a Defense Department mission, the bills would look to crimes committed by those engaged in activities relating to “a program, project, or activity for a department or agency of the United States other than the Defense Department.”⁴⁶

⁴⁰ H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(e)(2); S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3272(d)(2): “The term ‘accompanying any department or agency of the United States other than the Department of Defense’ means – (A) a dependant, family member, or member of household of – (i) a civilian employee of any department or agency of the United States other than the Department of Defense; or (ii) a contractor (including a subcontractor at any tier), an employee of a contractor (or a subcontractor at any tier), a grantee (including a contractor of a grantee or a subgrantee or subcontractor at any tier), or an employee of a grantee (or a contractor of a grantee or a subgrantee or subcontractor at any tier) of any department or agency of the United States other than the Department of Defense, which contractor, contractor employee, grantee, or grantee employee is supporting a program, project, or activity for a department or agency of the United States other than the Department of Defense; (B) residing with such civilian employee, contractor, contractor employee, grantee, or grantee employee outside the United States; and (C) not a national of or ordinarily resident in the host nation.”

⁴¹ See 18 U.S.C. 3267 (MEJA definitions).

⁴² The MEJA definitions make no mention of grants or grantees and include only dependants within their definition of “accompanying,” 18 U.S.C. 3267(1), (2).

⁴³ H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(e)(1)(A), (2)(A); S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3272(d)(1)(A), (2)(A).

⁴⁴ 18 U.S.C. 3267(1)(A)(i)(II).

⁴⁵ 157 *Cong. Rec.* S3500 (daily ed. June 6, 2011)(remarks of Sen. Leahy)(“In September 2007, Blackwater security contractors working for the state Department shot more than 20 unarmed civilians on the streets of Baghdad, killing at least 14 of them.... Efforts to prosecute those responsible for these shootings have been fraught with difficulties, and our ability to hold the wrongdoers in this case accountable remains in doubt”); see also, *Indictment at 2, United States v. Slough*, Crim. No. CR-08-360 (D.D.C. Dec. 4, 2008)(“ ... defendants ... were employed by the Armed Forces outside the United States, as defined in 18 U.S.C. §3267(1), that is: a. The defendants were employees and subcontractors of Blackwater Worldwide, a company contracting with the United States Department of State, who were employed to provide personal security services in the Republic of Iraq, which employment related to supporting the mission of the United States Department of Defense in the Republic of Iraq”); *United States v. Slough*, 641 F.3d 544, 547 (D.C.Cir. 2011)(internal citations omitted)(“On September 16, 2007, a car bomb exploded near the Izdihar Compound in Baghdad, where a U.S. diplomat was conferring with Iraqi officials. American security officials ordered a team ... to evacuate the diplomat to the Green Zone. Another Blackwater team, Raven 23, headed out of the Green Zone to block traffic at the Nisur Square traffic circle and thus assure the diplomat’s safe passage back.... Raven 23 positioned its four vehicles on the south side of the Square and its members starting gesturing to stop traffic. Shots were fired; the dispute over who fired at whom and when is the substantive crux of the criminal case underlying this appeal. When the shooting stopped, 14 Iraqi citizens were dead and 20 wounded”).

⁴⁶ Or those accompanying such individuals, H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(e)(1)(C), (2)(A)(ii); S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3272(d)(1)(C), (2)(A)(ii).

The bills would not repeal or amend MEJA's coverage of non-Defense Department employees, contractors, and dependants.⁴⁷ Thus, prosecutors would be free to proceed under either MEJA or the bill's proposed section, in cases involving employees, dependants, or contractors of such civilian agencies whose activities related to support of a Defense Department mission.

The bills appear limited to the crimes of executive branch employees, contractors, and those accompanying them, because the bills refer to individuals associated with "any department or agency of the United States other than the Department of Defense." As used in the criminal code, that term "department or agency of the United States" is usually understood not to apply to the legislative and judicial branches of government, unless the context suggests otherwise.⁴⁸

What Crimes

MEJA describes the crimes to which it applies generically: "an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States."⁴⁹ In the 110th Congress, OMB considered comparable coverage for non-Defense Department contractors too sweeping.⁵⁰ Perhaps with this in mind, the bills provide a list of specific offenses to which its extraterritorial provisions would apply. The list includes drug trafficking, terrorism offenses, assault, murder, and most of the other common law offenses that would be subject to federal prosecution had they occurred within the United States or its special maritime or territorial jurisdiction.⁵¹ The list is arguably as extensive as the list of offenses covered by MEJA.⁵²

Past and present Administrations have sought an exception for United States intelligence activities abroad.⁵³ The two bills would create such an exception, although in slightly differently terms. The House bill would exempt authorized intelligence activities *conducted* in accordance with applicable law; the Senate bill would exempt authorized intelligence activities *authorized* in

⁴⁷ H.R. 2136, §7; S. 1145, §5(a) ("Nothing in this Act or any amendment made by this Act shall be construed – (1) to limit or affect the application of extraterritorial jurisdiction related to any other Federal law").

⁴⁸ 18 U.S.C. 6 ("As used in this title: The term 'department' means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government. The term 'agency' includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense"); see also *Hubbard v. United States*, 514 U.S. 695, 715 (1995) (overruling *United States v. Bramblett*, 348 U.S. 503 (1955) which had held that the term agency or department of the United States in 18 U.S.C. 1001 as then written included legislative branch entities).

⁴⁹ 18 U.S.C. 3261(a).

⁵⁰ OMB, *Statement of Administration Policy: H.R. 2740 – MEJA Expansion and Enforcement Act of 2007* (Oct. 3, 2007), available at www.cq.com/graphics/hotdocs/27131-sapon-hr2740-10307.pdf.

⁵¹ The list appears as attachment to this report.

⁵² A second attachment lists the special maritime and territorial offenses.

⁵³ OM, *Statement of Administration Policy: H.R. 2740 – MEJA Expansion and Enforcement Act of 2007* (Oct. 3, 2007), available at www.cq.com/graphics/hotdocs/27131-sapon-hr2740-10307.pdf. *Holding Criminals Accountable: Extending Criminal Jurisdiction for Government Contractors and Employees Abroad: Hearing Before the Senate Comm. on the Judiciary*, 112th Cong., 1st sess. (2011) (statement of Ass't Att'y Gen. Lanny A. Breuer) ("It is essential that any legislation include a statutory carve-out to ensure that the legislation does not impose criminal liability on authorized intelligence activities of the United States Government. The absence of an explicit exemption for authorized intelligence activities conducted abroad would negatively impact the United States' ability to conduct such activities").

accordance with applicable law.⁵⁴ Both bills disclaim any intent to curtail other grants of extraterritorial jurisdiction or to negate any authority of responsibilities of the various chiefs of mission.⁵⁵

Implementation

MEJA has a number of procedural provisions designed to minimize the adverse impact of investigating and prosecuting those closely associated with military activities. More precisely, out of deference to the Posse Comitatus Act, MEJA explicitly authorizes overseas U.S. military law enforcement personnel to arrest those charged with MEJA violations.⁵⁶ Out of deference to groups representing the interests of overseas employees, MEJA contains several provisions designed to avoid an arbitrary return to the United States to face unfounded charges.⁵⁷ Those arrested for federal criminal offenses outside the United States must be brought before a federal magistrate “without unnecessary delay,”⁵⁸ although the initial appearance may be conducted by telephone or videoconference.⁵⁹ There, the magistrate may appoint military counsel to represent indigent defendants, and may dismiss the charges for want of probable cause or upon a finding of probable cause set bail.⁶⁰ The magistrate may also order the accused returned to the States; otherwise an accused may not be removed except for military necessity.⁶¹

The bills would establish no comparable provisions. However, they would vest the Attorney General, in consultation with the Director of National Intelligences and the Secretaries of State and Defense, with authority to promulgate regulations governing arrest, detention, delivery, and removal of individuals under the proposals.⁶² Under the House bill, the regulations would include an allocation of responsibility for the investigation of cases that involve a killing, serious bodily

⁵⁴ H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3272(d); S. 1145, §5(b).

⁵⁵ H.R. 2136, §7; S. 1145, §5(a); both citing 22 U.S.C. 3927 with respect to authority and responsibility of a Chief of Mission.

⁵⁶ 18 U.S.C. 3262. The Posse Comitatus Act, enacted after the Civil War, outlaws use of the Army or the Air Force to execute law unless expressly authorized by the Constitution or Act of Congress, 18 U.S.C. 1385. “The Posse Comitatus Act ... is generally understood not to apply outside the United States.... In any event, however, the specific language of the Act [MEJA] empowering military law enforcement officials to make arrests should be seen as controlling over the nineteenth century statute’s general prohibition,” Schmitt, *Closing the Gap in Criminal Jurisdiction Over Civilians Accompanying the Armed Forces Abroad – A First Person Account of the Creation of the Military Extraterritorial Jurisdiction Act*, 51 CATHOLIC UNIVERSITY LAW REVIEW 55, 118 n.295 (2001).

⁵⁷ *Id.* at 118-19 & n.301 (footnote 301 in pertain part in brackets)(“[T]he Military Extraterritorial Jurisdiction Act of 2000 contains an unusual and complex pair of sections. One section limits the power of the government to return a defendant to the United States until certain condition have been met and the other section requires some of the initial proceedings in a case to be held before the defendant is returned to the United States. These provisions were added to the bill during the House deliberations on House bill 3380 to address the concerns of the ACLU and FEA. [... At the hearing n the bill, an FEA representative expressed concern that House bill 3380, as it was introduced, would have allowed the government to forcibly return a person to the United States soon after allegations against herm were lodged with authorities, but before any real investigation into the merits of the allegations had occurred.... FEA’s main concern was that innocent defendants might have to bear the expensive costs of returning to a far away duty station once charges against them had been dismissed]”).

⁵⁸ F.R.Crim.P. 5(a)(1)(B).

⁵⁹ 18 U.S.C. 3265(a)(1).

⁶⁰ 18 U.S.C. 3265(c), (a)(2), (a)(3).

⁶¹ 18 U.S.C. 3264.

⁶² H.R. 2136, §2(a)(3), proposed 18 U.S.C. 3273; S. 1145, §2(a)(1)(C), proposed 18 U.S.C. 3273.

injury, property damage in excess of \$10,000, or the discharge of a firearm.⁶³ The Senate bill has no comparable provisions.

Earlier proposals would have amended MEJA. OMB objected that this might impose unwarranted investigative burdens upon the Defense Department.⁶⁴ The bills would shift the burden to the Attorney General, to be shared by the departments and agencies with covered employees, contractors, and grantees. The Attorney General would be directed to assign sufficient personnel and resources to investigate possible overseas violation of the offenses covered by the bills.⁶⁵ He would be empowered to request assistance to conduct such investigations from the agencies with employees and contractors abroad, including the Departments of Defense and State.⁶⁶

The Attorney General would also be obligated to report to Congress annually for six years on activities under the proposals and on any recommendations for related administrative or legislative adjustments, again after conferring with the Secretaries of State and Defense.⁶⁷

Statute of Limitations

The bills would adjust the applicable statute of limitations.⁶⁸ The statute of limitations refers to the statutory period within which a prosecution must be commenced. It begins with the commission of the offense.⁶⁹ A prosecution begins for purposes of the statute of limitations with the filing of an indictment or information.⁷⁰

“The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the legislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity.”⁷¹

⁶³ H.R. 2136, §3(a)(B).

⁶⁴ OMB, *Statement of Administration Policy: H.R. 2740 – MEJA Expansion and Enforcement Act of 2007* (Oct. 3, 2007), available at www.cq.com/graphics/hotdocs/27131-sapon-hr2740-10307.pdf.

⁶⁵ H.R. 2136, §3(a), (b); S. 1145, §3(a), (b).

⁶⁶ H.R. 2136, §3(b)(4), (2); S. 1145, §3(b)(4), (2).

⁶⁷ H.R. 2136, §3(b)(5); S. 1145, §3(b)(5).

⁶⁸ See generally, CRS Report RL31253, *Statutes of Limitation in Federal Criminal Cases: An Overview*, by Charles Doyle.

⁶⁹ *Toussie v. United States*, 397 U.S. 112, 115 (1970); *United States v. Palomino Garcia*, 606 F.3d 1317, 1323 (11th Cir. 2010); *United States v. Bucci*, 582 F.3d 108, 115 (1st Cir. 2009).

⁷⁰ *United States v. McMillan*, 600 F.3d 434, 444 (5th Cir. 2010) (“An indictment charging a defendant with a federal non-capital crime generally must be returned within five years after commission of the offense. Once an indictment is filed, the limitations period is tolled on the charges set forth in the indictment”); *United States v. Hickey*, 580 F.3d 922, 929 (9th Cir. 2009); *United States v. Hoffecker*, 530 F.3d 137, 157 (3d Cir. 2008) (“The statute of limitations requires that indictments for mail fraud and for conspiracy to commit mail and wire fraud must be found within five years of the commission of the offense. An indictment is found when it is returned by a grand jury and filed”).

⁷¹ *Toussie v. United States*, 397 U.S. at 114-15.

The statute of limitations for most federal crimes is five years.⁷² A few individual offenses have longer statutes of limitations. Arson, for instance, has a 10-year statute of limitations.⁷³ Capital offenses or certain terrorism and sex offenses are not subject to any period of limitation and may be prosecuted at any time.⁷⁴ Under some circumstances, the applicable statute of limitations will be suspended. For example, the limitation governing prosecution of fraud against the United States is suspended during wartime,⁷⁵ and during any period when the suspect was in flight.⁷⁶

Because the statute of limitations runs from the commission of the crime to indictment, it operates as an investigation time table. Given the difficulties often associated with an overseas investigation, proposals to adjust the statute of limitations in such cases come as no surprise. The bills each propose a suspension of any applicable statute of limitations during the period a suspect is abroad.⁷⁷ The House proposal would apply to offenses for which it would provide extraterritorial jurisdiction as well as to offenses under 18 U.S.C. 3271 which establishes such jurisdiction of certain human trafficking offenses: “The statute of limitations for an offense involving a violation of section 3271 or 3272 shall be computed without regard to any time the alleged offender is outside the United States.”

The Senate proposal has no reference to the trafficking section, but includes a cross reference to the fugitive provisions of 18 U.S.C. 3290: “The time during which a person who has committed an offense constituting a violation of section 3272 of this title is outside the United States, or is a fugitive from justice within the meaning of section 3290 of this title, shall not be take as any part of the time limited by law for commencement of prosecution of the offense.”

Under either proposal, the statute of limitations would only run while the suspect is in the United States. This might have the effect of eliminating the statute of limitations for overseas employees and contractors who are foreign nationals with no particular reason to come to the United States.

Venue

The Constitution insists that federal crimes be tried in the state and district in which they were committed, but affords Congress considerable latitude to decree where federal crimes committed overseas may be tried.⁷⁸ Under existing law, a defendant may be tried for an overseas crime in the district in which he is first arrested or brought. If indicted prior to arrest, he may be tried in the

⁷² 18 U.S.C. 3282.

⁷³ 18 U.S.C. 3295.

⁷⁴ 18 U.S.C. 3281, 3286(b), 3299, respectively. In rare cases, a want of timely prosecution may implicate a Sixth Amendment right to speedy trial, *Barker v. Wingo*, 407 U.S. 514, 530-33 (1972), or a Fifth Amendment right to due process, *United States v. Lovasco*, 431 U.S. 783, 788-89 (1977).

⁷⁵ 18 U.S.C. 3287.

⁷⁶ 18 U.S.C. 3290.

⁷⁷ H.R. 2136, §5(a), proposed 18 U.S.C. 3302; S. 1145, §2(c), proposed 3287A.

⁷⁸ 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 where the crime shall have been committed.... ”); Art. III, §2, cl.3 (“The Trial of all Crimes ... 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”). See generally, CRS Report RL33223, *Venue: A Legal Analysis of Where a Federal Crime May Be Tried*, by Charles Doyle.

district in which he last resided or in the District of Columbia when his last place of residence in the United States is unknown.⁷⁹

“[T]his statute permits the government to handpick its forum in the case of a person first found overseas, by picking the district to which it will return him;”⁸⁰ less so in the case of a person residing in the United States when the government is first ready to make an arrest or seek an indictment.

Both bills would afford the government an additional venue option. They would permit trial in the district in which the employing or contracting agency maintains its headquarters.⁸¹ The option would be available for the offenses over which the bills establish extraterritorial jurisdiction and for human trafficking and sex travel offenses over which in extraterritorial jurisdiction exists by virtue of 18 U.S.C. 3271.⁸² The Senate bill would also afford the government the option in MEJA cases.⁸³

When exercised, the option would operate to the disadvantage of the accused in some instances. Defendants, who resided in a district other than one in which their employing or contracting agency maintained its headquarters, could face the additional expense and inconvenience of trial in a remote location and the prospective of more onerous bail conditions or pre-trial detention.⁸⁴

On the other hand, the option might operate to enhance the prospect of a plea agreement, thus sparing the government the expense of a trial. It might also operate to the greater convenience of witnesses assigned, or who might be assigned, to duties in the headquarters of the employing or contracting agency.

⁷⁹ 18 U.S.C. 3238 (“The 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; but if such offender or offenders are not so arrested or brought into any district, an indictment or information may be filed in the district of the last known residence of the offender or of any one of two or more joint offenders, or if no such residence is known the indictment or information may be filed in the District of Columbia”).

⁸⁰ 2 Wright & Henning, FEDERAL PRACTICE AND PROCEDURE: CRIMINAL §304 (4th ed. 2009).

⁸¹ H.R. 2136, §4(a), proposed 18 U.S.C. 3245; S. 1145, §2(b), proposed 18 U.S.C. 3245 (“In addition to any venue otherwise provided in this chapter, the trial of any offense involving a violation of section 3261, 3271, or 3272 of *this title* may be brought – (1) in the district in which is headquartered the department or agency of the United States that employs the offender, or any one of two or more joint offenders, or (2) in the district in which is headquartered the department or agency of the United States that the offender is accompanying, or that any one of two or more joint offenders is accompanying”); language in italics appears only in the Senate bill.

⁸² *Id.*

⁸³ S. 1145, §2(b), proposed 18 U.S.C. 3245.

⁸⁴ 18 U.S.C. 3142(g) (“The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required ... take into account ... the characteristics of the person including ... the person’s ... employment, financial resources, length of residence in the community, community ties....”). A person tried in a district remote from his home has no length of residence in the community where the trial is to be held; is not likely to have community ties there; and may have difficulty continuing his employment while preparing for trial in a remote location.

Attachment 1

Extraterritorial Offenses Under H.R. 2136 and S. 1145: Proposed 18 U.S.C. 3272

(a) Whoever, while employed by or accompanying any department or agency of the United States other than the Department of Defense, knowingly engages in conduct (or conspires or attempts to engage in conduct) outside the United States that would constitute an offense enumerated in subsection (c) had the conduct been engaged in within the United States or within the special maritime and territorial jurisdiction of the United States shall be punished as provided for that offense....

(c) The offenses covered by subsection (a) are the following:

(1) Any offense under chapter 5 (arson) of this title [18 U.S.C. 81 (arson within the special maritime and territorial jurisdiction)].

(2) Any offense under section 111 (assaulting, resisting, or impeding certain officers or employees), 113 (assault within maritime and territorial jurisdiction), or 114 (maiming within maritime and territorial jurisdiction) of this title, but only if the offense is subject to a maximum sentence of imprisonment of one year or more.

(3) Any offense under section 201 (bribery of public officials and witnesses) of this title.

(4) Any offense under section 499 (military, naval, or official passes) of this title.

(5) Any offense under section 701 (official badges, identification cards, and other insignia), 702 (uniform of armed forces and Public Health Service), 703 (uniform of friendly nation), or 704 (military medals or decorations) of this title.

(6) Any offense under chapter 41 (extortion and threats) of this title [18 U.S.C. 871 (threats against the President), 872 (extortion by federal employees involving more than \$1,000), 874 (kickbacks from public works employees), 875 (extortionate wire communications involving threats to kidnap or inflict bodily injury), 876 (mailing extortionate threats to kidnap or inflict bodily injury), 877 (mailing extortionate threats to kidnap or inflict bodily injury to the United States from overseas), 878 (extortionate threats to kidnap or inflict bodily injury against internationally protected persons), 879 (threats against former Presidents)], but only if the offense is subject to a maximum sentence of imprisonment of three years or more.

(7) Any offense under chapter 42 (extortionate credit transactions) of this title [18 U.S.C. 892, 893 (making or financing such transactions)] of this title.

(8) Any offense under section 924(c) (use of firearm in violent or drug trafficking crime) or 924(o) (conspiracy to violate section 924(c)) of this title.

(9) Any offense under chapter 50A (genocide) of this title.

(10) Any offense under section 1111 (murder), 1112 (manslaughter), 1113 (attempt to commit murder or manslaughter), 1114 (protection of officers and employees of the United States), 1116 (murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1117 (conspiracy to commit murder), or 1119 (foreign murder of United States nationals) of this title.

(11) Any offense under chapter 55 (kidnapping) of this title [18 U.S.C. 1201 (kidnapping), 1202 (receipt of ransom money), 1203 (hostage taking), 1204 (international parental kidnapping)].

(12) Any offense under section 1503 (influencing or injuring officer or juror generally), 1505 (obstruction of proceedings before departments, agencies, and committees), 1510 (obstruction of criminal investigations), 1512 (tampering with a witness, victim, or informant), or 1513 (retaliating against a witness, victim, or an informant) of this title.

(13) Any offense under section 1951 (interference with commerce by threats or violence), 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), 1956 (laundering of monetary instruments), 1957 (engaging in monetary transactions in property derived from specified unlawful activity), 1958 (use of interstate commerce facilities in the commission of murder for hire), or 1959 (violent crimes in aid of racketeering activity) of this title.

(14) Any offense under section 2111 (robbery or burglary within special maritime and territorial jurisdiction) of this title.

(15) Any offense under chapter 109A (sexual abuse) of this title [18 U.S.C. 2241 (aggravated sexual abuse), 2242 (sexual abuse), 2243 (sexual abuse of a minor or ward), 2244 (abusive sexual contact)].

(16) Any offense under chapter 113B (terrorism) of this title [18 U.S.C. 2332 (violence against Americans overseas), 2332a (use of weapons of mass destruction), 2332b(multinational terrorism), 2332d (financial transactions with nations supporting terrorism), 2332f (bombing public facilities), 2332g (possession of anti-aircraft missiles), 2332h (possession of radiological dispersal device), 2339 (harboring terrorists), 2339A (providing material support for terrorist offenses), 2339B (providing material support for terrorist organizations), 2339C (financing terrorism), 2339D (receipt of training from terrorist organizations)].

(17) Any offense under chapter 113C (torture) of this title.

(18) Any offense under chapter 115 (treason, sedition, and subversive activities) of this title [18 U.S.C. 2381 (treason), 2382 (misprision of treason), 2383 (rebellion or insurrection), 2384 (seditious conspiracy), 2385 (advocating overthrow of the government), 2386 (registration of foreign political or military organizations), 2387 (activity adversely affecting the armed forces), 2388 (activity adversely affecting the armed forces during wartime), 2389 (recruiting for services against the United States), 2390 (enlistment to serve against the United States)].

(19) Any offense under section 2442 (child soldiers) of this title.

(20) Any offense under section 401 (manufacture, distribution, or possession with intent to distribute a controlled substance) or 408 (continuing criminal enterprise) of the Controlled Substances Act (21 U.S.C. 841, 848), or under section 1002 (importation of controlled substances), 1003 (exportation of controlled substances), or 1010 (import or export of a controlled substance) of the Controlled Substances Import and Export Act (21 U.S.C. 952, 953, 960), but only if the offense is subject to a maximum sentence of imprisonment of 20 years or more.

Attachment 2

Extraterritorial Offenses Under MEJA (Special Maritime and Territorial Jurisdiction)

8 U.S.C. 1375a(d)(3) (informed consent violations by international marriage brokers)

15 U.S.C. 1175 (manufacture or possession of gambling devices)

15 U.S.C. 1243 (manufacture or possession of switchblade knives)

15 U.S.C. 1245 (manufacture or possession of ballistic knives)

16 U.S.C. 3372(a)(3) (possession of illegally taken fish or wildlife)

18 U.S.C. 32 (destruction of aircraft)

18 U.S.C. 81 (arson)

18 U.S.C. 113 (assault)

18 U.S.C. 114 (maiming)

18 U.S.C. 115 (violence against federal officials, former officials and members of their families)

18 U.S.C. 117 (domestic assault by an habitual offender)

18 U.S.C. 118 (interference with certain protective functions [State Department & diplomatic security])

18 U.S.C. 249 (hate crimes)

18 U.S.C. 546 (smuggling goods into a foreign country from an American vessel)

18 U.S.C. 661 (theft)

18 U.S.C. 662 (receipt of stolen property)

18 U.S.C. 831 (threats, theft, or unlawful possession of nuclear material or attempting or conspiring to do so)

18 U.S.C. 1025 (false pretenses)

18 U.S.C. 1081 - 1083 (gambling ships)

18 U.S.C. 1111 (murder)

18 U.S.C. 1112 (manslaughter)

18 U.S.C. 1113 (attempted murder or manslaughter)

18 U.S.C. 1115 (misconduct or neglect by ship officers)

18 U.S.C. 1201 (kidnaping)

18 U.S.C. 1363 (malicious mischief)

18 U.S.C. 1460 (sale or possession with intent to sell obscene material)

18 U.S.C. 1466A (obscene visual representation of sexual abuse of children)

18 U.S.C. 1587 (captain of a slave vessel with slaves aboard)

18 U.S.C. 1591(sex trafficking of children)

18 U.S.C. 1656 (piratical conversion of vessel by captain, officer or crew member)

18 U.S.C. 1658 (plundering a ship in distress)

18 U.S.C. 1659 (attack upon a vessel with intent to plunder)

18 U.S.C. 1654 (Americans arming or serving on privateers outside the United States to be used against the United States or Americans)

18 U.S.C. 1801 (video voyeurism)

18 U.S.C. 1957 (prohibited monetary transactions)

18 U.S.C. 2111 (robbery)

18 U.S.C. 2191 (cruelty to seamen)

18 U.S.C. 2192 (incite to revolt or mutiny)
18 U.S.C. 2193 (revolt or mutiny by seamen)

18 U.S.C. 2194 (shanghaiing sailors)
18 U.S.C. 2195 (abandonment of sailors overseas)
18 U.S.C. 2196 (drunkenness of seamen)
18 U.S.C. 2197 (misuse of documents associated vessels)
18 U.S.C. 2198 (seduction of a female passenger)

18 U.S.C. 2199 (stowaways)
18 U.S.C. 2241 (aggravated sexual abuse)
18 U.S.C. 2242 (sexual abuse)
18 U.S.C. 2243 (sexual abuse of a minor or ward)
18 U.S.C. 2244 (abusive sexual contact)

18 U.S.C. 2252(a) (sale or possession of material involving sexual exploitation of children)
18 U.S.C. 2252A(a) (sale or possession of child pornography)
18 U.S.C. 2261 (interstate domestic violence)
18 U.S.C. 2261A (stalking)
18 U.S.C. 2262 (interstate violation of a protective order)
18 U.S.C. 2271-2279 (destruction of ships)
18 U.S.C. 2283 (transportation of explosives, biological, chemical, radioactive or nuclear materials for terrorist purposes on the high seas or aboard a U.S. vessel or in U.S. waters)

18 U.S.C. 2284 (transportation of a terrorist on the high seas or aboard a U.S. vessel or in U.S. waters)
18 U.S.C. 2318 (transporting counterfeit phonorecord labels, copies of computer programs or documentation, or copies of motion pictures or other audio visual works)
18 U.S.C. 2332b (acts of terrorism transcending national boundaries)
18 U.S.C. 2388 (war-time activities affecting armed forces)
18 U.S.C. 2422(b) (causing a minor to engage in prostitution or other sexual acts)

18 U.S.C. 2425 (transmission of information about a minor)
18 U.S.C. 3261 (offenses committed by members of the United States armed forces or individuals accompanying or employed by the United States armed forces overseas)
46 U.S.C. 70503 (maritime drug law enforcement)
46 U.S.C. 70508 (operation of stateless submersible vessels)
48 U.S.C. 1912 (offenses committed on United States defense sites in the Marshall Islands or Federated States of Micronesia)
48 U.S.C. 1934 (offenses committed on United States defense sites in Palau)
49 U.S.C. 46502(a) (air piracy or attempted air piracy)
49 U.S.C. 46504 (interference with flight crew or attendants within the special aircraft jurisdiction of the United States)
49 U.S.C. 46506 (assaults, maiming, theft, receipt of stolen property, murder, manslaughter, attempted murder or manslaughter, robbery, or sexual abuse)

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