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The Friendly Skies Are Not Always So Friendly

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I. INTRODUCTION

Venue plays a major role in federal criminal procedure and is controlled by constitutional provisions, statutes, and rules.¹ Venue has been discussed since the 1700s and continues to play a vital role in the litigation process.² In 1769, Parliament established that a defendant had the right to a trial by jurors who were located in the district where the crime was committed.³ In an attempt to mitigate the chances of war, Parliament proposed taking defendants to England or to another colony for

¹ See 2 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 301, (4th ed. 2006) (detailing how finding a proper venue in a criminal case is often controlled by several components outside of historic reasoning).

² See *id.* (discussing that what seems to be a simple element of the legal justice system is sometimes quite challenging and has been a topic of discussion for several centuries).

³ See *id.* (stressing that defendants had the right to a trial by jurors in the proximity of the location of the alleged crime. This rule found in the Sixth Amendment guarantees the right to the criminal defendant so that the government cannot bring a lawsuit in a district foreign to the defendant).

trial in treason cases.⁴ On May 16, 1769, the Virginia House of Burgess adopted the Virginia Resolves which ensured that jurors could only be selected in the district where the crime was committed.⁵ Alongside Virginia, the other colonies adopted similar statements and by 1776 the Declaration of Independence was drafted and George III's methodology was denounced.⁶

Pursuant to 18 United States Code § 3237(a) "Any offense involving the use of. . . transportation in interstate or foreign commerce. . . 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. . . moves."⁷ In criminal cases

⁴ See *id.* (explaining that Parliament attempted to try Americans overseas and in other colonies to lower the chances of uproar and war.)

⁵ See *id.* (discussing the importance of having jurors selected in the district where the crime was committed to unburden the defendant, jurors, and witnesses).

⁶ See *id.* (arguing that the colonies followed in the footsteps of Virginia and rejected George III's practice of sending defendants back to Europe to be tried in a district where the crime was not committed).

⁷ See 18 U.S.C.A. § 3237 (West 2019) (detailing Congress's

involving murder or manslaughter venue is often determined by the location of the crime.⁸ In civil cases venue is decided by where the defendant lives or does business.⁹ But how is venue decided 30,000 feet above the ground?¹⁰ This is the dilemma the Ninth, Tenth, and Eleventh Circuits faced.¹¹ In this circuit

decision to implement 18 United States Code § 3237(a) to establish a means of finding proper venue in crimes involving transportation).

⁸ See 18 U.S.C.A. § 3236 (West 2019) (establishing that the place where the death happened determined the jurisdiction of the court on an indictment for murder or manslaughter).

⁹ See 28 U.S. 1391 (West 2019) (providing that in a civil case the venue statute is designed to hinder the plaintiff from selecting an inconvenient district to pursue a lawsuit against the defendant).

¹⁰ See Katherine Carey, *High (Flying) Crimes: Where is Venue Proper for Crimes Committed on an Airplane in Flight?*, SUNDAY SPLITS (Nov. 17, 2019), <http://sundaysplits.com/author/katherine-carey>) (questioning how courts decided venue when a crime is committed above ground in transportation).

¹¹ See *id.* (discussing the undue burden and hardship on the defendant when venue is not decided exactly where the crime took place).

split, the Tenth and Eleventh Circuits found proper venue in the district in which the airplane landed.¹² On the other hand, the Ninth Circuit found proper venue over the exact district in which the crime took place.¹³

This Comment argues that the Tenth and Eleventh Circuits correctly applied the two-part *Rodriguez-Moreno* test in connection with 18 U.S. Code § 3237(a) and the Ninth Circuit Court incorrectly ruled on proper venue.¹⁴ Part II describes a brief overview of venue.¹⁵ Additionally, Part II gives an

¹² See *United States v. Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004) (holding that venue can only be proper in the district where the airplane landed or in any district that the plane flew over to ensure fairness to the defendant, witnesses, and jurors).

¹³ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (holding that venue is only proper in the district over which the plane was flying when the crime occurred).

¹⁴ See 18 U.S.C.A. § 3237 (West) (establishing that crimes committed across several districts does not invoke an argument of improper venue, but rather that any district in which the transport traveled can be a potential venue location).

¹⁵ See *infra Part II* (describing the important role venue plays in the constitutional right to a fair trial); see generally, 2

overview in the understanding of the Sixth Amendment, specifically “any district wherein the crime shall have been committed. . ..”¹⁶ Part II also analyzes the *Rodriguez-Moreno* test and gives an overview of the Ninth, Tenth, and Eleventh Circuit cases in dispute.¹⁷ Part III discusses the circuit’s interest and reasoning and also discusses the pros and cons of finding venue where the plane lands versus finding venue exactly where the crime was committed.¹⁸ Part IV argues that improper

CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 301, (4th ed. 2006) (detailing the history of venue in the United States and how, when, and why the Colonies had to adopt their own provisional statutes separate from England).

¹⁶ See *infra Part II* (reviewing the language found in the Sixth Amendment and how it relates to venue and crimes committed on a plane); see generally, 18 U.S.C.A. § 3237 (West 2019) (interpreting the statutory language to distinguish what the Supreme Courts case law).

¹⁷ See *infra Part II* *United States v. Rodriguez-Moreno*, 526 U.S. 275, 273 (1999) (explaining the courts intention for creating the *Rodriguez-Moreno* test).

¹⁸ See *infra Part III* *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (finding proper venue in the district where the airplane landed); see also *United States v. Lozoya*, 920 F.3d

venue can result in an unfair burden and undue hardship on criminal defendants under the Sixth Amendment.¹⁹ Also, Part IV recommends that SCOTUS should rule in favor of finding venue where the plane lands and abolish finding venue in the air altogether.²⁰ Part V concludes by reiterating that the circuits should adopt the holdings in the Tenth and Eleventh circuits and find venue where the plane lands.²¹

II. BACKGROUND

A. *History of Establishing Venue*

The Framers could have never predicted the difficulty it

1231, 1233 (9th Cir. 2019) (holding that venue is only proper in the district over which the plane was flying when the crime occurred).

¹⁹ See *infra* Part IV U.S. CONST. amend. VI (establishing that it is unconstitutional to inflict unfair burden and undue hardship on criminal defendants).

²⁰ See *infra* Part IV (voicing the need to find in favor of the Tenth and Eleventh Circuits ruling and eliminate the Ninth Circuits holding and reasoning).

²¹ See *infra* Part V (concluding that other courts should find venue where the plane lands).

would be to find proper venue in today's society.²² The Framers wanted trials to be held in the jurisdiction of the defendant's residence since that may be where the witnesses would be located.²³ In the eighteenth century most crimes were committed at the place where the defendant resided.²⁴ In *Hyde v. Shine*, the Supreme Court held that the Supreme Court of the District of Columbia had jurisdiction over the conspiracy offense because the conspiracy was allegedly entered into the city of Washington.²⁵ Justice Brown argued that having a defendant

²² See 2 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 301, (4th ed. 2006) (analyzing the difficulty of finding a proper venue because of the growth of population and the expansion of crime in today's society).

²³ See *id.* (discussing how trials were to be conducted in the jurisdiction of the defendant).

²⁴ See 2 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 301, (4th ed. 2006) (describing how during the eighteenth-century most crimes were committed at the place where the defendant lived making the determination of venue much easier unlike today).

²⁵ See *Hyde v. Shine*, 199 U.S. 62, 78, (1905) (ruling that the United States Supreme Court does not wish to be understood as approving the practice of indicting citizens of distant states).

travel across the country to a foreign environment is not only unfair to him but his witnesses which is opposite of the Framers initial intention found in the Constitution.²⁶

Today, as crime continues to skyrocket, it is becoming more difficult to conform with the Constitution because crimes are often committed across districts and continents.²⁷ Today, criminal cases must be prosecuted in the district in which the alleged crime was committed.²⁸ However, in the event that a crime takes place in an airplane, Congress has provided a means for finding venue.²⁹ Under 18 United States Code § 3237(a), the

²⁶ See *id.* at 80 (emphasizing the courts concern by highlighting the burden that would be placed on the defendant if venue was found outside of the jurisdiction the crime was committed).

²⁷ See *id.* (explaining how it is difficult to conform with the Framers reasoning of finding venue in the district where the crime was committed found in the Constitution).

²⁸ See *United States v. Rodriguez-Moreno*, 526 U.S. 275, 273 (1999) (establishing that a criminal case must be heard in the district where the crime took place to ensure a fair trial to the defendant and easier access to witnesses and jurors).

²⁹ See *United States v. Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004) (explaining how Congress has instituted a process found under 18 United States Code § 3237(a) in which to find

government need only prove that the alleged crime took place on a form of transportation in interstate commerce.³⁰

B. Crimes Committed on Airplanes

1. Finding Venue Where the Plane Lands

In *United States v. Rodriguez-Moreno*, the Supreme Court granted certiorari to determine whether venue for indictment is restricted to where the weapon was conveyed or utilized, or if proper venue was in any district where the crime of violence or drug trafficking crime occurred.³¹ The Supreme Court ruled in favor of the government in finding that venue could be found in any district in which the crime occurred.³²

venue for cases involving transportation in interstate commerce).

³⁰ See *United States v. McCulley*, 673 F.2d 346, 349-50 (11th Cir. 1982) (establishing that the government has the burden to show that the crime took place on a form of transportation in interstate commerce).

³¹ See *United States v. Rodriguez-Moreno*, 526 U.S. 275, 273 (1999) (discussing the issue presented to the Supreme Court in the case of *United States v. Rodriguez-Moreno*).

³² See *Rodriguez-Moreno*, 526 U.S. at 277 (held that venue in prosecution for using or carrying a firearm during and in relation to a crime of violence is proper in any district where

The Supreme Court has provided a two-part inquiry to determine in which district the alleged crime was committed, and therefore, in which district venue is proper.³³ A court must first identify the conduct constituting the offense (the nature of the crime), and then the court must discern the location of the commission of the criminal acts.³⁴

In determining the proper venue in a criminal prosecution not involving airplane crimes, the Supreme Court restated the test set forth in *United States v. Cabrales*, the *locus delicti* [of the charged offense] must be determined from the type of crime alleged and the location of the act or acts

the crime of violence was committed).

³³ See *id.* at 276 (holding that Missouri was not a place of proper venue for money laundering offenses which were begun, conducted and completed in Florida, when defendant deposited and withdrew money from Florida bank).

³⁴ See Katherine Carey, *High (Flying) Crimes: Where is Venue Proper for Crimes Committed on an Airplane in Flight?*, SUNDAY SPLITS (Nov. 17, 2019), <http://sundaysplits.com/author/katherine-carey/> (quoting how a court must identify the conduct constituting the offense and discern the location of the criminal act).

constituting it.³⁵ The court held that, in performing this inquiry, one must identify the offense (the nature of the crime) and then discern the location of the crime.³⁶

Federal law enforcement has tracked a significant increase in sexual assaults on airplanes in the recent years.³⁷ Over 50 years ago Congress recognized the continued problem and initiated and passed legislation to protect flight crews and passengers from serious crimes.³⁸ Throughout the years, Congress

³⁵ See *United States v. Cabrales*, 524 U.S. 1, 110 (1998)

(discussing how the Supreme Court followed the holding in *United States v. Cabrales* to distinguish the nature of the crime and the location of the crime to establish the holding in *United States v. Rodriguez-Moreno*).

³⁶ See *id.* at 120 (holding that in order to prove the defendant was in violation, the Government had to show that the defendant used a firearm in connection with the kidnapping of the victim).

³⁷ See *Sexual Assault Aboard Aircraft*, FBI (Apr. 26, 2018), <https://www.fbi.gov/news/stories/raising-awareness-about-sexual-assault-aboard-aircraft-042618> (reporting that sexual assaults aboard an aircraft are a growing concern in the United States).

³⁸ See Federal Aviation Act Amendments of 1961, Pub. L. No. 87-197, 75 Stat. 466, 466-68 (describing the initiation of legislation to protect flight crew members and passengers aboard

extended the application to include assault cases.³⁹ In the Federal Aviation Act Amendments, policymakers urge Congress to enact a law to find venue where the plane lands so that more criminals can be convicted.⁴⁰ The policymakers argue that the statute will eliminate any dispute on venue in regards to crimes committed on a plane.⁴¹ The plane would be met by Federal officers upon landing and the accused could be taken into custody and the criminal proceedings could commence immediately.⁴² This was the case in *United States v.*

a plane).

³⁹ See Federal Aviation Act Amendments (discussing the history of the Act and the recent Amendments to ensure safety to all aboard the plane during a crime).

⁴⁰ See Federal Aviation Act Amendments (arguing how Congress must find in favor of the Tenth and Eleventh Circuits and find venue where the plane lands).

⁴¹ See Federal Aviation Act Amendments (discussing how finding venue where the plane lands will eliminate any minute technicalities and allow for a swifter justice procedure).

⁴² See Federal Aviation Act Amendments (suggesting if venue is found where the plane lands how quick and easy the process will begin and how much quicker justice would be attained for the victim(s)).

Breitweiser.⁴³

On January 26, 2004 Russel Breitweiser was convicted of abusive sexual contact with a minor and simple assault of a minor.⁴⁴ Breitweiser had assaulted fourteen-year-old A.B. while on a flight from Houston International Airport to Hartsfield-Jackson Atlanta International Airport.⁴⁵ On appeal Breitweiser argued that the district court erred in finding proper venue.⁴⁶ The court established that the government met its burden for proving proper venue by establishing that Breitweiser committed crimes on an airplane that landed in Georgia.⁴⁷ Further, the court argued that it would be impossible for the government to

⁴³ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (emphasizing how the defendant was met by officers upon landing and taken into custody).

⁴⁴ See *id.* (discussing how a jury found Breitweiser guilty and allowed the government to bring the case in anyone of the districts in which the crime allegedly took place).

⁴⁵ See *Breitweiser*, 357 F.3d 1249 at 1255 (describing the events that led up to Breitweiser's conviction).

⁴⁶ See *id.* (disagreeing with the court and asserting that the case should be reversed and remanded).

⁴⁷ See *id.* (reiterating how the government met its burden of proof by establishing that the plane landed in Georgia).

prove exactly where the crimes were committed.⁴⁸ The court relied heavily on the findings in *McCulley*.⁴⁹ The court concluded that the district court correctly found that there was venue in Georgia under § 3237(a).⁵⁰

In *Cope*, the Tenth Circuit affirmed Cope's conviction for operating a commercial airplane while under the influence of alcohol.⁵¹ The court rejected his argument of improper venue in the District of Colorado.⁵² In applying *Breitweiser*, the court

⁴⁸ See *id.* (arguing how it would be impossible for the government to pinpoint exactly when and where the crime took place during the flight).

⁴⁹ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (discussing how § 3237 was established to ensure that criminal cases could not be dismissed on a simple technicality).

⁵⁰ See *Breitweiser*, 357 F.3d 1249 at 1260 (holding that the district court ruled correctly in finding venue under § 3237(a) to prosecute the case in the district in which the crime was possibly committed).

⁵¹ *United States v. Cope*, 676 F.3d 1219, 1221 (2012) (defining under Title 18 United States Code § 341 that a person will be considered to be under the influence of alcohol with a blood alcohol count of .10 percent or higher).

⁵² See *Cope*, 676 F.3d at 1222 (disagreeing with Cope's argument

found that Cope committed the offense while operating the plane in interstate commerce.⁵³ The government had the choice of finding venue in any district Cope had traveled “from, through, or into,” which included the District of Colorado where the plane landed.⁵⁴

2. *Finding Venue Where the Crime Was Committed*

In *United States v. Lozoya*, the defendant was arrested and convicted of inflight simple assault in the Central District of California where the plane landed.⁵⁵ On review Lozoya rejected

the Court found venue proper in the district of Georgia pursuant to § 3237(a), citing *Breitweiser* for the proposition that the government must prove that the crime took place on an airplane in interstate commerce).

⁵³ See *id.* (holding that as long as the government could establish that Cope committed the crime interstate commerce then he could be tried in anyone of the districts in which the plane flew over).

⁵⁴ See *Cope*, 676 F.3d at 1222 (discussing how the prosecution could have found venue in any jurisdiction across the flight plan).

⁵⁵ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (holding that the defendant was guilty of inflight simple assault in the proper venue).

the Courts holding and argued improper venue.⁵⁶ The Ninth Circuit found the provisions of § 3237(a) to be inapplicable to establish venue in that district.⁵⁷ Specifically, after applying the *Rodriguez-Moreno* test, the Court disagreed with the statutory language “[continuing] offenses involving. . . transportation in interstate or foreign commerce.”⁵⁸

The Ninth Circuit determined that (1) as to the nature of the assault, Lozoya committed a single, instantaneous offense which, though it occurred on a plane. . . did not implicate interstate or foreign commerce, and (2) partly because of its instantaneous nature, the crime was likely committed only in the district over which the plane was flying at the time of the offense.⁵⁹ Accordingly, the Court held venue would be proper

⁵⁶ See *Lozoya*, 920 F.3d at 1234 (discussing respondent’s disagreement with the lower courts holding).

⁵⁷ See *id.* (rejecting the statutory interpretation, the Ninth Circuit found the provision to be inapplicable to their case).

⁵⁸ See *id.* (comparing the *Rodriguez-Moreno* test, the Court found a different interpretation of the statutory language).

⁵⁹ See *Lozoya*, 920 F.3d at 1234 (discussing how a crime on a plane does not implicate interstate commerce, and the likelihood that the crime was committed in a district where the plane was flying at the time).

only in the district over which the plane was flying when the crime occurred and reversed Lozoya's conviction on the grounds of improper venue.⁶⁰

III. ANALYSIS

- A. *The Tenth and Eleventh Circuits Were Correct in Finding Venue Where the Plane Lands Because They Properly Identified the Conduct of the Offense and Correctly Discerned the Location of the Criminal Act*

The Tenth and Eleventh Circuits correctly interpreted the plain language of 18 United States Code § 3237(a) because they found proper venue where the plane landed.⁶¹ When looking at the plain language of 18 United States Code § 3237(a), it is difficult to come to any conclusion other than that of the Tenth

⁶⁰ See *id.* (holding that venue could only be proper in the district where the crime occurred and reversed and remanded the district court's holding).

⁶¹ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (discussing how a jury found Breitweiser guilty of abusive sexual contact with a minor and simple assault of a minor while aboard an airplane); see also *United States v. Cope*, 676 F.3d 1219, 1221 (10th Cir. 2012) (holding that Cope was guilty for operating a commercial airplane while under the influence of alcohol).

and Eleventh Circuits because they properly identified the conduct constituting the offense and then discerned the location of the commission of the criminal act.⁶² 18 United States Code § 3237(a) clearly states that, “any offense against the United States . . . may be prosecuted in any district in which such offense was begun, continued, or completed.”⁶³ Additionally, 18 United States Code § 3237(a)– “any offense involving the use of . . . transportation in interstate or foreign commerce . . . is a continuing offense . . . and may be . . . prosecuted in any district from, etc. . . moves.”⁶⁴ Based on the statutory

⁶² Compare 18 U.S.C.A. § 3237 (West 2019) (stressing the need to prosecute in any district where the offense might have occurred) and *Cope*, 676 F.3d 1219, 1221, (10th Cir. 2012) (holding that proper venue is valid in any district upon which *Cope* had flown over), with *Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004) (discussing how venue should be found where the plane landed).

⁶³ See 18 U.S.C.A. § 3237 (West) (quoting the first prong of § 3237 and describing the ability to bring a claim in any of the districts in which a crime was begun).

⁶⁴ See 18 U.S.C.A. § 3237 (West) (quoting the second prong of § 3237 and explaining that any crime involving the use of transportation in interstate or international commerce is a continuing offense and liable to prosecution in any district

language, it is clear that the Supreme Court was most concerned with ensuring that a defendant did not get away with a crime simply because proper venue could not be established.⁶⁵ One can argue that limiting venue where the defendant and potential witnesses have zero ties can inflict an unfair burden and undue hardship.⁶⁶ In contrast, Judge Owens in *Lozoya* correctly argued that a prosecution in the landing district constitutes no type of discrimination towards defendants and the defendant can inquire a relocation of the venue if they sincerely feel inconvenienced.⁶⁷

from, through, or into such commerce).

⁶⁵ See John, Cooper, *Crimes Aboard American Aircraft: Under What Jurisdiction Are They Punishable?*, AM. BAR ASSOC. J., 37(4), 257-327 (1951) (discussing the courts' desire to attain fairness for both the defendant and the plaintiff but still ensure justice so that the criminal is punished).

⁶⁶ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (holding that having a limiting venue can result in an undue burden and unfair hardships not only to the defendant but also to the witnesses who may be called upon to testify).

⁶⁷ See *Lozoya*, 920 F.3d at 1234 (discussing how a defendant and her witnesses might be burdened by an opposing venue selection, but argued that if she is truly inconvenienced, she can request

The Constitution and the Sixth Amendment guarantee criminal defendants the right to be tried in the district in which the crime was committed.⁶⁸ To establish venue, the government need only show that the crime took place on a form of transportation in interstate commerce.⁶⁹ Under *Rodriguez-Moreno* and 18 United States Code § 3237(a) the government met its burden by showing that Breitweiser committed the crimes on an airplane that ultimately landed in Georgia.⁷⁰ The Court ruled correctly because ultimately it would be impossible for the government to prove exactly where the crime was committed.⁷¹ Additionally, the

a transfer in venue).

⁶⁸ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (explaining how the Court disagreed with Breitweiser although he had a right to argue that his case should be tried where the crime was committed).

⁶⁹ See *id.* (establishing that because it was proven that Breitweiser committed the crime on the plane, the government was able to establish venue in the district of its choosing).

⁷⁰ See *id.* (reiterating that the government did not need to prove exactly where the crime occurred only that the crime occurred while on flight the airplane).

⁷¹ See *id.* (demonstrating that the Ninth Circuit court ruled incorrectly in finding venue because there is no precise way of

Court correctly rejected the Ninth Circuit's reasoning because the crimes were continuing offenses and not point-in-time offenses.⁷² Where a crime consists of distinct parts which have different localities, the offense may be tried where any part was committed.⁷³ The Court concluded that venue could be established in any of the districts where the kidnapping occurred.⁷⁴

proving exactly which federal district was beneath the place at the time the crime took place).

⁷² See JIMMY GURULÉ, MARK H. BONNER & LAURIE LEVENSON, *COMPLEX CRIMINAL LITIGATION: PROSECUTING DRUG ENTERPRISES AND ORGANIZE CRIME*, 236 (3rd ed. 2013) (defining how a point-in-time offense is committed in the place where the kidnapping and the use of the gun coincided and a continuing offense is a crime that crossed district, borders, regions).

⁷³ See *id.* at 237 (distinguishing the proper usage of the Rodriguez-Moreno inquiry that the Tenth and Eleventh Circuits adopted versus the improper usage of the inquiry that the Ninth Circuit adopted).

⁷⁴ See *United States v. Rodriguez-Moreno*, 526 U.S. 275, 282 (1999) (holding that although the kidnapping initiated in one district, because it crossed interstate commerce any of the districts were available for proper venue).

B. *The Ninth Circuit Was Incorrect in Finding Venue Where the Crime Was Committed Because They Did Not Properly Identify the Location of the Criminal Act*

The Ninth Circuit incorrectly ruled on venue because the crime took place while the plane was in flight and landed in the district where the plaintiff brought the suit.⁷⁵ The court incorrectly applied the *Rodriguez-Moreno* inquiry because the court found that because the assault took place before the aircraft entered the district's airspace, so the venue could not be found where the plane landed.⁷⁶ Additionally, the court argued that the assault occurred in an instant and likely in the airspace of only one district, and the government did not prove that *any part* of that assault occurred once the aircraft entered the airspace over the Central District; indeed, it concedes that the assault ended before then.⁷⁷ The court incorrectly applied §

⁷⁵ See *Lozoya*, 920 F.3d at 1234 (disagreeing with the Tenth and Eleventh Circuits reasoning, the Ninth Circuit remanded the case on the grounds of improper venue).

⁷⁶ See *id.* at 1239 (arguing that the assault did not occur within the Central District of California because the Court held that airspace is jurisdictionally apart of the district it passes through).

⁷⁷ See *id.* at 1237 (disagreeing with the government, the court found that you must bring the claim in the same district in

3237(a) by arguing that it did not provide a basis for extending venue because the aircraft continued into its airspace after the offense was complete.⁷⁸ Also, the court found that once the crime was committed any subsequent activity was incidental and irrelevant for venue purposes.⁷⁹ This argument should be rejected because the statute makes clear that an offense is a continuing offense and can be inquired or prosecuted in any district.⁸⁰

The court determined that § 3237(a)'s second paragraph supported the government's position.⁸¹ However, the court argued that the paragraph, in relevant part, pertains to "offense[s]

which the crime took place).

⁷⁸ See *id.* at 1235 (reiterating that the court incorrectly applied the Rodriguez-Moreno inquiry and misinterpreted the test).

⁷⁹ See *id.* at 1230 (discussing how when a crime can only be committed in one location and cannot travel across commerce).

⁸⁰ See *United States v. Rodriguez-Moreno*, 526 U.S. 275, 1234 (1999) (arguing that the Ninth Circuit's interpretation and application of the Rodriguez-Moreno inquiry is incorrect and should be rejected).

⁸¹ See *id.* at 1235 (agreeing with the government, the Court finds that the second paragraph of § 3237(a) does apply).

involving the ... transportation in interstate or foreign commerce." 18 United States Code § 3237(a).⁸² The government maintained that because the charged offense involved transportation in interstate commerce, it was a continuing offense for purposes of § 3237(a).⁸³ This assertion is tenable, however, since the assault occurred on a plane, the offense itself implicated interstate commerce.⁸⁴ Here, the conduct constituting the offense was the assault, which had to do with interstate commerce.⁸⁵ As *Lozoya* notes, "the jurisdictional

⁸² See *id.* at 1239 (explaining how in part does not apply to the case at hand because the crime did not involve transportation in interstate commerce but rather it occurred in one precise location).

⁸³ See *id.* at 1240 (disagreeing with the Ninth Circuit, the government argued that under the statute the crime was continuing and can be prosecuted in any of the districts flown over).

⁸⁴ See *id.* at 1240 (distinguishing the application of the *Rodriguez-Moreno* inquiry from the Ninth Circuit and the Tenth and Eleventh Circuit's reasoning).

⁸⁵ See *id.* at 1230 (establishing that the crime that occurred took place across interstate commerce and the statute applies to the case because the crime was committed on a place in

element requiring the offense to have occurred on an aircraft does not convert the offense to one that involves transportation in interstate commerce.”⁸⁶ The court argued that even if it could be so construed, it would not be a conduct element of the offense, but rather a circumstance element that does not support venue.⁸⁷ This reasoning is incorrect because as *Breitweiser* established, any crime from, through, or into the interstate commerce is fair game in which the prosecution can bring their case.⁸⁸

The Ninth Circuit's interpretation of 3237(a) must be rejected because it did not correctly analyze the conduct of

interstate commerce).

⁸⁶ See *id.* at 1234 (quoting the reasoning of the Court in *Lozoya* and incorrectly arguing that just because a crime occurs on a plane does that mean that the crime involves transportation in interstate commerce).

⁸⁷ See *id.* at 1245 (clarifying that it will take more than just committing a crime on a plane to determine venue, but rather the plaintiff will have to establish at exactly what place in the flight plan the crime occurred).

⁸⁸ See *id.* at 1244 (disagreeing with the holding in *Lozoya* and arguing that the precedent established in *Rodriguez-Moreno* was incorrectly applied).

crime as required by *Rodriguez-Moreno*.⁸⁹ The Ninth Circuit argued that the Tenth and Eleventh Circuits misinterpreted the statute and instead, the court merely reiterated that even by a bulk of the evidence, it would be arduous, if not futile for the government to determine which federal district was below the plane when the defendant committed the crime.⁹⁰ Additionally, the Court argued that the Tenth and Eleventh Circuits improperly relied on *United States v. McCulley's* reasoning, that § 3237 was constructed to counter criminal evading retribution when there was a lack of a venue.⁹¹

Judge Owens dissents in *Lozoya*, finding that the venue provision at issue—the second paragraph of 18 United States Code

⁸⁹ See *id.* at 1235 (emphasizing that the Tenth and Eleventh Circuits' reasoning and application of the *Rodriguez-Moreno* inquiry must be applied to the *Lozoya* case and any future cases that face the same dilemma).

⁹⁰ See *id.* at 1237 (arguing that the Tenth and Eleventh Circuits were too eager to find venue and in turn the defendant was faced with undue burden and hardship).

⁹¹ See *id.* at 1240 (highlighting how the Tenth and Eleventh Circuits were more focused on finding a venue to bring the case regardless of the burden on the defendant).

§ 3237(a)—could be clearer.⁹² However, he argued, like the Supreme Court advised, interpretations that formulate illogical results should be avoided.⁹³ The Judge correctly agreed with the Tenth and Eleventh Circuits and found that the “transportation in interstate . . . commerce” language in § 3237(a) covered the conduct at issue here.⁹⁴ The Judge argued that the Tenth and Eleventh Circuits opinions were not tenure track in their analyses, but not every legal question requires a law review article, sometimes common sense is enough.⁹⁵ Finally, the Judge argued that venue in criminal cases protects defendants’ rights

⁹² See *id.* at 1241 (dissenting and finding that it would be impossible to determine the exact location of where a crime took place in an airplane).

⁹³ See *id.* at 1236 (suggesting that the courts should look to the statutory language to help clarify this confusion and calls on the Supreme Court to clarify this language to help mitigate the several different rulings).

⁹⁴ See *id.* at 1236 (arguing how it is clear what Congress was trying to establish and that the courts should follow the statutory interpretation provided).

⁹⁵ See *id.* at 1240 (discussing how some issues are straight forward).

to a fair trial.⁹⁶ But here, limiting venue to a flyover state, where the defendant and potential witnesses have no ties, makes no sense.⁹⁷ In contrast, a prosecution in the landing district creates no unfairness to defendants.⁹⁸

The Ninth Circuit incorrectly interpreted the plain language of 18 United States Code § 3237 and created an irrational split among the circuits.⁹⁹ The first prong of § 3237(a), the Temporal Prong— “any offense against the United States begun in one district and completed in another, or

⁹⁶ See *id.* at 1241 (reiterating how it protects defendants but there is in a case involving airplanes it does not make sense to find venue over the district where the crime was committed).

⁹⁷ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (dissenting with the court, Judge Brown discusses how it would be extremely difficult for the government to prove exactly where the crime took place in the air, not only in this case but in future similar cases).

⁹⁸ See *id.* at 1238 (explaining how it does not create an unfairness to defendants especially if the defendant is guilty).

⁹⁹ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (holding that the district court incorrectly established venue in the district where the plane landed rather than the district where the crime was committed).

committed in more than one district, may be . . . prosecuted in any district in which such offense was begun, continued, or completed” seems quite clearly meant to apply to crimes which are still being committed when district lines are crossed, as the Ninth, Tenth, and Eleventh Circuits held.¹⁰⁰

The issue in dispute among the circuits is the second prong of § 3237(a), the Commerce Prong— “any offense involving the use of . . . transportation in interstate or foreign commerce . . . is a continuing offense . . . and may be . . . ”¹⁰¹ In other words, when a crime involves air travel as an essential element to its success, it then falls under the Commerce Prong because it involved an offense involving the use of transportation.¹⁰²

¹⁰⁰ See *id.* at 1234 (defining what it means to commit an offense in more than one district and where the trial can be held. Also, distinguishing that the Ninth, Tenth, and Eleventh Circuits were not in dispute about this section of the statute).

¹⁰¹ See *id.* at 1235 (distinguishing the actual area in dispute among the circuits because of the different interpretations of the statute).

¹⁰² See *id.* at 1235 (defining involving the use, and how the Ninth Circuit interpreted the statute to mean that the airplane must be engaged as a participant of the crime to determine their holding).

However, the Ninth Circuit's position is that the airplane was not a part of the essential element and was not engaged as a participant of the crime just because the crime took place on the plane does not mean it was involving the use of transportation.¹⁰³ The Ninth Circuit incorrectly interpreted the statute.¹⁰⁴

Defendants are not receiving an unfair burden or undue hardship when the venue is chosen outside of the State and district where the crime is committed because they can request a change in venue.¹⁰⁵ The Sixth Amendment establishes the rights

¹⁰³ See *id.* at 1234 (indicating that an air travel crime would only apply under the Commerce Prong if the air travel was a participant in the crime. For example, drug trafficking via air commercial air travel).

¹⁰⁴ See *id.* at 1239 (rejecting the district court's holding and the Tenth and Eleventh Circuits' holding, the Ninth Circuit incorrectly ruled in *Lozoya* and should have found venue where the plane landed).

¹⁰⁵ See Scott Kafker, *The Right to Venue and the Right to an Impartial Jury: Resolving the Conflict in the Federal Constitution*, 52 U Chi L. Rev 729, 730 (1985) (discussing how in some criminal cases, courts have had to change venue because of the pretrial publicity and the risks of prejudice to the

to a defendant in a criminal trial.¹⁰⁶ The amendment addresses the right to an impartial jury.¹⁰⁷ Traditionally, courts have granted a change of venue in situations where the defendants constitutional rights are in jeopardy.¹⁰⁸ It is essential for courts to grant a defendant a proper venue to guarantee the constitutional right to a fair trial.¹⁰⁹ The determination can

defendant).

¹⁰⁶ See U.S. CONST. amend. VI (establishing the rights of a defendant when accused of a crime, which include: the right to a speedy trial, public trial, impartial jury, and notice of the accusation).

¹⁰⁷ See U.S. CONST. amend. VI (guaranteeing the right to a trial by an unbiased jury under the Sixth Amendment. Additionally, the prosecutor and defense attorney interview potential jurors to ensure impartiality and later choose who becomes a part of the jury).

¹⁰⁸ See *Groppe v. Wisconsin*, 400 U.S. 505, 510-11 (1971) (holding that in some cases, a change of venue is required to ensure an impartial jury).

¹⁰⁹ See *United States v. Johnson*, 323 U.S. 273, 273 (1944) (affirming the district courts holding in granting venue where the crime was completed and not allowing the defendants to be hauled across the country for trial under the Federal Denture

impose undue hardship by forcing the defendant to defend in an environment alien to her in the course of litigation.¹¹⁰

The Ninth Circuit erred in finding proper venue in the district where the crime occurred because it would be impossible to pinpoint the exact location of where the crime took place.¹¹¹

The Framers issued the section on trials being held in the place where the crime occurred to ensure fairness to the defendants.¹¹²

However, the Ninth Circuits argument is founded on the testimony of a flight attendant who was told that an assault occurred at least an hour after takeoff.¹¹³ The flight attendant also stated

Act).

¹¹⁰ See *id.* at 250 (addressing the concerns of the court and its desire to ensure fairness to the defendant in its trial by allowing the litigation to take place where the crime took place).

¹¹¹ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (arguing that it would be wildly unreasonable for the government to have to locate the exact location of not only this crime but any future crimes that occurred on a plane).

¹¹² See *id.* at 29 (discussing the potential trauma that could occur when asking a victim (especially a child) to discuss the precise timeline of their sexual assault).

¹¹³ See *id.* at 24 (highlighting the difficulty it would be to

that during the flight, which lasted approximately three hours, he received word of an assault. The flight attendant spent 30 to 45 minutes investigating the incident. During the investigation, the captain made an announcement that the aircraft would soon be landing—which usually occurs twenty-five minutes before landing.¹¹⁴ The Ninth Circuit argued that with the testimony and flight data plan the government could pinpoint exactly where the crime took place.¹¹⁵ However, this rationale is unreasonable and ridiculous because it simply is not feasible, not only in this case but in future cases because it could potentially be unreliable.¹¹⁶ The Ninth Circuit wanted to ensure fairness to

rely on one person's testimony and ability to account for detailed memories and find the exact location of where the crime was committed even with the help of the flight data).

¹¹⁴ See *id.* at 23 (identifying the exact point in time the assault occurred based on circumstantial evidence, such as average speed of the plane and the districts it flew over during its flight time).

¹¹⁵ See *id.* at 24 (addressing the difficulty in precision when a crime takes place in the air over multiple circuits, districts, and airports in close proximity).

¹¹⁶ See *id.* at 29 (dissenting with the Ninth Circuits decision, the Tenth and Eleventh Circuits argued that the Ninth Circuits

the defendant and prevent the defendant from traveling to a foreign environment.¹¹⁷ But what difference will it make if the defendant is tried in the pinpoint venue or the venue in which the plane landed when it could potentially still be an environment alien to him?¹¹⁸ The Tenth and Eleventh Circuits were correct in finding venue in a district where a plane lands or in any of the districts that it flies over because it will not make a difference to a defendant.¹¹⁹

holding could potentially apply to other cases and it will apply to any crime not just sexual assault, but also murder and theft).

¹¹⁷ See *id.* at 24 (questioning whether it would be unfair for the defendant to travel to any of the districts over the flight plan versus traveling to the district where the plane landed when potential witnesses would have to travel to the foreign venue either way).

¹¹⁸ See *id.* (examining the reality of the Ninth Circuits holding when it is clear that each case will be different and each testimony might not be so precise).

¹¹⁹ See *id.* (evaluating whether a defendant would care if he is tried in one rather than another of the states over which the plane flew over when he would have to travel regardless unless he is from one of the flown over districts).

The Ninth Circuit incorrectly argued that based on the Constitution, the *Rodriguez-Moreno* inquiry, and case law that venue should be found in the district the crime occurred.¹²⁰ The Ninth Circuit argued that based on their findings the crime could not have occurred in the district in which the prosecution brought its charges.¹²¹ The court disagreed with the Tenth and Eleventh Circuits interpretation in that venue could be brought in any district in which the crime took place because it is unfair to the defendant.¹²²

The Ninth Circuit incorrectly interpreted Title 18 United

¹²⁰ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (arguing that the Tenth and Eleventh Circuits were correct in their statutory interpretations and applied the *Rodriguez-Moreno* inquiry correctly because statutory interpretations which would produce absurd results are to be avoided).

¹²¹ See *id.* at 26 (concluding that because the prosecution does not dispute that the assault ended before the aircraft entered the airspace of where the charges were brought then the venue had to be improper).

¹²² See *id.* at 29 (discussing under the majority rule, the government must prove which district-not merely which state- an airplane was flying over when the crime was committed).

States Code § 3237 as applied to *Breitweiser* and *Cope*.¹²³ The statute establishes that if a crime is committed in multiple districts, meaning that if a crime starts in one district and ends in another through the use of transportation, then the defendant can be prosecuted in anyone of the districts in which she passed through.¹²⁴ In *Cope*, the Tenth Circuit established that because *Cope* was under the influence of alcohol during the flight and was operating a common carrier in interstate commerce, it was immaterial whether he was under the influence

¹²³ See *United States v. Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004) (holding that venue can only be proper in the district where the airplane landed); see generally *United States v. Cope*, 676 F.3d 1219, 1221 (2012) (holding that the prosecution can bring a lawsuit in any one of the districts in which a crime was carried out through the use of transportation); see 18 U.S.C.A. § 3237 (West 2019) (detailing Congress's decision to implement this section to establish a means of finding proper venue in crimes involving transportation).

¹²⁴ See *Cope*, 676 F.3d 1219, 1221 (2012) (outlining the necessary criteria to establish venue involving crimes that occur in more than one district).

of alcohol in Colorado.¹²⁵ It was then established that venue could be brought in the District of Colorado because the government showed that the crime took place on a form of transportation in interstate commerce.¹²⁶ So, venue was proper in any district through which Cope traveled on the flight, including the District of Colorado.¹²⁷ The only thing the government needs to show is that the evidence proves that the defendant passed through the district.¹²⁸

¹²⁵ See *id.* at 1221 (distinguishing the irrelevance of the defendant being under the influence to determine that venue was proper in the District of Colorado).

¹²⁶ See *id.* at 1225 (finding that in order to establish that venue was proper in the District of Colorado the government only had to show that the crime took place on a plane, car, boat, etc. and crossed multiple districts).

¹²⁷ See *id.* at 1225 (deciding that because the crime took place on a plane that crossed through the District of Colorado then venue was proper, and the government met its burden).

¹²⁸ See *id.* at 1225 (reiterating that the government needed to show that the defendant was traveling through the District of Colorado at the time the crime took place, which they established so the court affirmed the district court's opinion and granted venue in the District of Colorado).

If the defendant believes that the venue is improper, the accused may request a change of venue for reasons of prejudice, convenience, plea or sentence.¹²⁹ Therefore, there is a remedy that relieves the argument of unfairness and undue burden and hardship.¹³⁰ However, to receive a change of venue, defendants must show that they cannot receive a fair trial under the current circumstances.¹³¹ That reasonable likelihood is usually due to pretrial publicity, but it could have to do with some other event making it almost impossible to find an impartial

¹²⁹ See Charles Doyle, *Venue: An Abridged Legal Analysis of Where a Federal Crime May be Tried*, FEDERATION OF AMERICAN SCIENTISTS (Dec. 6, 2018), <https://fas.org/sgp/crs/misc/RS22361.pdf> (explaining the remedy the defendant has if she believes that the court granted an improper venue or the defendant can waive trial in a proper venue either explicitly or by failing to object to prosecution in an improper venue in a timely manner).

¹³⁰ See *id.* (recognizing that the defendant does receive justice when given the option of requesting a change of venue).

¹³¹ See *id.* (requiring that a defendant show the court that they received an unjust ruling by proving she will receive an impartial jury in the venue, pretrial publicity, prejudice by a judge, etc.).

jury.¹³²

IV. POLICY RECOMMENDATION

The Ninth Circuit ended its opinion by calling on Congressional action.¹³³ “Congress can . . . enact a new statute to remedy any irrationality that might follow from our conclusion.¹³⁴ Indeed [we hope] that Congress will address this issue by establishing a just, sensible, and clearly articulated venue rule for this and similar airborne offenses.”¹³⁵ It is imperative that Congress enact a law that will rectify the Ninth

¹³² See *id.* (discussing additional reasons why a defendant might request a change of venue in a district granted to the prosecution).

¹³³ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (concurring in part and dissenting in part with the court, Judge Owen urges either the Supreme Court or Congress to establish a venue rule that is fair).

¹³⁴ See *id.* at 1240 (Owens, J., dissenting) (suggesting Congress enact a new law to correct the split amongst the Circuits).

¹³⁵ See *id.* at 1240 (continuing his desire for Congress to enact a new law, Justice Owens emphasizes the need to establish a clear and candid law to resolve the dilemma among the circuits).

Circuits opinion.¹³⁶ Without a clear statute for courts to follow criminals will continue to escape convictions because of improper venue.¹³⁷

The Ninth Circuit incorrectly interpreted the language of § 3237(a) and this interpretation is not good policy.¹³⁸ The Tenth and Eleventh Circuits addressed the difficulty of establishing proper venue and even claimed that it may be impossible for the government to prove.¹³⁹

¹³⁶ See *id.* at 1245 (resolving this dilemma is necessary to ensure justice to the victims of potential crimes involving an aircraft).

¹³⁷ See *id.* at 1245 (disagreeing with the court Judge Owen discusses how without precision that the majority requires, prosecutions of violent crimes on board aircraft could be impossible and result in dismissal).

¹³⁸ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (describing how the court found that 18 U.S. Code § 3237(a) was not applicable and how it was just to find venue in the exact district where the crime was committed).

¹³⁹ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (arguing that proper venue is in the district where the plane landed and not exactly where the crime took place).

The Ninth Circuit relied heavily on the testimony of the lead flight attendant in its case.¹⁴⁰ To pinpoint the exact district in which the crime took place based off of flight plans and data is already insufficient, but to base it off an unreliable witness who was alerted by the crime by another passenger is even more inadequate.¹⁴¹ It would be irresponsible of courts to establish proper venue off of the testimony of a busy flight attendant and flight plans.¹⁴² Additionally, if courts were to allow this type of evidence to be the basis of establishing venue, they will be entrusting flight attendants to handle the immediate investigation of the crime and the responsibility of marking the exact time and place the crime occurred.¹⁴³

¹⁴⁰ See *Lozoya*, 920 F.3d at 1234 (relying heavily on the flight attendant's testimony the Ninth Circuit overruled the district court's holding and remanded the case).

¹⁴¹ See *id.* at 1233 (criticizing the majorities holding, Justice Owens distinguishes the need to find more reliable evidence in proving venue that can be more sufficient).

¹⁴² See *id.* at 1233 (reiterating the need to establish a system that has more safeguards to ensure accuracy amongst the other circuits).

¹⁴³ See *id.* at 1235 (highlighting how difficult it would be for

Finally, how can the court argue that finding venue exactly where the crime took place rather than where the plane landed is fair?¹⁴⁴ If the entire purpose of venue is to prevent undue burden and hardship to the accused by not holding a trial in an environment alien to the defendant, then finding venue in a flyover district is not any less fair than finding venue where the plane landed.¹⁴⁵ One can argue that finding venue exactly where the crime took place is more burdensome to the defendant because the defendant may not have any dealings in that district.¹⁴⁶ However, by finding venue where the plane lands,

courts to ask so much of flight attendants when crimes are committed on a plane).

¹⁴⁴ See *id.* at 1234 (questioning how the courts reasoning is illogical and lacks a true basis in finding venue in the district in which the crime was committed).

¹⁴⁵ See *United States v. Breitweiser*, 357 F.3d 1249 (11th Cir. 2004) (arguing how the defendant will still be burdened whether in a flyover district or in the district where the plane has landed; however, the court wants to establish continuity by finding venue where the plane lands).

¹⁴⁶ See *id.* at 1255 (inferring that finding venue where the plane lands is not anymore burdensome to the defendant because there is no guarantee that the flyover state will be any less

there's a possibility that the defendant may have family, friends, or even may call the district home.¹⁴⁷ If the defendant believes that she is still burdened then she can request a change in venue.¹⁴⁸

V. CONCLUSION

When comparing the Ninth, Tenth, and Eleventh Circuits holdings it is clear that the Ninth Circuit has interpreted the two-part *Rodriguez-Moreno* test and 18 U.S. Code § 3237(a) completely differently from the Tenth and Eleventh Circuits.¹⁴⁹

burdensome).

¹⁴⁷ See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (noting that there is always a chance that the defendant may have to travel to an environment alien to her because the crime was committed on an airplane that may pass through multiple districts).

¹⁴⁸ See *id.* at 1240 (rejecting the courts reasoning Justice Owens argued that the defendant always has the right to request a change in venue to a district less burdensome to her and her potential witnesses).

¹⁴⁹ See *id.* at 1230 (splitting from the Tenth and Eleventh Circuits the Ninth Circuit interpreted the *Rodriguez-Moreno* test and 18 U.S. Code § 3237(a) to find venue proper in the district

The Tenth and Eleventh Circuits held that venue was proper in the district in which the airplane landed.¹⁵⁰ The government met its burden by showing that the crime took place on a form of transportation in interstate commerce and the claim could be brought in anyone of the districts in which the crime took place.¹⁵¹ The Ninth Circuit split from the Tenth and Eleventh Circuits and found that the *Rodriguez-Moreno* test did not apply.¹⁵² Additionally, they argued that § 3237(a) was not

where the crime was committed).

¹⁵⁰ See *United States v. Breitweiser*, 357 F.3d 1249, 1253 (11th Cir. 2004) (holding that venue can only be proper in the district where the airplane landed or in any district that the plane flew over to ensure fairness to the defendant, witnesses, and jurors); see generally *United States v. Cope*, 676 F.3d 1219, 1221 (2012) (holding that the prosecution can bring a lawsuit in any one of the districts in which a crime was carried out through the use of transportation).

¹⁵¹ See *id.* at 1221 (vacating the holding in *Lozoya*, the Tenth Circuit established that the prosecution could bring their case in anyone of the districts the plane passed over).

¹⁵² See *United States v. Lozoya*, 920 F.3d 1231, 1233 (9th Cir. 2019) (declining the Tenth and Eleventh Circuits holding, the Ninth Circuit argued that venue would not be held where the

applicable to establish venue in the district in which the plane landed because the crime did not take place in the district in which the plane landed.¹⁵³

While it may seem like this is a difficult query for some, there is a simple and straightforward solution.¹⁵⁴ By finding venue where the plane lands this will eliminate potential inconsistent testimonies from witnesses in determining the exact pinpoint of where the crime took place.¹⁵⁵ Additionally, if courts were to apply the ruling in the Tenth and Eleventh Circuits holdings there will be a potential decrease in the amount of defendants escaping conviction based off improper

plane landed because it could prove exactly where the crime took place).

¹⁵³ See *id.* at 1233 (arguing that the statute did not apply to their case, the Ninth Circuit rejected the prior holdings and set forth their own interpretation of the statute).

¹⁵⁴ See *id.* at 1233 (providing a solution to this split, Judge Owens suggests to the court that they should find venue where the plane lands because it will be impossible to locate the venue exactly where the crime took place).

¹⁵⁵ See *id.* at 1233 (underlining the future errors that may arise if the courts continue to follow the Ninth Circuits holding and not find venue where the plane lands).

venue.¹⁵⁶

¹⁵⁶ See *id.* at 1233 (suggesting that there can be a decrease in the amount of defendants that slip through the cracks and escape conviction based on improper venue).