



# Terrorist Attacks on Commercial Airlines: Federal Criminal Prohibitions

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January 22, 2010

Congressional Research Service

7-5700

[www.crs.gov](http://www.crs.gov)

R41035

## Summary

Federal authorities can and have prosecuted terrorist attacks on commercial airlines under a wide variety of federal statutes. Some of those statutes outlaw crimes committed aboard a commercial airliner; some, crimes committed against the aircraft itself; others, crimes involving the use of firearms or explosives; still others, crimes committed for terrorist purposes. Within each category, the law reaches co-conspirators and other accomplices. Moreover, although most apply when committed within the United States, many apply to terrorist attacks overseas, particularly but not necessarily, when the victims are Americans or U.S. airlines.

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## Introduction

A handful of terrorists have been prosecuted in federal court for attacks on commercial airlines or their passengers. Most often they have been charged with several crimes. Prosecution for some crimes depends upon where they were committed; some on the nationality of the airline, of the victim, or of the offender; some on whether the crimes has been planned, attempted, or completed; some on the nature of the attack; and some without regard to any of these factors. For instance, Umar Farouk Abdulmutallab, the alleged so-called Christmas bomber, has been charged with attempted use of a weapon of mass destruction; attempted murder within the special aircraft jurisdiction of the United States; attempt to destroy an aircraft within such jurisdiction; placing an endangering destructive device upon an aircraft there; and possession of a destructive device in furtherance of a crime of violence.<sup>1</sup> The offenses with which terrorists may be charged fall within one or more of several categories: crimes committed aboard an aircraft; crimes committed against an aircraft; crimes committed using dangerous instrumentalities, such as a bomb; crimes of terrorism; crimes committed by or against certain classes of individuals; and crimes for which accomplices may be liable. This is a brief description of those offenses, and an outline of the penalties to which they may be subject and of the jurisdictional circumstances under which offenses they may be federally prosecuted regardless of whether they are committed within the United States or overseas. Perhaps because of the range of existing criminal proscriptions, there have been no legislative proposals to enlarge upon them as of yet.<sup>2</sup>

## Crimes Aboard an Aircraft

Chapter 465 of title 49 of the United States Code prohibits, among other offenses, murder, manslaughter, attempted murder or manslaughter, and assault, when committed within the special aircraft jurisdiction of the United States.<sup>3</sup> It defines the special aircraft jurisdiction of the United States to include any aircraft in flight (from when the doors are closed after boarding until when they are opened after landing) in the United States.<sup>4</sup> It includes any aircraft of an America carrier, or any U.S. military craft, in flight anywhere else in the world.<sup>5</sup> It also includes any aircraft of a foreign carrier in flight and destined for, or departing from, the United States, as well as any foreign aircraft which in a case of air piracy lands in the United States with the hijacker aboard.<sup>6</sup>

In addition to outlawing murder, manslaughter, attempted murder or manslaughter, assault and a few other common law crimes committed within the special aircraft jurisdiction of the United States,<sup>7</sup> chapter 465 outlaws:

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<sup>1</sup> INDICTMENT, *United States v. Abdulmutallab*, 2:10-cr-2005 (E.D. Mich. (S.D) Jan. 6, 2010).

<sup>2</sup> For a general discussion of proposals concerning aviation security see CRS Report RL33512, *Transportation Security: Issues for the 111th Congress*, by David Randall Peterman, Bart Elias, and John Frittelli and CRS Report RL33645, *Terrorist Watchlist Checks and Air Passenger Prescreening*, by William J. Krouse and Bart Elias.

<sup>3</sup> 49 U.S.C. ch. 465; 49 U.S.C. 46501, 46506.

<sup>4</sup> 49 U.S.C. 46501.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 49 U.S.C. 46506 prohibits by cross reference crimes described in 18 U.S.C. 113 (assault), 114 (maiming), 661 (theft), (continued...)

- aircraft piracy within the special aircraft jurisdiction of the U.S. (violently taking over an aircraft in flight or the attempt or conspiracy to do so);<sup>8</sup>
- aircraft piracy outside the special aircraft jurisdiction of the U.S. (violently taking over an aircraft in flight or the attempt or conspiracy to do so where an American was aboard, the offender is an American, or where the offender is later found in the U.S.);<sup>9</sup>
- interfering with (assaulting) security screening personnel in the United States;<sup>10</sup>
- interfering with (assaulting, intimidating, or attempting or conspiring to assault or intimidate) a flight crew member or attendant in the special aircraft jurisdiction of the United States;<sup>11</sup>
- placing, causing to be placed, or possessing a loaded firearm, explosive, or incendiary device aboard an aircraft in intrastate, interstate, or foreign air transportation (or attempting to do so);<sup>12</sup> and
- threatening to commit, or provide false information concerning the commission of, one of these offenses.<sup>13</sup>

Terrorists who have attacked commercial aircraft have most often been prosecuted under chapter 465 or its air piracy predecessor 49 U.S.C. App. 1472 (1988 ed.). This is because of the number of individual offenses in the chapter and because the air piracy statute was one of the first federal laws that addressed directly terrorism aboard commercial airlines.

The early air piracy statute was used to convict Omar Mohammed Ali Rezaq. Rezaq was one of several terrorists who hijacked an Air Egypt flight after it took off from Athens and who subsequently murdered or attempted to murder several passengers including three Americans.<sup>14</sup> The statute was also used to prosecute Fawaz Yunis who participated in the seizure of a Jordanian airliner in flight from Beirut to Cyprus.<sup>15</sup>

Over the years, Congress added other on board crimes to the section before it broke them out into the separate sections of chapter 465. For instance, the expanded statute was used to convict

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(...continued)

662 (receipt of stolen property), 1111 (murder), 1112 (manslaughter), 1113 (attempted murder or manslaughter), 2111 (robbery), and ch. 109A (sexual abuse) – when committed in the special aircraft jurisdiction of the United States.

<sup>8</sup> 49 U.S.C. 46502(a).

<sup>9</sup> 49 U.S.C. 4605(2)(b).

<sup>10</sup> 49 U.S.C. 46503.

<sup>11</sup> 49 U.S.C. 46504.

<sup>12</sup> 49 U.S.C. 46505.

<sup>13</sup> 49 U.S.C. 46507.

<sup>14</sup> *United States v. Rezaq*, 134 F.3d 1121, 1126 (D.C.Cir. 1998). Rezaq was sentenced to life imprisonment following his conviction, *id.* at 1127.

<sup>15</sup> *United States v. Yunis*, 924 F.2d 1086, 1089-90 (D.C.Cir. 1991). Yunis was charged with conspiracy (18 U.S.C. 371); hostage taking (18 U.S.C. 1203); air piracy (49 U.S.C. App. 1472(n)(1988 ed.)); violence aboard an aircraft (18 U.S.C. 32(b)(1)); damaging an aircraft (18 U.S.C. 32(b)(2)); and placing a destructive device on an aircraft (18 U.S.C. 32(b)(3)). He was convicted of all but the section 32 offenses and sentenced to concurrent sentences of imprisonment for 30 years (hostage taking), 20 years (air piracy), and 5 years (conspiracy).

Mohammed Rashed for placing a bomb on a Pan Am flight from Tokyo to Honolulu that killed a Japanese passenger and injured several others.<sup>16</sup>

Since the components of the original air piracy statute have been divided into the various sections of chapter 465, they have been used to prosecute Richard Reid, the shoe bomber;<sup>17</sup> Umar Farouk Abdulmutallab, the alleged Christmas bomber;<sup>18</sup> Zacarias Moussaoui, the co-conspirator of the 9/11 terrorists;<sup>19</sup> and Ahmed Omar Abu Ali, convicted in connection with the activities of an al Qaeda cell in Saudi Arabia.<sup>20</sup>

## Crimes Against an Aircraft

Although there is some overlap with chapter 465, crimes committed against aircraft are the province of chapter 2 of title 18 of the United States Code, principally 18 U.S.C. 32.<sup>21</sup> Among other things, section 32 outlaws damaging or destroying an aircraft in the special aircraft jurisdiction of the United States by fire or destructive device (or attempting or conspiring to do so).<sup>22</sup> It provides similar protection for foreign flagged aircraft, when the offender is an American,

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<sup>16</sup> *United States v. Rashed*, 83 F.Supp.2d 96, 100 (D.D.C. 1999). Rashed was initially charged with conspiracy to commit murder (18 U.S.C. 1117); murder (18 U.S.C. 1111); damaging an aircraft (18 U.S.C. 32); destroying property with an explosive (18 U.S.C. 844(i)); placing a bomb on an aircraft intended for foreign transportation (49 U.S.C. 1472(1)(2)1988 ed.); and assault (18 U.S.C. 113), *id.* He subsequently pleaded guilty to the conspiracy and murder charges under a plea agreement which called for him to serve 25 years in prison, Department of Justice, *Press Release* (Mar. 24, 2006), available at [http://www.justice.gov/opa/pr/2006/March/06\\_crm\\_172.html](http://www.justice.gov/opa/pr/2006/March/06_crm_172.html).

<sup>17</sup> *United States v. Reid*, 369 F.3d 619, 619-20 (1<sup>st</sup> Cir. 2004). Reid attempted to destroy an American Airline aircraft in flight between Paris and Miami, using explosives hidden in his shoes. He was charged with an attack on mass transit (18 U.S.C. 1993 (2000 ed.)); attempted use of a weapon of mass destruction (18 U.S.C. 2332a(a)(1)); attempted homicide (18 U.S.C. 2332(b)(1)); placing an explosive device on board an aircraft (49 U.S.C. 46505); attempted murder (49 U.S.C. 456506(1) and 18 U.S.C. 1113); interfering with an airline flight crew and attendants (49 U.S.C. 46504); attempted destruction of an aircraft (18 U.S.C. 32(a)); and using a destructive device during and in relation to a crime of violence (18 U.S.C. 924(c)). He pleaded guilty to and was sentenced to life imprisonment for each of the offenses with which he was charged other than alleged violation of 18 U.S.C. 1993 which was only later amended to include attacks on air transportation (now amended as 18 U.S.C. 1992).

<sup>18</sup> Abdulmutallab was charged with attempting to destroy a Northwest Airline aircraft in flight between Amsterdam and Detroit, using explosives hidden in his underwear. More specifically, the indictment charged him with attempted use of a weapon of mass destruction (18 U.S.C. 2332a(a)(2)); attempted murder (49 U.S.C. 456506(1) and 18 U.S.C. 1113); attempted destruction of an aircraft (18 U.S.C. 32(a)(1), (2), (8)); and using a destructive device during and in relation to a crime of violence, (18 U.S.C. 924(c)(1)(A), (c)(1)(B)(ii)), INDICTMENT, *United States v. Abdulmutallab*, 2:10-cr-2005 (E.D. Mich. (S.D) Jan. 6, 2010).

<sup>19</sup> Moussaoui pleaded guilty to being a co-conspirator in the 9/11 terrorist attacks and was sentenced to six terms of life imprisonment. His plea covered charges for conspiracy to commit acts of terrorism transcending national boundaries (18 U.S.C. 2332b(a)(2) and (6)); conspiracy to commit air piracy (18 U.S.C. 46502(a)(1)(A) and (a)(2)(B)); conspiracy to destroy aircraft (18 U.S.C. 32(a)(7) and 34); conspiracy to use weapons of mass destruction (18 U.S.C. 2332a(a)); conspiracy to murder federal employees (18 U.S.C. 1114, 1117); and conspiracy to use explosives to destroy property used in or whose use affects the interstate or foreign commerce of the United States (18 U.S.C. 844(f), (i), (n)), *United States v. Moussaoui*, \_\_\_ F.3d \_\_\_, \_\_\_ (4<sup>th</sup> Cir. Jan. 4, 2010).

<sup>20</sup> *United States v. Abu Ali*, 528 F.3d 210, 225 (4<sup>th</sup> Cir. 2008). Abu Ali, an American, was charged with, convicted of, and sentenced to imprisonment for 30 years, for violation of: 18 U.S.C. 49 U.S.C. 46502(a)(2)(conspiracy to commit air piracy); 18 U.S.C. 32(b)(4) (conspiracy to destroy aircraft); and several unrelated terrorism offenses, *id.*

<sup>21</sup> Other related chapter 2 offenses include imparting or conveying false information (18 U.S.C. 35), violence at international airports (18 U.S.C. 37), and fraud involving aircraft parts (18 U.S.C. 38).

<sup>22</sup> 18 U.S.C. 32(a)(1), (8).

when an American is aboard the aircraft which is the subject of the attack, or when the offender later comes or is brought to the United States.<sup>23</sup>

The inventory of section 32 crimes includes:

- damaging or destroying an aircraft in the special aircraft jurisdiction of the United States or one used in interstate, overseas, or foreign air commerce;<sup>24</sup>
- endangering the safety of such aircraft by placing a destructive device or substance on or near it (causing such advice or substance to be so placed);<sup>25</sup>
- endangering the safety of such aircraft by damaging, destroying, or violently interfering with the operation of air navigation facilities;<sup>26</sup>
- intending to damage, destroy, or disable such aircraft by damaging or destroying nearby or closely related equipment, material or facilities;<sup>27</sup>
- interfering with those operating such aircraft or related navigation facilities with the intent to injure or reckless disregard of the risk of injuring such individuals;<sup>28</sup>
- assaulting or incapacitating another aboard such aircraft when likely to endanger its safety;<sup>29</sup>
- endangering the safety of such aircraft in flight by communicating a hoax;<sup>30</sup>
- attempting or conspiring to commit any such offense;<sup>31</sup>

and with respect to foreign flagged aircraft (those registered outside the U.S.)

- assaulting another aboard such aircraft when likely to endanger its safety;<sup>32</sup>
- incapacitating, destroying, or inflicting endangering damage to such aircraft;<sup>33</sup>
- placing aboard such aircraft (or causing to be placed) a device or substance likely to incapacitate it, destroy it, or inflict endangering damage upon it;<sup>34</sup>
- attempting or conspiring to commit any such offense.<sup>35</sup>

Since terrorist attacks upon airline passengers and crew will often involve damage to the plane as well, it is not surprising that most prosecutions have involve charges under both section 32 and

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<sup>23</sup> 18 U.S.C. 32(b).

<sup>24</sup> 18 U.S.C. 31(a)(1).

<sup>25</sup> 18 U.S.C. 31(a)(2).

<sup>26</sup> 18 U.S.C. 31(a)(3).

<sup>27</sup> 18 U.S.C. 31(a)(4).

<sup>28</sup> 18 U.S.C. 31(a)(5).

<sup>29</sup> 18 U.S.C. 31(a)(6).

<sup>30</sup> 18 U.S.C. 31(a)(7).

<sup>31</sup> 18 U.S.C. 31(a)(8).

<sup>32</sup> 18 U.S.C. 32(b)(1).

<sup>33</sup> 18 U.S.C. 32(b)(2).

<sup>34</sup> 18 U.S.C. 32(b)(3).

<sup>35</sup> 18 U.S.C. 32(b)(4).

chapter 465. One exception is the case of Ramzi Ahmed Yousef. Yousef, who had participated in the first attack on the World Trade Center, then proceeded to devise a scheme to place explosive devices on a dozen American airliners operating in Asia. As a test, he planted a bomb on a Philippine Airlines flight from Manila to Japan. The bomb exploded in flight killing a Japanese passenger and injuring several others. The plot was discovered, however, before he could plant explosives on the planes he had targeted.<sup>36</sup> Yousef was convicted for complicity in the first World Trade Center bombing and for the airline offenses. He was sentenced to 240 years imprisonment for the World Trade Center bombing and life imprisonment for the airline bombing offenses.<sup>37</sup>

In addition to the proscriptions in chapter 465 and section 32, prosecutors originally charged Reid under 18 U.S.C. 1992 (2000 ed. Supp. I), which prohibited terrorist attacks on mass transit systems. The court dismissed, however, the charge on the grounds that the section's proscriptions did not protect air travel.<sup>38</sup> Congress amended the proscription so that as section 1992 it now protects commercial air travel in terms reminiscent of section 32. It condemns:

- wrecking or disabling a mass transportation vehicle (which includes any vehicle “used . . . as a means of transportation . . . through the air”);<sup>39</sup>
- endangering personal safety on a mass transportation vehicle by placing a destructive device or dangerous substance on or near it;<sup>40</sup>
- endangering personal safety on a mass transportation vehicle by placing a destructive device or dangerous substance on or near equipment, material, or facilities relating to its operation;<sup>41</sup>
- damaging or contaminating equipment, material, or facilities relating to the operation of a mass transportation vehicle;<sup>42</sup>
- interfering with those operating or controlling a mass transportation vehicle with the intent to injure or reckless disregard of the risk of personal injury;<sup>43</sup>
- use of a dangerous weapon with the intent to cause serious injury to a person on a facility used to operate or facilitate the operation of a mass transportation vehicle;<sup>44</sup>
- collecting information to facilitate the commission of one of these offenses;<sup>45</sup>

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<sup>36</sup> *United States v. Yousef*, 327 F.3d 56, 80-1 (2d Cir. 2003).

<sup>37</sup> *Id.* at 80. Charges in the airline bombing case included violations of 18 U.S.C. 32(a)(1), (7)[now (8)](attempting to destroy an aircraft within the special aircraft jurisdiction of the United States); 18 U.S.C. 32(a)(2), (7)[now (8)](attempting to place a bomb on such aircraft); 18 U.S.C. 32(b)(3) (placing a bomb on a foreign flagged aircraft); 18 U.S.C. 2332(b), (d)(conspiring to kill Americans outside the U.S.); 18 U.S.C. 2332a (conspiracy to use a weapon of mass destruction against Americans outside the U.S.); 18 U.S.C. 924(c), 2 (aiding, abetting, or commanding another's using and carrying a bomb during and in connection with a crime of violence), *id.* at 83-4.

<sup>38</sup> *United States v. Reid*, 206 F.Supp.2d 132, 142 (D.Mass. 2002).

<sup>39</sup> 18 U.S.C. 1992(a)(1), (d)(16).

<sup>40</sup> 18 U.S.C. 1992(a)(2).

<sup>41</sup> 18 U.S.C. 1992(a)(3).

<sup>42</sup> 18 U.S.C. 1992(a)(4).

<sup>43</sup> 18 U.S.C. 1992(a)(6).

<sup>44</sup> 18 U.S.C. 1992(a)(7).

<sup>45</sup> 18 U.S.C. 1992(a)(8).



- communication false information relating to a purported commission of an offense under the section;<sup>46</sup> and
- attempting or conspiring to commit one of these offenses.<sup>47</sup>

## Crimes Involving Destructive Devices

Federal prohibitions relating to the use of destructive devices are implicated whenever terrorists use (or conspire to use or attempt to use) explosives in their attacks on commercial air carriers. The shoe bomber, the alleged Christmas bomber, Yousef, Moussaoui, and Rashed have each been prosecuted for violation of the bans on the criminal use of explosives found 18 U.S.C. 844, 924 and 2332a.<sup>48</sup>

Section 2332a outlaws, among other things, the use (or attempts, conspiracies, or threats to use) a weapon of mass destruction by or against an American overseas or against property in this country used in interstate or foreign commerce.<sup>49</sup> It defines destructive devices by cross reference to include explosive and incendiary devices.<sup>50</sup> Section 844 outlaws, among other things, damage or destruction of property used in, or whose use affects, interstate or foreign commerce, or conspiracy to do so.<sup>51</sup> Section 924 outlaws, among other things, using or carrying an explosive or incendiary device during and in relation to a federal crime of violence.<sup>52</sup>

Finally, 18 U.S.C. 2332f outlaws, among other things, placing or detonating explosives on foreign flagged airlines in the United States or on U.S. flagged airlines overseas (or attempting or conspiring to do so).

## Other Terrorist Crimes

There is no single federal terrorist offense, but Congress has created a number of federal offenses with terrorists in mind. Some have already been mentioned. Most of the crimes associated with violence committed aboard and against commercial airlines and found in section 32, section 1992, and chapter 465 certainly fit this description. So do the weapons of mass destruction offenses of section 2332a and the bombing of public facilities offenses of section 2332f.

Other statutes focus on the offenses which a terrorist might commit against an American. For instance, both Reid and Yousef were convicted for violating 18 U.S.C. 2332 which outlaws

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<sup>46</sup> 18 U.S.C. 1992(a)(9).

<sup>47</sup> 18 U.S.C. 1992(a)(10).

<sup>48</sup> *United States v. Reid*, 369 F.3d 619, 619-20 (1<sup>st</sup> Cir. 2004)(18 U.S.C. 924(c), 2332a); INDICTMENT, *United States v. Abdulmutallab*, 2:10-cr-2005 (E.D. Mich. (S.D) Jan. 6, 2010)(18 U.S.C. 924(c), 2332a); *United States v. Yousef*, 327 F.3d 56, 80 (2<sup>d</sup> Cir. 2003)(18 U.S.C. 924(c), 2332a); *United States v. Moussaoui*, \_\_\_ F.3d \_\_\_, \_\_\_ (4<sup>th</sup> Cir. Jan. 4, 2010)(18 U.S.C. 844, 2332a); *United States v. Rashed*, 83 F.Supp.2d 96, 100 (D.D.C. 1999)(18 U.S.C. 844).

<sup>49</sup> 18 U.S.C. 2332a(a), (b).

<sup>50</sup> 18 U.S.C. 2332a(c)(2)(A), 921(4)(A).

<sup>51</sup> 18 U.S.C. 844(i), (n).

<sup>52</sup> 18 U.S.C. 924(c), 921(3), (4).

killing or attempting to kill an American overseas for terrorist purposes.<sup>53</sup> Moussaoui was convicted under 18 U.S.C. 2332b for conspiracy to commit murder in the United States having travelled from overseas, and Yunis under 18 U.S.C. 1203 for taking an American hostage overseas.<sup>54</sup>

## Crimes Against Protected Individuals

A number of federal statutes protect various groups of individuals, some without regard to the means used to harm them, the location of the offense, or the character of the offender. Beyond section 2332 which protects Americans from overseas terrorist attacks and other sections already mentioned, federal law outlaws killing or assaulting federal employees and officers and members of the U.S. armed forces during or because of the performance of their duties,<sup>55</sup> anywhere in the world.<sup>56</sup> Under separate legislation, it protects the President and high executive branch officials,<sup>57</sup> Members of Congress and the Supreme Court, and foreign dignitaries.<sup>58</sup> Each would apply to killings and assaults by terrorists aboard an aircraft no matter the registry of the aircraft or where it was located when the crime occurred.<sup>59</sup> Each proscription applies to attempts and conspiracies as well.<sup>60</sup>

## Accomplice Liability

The accomplices who facilitate a terrorist attack on a commercial airline or help the terrorist avoid apprehension may be subject to federal criminal liability as well. Regardless of the offense, anyone who aids or abets in the commission of a federal crime is punishable as if he had committed the act himself.<sup>61</sup> To aid and abet in the commission of a federal crime, an accused must have contributed, and intended to contribute, to the success of the criminal endeavor of another.<sup>62</sup>

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<sup>53</sup> *United States v. Reid*, 369 F.3d 619, 619-20 (1<sup>st</sup> Cir. 2004); *United States v. Yousef*, 327 F.3d 56, 80 (2d Cir. 2003). Section 2332 also condemns manslaughter, conspiracy to kill, or other crimes of physical violence when committed against an American overseas for terrorist purposes.

<sup>54</sup> *United States v. Moussaoui*, \_\_\_ F.3d \_\_\_, \_\_\_ (4<sup>th</sup> Cir. Jan. 4, 2010); *United States v. Yunis*, 924 F.2d 1086, 1089-90 (D.C.Cir. 1991). Section 2332b prohibits acts of terrorism transcending national boundaries when they involving killing, kidnapping, maiming, seriously assaulting someone in the United States; or dangerously damaging or destroy property here (on attempting or conspiring to do so).

<sup>55</sup> 18 U.S.C. 1114, 111. 18 U.S.C. 115 also protects the families of such individuals, former federal officers and employees, and members of their families from murder, manslaughter, and assault – during or because of the performance of official duties.

<sup>56</sup> *United States v. Felix-Guiterrez*, 940 F.2d 1200, 1204-206 (9<sup>th</sup> Cir. 1991); *United States v. Benitez*, 741 F.2d 1312, 1316-317, (11<sup>th</sup> Cir. 1984).

<sup>57</sup> 18 U.S.C. 1751.

<sup>58</sup> 18 U.S.C. 351, 1116, 112.

<sup>59</sup> 18 U.S.C. 1751(k), 351(i), 1116(c).

<sup>60</sup> Other than attempt to commit an assault; 18 U.S.C. 1114(3); 1117 (conspiracy to violation sections 1114 or 1116); 1751(c), (d); 351(c), (d); 115(a), (b)(3); 371 (conspiracy to commit any federal offense).

<sup>61</sup> 18 U.S.C. 2.

<sup>62</sup> *Nye & Nissen v. United States*, 336 U.S. 613, 619 (1949); *United States v. Tagg*, 572 F.3d 1320, 1324(11<sup>th</sup> Cir. 2009); *United States v. Carbo*, 572 F.3d 112, 118 (3d Cir. 2009).

Aiding and abetting occurs prior to or during the commission of an offense. Criminal liability as an accessory after the fact flows from conduct committed after another has committed an offense. Under federal law, an accessory after the fact is one who knowing a federal offense has been committed “receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment,” 18 U.S.C. 3. The elements of the offense are “(1) commission of a specified offense by some person, (2) the defendant’s knowledge of the crime’s commission and the principal’s participation in it, and (3) the defendant’s assistance to the principal with the specific purpose or plan to hinder or prevent the principal’s apprehension, trial, or punishment.”<sup>63</sup>

The aiding and abetting statute also treats as a principal one who commands the commission of a completed federal offense,<sup>64</sup> 18 U.S.C. 373 imposes criminal liability upon one who recruits another to commit a federal crime of violence even if the crime is in fact never committed. Conviction requires that the prosecution establish that the defendant “(1) had the intent for another to commit a crime of violence and (2) solicited, commanded, induced or otherwise endeavored to persuade such other person to commit the crime of violence under circumstances that strongly corroborate evidence of that intent.”<sup>65</sup>

There is also a general conspiracy statute, 18 U.S.C. 371. It outlaws conspiracies to commit any other substantive federal criminal offense. Because offenses under section 371 are only punishable by imprisonment for not more than five years, Congress has often made conspiracy to commit more serious offenses, including several of the offenses already discussed, punishable to the same extent as the underlying substantive offense. Thus, for example, conspiracy to violate any of the proscriptions of sections 32(a) or 32(b) is punished just as severely as the underlying substantive offense.<sup>66</sup>

In addition to these generally applicable provisions, Congress has enacted others more specifically directed at those complicit in any terrorist attack which include:

- 18 U.S.C. 956 which outlaws conspiracy within the U.S. to kill, maim, or destroy property overseas;
- 18 U.S.C. 2339A which outlaws material support for a violation of: 18 U.S.C. 844(i)(bombing that affects interstate or foreign commerce), 1203 (hostage taking), 1992 (terrorist attacks on airlines), 2332 (killing Americans overseas), 2332a (use of weapons of mass destruction), 2332b(multi-national crimes of terrorism), 2332f (bombing certain airlines), 49 U.S.C. 46502 (air piracy), or of federal crime of terrorism, e.g., 18 U.S.C. 32 (violence against aircraft), 49 U.S.C. 46504 (assaulting a flight crew member with a dangerous weapon), 46505(b)(3), (c)(bombs on aircraft), 46506 (murder, manslaughter or attempted murder or manslaughter within the special aircraft jurisdiction);
- 18 U.S.C. 2339 which outlaws harboring a terrorist who has or is about to violate, among others, 18 U.S.C. 32 (violence against aircraft), 2332a (use of weapons of

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<sup>63</sup> *United States v. Snype*, 441 F.3d 119, 142 (2d Cir. 2006); see also *United States v. Montgomery*, 384 F.3d 1050, 1059 (9<sup>th</sup> Cir. 2004).

<sup>64</sup> 18 U.S.C. 2.

<sup>65</sup> *United States v. Caldwell*, 433 F.3d 378, 390 (4<sup>th</sup> Cir. 2005); see also *United States v. Hale*, 448 F.3d 971, 982 (7<sup>th</sup> Cir. 2006).

<sup>66</sup> 18 U.S.C. 32(a)(8), 32(b)(4).

mass destruction), 2332b (multi-national crimes of terrorism), or 49 U.S.C. 46502 (air piracy); and

- *18 U.S.C. 2284* which outlaws providing maritime transportation for a terrorist who has or is about to violate a federal crime of terrorism, e.g., 18 U.S.C. 32 (violence against aircraft), 844(i) (bombing that affects interstate or foreign commerce), 1992 (terrorist attacks on airlines), 2332 (killing Americans overseas), 2332a (use of weapons of mass destruction), 2332b (multi-national crimes of terrorism), 2332f (bombing certain airlines), 49 U.S.C. 46502 (air piracy), or of federal crime of terrorism, e.g., 49 U.S.C. 46504 (assaulting a flight crew member with a dangerous weapon), 46505(b)(3), (c) (bombs on aircraft), 46506 (murder, manslaughter or attempted murder or manslaughter within the special aircraft jurisdiction).

## Selected Procedural Aspects

Special procedures often apply to those accused or convicted of terrorists attacks on commercial airlines. Other than murder, for which there is no statute of limitations,<sup>67</sup> most federal crimes must be prosecuted within five years of their commission.<sup>68</sup> The statute of limitations for federal crimes of terrorism, however, is eight years, unless the offense involves a risk of serious physical injury in which case there is no statute of limitations.<sup>69</sup> Moreover, any applicable statute of limitations is tolled while the offender is a fugitive.<sup>70</sup>

When a suspect is arrested for violation of a federal crime of terrorism, he is subject to the preventive detention provisions of the federal bail laws.<sup>71</sup> Upon conviction, federal crimes of terrorism are subject to an escalated sentencing guideline,<sup>72</sup> and to the possibility of a life-time period of supervised release rather than the five year maximum that applies to convictions for most crimes.<sup>73</sup>

## Pertinent Penalties and Territorial Jurisdictional Factors

Although federal law punishes severely most of crimes discussed above, the maximum terms of imprisonment vary considerably among them. Even greater diversity marks the jurisdictional circumstances under which federal law permits the prosecution of such offenses especially when

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<sup>67</sup> 18 U.S.C. 3281.

<sup>68</sup> 18 U.S.C. 3282.

<sup>69</sup> 18 U.S.C. 3286, 3281

<sup>70</sup> 18 U.S.C. 3290.

<sup>71</sup> 18 U.S.C. 3142(e), (f).

<sup>72</sup> U.S.S.G. §3A1.4.

<sup>73</sup> 18 U.S.C. 3583(j), (b).

committed overseas.<sup>74</sup> A rough outline of the pertinent terms of imprisonment and jurisdictional factors follows:

## **Crimes Aboard Aircraft**

49 U.S.C. 46502 (air piracy)(imprisonment for not less than 20 years; if death results, death or life imprisonment)

*Jurisdictional factors:*

*in flight within the special aircraft jurisdiction of the United States*

- U.S. aircraft;
- other aircraft within the U.S.; or
- other aircraft outside the U.S.
  - - the last point of departure or next point of arrival is U.S. or
  - - the pirated aircraft lands in the U.S. with the pirate aboard

*in flight outside the special aircraft jurisdiction of the United States*

- a U.S. national is aboard;
- the offender is U.S. national; or
- the offender is later found in the U.S.

49 U.S.C. 46503 (interfering with securing screening personnel in the U.S.) (imprisonment for not more than 10 years; imprisonment for any term of years or for life, if a dangerous weapon is used)

49 U.S.C. 46504 (assaulting or intimidating a flight crew member within the special aircraft jurisdiction of the United States) (imprisonment for not more than 20 years; imprisonment for any term of years or for life, if a dangerous weapon is used)

*Jurisdictional factors:*

*in flight within the special aircraft jurisdiction of the United States*

- U.S. aircraft;
- other aircraft within the U.S.; or
- other aircraft outside the U.S.
  - - the last point of departure or next point of arrival is U.S. or
  - - the pirated aircraft lands in the U.S. with the pirate aboard

49 U.S.C. 46505 (placing (or causing to be placed) an explosive or incendiary device, or an accessible dangerous weapon or loaded firearm, aboard an aircraft in U.S. air transportation (or attempted or conspiring to do so) (imprisonment for not more than 10 years; not more than 20 years, if done without regard for, or in reckless disregard for, human safety; imprisonment for any terms of years or for life, if death results))

*Jurisdictional factors*

- intrastate air transportation;
- common carrier interstate air transportation; or
- common carrier air transportation between the U.S. and elsewhere

49 U.S.C. 46506 (murder, manslaughter, attempted murder or manslaughter, assault, or maiming within the special aircraft jurisdiction of the United States)

- murder: death or life imprisonment (1<sup>st</sup> degree); imprisonment for any term of years or for life (2<sup>d</sup> degree);
- manslaughter: imprisonment for not more than 15 years (voluntary); imprisonment for not more than 8 years (involuntary);
- attempted murder: imprisonment for not more than 20 years; attempted manslaughter, imprisonment

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<sup>74</sup> For a general discussion of federal extraterritorial criminal jurisdiction see *Extraterritorial Application of American Criminal Law*, CRS Rept. 94-166.

- for not more than 7 years;
- assault: imprisonment for not more than 20 years, if committed with the intent to murder; imprisonment for not more than 10 years, if committed with the intent to commit any other felony, or if assault with a dangerous weapon, or if resulting in serious bodily injury; imprisonment for not more than 5 years, if resulting in substantial bodily injury; imprisonment for not more than 6 months, if simple assault; or imprisonment for not more than 1 year, if the victim is under 16 years of age;
- maiming: imprisonment for not more than 20 years

*Jurisdictional factors:*

*in flight within the special aircraft jurisdiction of the United States*

- U.S. aircraft;
- other aircraft within the U.S.; or
- other aircraft outside the U.S.
  - - the last point of departure or next point of arrival is U.S.; or
  - - the pirated aircraft lands in the U.S. with the pirate aboard

## **Crimes Against Aircraft**

18 U.S.C. 32 (crimes against aircraft punishable by imprisonment for not more than 20 years;

18 U.S.C. 34: punishable by death or imprisonment for life, if death results)

*Offenses within the special aircraft jurisdiction of the U.S.*

- damaging or destroy aircraft or endangering its safety by placing (or causing the placement of) a destructive device or substance on or near an aircraft;
- endangering safety of an aircraft by damaging, destroying, or violently interfering with the operation of air navigation facilities;
- intending to damage, destroy or disable aircraft by damaging or destroying nearby or closely related equipment, material, or facilities;
- interfering with those operating aircraft or related navigation facilities with the intent to injure or recklessly disregarding the risk of injury such individuals
- assaulting or incapacitating another aboard an aircraft when likely to endanger its safety;
- attempting or conspiring to commit any of these offenses

*Jurisdictional factors:*

*In flight within the special aircraft jurisdiction of the United States*

- U.S. aircraft;
- other aircraft within the U.S.; or
- other aircraft outside the U.S.
  - - the last point of departure or next point of arrival is U.S. or
  - - the pirated aircraft lands in the U.S. with the pirate aboard

*Offenses relating to aircraft not registered in the U.S.*

- assaulting another aboard an aircraft when likely to endanger its safety;
- incapacitating, destroying or inflicting endangering damage to an aircraft;
- placing aboard aircraft (or causing placement of) a device or substance likely to incapacitate it, destroy it, or inflict endangering damage upon it;
- attempting or conspiring to commit such an offense

*Jurisdictional factors:*

- the aircraft is in the special aircraft jurisdiction of the United States;
- the victim or offender is a United States national; or
- the offender is found in the United States

18 U.S.C. 1992 (terrorist attack on mass transit; punishable by imprisonment for not more than 20 years; by death or imprisonment for any term of years or for life if death results)

- wrecking or disabling a mass transportation vehicle (which includes any vehicle “used . . . as a means of transportation . . . through the air;”

- endangering personal safety on a mass transportation vehicle by placing a destructive device or dangerous device or substance on or near it;
- endangering personal safety on a mass transportation vehicle by placing a destructive device or dangerous or substance on or near equipment, material, or facilities relating to its operation;
- damaging or contaminating equipment, material, or facilities relating to the operation of a mass transportation vehicle;
- interfering with those operating or controlling a mass transportation vehicle with the intent to injure or reckless disregard of the risk of personal injury;
- use of a dangerous weapon with intent to cause serious injury to a person on a facility used to operate or to facilitate the operation of a mass transportation vehicle;
- collecting information to facilitate the commission of one of these offenses' and
- attempting or conspiring to commit one of these offenses

*Jurisdictional factors*

offense is committed against the vehicle of a provider of transportation services in the interstate or foreign commerce of the United States

## **Crimes Involving Destructive Devices**

*18 U.S.C. 2332a* (use of weapons of mass destruction)(or attempts or conspiracy to do so)  
(imprisonment for any term of years or life; by death or imprisonment for any term or years or for life, if death results)

*Jurisdictional factors:*

- within the U.S: property or conduct affects interstate or foreign commerce or involves property owned or leased by a foreign government
- outside the U.S.: offender or victim is an American

*18 U.S.C. 2332f* (bombing of public transportation a system)(or attempts or conspiracy to do so)  
(imprisonment for any term of years or life; by death or imprisonment for any term or years or for life, if death results)

*Jurisdictional factors:*

- within the U.S.:
- committed against a foreign government;
  - committed to compel U.S. or foreign government action;
  - committed aboard an aircraft of foreign registry;
  - the victim or offender is a foreign national; or
  - the offender is found outside the U.S.
- (but not if, the victim and offender are U.S. nationals and the offender is found in the U.S.)
- outside the U.S.:
- the victim or offender is an American;
  - committed aboard an aircraft of U.S. registry;
  - the offender is found in the U.S.; or
  - committed to compel U.S. government action

*18 U.S.C. 844(i)* (bombing property)(or attempting or conspiring to do so)(imprisonment for not less than 5 nor more than 20 years; if personal injury results, not less than 7 nor more than 40 years; if death results, death or imprisonment for any term of years or for life)

*Jurisdictional factor:*

property used in or used in an activity which affects U.S. interstate or foreign commerce attempt and conspiracy are included

*18 U.S.C 924(c)* (possession of a firearm or other destructive device during and in furtherance of a federal crime of violence)

- imprisonment for not less than 5 years;
- if the firearm or destructive device is brandished, imprisonment for not less than 7 years;

- if the firearm is discharged (and perhaps if the destructive device detonated or ignited), imprisonment for not less than 10 years;
  - if the offender has a prior conviction, imprisonment for not less than 25 years;
  - if the firearm has a silencer or is a machine gun or a destructive device, imprisonment for less than 30 years;
  - if the offender has a prior conviction and the firearm has a silencer or is a machine gun or a destructive device, imprisonment for life)
- Jurisdictional factor:* same as the underlying offense

## **Other Terrorist Offenses**

*18 U.S.C. 2332* (killing, attempting to kill, conspiring to kill, or assaulting an American overseas)

- murder: death or imprisonment for any term of years or for life;
- manslaughter: imprisonment for not more than 10 years (voluntary); imprisonment for not more than 3 years (involuntary);
- attempted murder: imprisonment for not more than 20 years;
- conspiracy to murder: imprisonment for any term of years or for life;
- assault with intent to, or with resulting in, serious bodily injury: imprisonment for not more than 10 years;

*Jurisdictional factor:* the victim is an American overseas (but the Attorney General must certify the offense was committed for terrorist purposes)

*18 U.S.C. 2332b* (acts of transnational terrorism committed within the U.S.) (killing, maiming, serious assaults, or damaging or destroy property or attempting to do so at the risk of serious bodily injury to others)

- killing: death or imprisonment for any term of years or for life;
- maiming: imprisonment for not more than 35 years;
- assault with a dangerous weapon or resulting in serious bodily injury: imprisonment for not more than 30 years;
- property damage or destruction: imprisonment for not more than 25 years;
- attempt or conspiracy to commit such an offense: imprisonment for not more than the term authorized for the underlying offense;

*Jurisdictional factor:*

- the offense affects interstate or foreign commerce of the U.S.;
- the victim of a federal official, employee or member of the U.S. armed forces; or
- the offense occurs aboard an aircraft of American registry outside the jurisdiction of any other nation victim is an American overseas (but the Attorney General must certify the offense was committed for terrorist purposes)

*18 U.S.C. 1203* (hostage taking)(or attempting or conspiring to do so)(imprisonment for any term of years or for life; if death results, death or life imprisonment)

*Jurisdictional factors*

*within the U.S.*

- the offender or one of victims is a foreign national;
- the offender is found outside the U.S. or
- the offense is committed to compel U.S. government action

*outside the U.S.:*

- the offender or the victim is an American;
- the offender is later found in the U.S.; or
- the offense is committed to compel U.S. government action

## **Crimes Against Protected Individuals**

*18 U.S.C. 1751* (killing, attempting to kill, conspiring to kill, or assaulting the President or other



senior executive branch official)

- murder: death or life imprisonment (1<sup>st</sup> degree); imprisonment for any term of years or for life (2d degree);
- manslaughter: imprisonment for not more than 15 years (voluntary); imprisonment for not more than 8 years (involuntary);
- attempt to kill: imprisonment for any term of years or for life;
- conspiracy to kill: imprisonment for any term of year or for life; if death results, by death or imprisonment for any term of years or for life;
- assault: imprisonment for not more than 10 years, if committed against the President or Vice President, or with dangerous weapon, or resulting in bodily injury; imprisonment for not more than 1 year in all other cases

*Jurisdictional factor:* the victim is a federal official or employee

*18 U.S.C. 351* (killing, attempting to kill, conspiring to kill, or assaulting a Member of Congress, a Justice of the Supreme Court or senior executive branch official)

- murder: death or life imprisonment (1<sup>st</sup> degree); imprisonment for any term of years or for life (2d degree);
- manslaughter: imprisonment for not more than 15 years (voluntary); imprisonment for not more than 8 years (involuntary);
- attempt to kill: imprisonment for any term of years or for life;
- conspiracy to kill: imprisonment for any term of year or for life; if death results, by death or imprisonment for any term of years or for life;
- assault: imprisonment for not more than 10 years, if committed with dangerous weapon or resulting in bodily injury; imprisonment for not more than 1 year in all other cases

*Jurisdictional factor:* the victim is a federal official or employee

*18 U.S.C. 1116* (killing foreign dignitaries or members of their families)

- murder: death or life imprisonment (1<sup>st</sup> degree); imprisonment for any term of years or for life (2d degree);
- manslaughter: imprisonment for not more than 15 years (voluntary); imprisonment for not more than 8 years (involuntary);
- attempt to kill: imprisonment for not more than 20 years (murder) or not more than 7 years (manslaughter);
- conspiracy to murder: imprisonment for any term of year or for life (18 U.S.C. 1117)

*Jurisdictional factor:*

- in the U.S. or
- outside the U.S.
  - - the victim is U.S. officer or employee;
  - - the offender is an American; or
  - - the offender is later found in the U.S.

*18 U.S.C. 112* (assault on foreign dignitaries)

- using a deadly or dangerous weapon or inflicting bodily injury: imprisonment for not more than 10 years;
- in other cases: imprisonment for not more than 3 years

*Jurisdictional factor:*

- in the U.S. or
- outside the U.S.
  - - the victim U.S. officer or employee;
  - - the offender is an American; or
  - - the offender is later found in the U.S.

## **Accomplice Liability**

18 U.S.C. 2 (aiding, abetting, commanding the commission of a federal offense)(punishment & jurisdiction: same as the underlying offense)<sup>75</sup>

18 U.S.C. 3 (accessory after the fact to the commission of a federal offense)(imprisonment for not more than one half the maximum of the underlying offense; imprisonment for not more than 15 years, if the underlying offense is punishable by death or by life imprisonment)  
*Jurisdictional factor:* same as the underlying offense<sup>76</sup>

18 U.S.C. 371 (conspiracy to violate a federal criminal statute)(imprisonment for not more than 5 years)  
*Jurisdictional factors:* same as the underlying offense<sup>77</sup>

18 U.S.C. 373 (solicitation to commit a federal crime of violence) (imprisonment for not more than one half the maximum of the underlying offense; imprisonment for not more than 20 years, if the underlying offense is punishable by death or by life imprisonment)  
*Jurisdictional factors:* same as the underlying offense<sup>78</sup>

18 U.S.C. 956 (conspiracy within the U.S. to kill, maim, or damage property overseas)  
- killing: imprisonment for any term of years or for life;  
- maiming: imprisonment for not more than 35 years;  
- property damage: imprisonment for not more than 25 years  
*Jurisdictional factor:* scheme is hatched within the U.S. and underlying offenses are to be committed overseas

18 U.S.C. 2284 (maritime transportation of a terrorist who has or is about to violate a federal law of terrorism)(imprisonment for any term of years or for life)  
*Jurisdictional factors:*  
- in the U.S. or  
- aboard a vessel of U.S. registry

18 U.S.C. 2339 (harboring a terrorist who has or is about to commit various federal terrorist offenses) (imprisonment for not more than 10 years)  
*Jurisdictional factors:* same as the underlying offense<sup>79</sup>

18 U.S.C. 2339A (providing material support for the commission of various federal terrorist offenses) (imprisonment for not more than 15 years; imprisonment for any term of years or for life, if death results)  
*Jurisdictional factors:* same as the underlying offense<sup>80</sup>

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<sup>75</sup> 18 U.S.C. 2; cf., *United States v. Yousef*, 327 F.3d 56, 84-8 (2d Cir. 2003).

<sup>76</sup> *United States v. Felix-Gutierrez*, 940 F.2d 1200, 1205 (9<sup>th</sup> Cir. 1991).

<sup>77</sup> *United States v. Yousef*, 327 F.3d at 87-8; *Brulay v. United States*, 383 F.2d 345, 349-50 (9<sup>th</sup> Cir. 19967).

<sup>78</sup> Cf., *United States v. Felix-Gutierrez*, 940 F.2d at 1205.

<sup>79</sup> *Id.*

<sup>80</sup> *id.*

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