



Overseas Crime in the United States

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How do you commit a crime in the United States when you have never been here? According to the United States Court of Appeals for the Fourth Circuit (Fourth Circuit) in *United States v. Elbaz*, you can commit a crime in the United States without being physically present by phoning it in, even though the crime in question, [wire fraud](#), only applies domestically. Specifically, the Fourth Circuit recently held that the wire fraud statute could be applied to a defendant’s domestic conduct in using wires located in the United States to defraud victims in the United States without having to be physically present in the United States.

Background

Lee [Elbaz](#) operated a global “binary option” scheme from Israel. Elbaz and her associates invited victims to place a bet on the possible value of an asset at a given time. After victims had been enticed to participate in the scam, Elbaz and her retention agents based in Israel reassured them, discouraged withdrawals, and encouraged further investments. The scheme cost victims more than \$100 million, including millions from victims located in the United States.

A federal grand jury indicted Elbaz for wire fraud and conspiracy to commit wire fraud based on three wire transmissions sent to victims in Maryland. Federal authorities arrested Elbaz when she arrived in New York on vacation. Elbaz was convicted following a jury trial in the U.S. District Court for Maryland. The district judge sentenced her to 22 years in prison and ordered her to pay \$28 million in restitution. She appealed the conviction and restitution order arguing, among other things, (1) that the wire fraud statute under which she was convicted does not punish overseas conduct, and that the statute was impermissibly applied to convict her for extraterritorial conduct; and (2) that the restitution order issued against her improperly counted the foreign losses of the entire global scheme.

With regard to Elbaz’s first challenge, the Supreme Court has [declared](#) that, “[a]bsent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application.” The Court presumed that “[w]hen a statute gives no clear indication of extraterritorial application, it has none.” The Court further explained that the [wire fraud](#) statute, which makes no specific extraterritorial statement, does encompass wire communications transmitted “in interstate or *foreign* commerce.” Having determined a statute has no extraterritoriality, the Court has held that the [second step](#) in order to rebut the presumption is to determine whether a case “involves a domestic application of the statute,” a task that entails examination of the focus of the statute.

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Elbaz's restitution challenge rested on her argument that, upon conviction, a federal court **must** order a defendant to pay restitution to the victims of certain crimes, but that the restitution order in her case was improper. She asserted that the district court erred in considering her foreign conduct and losses to foreign victims when calculating the restitution owed.

Fourth Circuit

The **Fourth Circuit** rejected Elbaz's request to vacate her conviction but agreed with her challenge to the restitution award. The court **acknowledged** at the outset of its opinion that the wire fraud statute has no extraterritorial application. Having made that determination, the court next turned to step two, which is to "identify the wire-fraud statute's 'focus.'" The court held that the focus of the statute is the protection of wire communications and explained that the statute proscribes fraudulent wire use where the message is transmitted or received. The court determined that, in this case, "the transmissions were received by victims in Maryland using wires in Maryland. So Elbaz's convictions are all permissible domestic applications of the wire fraud statute." As for the **conspiracy** conviction, the court explained that conspiracy occurs wherever an act in its furtherance takes place "which may include a place where 'the defendant has never set foot,'" *i.e.*, Maryland.

Elbaz fared slightly better with her restitution challenge. The court recognized that when calculating Elbaz's term of imprisonment, the district court could **consider** related "relevant conduct," such as the losses suffered by foreign victims of the global scheme. The court held that restitution, however, is limited to victim losses attributable to the defendant's **crime of conviction**, in this case wire fraud and conspiracy committed in the United States.

Congressional Considerations

In the past, Congress has explicitly called for extraterritorial application of a particular criminal statute, such as those involving **money laundering** and the **theft of trade secrets**. Congress might address the wire fraud's extraterritorial application in much the same manner, although legislation to do so does not appear to have been introduced thus far.

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