

## SIXTH CIRCUIT REVIEW

***United States v. Doggart: Does a House of Worship Affect Interstate Commerce?***

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In *United States v. Doggart*, 947 F.3d 879 (6th Cir. 2020), the Sixth Circuit sought to answer two intertwined questions of law: Does a house of worship affect interstate commerce enough to invoke a federal arson charge, even though arson is a crime usually left to the States? In the spring of 2015, Robert Doggart [planned an attack](#) on a small Muslim community in the Catskills known as Islamberg. He was [recruiting people online](#) to carry out an armed attack on Islamberg’s mosque, which Doggart targeted specifically for its religious significance. He planned to burn it down or blow it up with a Molotov cocktail, and had little regard for any damage the explosion might cause, stating: “I don’t want to have to kill children, but there’s always collateral damage.” Simply put, the facts of the attempted crime are heinous.

[Doggart’s planned attack was not the only one](#) this small community has experienced in recent years. Islamberg was formed in the 1970s by a group of African-American Muslims seeking to raise their children in a serene, prayerful environment. [Only about 40 Muslim families](#)—around 200 people total—call this 68-acre, privately-owned community home. *United States v. Doggart*, 906 F.3d 506, 506 (6th Cir. 2018). Yet despite the community’s religious solitude and close connections with its non-Muslim neighbors, Islamberg is not a safe haven for its residents. In addition to Doggart’s planned 2015 attack, Islamberg has been the target of internet conspiracy theories and [other attacks](#) from people claiming that the community is a den of Islamic extremism.

Although some organizations called his plans acts of [domestic terrorism](#), Doggart was not charged with terrorism. Instead, he was charged with solicitation to commit federal arson under [18 U.S.C. § 844\(i\)](#), raising the question at issue in the Sixth Circuit’s recent decision: Can Doggart be charged with “making a threat in interstate commerce” when the mosque’s ties to interstate commerce were attenuated? *Doggart*, 947 F.3d at 883. According to the Sixth Circuit, he cannot. “The text of this criminal statute does not create a natural home for the attempted destruction of a mosque” and by “conventional measure, these terms do not cover the attempted destruction of a local mosque.” *Id.*

Here, because the mosque was created for local spiritual activity, it

would not be transformed into a building used in interstate commerce without something “more.” *Id.* at 885. This “something more” does not require the building be used *for* commercial purposes, but it must be actively involved *in* commercial purposes for § 844(i) to apply. *Jones v. United States*, 529 U.S. 848, 859 (2000). In this case, Islamberg argued it was involved in two commercial activities: a planned online bookstore and a summer camp collecting about \$100–\$150 per student. *Doggart*, 947 F.3d at 885–87. But these *de minimis* interactions with commerce—which may or not be *interstate* commerce—were not enough meet the *Jones* requirements and allow the § 844(i) charge against Doggart. *Id.*

Even though the § 844(i) conviction was reversed, Doggart still could face 120 months in prison under 18 U.S.C. § 247(d)(3). *Id.* at 883. He will be re-sentenced based on this reversal. *Id.*

But can a house of worship ever be involved in interstate commerce? As Judge Jeffrey Sutton quipped in his opinion, “[T]he buildings are often insured. (Faith goes so far.) A house of worship must comply with governmental building and safety codes that apply to commercial buildings. (Give to Caesar what is Caesar’s.) The faith community ... pays the individuals who work in the buildings. (Even servants of God have bills to pay.)” *Id.* at 884–85. Churches can, and do, engage in some forms of commerce. But “without more,” they do not meet the *Jones* test for being involved in interstate commerce. *Doggart*, 947 F.3d at 885.

However, *Doggart* raised a question more fundamental than the commerce question: should the federal justice system have been involved in the first place? After all, arson is a crime traditionally left to the states to prosecute. *Id.* at 883. But by cabining the arson statute’s reach only to buildings “used in” interstate commerce, Congress signaled its intent to regulate less than it might otherwise have the power to do. *Id.* (quoting *Jones*, 529 U.S. at 854–55). Without that limitation, Congress might have created a statute that could transform almost every arson into a federal offense. *Id.*

Even so, the “used in interstate commerce” limitation does little to clarify the point at which a state arson could become a federal charge under § 844(i). Perhaps, with slightly different factual circumstances, the mosque in Islamberg might be considered to affect interstate commerce. After all, it sits only ten miles from the Pennsylvania border and has attracted people from Tennessee and Arizona to plan attacks.