

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION**

**THE UNITED STATES OF AMERICA**

**v.**

**NOBLE L. MORTON**

**Criminal No. PJM-03-021**

\*  
\*  
\*  
\*

\* \* \* \* \*

**MOTION TO DISMISS INDICTMENT**

Defendant Noble L. Morton, by and through his attorneys, James Wyda, Federal Public Defender for the District of Maryland, and Michael T. CitaraManis, Assistant Federal Public Defender, hereby moves this Court to dismiss the indictment herein on grounds that this Court lacks jurisdiction over the alleged offense. In support of this motion, undersigned defense counsel states as follows:

**I. INTRODUCTION**

Noble L. Morton is charged in a two-count indictment with aggravated sexual abuse of a minor, in violation of 18 U.S.C. § 2241(c), and abusive sexual contact with a minor, in violation of 18 U.S.C. § 2244(a)(1) and (c).

The conduct specified in the indictment allegedly occurred in September 1995, at United States government housing quarters in Landstuhl, Germany. The basis for jurisdiction alleged in the indictment is that the offenses occurred “within the special maritime and territorial jurisdiction of the United States.” *See* 18 U.S.C. § 2241(c) (1995 ed.) (“Whoever, in the special maritime and territorial jurisdiction of the United States . . . knowingly engages in a sexual act with another person who has not attained the age of 12 years, or attempts to do so . . .”); and § 2244(a) (“Whoever, in

the special maritime and territorial jurisdiction of the United States . . . , knowingly engages in or causes sexual contact with or by another person . . .”).

18 U.S.C. § 7 defines “special maritime and territorial jurisdiction of the United States.” The definition includes various maritime provisions, § 7 (1), (2), (5) and (8), as well as provisions relating to U. S. spacecraft, § 7 (6), lands with guano deposits considered as appertaining to the United States, § 7 (4), and any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States, § 7 (7). In addition, it includes a provision which the defense believes the government will rely upon in arguing for jurisdiction, § 7(3). Under this provision, the term, “special maritime and territorial jurisdiction of the United States” includes:

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Clearly, the third phrase of § 7 (3), “any place purchased or otherwise acquired by the United States by consent of the legislature of the State . . . ,” is inapplicable since by its terms, § 7 (3) is limited to places purchased or otherwise acquired with the consent of “the State,” meaning any one of the States comprising the United States.

Therefore, in order for an Article III court like this Court to have jurisdiction over the crimes charged herein, the first two phrases of § 7 (3) must apply. However, as more fully explained below, the United States government housing quarters in Landstuhl, Germany, are not “lands reserved or acquired for the use of the United States,” and are not under the “exclusive or concurrent jurisdiction” of the United States.

For these reasons, this Court lacks jurisdiction over the offenses alleged herein and the indictment against Mr. Morton must be dismissed.

## **II. ARGUMENT**

### **A. 18 U.S.C. § 7(3) Does Not Apply Extraterritorially.**

Section 7(3) does not extend to conduct at the government housing quarters in Landstuhl, Germany, for the simple reason that § 7(3) does not extend to conduct outside the territorial United States. There are several reasons supporting this premise.

#### **1. International Doctrine of “Territorial Jurisdiction.”**

First, under international law, each country has “territorial jurisdiction” over the acts occurring on property within its borders. A country’s ability to enforce its laws may be limited by treaty and the doctrine of diplomatic immunity, but within its borders or territory, each country has territorial jurisdiction. *See Wilson v. Girard*, 354 U.S. 524, 529-30 (1957) (noting that Japan’s cession to the United States of jurisdiction to try American military personnel was a “qualified jurisdiction” and that “[a] sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders, unless it expressly or impliedly consents to surrender its jurisdiction”); *Reid v. Covert*, 354 U.S. 53 (Frankfurter, J., concurring) (noting that the power over military installations in Great Britain and Japan “does not relate to ‘Territory.’”). *Also see* Jordan J. Praust, *Non-Extraterritoriality of “Special Territorial Jurisdiction” of the United States: Forgotten History and the Errors of Erdos*, 24 Yale J. Int’l. 305, 309-312 (1999).

Thus, the United States cannot assert territorial jurisdiction over lands within Germany, just as Germany cannot assert territorial jurisdiction over lands within the United States.<sup>1</sup> Otherwise, the United States could assert power over German citizens on German territory, as well as citizens of other countries. This is inconceivable.

Underscoring the principle of territorial jurisdiction are the examples, noted in Praust, *supra*, regarding incidents in 1948, during which the United States protested an attempt by the Soviet Union to exercise police power in a Soviet consulate within United States territory, and 1977, in which persons occupied a Yugoslavian mission to the United Nations in New York and the United States prosecuted them despite an attempt by Yugoslavia to assert extraterritorial jurisdiction. Praust, *supra* at 311.

Section 7 is limited by its express terms to “maritime” or “territorial” jurisdiction. Since maritime jurisdiction is clearly not at issue and territorial jurisdiction cannot be asserted over the lands in another country, § 7 is inapplicable.

## **2. Lanstuhl Government Housing Does Not Constitute “Lands.”**

Two, on its face, § 7(3) is also limited to “lands” reserved or acquired for the use of the United States and housing quarters in a foreign country do not constitute “lands” within the meaning of this word. When Congress wanted, it has showed it can distinguish between “lands” and buildings or other structures, as evident from the third phrase of § 7(3), wherein jurisdiction reaches “places” reserved or otherwise acquired for the erection of a “fort, magazine, arsenal, dockyard, or other needful building.” *Also see* § 7(9), added by amendment, Oct. 26, 2001 (extending jurisdiction

---

<sup>1</sup>

Territorial jurisdiction is to be distinguished from the “nationality” principle under which each nation can extend jurisdiction over its citizens wherever they may be located.

over “the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities,” along with “residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.”)

**3. Landstuhl Government Housing Was Not “Reserved” or “Acquired.”**

Under § 7(3), the lands referred to must have been “reserved” or “acquired” for use by the United States. Legislative history reveals that when a predecessor statute to § 7(3) was amended in 1874, Congress added “reserved” after courts held that the statute only applied to land obtained by cession and thus did not apply to land that the United States owned and retained upon a new state being admitted to the Union. See *United States v. Corey*, 232 F.3d 1166, 1189-90 (9<sup>th</sup> Cir. 2000), (dissent, McKeown, J.); Praust, *supra*, at 317. Since “reserved” has a special historical meaning that has nothing to do with foreign countries, this suggests that both “reserved” and “acquired” apply only domestically.

**4. Congress Did Not Intend for § 7(3) to be Applied Extraterritorially.**

Third, Congress never intended for § 7(3) to apply beyond the borders of the United States.

As a preliminary matter, in determining whether a statute extends to conduct outside the territorial United States, there is a “presumption that Acts of Congress do not ordinarily apply outside our borders.” *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 173, 113 S.Ct. 2549 (1993). This presumption “serves to protect against unintended clashes between our laws and those of other

nations which could result in international discord.” *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248, 111 S.Ct. 1227 (1991) (“*Aramco*”).

This presumption against extraterritoriality can be overcome, and a statute applied to conduct outside the territorial United States, only if there is “clear evidence” that Congress intended for the statute to be applied extraterritorially. *Smith v. United States*, 507 U.S. 197, 204, 113 S.Ct. 1178 (1993); *Aramco*, 499 U.S. at 248 (“It is a longstanding principle of American law that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.” [internal quotation marks omitted]). *Also see United States v. Gatlin*, 216 F.3d 207, 211 (2d Cir. 2000), and citations therein.

Indeed, the Supreme Court has recognized that the presumption against extraterritoriality applies to crimes against individuals such as in the instant case. In *United States v. Bowman*, 260 U.S. 94, 98, 43 S.Ct. 39 (1922), the Court created an exception to the presumption against territoriality, ruling it did not apply to conduct, such as fraud, against the United States government. However, the Court, *id.*, reiterated the presumption as applicable here:

Crimes against private individuals or their property, like assaults, murder, burglary, larceny, robbery, arson, embezzlement, and frauds of all kinds, which affect the peace and good order of the community must, of course, be committed within the territorial jurisdiction of the government where it may properly exercise it. If punishment of them is to be extended out side of the strict territorial jurisdiction, it is natural for Congress to say so in the statute, and failure to do so will negative the purpose of Congress in this regard.

On the face of § 7(3), none of its provisions expressly apply to lands or places outside the territorial United States. Therefore, the presumption is not overcome by the text of the statute.

Further, an examination of the legislative history of § 7(3) and its predecessor statutes does not reveal “clear evidence” that Congress intended for § 7(3) to be applied extraterritorially. Indeed,

the opposite is revealed: that Congress intended for § 7(3) to be limited to the territorial United States.

In this regard, an excellent review of the legislative history of § 7(3) and its predecessor statutes is contained in the opinion by the Second Circuit in *Gatlin*, 216 F.3d at 217-220, and undersigned defense counsel will not restate it in detail herein. However, in sum, the *Gatlin* opinion tracks the development of § 7(3) back to an Act by the First Congress in 1790, limiting jurisdiction of the federal courts to certain lands within the “sole and exclusive jurisdiction of the United States” (which would have been inconceivable in 1790 as applying to lands in a foreign country). 1 Stat. 112 (1790). This law was codified and slightly amended in 1874. *See* 70 Rev. Stat., ch. 3, § 5339 (1874). In 1909, the 60<sup>th</sup> Congress created a separate statute defining jurisdiction only slightly different from current the § 7(3). *See* 35 Stat. 1088, ch. 321 (1909). Like the 1709 Act, jurisdiction was limited to lands within the “exclusive” jurisdiction of the United States and the legislative history unequivocally reveals an intent to preserve the “status quo” and not enlarge the jurisdiction of the United States “technically or geographically.” *Gatlin*, 216 F.3d at 218.

The tracking of the legislative history ends with the enactment of § 7(3) in 1940 by the 76<sup>th</sup> Congress which made two changes: deleting the word “exclusive” from the first phrase (so that lands reserved or acquired for “use” of the United States, as opposed to “exclusive use,” come within the statute’s purview), and adding the word “concurrent” to the second phrase (so jurisdiction extended to lands acquired for use of the United States and under “the exclusive *or concurrent* jurisdiction thereof.”)

However, as the *Gatlin* Court points out, the Senate and House reports on the 1940 Act make clear that the changes were made in order to reach offenses committed on Federal reservations,

including the George Washington Memorial Parkway in Virginia, over which the United States did not have “exclusive” but instead, concurrent jurisdiction with States, *Gatlin*, 215 F.3d at 219, and were in response to the decision in *James v. Dravo Contracting Co.*, 302 U.S. 134, 58 S.Ct. 208 (1937), in which the Supreme Court held for the first time that States could retain concurrent jurisdiction over lands acquired by the United States with the consent of the States. *Gatlin*, 215 F.3d at 220, n.14. The 1940 amendments therefore did not expand the scope of § 7(3) and considering the legislative history of § 7(3) and its predecessor statutes, it is clear that Congress did not intend for § 7(3) to extend jurisdiction outside the territorial United States.

**5. The Fourth Circuit Decision in *United States v. Erdos*.**

Undersigned defense counsel are aware of the Fourth Circuit Court of Appeals decision in *United States v. Erdos*, 474 F.2d 157 (4th Cir.), *cert. denied*, 414 U.S. 876, 94 S.Ct. 42 (1973), in which the Court held that § 7(3) applied to the United States embassy in Equatorial Guinea.

In *Erdos*, the defendant was charged with manslaughter within the “special maritime and territorial jurisdiction of the United States, pursuant to 18 U.S.C. § 1112. In particular, Erdos, an American citizen, was charged with killing another American citizen in the United States embassy in the Republic of Equatorial Guinea. He was tried and convicted in the United States District Court for the Eastern District of Virginia.

On appeal, Erdos maintained that the District Court lacked jurisdiction under § 7(3) since the third phrase of § 7(3) - “any place purchased or otherwise acquired by the United States by consent of the legislature of the *State* in which the same shall be, . . . (emphasis added) - can only be read to apply to States within the territorial United States and modifies the more general coverage of the

preceding two phrases.

The Fourth Circuit noted that Erdos' interpretation of § 7(3) was "not implausible" since the Court viewed the meaning of § 7(3) or its legislative history as unclear. *Id.* at 60. The Court also observed it is possible that when § 7 was enacted, "the attention of Congress was not in the slightest focused on extraterritorial jurisdiction." *Id.* Nonetheless, the Court rejected Erdos' argument, finding that the third phrase of § 7(3) is independent of and does not modify the first two phrases, and refusing to narrowly construe the statute "[w]here the power of Congress is clear, and the language of exercise is broad." *Id.*

Although this Court may feel it is compelled to follow the decision in *Erdos*, undersigned defense counsel submit that the *Erdos* decision should not be followed for two reasons:

First, the *Erdos* decision should be limited to its facts, where the crime occurred within a United States embassy, as opposed to a military installation or in government housing quarters. In *Erdos*, the Fourth Circuit noted with approval the observation in *United States v. Archer*, 51 F.Supp. 708, 709 (S.D. Cal. 1943), concerning the unique nature of diplomatic facilities (*e.g.*, a consulate) (" . . . although not owned by the United States, it is part of the territory of the United States of America.") The same cannot be said about the thousands of military and government housing facilities in other countries spread all across the world.

Second, *Erdos* was incorrectly decided.<sup>2</sup>

Although the errors of *Erdos* are set out in detail in *Gatlin*, and undersigned defense counsel

---

2

In addition, even if this Court follows the *Erdos* decision regarding the reach of § 7(3) beyond the territorial United States, there is a separate reason - not discussed in *Erdos* and thus, unaffected by *Erdos* - to find § 7(3) inapplicable to the instant case. *See infra*, at 15-17.

see no need to repeat them in detail, it is important to point out the most salient errors, as follows:

(1) First, the *Erdos* Court failed to apply the proper canon of statutory construction, and in particular, failed to apply the presumption against extraterritoriality in accordance with the decisions by the United States Supreme Court as noted above. *Gatlin*, 216 F.3d at 214-15.

(2) Second, the *Erdos* Court's reasoning is flawed. Essentially, the *Erdos* court reasoned that since the third phrase of § 7(3) did not qualify the first two phrases, the first two phrases can be presumed to apply extraterritorially. However, as noted in *Gatlin*, "it is equally possible that the first and second parts of § 7(3), though independent of each other, both were meant to apply exclusively to places within the United States." *Id.* at 215.<sup>3</sup>

(3) Contrary to the contention in *Erdos* that the legislative history of § 7(3) is not clear, the history concerning § 7(3) and its predecessor statutes makes quite clear that Congress intended for the statute to apply only to lands within the territorial boundaries of the United States. *See Gatlin*, 216 F.3d at 215-220; and *infra*, at 6-8.

(4) The *Erdos* decision ignores the history of law respecting criminal prosecutions of civilians accompanying the military overseas. In particular, before 1957, courts uniformly recognized that civilians accompanying the military who committed crimes overseas could be prosecuted only in courts martial. *See Gatlin*, 215 F.3d at 220, and n.15. In 1957, this changed with the Supreme Court's ruling in *Reid v. Covert*, 354 U.S. 1, 77 S.Ct. 1222 (1957), that civilians could

---

3

This reading of the first phrase of § 7(3) makes sense since many lands were acquired by the United States within its territory without consent of the States. *See Praust, supra*, at 318 (noting as examples, Arlington Cemetery, many places within Washington, D.C., lands acquired in territorial form before some states existed, every national park, wetlands, military land areas); *Gatlin*, 216 F.3d at 215, and n.10.

not be tried in courts martial during times of peace. As a result of *Reid* and its progeny, the Supreme Court justices themselves recognized that civilians accompanying the military overseas could be prosecuted only in foreign courts. See *Reid*, 354 U.S. at 48 (Frankfurter, J., concurring) (recognizing government argument that absent military jurisdiction, “only a foreign trial could be had”); *id.* at 90 (Clark, J., dissenting) (“All that remains is for the dependents of our soldiers to be prosecuted in foreign court”); also see, *Gatlin*, 215 F.3d at 220, and n.16, and citations therein.

(5) Congressional efforts to close this “jurisdictional gap” reflect the wide-spread view of military, executive branch and Congressional officials<sup>4</sup> (as well as scholars) that § 7(3) does not cover offenses committed on military installations by civilians accompanying the military in foreign countries. See, *Gatlin*, 215 F.3d at 221-23. This view has in fact been shared by the Department of Justice. *Id.* at 221, n.18; also see *Overseas Crimes Jurisdiction*, statement of Roger Pauley, Director of Policy and Legislation, Criminal Division, Department of Justice (March 30, 2000), attached as **Exhibit B**.

The ultimate proof of this “jurisdictional gap” are: (1) the fact that in 2001, Congress took steps to close the gap; and (2) there has been a dearth of prosecutions and reported federal court decisions concerning civilians prosecuted for committing a crime within the “special maritime and territorial jurisdiction of the United States” while accompanying the military overseas.

In 2001, as part of the PATRIOT Act of 2001, Congress added provisions to 18 U.S.C. § 7

---

4

For example, as noted in Praust, *supra* at 328, at n.75, a report by the Overseas Jurisdiction Advisory Committee, entitled “Report to the Secretary of Defense, the Attorney General, and the Congress of the United States (1997), recognized “jurisdictional gaps’ with respect to “civilians accompanying the armed forces in foreign countries,” and noted that this is “not news to the Congress or to other U.S. Government entities.” The Report also observed: “installations in foreign countries are not currently within the special maritime and territorial jurisdiction of the United States.”

to specifically deal with extraterritorial jurisdiction. Under the definition of “special and territorial jurisdiction of the United States,” Congress added the following, codified as § 7(9):

(9)(A) With respect to offenses committed by or against a United States national, as defined in section 1203(c) of this title -

(i) the premises of United States diplomatic, consular, military, or other United States Government missions or entities in foreign states, including the buildings, parts of buildings, and the land appurtenant of ancillary thereto, irrespective of ownership, used for purposes of those missions or entities; and

(ii) residences in foreign states and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities, except that this paragraph does not supercede any treaty or international agreement in force on the date of the enactment of this paragraph.

By virtue of Congress enacting § 7(9), Congress made clear that under already existing provisions, including § 7(3), federal court jurisdiction was lacking with respect to crimes committed by civilians overseas in buildings or residences in foreign countries used by the military or personnel assigned to the military.

Indeed, it appears that since *Erdos* was decided in 1973, prosecuting officials have ignored *Erdos* and chosen not to bring prosecutions of civilians in Article III Courts for conduct overseas while accompanying the military.<sup>5</sup> This can only be due to a recognition that *Erdos* is limited to its facts (*i.e.*, crimes within U.S. embassies abroad) or was not soundly decided. The only reported appellate cases concerning prosecutions of U.S. civilians for crimes committed overseas where the basis of jurisdiction was the “special maritime and territorial jurisdiction of the United States” are *Gatlin* and the Ninth Circuit case of *United States v. Corey*, 232 F.3d 1166 (9<sup>th</sup> Cir. 2000), discussed

---

5

See Jason A. Cincilla, *Jurisdictional Gap in Reality or Only in Law Reviews?--The Circuit Split on the Extraterritorial Application of 18 U.S.C. § 7(3)*, 105 Dick. L. Rev. 419, 420 (2001) (“In the years [after *Erdos*], federal prosecutors showed little interest in extending the judicial reach of this decision.”)

below.

**6. The Ninth Circuit Decision in *United States v. Corey*.**

In *Corey*, the defendant was prosecuted and convicted of aggravated sexual abuse and sexual abuse against his step-daughter while living on the United States Air Force Base at Yokota, Japan, and a residential apartment building rented by the U.S. embassy in the Phillipines. Corey's challenge on appeal, based on lack of jurisdiction was denied by the Ninth Circuit.

In rejecting Corey's claim on appeal, the Ninth Circuit disagreed with the Second Circuit in *Gatlin* and found that § 7(3) applies extraterritorially. However, the *Corey* decision, like *Erdos*, is flawed.

Whereas the Court in *Erdos* did not address the presumption against extraterritoriality at all, the Court in *Corey* found it inapplicable. However, in doing so, the Court in *Corey* relied on an overly broad misinterpretation of the Supreme Court ruling in *Bowman*, construing *Bowman* as holding the presumption inapplicable where legislation implicates concerns not "inherently domestic," *Corey*, 232 F.3d at 1170. However, *Bowman* explicitly recognized that in order for jurisdiction to be extended over crimes against private individuals, Congress must say so. *Bowman*, 260 U.S. at 98.

The *Corey* Court also adopted the notion, without precedent in support, that the presumption should not apply to a jurisdictional statute like § 7, as opposed to "ordinary domestic statutes," *Corey*, 232 F.3d at 1171, and defined "territorial jurisdiction" under § 7 as automatically including foreign lands. As Justice McKeown, in dissent, pointed out, this is "bootstrapping at its worst," *Corey*, 232 F.3d at 1186, and would "eviscerate the concept of extraterritoriality" since "[i]f 'territorial' automatically includes foreign lands where U.S. law applies, then the presumption is pointless because there would be no 'extraterritorial' application of U.S. law." *Corey*, 232 F.3d at

1188.

In addition, the *Corey* Court opined that Congress intended for § 7(3) to apply extraterritorially since Congress has broadly extended jurisdiction to space and other places outside the fifty states. *Corey*, 232 F.3d at 1171. Aside from the fact that this ignores the piecemeal fashion by which the different provisions of § 7 have been enacted, Congress' extension of jurisdiction in these other provisions underscores the fact that when Congress wants to it can clearly state whether it wants jurisdiction to be extended extraterritorially or not, and it did not do so in § 7(3).

Finally, the *Corey* Court relies on an extensive discussion of general nineteenth century history concerning the westward expansion in the United States. However, as pointed out by the Justice McKeown in dissent, *see Corey*, 232 F.3d at 11193, this might be interesting but it is not evidence of an intent behind § 7(3) or its predecessor statutes. Indeed, the predecessor statutes dealt only with lands over which the United States had *exclusive* jurisdiction, including lands annexed, purchased or obtained by conquest, and not embassy housing or military bases in a foreign country. *Id.*

It is clear that the Court in *Corey* was bothered by the fact that *Corey* might go free if it did not construe § 7(3) as providing extraterritorial jurisdiction. In its view, applying § 7(3) “only to federal lands within the United States serves neither congressional intent nor American foreign policy. All it does is hand a get-out-of-jail card to American civilians who violate U.S. law while stationed abroad.” *Corey*, 232 F.3d at 1176. However, as pointed out by the dissent, the majority's strained finding that § 7(3) extends jurisdiction “to areas where American citizens and property need protection” is to “manufacture congressional intent by substituting a judicial policy judgment for a congressional one.” *Corey*, 232 F.3d at 1191.

This Court should not be concerned, as was the Court in *Corey*, with the result of its finding, but instead should be concerned with the legal correctness of its finding. The correct finding is that § 7(3) does not apply extraterritorially to U.S. civilians who allegedly commit crimes on bases or residences used by the military in foreign countries. As a consequence, this Court should choose not to apply *Erdos* and *Corey* to the facts of the instant case.

**B. Absence of Exclusive or Concurrent Jurisdiction.**

As required by the plain language of § 7(3), in order for jurisdiction to reach particular lands, those lands must not only be reserved or acquired for use of the United States, but they must also fall within the “exclusive or concurrent jurisdiction” of the United States. Therefore, even if § 7(3) applies to lands (and, in particular, government housing at military facilities) outside the territorial United States, it still must be shown that the United States has “exclusive or concurrent jurisdiction” over these lands in order for jurisdiction under § 7(3) to apply. *See Gatlin*, 216 F.3d at 213-14, and n.7 (recognizing but not addressing the issue in light of its reversal on other grounds).

This was not an issue raised or addressed in *Erdos*, and therefore, is unaffected by the *Erdos* decision.

By way of agreement, countries can give up or acquire jurisdiction, either exclusively or concurrently, with other countries. Typically, where the United States stations military personnel in other countries, this is negotiated in what are called Status of Forces Agreements (“SOFA’s”). In the absence of a treaty like a SOFA, jurisdiction over foreign forces rests exclusively with the host country. *See* Steven J. Lepper, *A Primer on Foreign Criminal Jurisdiction*, 37 A.F.L. Rev. 169, 171 (1994).

Such an agreement, involving Germany and the United States as parties, is provided for in

the North Atlantic Treaty Organization Status of Forces Agreement (June 19, 1951), a copy of which is attached as **Exhibit B**.

Article VII of this SOFA sets out the respective jurisdictions of the “sending State” (the country to which the military force belongs, here, the United States) and the “receiving State” (the host country where the military force is located, here, Germany). Pursuant to Article VII:

(1) The military authorities of the “sending State” have the right to exercise “criminal and disciplinary jurisdiction” over all persons subject to “military law of that State,” *see* Article VII § 1a; and

(2) The host country has jurisdiction over the members of the sending State’s military force or “civilian component” and their dependents with respect to offenses committed within the territory of the host country, *see* Article VII, § 1b.

Although the “sending” and “receiving” States each are also granted exclusive jurisdiction over certain persons, these provisions are inapplicable. *See* Article III, § 2.<sup>6</sup>

Important in the context of this case, where Mr. Morton was a civilian and not a member of the armed services, is that the reach of Article VII, § 1a, is limited to “persons subject to the military law” of the United States. Since the military law is inapplicable to civilians like Mr. Morton, *see Reid*, 354 U.S. 1, Article VII does not confer concurrent jurisdiction with respect to any crimes committed by him to the “sending State,” the United States. Instead, jurisdiction remains with the “receiving State,” Germany. *See* Article VII, § 1b.

---

6

Article VII, § 3, also contains provisions relating to concurrent jurisdiction but this section does not create separate bases for concurrent jurisdiction but qualify the jurisdiction created under § 2.

Consequently, the United States does not have “exclusive or concurrent” jurisdiction under 18 U.S.C. § 7(3) over the government housing quarters in Landstuhl, Germany, and for this reason too the indictment herein must be dismissed against Mr. Morton.

### **III. CONCLUSION**

For the reasons expressed above, defendant and undersigned defense counsel respectfully request this Court to dismiss the indictment against defendant.

Respectfully submitted,  
JAMES WYDA  
Federal Public Defender

---

MICHAEL T. CITARAMANIS (#03674)  
Assistant Federal Public Defender  
6411 Ivy Lane, Suite 710  
Greenbelt, Maryland 20770  
Office: (301) 344-0600  
Fax: (301) 344-0019

---

SUSAN M. BAUER  
Assistant Federal Public Defender  
6411 Ivy Lane, Suite 710  
Greenbelt, Maryland 20770  
Office: (301) 344-0600  
Fax: (301) 344-0019

**REQUEST FOR HEARING**

Pursuant to Rule 105.6 of the Local Rules of the United States District Court for the District of Maryland, a hearing is requested on the Defendant's Motion.

---

MICHAEL T. CITARAMANIS  
Assistant Federal Public Defender

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25th day of June 2003, a copy of the foregoing Motion to Dismiss Indictment was delivered to the office of Odessa P. Jackson, Assistant United States Attorney, 6500 Cherrywood Lane, Room 400, Greenbelt, Maryland 20770.

---

MICHAEL T. CITARAMANIS  
Assistant Federal Public Defender