NO. _____

IN THE 21-5604

SUPREME COURT OF THE UNITED STATES

Daniel Chase Harris,

Petitioner,

vs.

United States Of America,

Respondent.

On Petition For A Writ Of Certiorari To
The Fourth Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

Daniel C. Harris, Pro Se
USP Terre Haute / D-1
P.O. Box 33
Terre Haute, IN 47808

QUESTIONS PRESENTED FOR REVIEW

1) Whether U.S. military or civilian courts have exclusive jurisdiction of service members for their overseas conduct on foreign U.S. military installations based on the passage of 18 U.S.C. §7(9) and subsequent incorporation of 18 U.S.C. §3261(a)&(d) and whether the Fourth Circuit's previous interpretation of 18 U.S.C. §7(3) in U.S. v. Erdos, 474 F.2d 157 (4th Cir. 1973) is no longer good law in light of Congress enacting 18 U.S.C. §7(9), which it squarely failed to rule on in Harris' case, depriving him of Due Process.

2) Whether the Fourth Circuit's decision in Erdos has created such a split and lack of uniformity in the interpretation of 18 U.S.C. §7(9) vs. 18 U.S.C. §7(3) between many circuits and between these circuits and military courts that it needs to be overturned in favor of the more recent 18 U.S.C. §7(9).

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To The Fourth Circuit Court Of Appeals

The petitioner, Daniel Harris, prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The published decision of the Fourth Circuit Appellate Court is reported at U.S. v. Harris, 2021 U.S. App. LEXIS 7964*, 991 F.3d 552 and is attached as Appendix A. A copy of the order denying petitioner's rehearing request, which was made on May 14, 2021, is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). The Fourth Circuit Appellate Court decided petitioner's case on March 18, 2021. A timely petition for rehearing was denied on May 14, 2021 and a copy of said order appears at Appendix B.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV

18 U.S.C. §7(3) states:

> 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.

18 U.S.C. §7(9) states:

> With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act [8 USCS §1101] --
>
> (A) 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 land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and
>
> (B) 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.
>
> Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title [18 USCS §3261(a)].

18 U.S.C. §3261(a) states:

Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States

(a) Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States--

(1) while employed by or accompanying the Armed Forces outside the United States; or

(2) while a member of the Armed Forces subject to chapter 47 of title 10 [10 USCS §§801 et seq.] (the Uniform Code of Military Justice),

shall be punished as provided for that offense.

18 U.S.C. §3261(d) states:

No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 [10 USCS §§801 et seq.] (the Uniform Code of Military Justice) under this section unless--

(1) such member ceases to be subject to such chapter; or

(2) an indictment or information charges that the member committed the offense with one or more defendants, at least one of whom is not subject to such chapter.

STATEMENT OF THE CASE

This case presents an issue of exceptional importance concerning which jurisdiction U.S. service members fall under for alleged overseas conduct on foreign U.S. military installations - military or civilian - and thus, the continued viability of the 4th Circuit's controversial decision in U.S. v. Erdos, 474 F.2d 157 (4th Cir. 1973), which has been debated for almost five decades. Harris argues that Erdos is no longer good law in light of Congress' enactment of 18 U.S.C. §7(9) and its further incorporation of the Military Extraterritorial Jurisdiction Act of 2000 (MEJA), 18 U.S.C. §3261 into §7(9). The importance of the resolution of this question cannot be overstated because sections §7(9) and §3261(d) removed personal jurisdiction from civilian courts and instead provides for trial by courts-martial concerning the overseas conduct of members of the Armed Forces.

In 1973, the 4th Circuit decided in Erdos, that through 18 U.S.C. §7(3), U.S. special maritime and territorial jurisdiction extended to foreign countries wherein the U.S. had land for its exclusive use. 18 U.S.C. §7(3) is one of the most antiquated provisions in our legal system, dating back as far as 1790 when the U.S. clearly had no foreign holdings or territories for its exclusive use. This being one of the reasons Erdos has been so openly criticized because §7(3)'s original intent was to confine such jurisdiction to the U.S. only; more specifically land used by the federal government in the States of the Union. See, 18 U.S.C. §7(3).

The 2nd Circuit squarely opposed Erdos in U.S. v. Gatlin, 216 F.3d 207 (2d Cir. 2000). The court correctly dismissed Erdos' interpretation of §7(3) and identified a "jurisdictional gap" for lawmakers. The Gatlin court then took the unprecedented step to send their opinion to the House Judiciary Committee so that this loop hole could be addressed; hence Congress' enactment of §7(9) in the Patriot Act one year later and its incorporation with the MEJA.

As correctly pointed out by Chief Judge Davis, the district judge below, the passage of 18 U.S.C. §7(9) calls into serious question whether "the Fourth Circuit's prior interpretation of 18 U.S.C. §7(3) [in Erdos] remains good law" with respect to crimes committed by a U.S. service member on an overseas military base.

Almost a decade ago in U.S. v. Holmes, 670 F.3d 586 (4th Cir. 2012), the 4th Circuit declined to revisit Erdos because neither MEJA nor 18 U.S.C. §7(9) was implicated, as they had not yet come into effect under the particular facts of that case. See Holmes, 670 F.3d at 586 n.2.

Yet, unlike Holmes, the question of whether Erdos has been superseded by statute was squarely presented by the case of Daniel Harris, who, based in part on conduct alleged to have occurred at Naval Air Facility Atsugi (Japan)[1] in the "Special Maritime and Territorial Jurisdiction of the United States," was charged inter alia, with using a facility of interstate commerce to entice a minor to engage in criminal sexual activity, in violation of 18 U.S.C. §2422(b) (2012), as alleged in Count 14 of the Superseding Indictment. Moreover, Harris raised this issue as his principal claim on appeal, as well as in his underlying motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255.

The 4th Circuit herein acknowledged this in its opinion:

> The "special maritime and territorial jurisdiction of the United States" is defined in a separate satutory provision, 18 U.S.C. §7(3), to include "any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof." In U.S. v. Erdos, 474 F.2d 157 (4th Cir. 1973), we held that this definition extends to overseas United States facilities - there, a United States embassy in Equatorial Guinea. It followed, we concluded that a federal manslaughter statute covering killings committed "within the special maritime and territorial jurisdiction of the United States" - the same language used in [18 U.S.C.] §2422(b) - could be applied extraterritorially, to prosecute a killing at the embassy. Id. at 158-60 & 158 n.1 (quoting 18 U.S.C. §1112(b)). Under Erdos, it would seem that §2422(b)'s reference to the same "special maritime and territorial jurisdiction," incorporating the same definition in §7(3), would authorize extraterritorial application of that statute, as well.

1/ It was the 4th Circuit in U.S. v. Passaro, 577 F.3d 207 (4th Cir. 2009) that explicity decided that "Naval Air Facility Atsugi in Japan ... constitute[s] 'premises' of a 'military mission' under §7(9)," which is the alleged location of Counts 1 and 14. Id. at 214.

But there is a potential complication, because after our decision in Erdos, Congress amended §7, adding to the definition of "special maritime and territorial jurisdiction" a provision that expressly addresses the status of "United States diplomatic, consular, [or] military ... missions or entities in foreign States," 18 U.S.C. §7(9), like the United States Navy bases at which Harris was posted. Under the new provision, those overseas entities do fall within the definition, but - due to a series of amendments and carevouts - not with respect to "member[s] of the Armed Forces subject to ... the Uniform Code of Military Justice," id.; 18 U.S.C. §3261(a), unless they fall within certain exceptions not relevant here, id. at §3261(a), (d).

So the question Harris raises is whether a prosecution under §2422(b) for conduct committed at a military facility abroad still may be predicated on §7(3)'s general definition of "special maritime and territorial jurisdiction" as construed by Erdos - or whether it must now proceed under §7(9)'s more specific definition, in which case Harris, as a member of the Armed Forces subject to the Uniform Code of Military Justice [(UCMJ)], would be excluded from its reach.

U.S. v. Harris, No. 19-7145, 991 F.3d 552, 2021 U.S. App. LEXIS 7964, *3-*5 (4th Cir. Mar. 18, 2021) (Emphasis added).

Yet, rather than address the straightforward question of whether Erdos' interpretation of §7(3) has been superseded by §7(9)'s incorporation of §3261(d) of MEJA, the 4th Circuit ignored the central issue in the case, i.e., whether the district court lacked personal jurisdiction over Harris for his alleged overseas conduct, and instead attempted to answer a wholly unnecessary legal question, viz., the extraterritorial reach of §2422(b), whereby it could sidestep the elephant in the room concerning Erdos' continued viability, to wit:

Beginning with the step-one inquiry - whether §2422(b)'s reference to the "special maritime and territorial jurisdiction of the United States," as defined by the various subsections of §7, plainly enough contemplates extraterritorial application in these circumstances that it rebuts the presumption against extraterritoriality - would require us to parse an exceedingly complex statutory regime, and to consider whether our longstanding precedent in Erdos has been undermined or abrogated by subsequent amendment. As the district court concluded, those are difficult issues, and they would have implications that stretch well beyond this case.

Harris, 2021 U.S. App. LEXIS 7964, *15. (Emphasis added).

In particular, the legal issue pertaining to §7 raised by Harris addresses the "in personam jurisdiction in the district courts for offenses occurring in the special maritime and territorial jurisdiction of the United States." William C. Peters, On Law, Wars, and Mercenaries: The Case for Courts-Martial Jurisdiction over Civilian Contractor Misconduct in Iraq, 2006 B.Y.U.L.Rev. 367, 387. In this regard, it is well established that "[t]he question of the extraterritorial application of federal statutes has nothing to do with the jurisdiction of the federal courts." U.S. v. Martinelli, 63 M.J. 52, 56 n.4 (C.A.A.F. 2005).

Thus, the sole legal question at issue in Harris' appeal, given Congress' enactment of MEJA and its incorporation in §7(9), surrounds whether the district court lacked personal jurisdiction to try Harris for alleged conduct occurring overseas because such jurisdiction was exclusively reserved to the military by Congress. See Harris, 2021 U.S. App. LEXIS 7964, *10 (pointing out that "[t]hroughout, Harris has framed this argument in jurisdictional terms, contending that the trial court lacked personal jurisdiction over him with respect to Count 14 [and 1], and the district court followed suit").

Furthermore, if the district court lacked jurisdiction, then the conviction and sentence on Count 14 and 1 would be void as a matter of law because the judgment is void ab initio; it is "without legal effect" and "a legal nullity." Baumlin & Ernst, Ltd. v. Gemini, Ltd., 637 F.2d 238, 241 (4th Cir. 1980) (qouting Lubben v. Selective Service System Local Board No. 27, 453 F.2d 645, 649 (1st Cir. 1972)), and Vinton v. Jeantot Marine Alliances, S.A., 191 F. Supp.2d 642, 652 (D.S.C. 2002). As a result, no part of these convictions can stand, nor can any portion of the judgment under these counts, relating to alleged domestic conduct, be salvaged under the argument of extraterritoriality application or continuing offense doctrine. Regrettably however, at the Government's ill-informed prompting, the 4th Circuit dove down the rabbit hole of "extra-territorial application," which has no direct bearing upon this case. See id. at *13-*20.

Resolution of this issue also presents a question of exceptional importance for a writ because: (1) the ruling in Erdos created a direct conflict with multiple circuits, chiefly the 2nd Circuit in U.S. v. Gatlin, 216 F.3d 207, 213-15 (2d. Cir. 2000)(rejecting the reasoning of Erdos on multiple grounds) and with every military court (repeatedly rejecting the Government's argument that child pornography charges involving overseas conduct can be applied to military personnel, explicitly citing §7(9)'s cross-reference to MEJA); (2) Erdos factored

into the legislative history of the incorporation of §3261 into §7(9), see H.R. Rep. 107 - 236 at 73-74 (2001); and (3) the rationale of Erdos has been severely criticized in scholarly writings, see, e.g., Jordan J. Paust, Non-Extraterritoriality of "Special Territorial Jurisdiction" of the United States: Forgotten History and the Errors of Erdos, 24 Yale J. Int'l L. 305 (1999); Jordan J. Paust, Territorial Jurisdiction of the U.S. Does Not Extend on the Outer Continental Shelf or in Superjacent Waters, 38 Hous. J. Int'l L. 269, 269-70 & n.4 (2016) (revisiting errors in Erdos' application of 18 U.S.C. §7(3)).

With the multitude of military and peacekeeping operations occurring worldwide and the vast percentage of the U.S. Military that falls under the 4th Circuit's perview, it is incumbent upon this Court to give guidance to every circuit, defendant and prosecutor, as well as the military itself as to whether Erdos remains good law. It is now 20 years since these provisions went into effect and which statute directly impacts whether the civilian courts or courts-martial maintain personal jurisdiction over a member of the Armed Forces subject to the UCMJ for overseas conduct is still apparently in question. The buck must stop here, as the can has nowhere else to be kicked.

BACKGROUND

Daniel Harris was charged, tried by a jury, and convicted of various child pornography offenses, including production, receipt, transportation, and possession, as well as enticing a minor to engage in criminal sexual activity and obstruction of justice. See U.S. v. Harris, 653 Fed.Appx.203, 203 (4th Cir. 2016). Harris was a member of the Navy, and thus subject to the UCMJ, at the time the Superseding Indictment was issued against him on September 17, 2014. See Harris v. U.S., Case No. 16-560 C, 2017 U.S. Claims LEXIS 83, *2 (Fed. Ct. Cl. Feb. 9, 2017)(memorializing that as of February 2017, Lieutenant Harris "has not yet been discharged" from the United States Navy), aff'd, 868 F.3d 1376 (Fed. Cir. 2017). Furthermore, Harris was not alleged in the Superseding Indictment to have perpetrated the offenses with a co-defendant who was not subject to the UCMJ. He was sentenced to 600 months' imprisonment.

Harris filed a timely direct appeal in which he raised two isses. The 4th Circuit affirmed. Harris' petition for a writ of certiorari was subsequently denied by this Court. See Harris v. U.S., 137 S.Ct. 1355 (2017).

After the district court denied Harris' motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. §2255, which asserted the question now before this Court, the 4th Circuit granted Harris' Application for a Certificate of Appealability. The 4th Circuit granted a certificate of appealability on the following issue:

> Whether the district court erred when it rejected Harris' claim that the district court lacked jurisdiction to support Harris' conviction for using a facility of interstate commerce to entice a minor to engage in criminal sexual activity, in violation of 18 U.S.C. §2422(b) (2012), as alleged in Count 14 of the Superseding Indictment.

Count 14 of the Superseding Indictment charged that:

> From on or about March 19, 2011, to on or about October 8, 2011, beginning at Naval Air Facility Atsugi (Japan) in the Special Maritime and Territorial Jurisdiction of the United States, and continuing in the Eastern District of Virginia, and elsewhere, the defendant DANIEL CHASE HARRIS, used a facility and means of interstate and foreign commerce to attempt to and did knowingly persuade, induce, entice, and coerce H.K., who had not attained the age of 18 years, to engage in a sexual activity for which a person can be charged with a criminal offense under Virginia law, namely, Production of Child Pornography, in violation of §18.2-374.1 of the Virginia Code.
> (In violation of Title 18, United States Code, Section 2422(b) and .7.)

On March 18, 2021, the 4th Circuit denied Harris' appeal and then his request for a rehearing on May 14, 2021.

Harris has asserted throughout that he is innocent and that the jury should never have been exposed to any of the alleged evidence introduced in relation to H.K. on Count 14 and Count 1, which overlap. The government has continuously attempted to marginalize the significance of this in Harris' appeals because it is well aware that the alleged evidence it was able to introduce was outcome-determinative in convicting Harris. The government relied so heavily on these counts that nearly the entirety of its opening and closing arguments focused on the evidence presented in Counts 14 and 1. Absent this alleged evidence, the result of Harris' trial would have been markedly different in the face of Harris' numerous documented alibi defenses, wherein he

is physically flying and F/A - 18 fighter aircraft during the allged conduct. See Harris, 2021 U.S. App. LEXIS 7964, *10 n.3.

REASONS FOR GRANTING CERTIORARI

1) Whether U.S. military or civilian courts have exclusive jurisdiction of service members for their overseas conduct on foreign U.S. military installations based on the passage of 18 U.S.C. §7(9) and subsequent incorporation of 18 U.S.C. §3261(a) & (d) and whether the Fourth Circuit's previous interpretation of 18 U.S.C. §7(3) in U.S. v. Erdos, 474 F.2d 157 (4th Cir. 1973) is no longer good law in light of Congress enacting 18 U.S.C. §7(9), which it squarely failed to rule on in Harris' case, depriving him of Due Process.

One of the questions squarely presented to this Court is whether 18 U.S.C. §7(9) or 18 U.S.C. §7(3) is the controlling statute for service members' conduct overseas on U.S. military installations. This question has vast implications for not only all service members but also the U.S. military. It will determine whether the district court lacked in personam jurisdiction over Harris to enter a conviction and sentence on Count 14 of the Superseding Indictment and subsequently Count 1 as well, which invoked 18 U.S.C. §7, because 18 U.S.C. §3261(d) of MEJA, which was incorporated into 18 U.S.C. §7(9), removed such jurisdiction from civilian courts and instead provided for trial by court-martial in situations involving overseas conduct of a member of the Armed Forces subject to the UCMJ. For its part, the 4th Circuit relied on §7(3) to meet its jurisdictional requirement based on its ruling in Erdos. A decision made 30 years before the enactment of §7(9). Because, as detailed below, the definition of "special maritime and territorial jurisdiction of the United States" is much-more specific in §7(9) than in §7(3), Harris argues that the former controls over the latter and that Erdos is no longer good law because it has been superseded by Congressional statute in light of §7(9)'s incorporation of MEJA.

18 U.S.C. §7 defines the term "special maritime and territorial jurisdiction of the United States." See 18 U.S.C. §7(1)-(9).

Subsection (3) describes this term generally as including:

> 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.

18 U.S.C. §7(3). (Emphasis added).

Subsection (9), on the other hand, provides that, "[w]ith respect to offenses committed by or against a national of the United States," a phrase lacking in §7(3), the "special maritime and territorial jurisdiction of the United States" includes:

> (A) 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 land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and
>
> (B) 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.

18 U.S.C. §7(9)(A), (B). (Emphasis added).

Furthermore, subsection (9) contains a proviso that "[t]his paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title [18 U.S.C. §3261(a)]." 18 U.S.C. §7(9).

In turn, 18 U.S.C. §3261(a) describes two categories of persons:

> (a)Whoever engages in conduct outside the United States that would constitute an offense punishable by imprisonment for more than 1 year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States -
>
> (1)While employed by or accompanying the Armed Forces outside the United States; or
>
> (2)While a member of the Armed Forces subject to chapter 47 of title 10 [10 U.S.C. §§801 et seq.],
>
> shall be punished as provided for that offense.

18 U.S.C. §3261(a).

Yet, of direct relevance to the instant case, subsection (d) of §3261 provides:

> No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 [10 U.S.C. §§801 et seq.] (the Uniform Code of Military Justice) under this section unless -
>
> (1) Such member ceases to be subject to such chapter; or
>
> (2) An indictment or information charges that the member committed the offense with one or more other defendants, at least one of whom is not subject to such chapter.

18 U.S.C. §3261(d).

Walking the dog, Harris' argument is that the government was required to enact "special maritime and territorial jurisdiction" in order to charge him with Count 14, as is memorialized in the Superseding Indictment. Harris argues that §7(9) and not §7(3) is the controlling section because it is not only more recent but is clearly more specific. See Passaro, 577 F.3d 207 (4th Cir. 2009) and RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 566 U.S. 639, 645 (2012) (citing the well established rule of statutory interpretation that the more-specific terms of a statute control over the more-general terms).

Therefore, in enacting §7 for its jurisdiction, the government must rely on §7(9). However, the 4th Circuit has continuously held to its decision in Erdos, prioritizing §7(3). Harris argues that this is because §7(9) cannot apply to him as he was an active duty service member at the time of the indictment and subject to the UCMJ. Furthermore, because of this exact situation, seen by the 2nd Circuit in Gatlin, 216 F.3d 207 (2d. Cir. 2000) and forseen by Congress, Harris could not be tried by a civilian court. Congress had removed the civilian court's jurisdiction for overseas conduct of service members exressly to ensure that the service member was tried by a courts-martial. See H.R. Rep. 106-778(1)(2000).

Therefore, should this Court agree with Harris, then the district court had no in personam jurisdiction over Harris for Count 14 or Count 1, regardless of the fact that §2422(b) may have extraterritorial reach or be considered a continuing offense. This part is critical because "[t]he question of the extra-territorial application of federal statutes has nothing to do with the jurisdiction of the federal courts." See Martinelli, 62 M.J. at 56 n.4 (C.A.A.F. 2005). And the continuing nature of an offense does not somehow magically re-invest a court with jurisdiction where, as here, Congress has explicitly

withdrawn personal jurisdiction from the civilian courts by statute. No federal court has the power to unilaterally and gratuitously "reinvest" itself with personal jurisdiction over a criminal defendant where such jurisdiction for the defendant's overseas conduct was initially lacking. Neither the district or appellate court, nor the government, has provided any legal authority to support such an unprecedented assertion of personal jurisdiction. There is none.

The validity of a federal court's judgment depends on the court having both subject matter and personal jurisdiction over the defendant. See Ins. Corp. of Ireland v. Compagnie Des Bauxites De Guinee, 456 U.S. 694, 701 (1982). Where a court lacks in personam jurisdiction, a defendant's due process rights are violated. See id. at 702; Foster v. Arletty 3 S.A.R.L., 278 F.3d 409, 413 (4th Cir. 2002)("The requirement that a court have personal jurisdiction is grounded in the Due Process Clause."). Moreover, because "any judgment entered against a defendant over whom the court does not have personal jurisdiction is void," Koehler v. Dodwell, 152 F.3d 304, 306-07 (4th Cir. 1998), Harris' conviction and sentence on Count 14 are void.

Every legal source supports Harris' interpretation of §3261(d) of MEJA, as incorporated into §7(9), with regard to the district court's lack of personal jurisdiction over his alleged overseas conduct. Likewise, courts, both civilian and military, have confirmed this identical point. See, e.g., U.S. v. Green, 654 F.3d 637, 643 (6th Cir. 2011)(pointing out that §3261(d) of MEJA "provides limitations on when a member of the Armed Forces may be subject to civilian prosecution"); U.S. v. Santiago, 966 F. Supp.2d 247, 255 (S.D.N.Y. 2013)("MEJA's text indicates that servicemen and women who commit crimes while on active duty are to be prosecuted under the UCMJ; indeed, 18 U.S.C. §3261(d) specifically prohibits the use of MEJA to try active duty service personnel who are subject to court-martial, unless the serviceman or woman committed the crime with someone who was not subject to UCMJ jurisdiction."); U.S. v. Robinshaw, Case No. ARMY 20030527, 2006 CCA LEXIS 442, *3-*5 (A.Ct. Crim. App. May 31, 2006)(unpublished) (citing 18 U.S.C. §7(9)'s cross-reference to MEJA and pointing out that "the statute specifically excludes members of the armed forces subject to the UCMJ from its application: 'This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.'").

The 4th Circuit simply failed to address the question of the continued viability of Erdos' interpretation of §7(3) in light of the subsequent passage of §7(9), despite the fact that the latter statute was both more specific and later in time. Section 7(9) clearly controls over §7(3) under both the canon of

statutory construction that the more-specific provision controls over the more-general, D.B. v. Cardall, 826 F.3d 721, 735 (4th Cir. 2016), and the related canon of interpretation that the more-recent statute controls over an earlier one. See Oldenkamp v. United Am. Ins. Co., 619 F.3d 1243, 1247 (10th Cir. 2010) (noting that "a specific statute controls over one of more general applicability and the most recent enactment controls over an earlier one"); U.S. v. Smith, 813 F.Supp. 549, 551 (E.D. Va. 1993)(holding that "later statutes receive precedence over earlier statutes and specific statutes receive precedence over more general statutes").

Instead, inexplicably, the 4th Circuit addressed an issue never raised by Harris and wholly unnecessary to the resolution of the case at hand, viz., the extraterritorial reach of §2422(b). In light of Congress' enactment of MEJA and its incorporation into §7(9), the sole question at bar is which adjudicative tribunal has person jurisdiction to try service members, and specifically Harris, for their alleged conduct occurring overseas - court-martial or civilian court. This is an entirely separate and distinct legal question from whether §2422(b) has extraterritorial reach beyond the boundaries of the United States, which is nothing but a red herring and does nothing to resolve the principle question of whether Erdos' interpretation of §7(3) is no longer good law in light of the passage of §7(9).

For if §7(3) is allowed to control, the federal court's jurisdiction over service members abroad will be exponentially increased, equalling that of the UCMJ which is hard to fathom considering the UCMJ's jurisdiction attaches to the person and not the place. However, if §7(3) is allowed to be so broadly defined in the face of §7(9), it will greatly diminish the power of courts-martial to hold service members accountable and the confidence of the public in the strength of the UCMJ. Moreover, it will confuse service members and the courts alike and blur the lines between Article I and Article III courts.

This is what the 4th Circuit alluded to when they said this "would have implications that stretch well beyond this case," Harris, 2021 U.S. App. LEXIS 7963, *15, and what this Court, because of its broad reaching application should resolve by granting Harris' writ.

2) Whether the Fourth Circuit's decision in Erdos has created such a split and lack of uniformity in the interpretation of 18 U.S.C. §7(9) vs. 18 U.S.C. §7(3) between many circuits and between these circuits and military courts that it needs to be overturned in favor of the more recent 18 U.S.C. §7(9).

A basic principle of our legal system is that an outcome should not depend on the court a party finds itself in. A service member landing in New York following a deployment should expect to find themselves under the same federal laws as if they had landed in Virginia. Unfortunately for every member of the Armed Forces this is not the case.

A service member landing in New York, following alleged misconduct overseas, will find that a courts-martial is the only tribunal that can try them for that misconduct because Congress removed civilian court's jurisdiction over them in §7(9), which the 2nd Circuit upholds. However, a service member landing in Virginia can be tried by whomever get to them first because of the 4th Circuit's precedence in Erdos. The former service member is afforded the considerably larger and more appropriate rights of a courts-martial, while the latter is left wondering why Congress created §7(9) if the 4th Circuit can just simply ignore it. Forcing the question; why is there such a lack of uniformity in the law between States for such a large group of U.S. Citizens? Such a split in authority might be expected where Congress had established that this issue be answered on a case-by-case basis. However, it is clear they did not.

The 4th Circuit would not be the only circuit in which §7(9) would seem to be a duplicity that wasn't needed. Service members would find themselves in this strange jurisdictional conundrum in the 9th Circuit as well. See U.S. v. Corey, 232 F.3d 1166, 1172 (9th Cir. 2000).

Tallying the circuits, a service member would find themselves exclusively at a courts-martial for any alleged overseas conduct in the 2nd Circuit, see Gatlin, 216 F.3d 207, and Santiago, 966 F.Supp.2d 247, the 6th Circuit, see U.S. v. Green, 654 F.3d 637, 643 (6th Cir. 2011)(pointing out that §3261(d) of MEJA "provides limitations on when a member of the Armed Forces may be subject to civilian prosecution"), and in all military courts, see U.S. v. Robinshaw, 2006 CCA LEXIS 442 (concerning conduct in Korea), U.S. v. Johnson, 2006 CCA LEXIS 447, *3 (A. Ct. Crim. App. June 26, 2006)(concerning conduct in Afghanistan), U.S. v. Ziegler, Case No. ARMY 20030009, 2006 CCA LEXIS 457, *5 (A. Ct.

Crim. App. June 12, 2006)(concerning conduct in Germany), wherein they repeatedly reject the argument that child pornography charges involving overseas conduct can be applied to military personnel. However, the 4th and 9th Circuits have determined that both civilian and military courts may try that same service member for that same overseas conduct.

The question may be asked why more circuits have not weighed in on the issue. But a thorough look would indicate that this issue deals with service members and their overseas conduct only - a not small percentage of the U.S., especially when considering the Reserves, and that between these circuits are the largest military bases in the World and the largest concentration of service members in the U.S. Furthermore, a large percentage of every foreign deployment begins or ends in these circuits. So it is no wonder that these circuits are the ones who are dealing with these cases and not others. One could argue that about 90% of the circuits that could reasonably be expected to deal with this issue do, and amongst them, they are all split on one side or the other.

Although the split is explicit, even Congress recognized it in its reasoning for enacting §7(9). "Extraterritoriality regarding U.S. embassies and U.S. [missions] overseas [has been] the subject of differing interpretation by judicial circuits" and 18 U.S.C. §7(9) "would make it clear that embassies and [missions] of the U.S. in foreign states are included in the special maritime and extraterritorial jurisdiction of the U.S." H.R. Rep. 107-236 @ 73-74 (2001). Then to further clarify, Congress incorporated MEJA into §7(9), so that when read by its plain language, §7(9) would close the "jurisdictional gap" identified in Gatlin and ensure that service members were to be solely tried by courts-martial for conduct committed overseas on U.S. installations.

This split should be highly disconcerting to this Court for other reasons as well. Special deference has always been given by this Court to the military on military issues, especially now when Congress has expressly stated that the military "has the predominant interest in disciplining its members and [18 U.S.C. §3261(d) incorporated into §7(9)] enacts the general preference that military members be tried by court-martial for their crimes." H.R. Rep. No. 106-778(1) (2000).

Moreover, Harris' case expressly acknowledged this split when the 4th Circuit stated that "there is a potential complication because after our decision in Erdos, Congress amended §7" and they would need to "consider whether our long-standing precedent in Erdos has been undermined or abrogated by subsequent amendment." Harris, 2021 U.S. App. LEXIS 7964, *15. The district court also acknow-

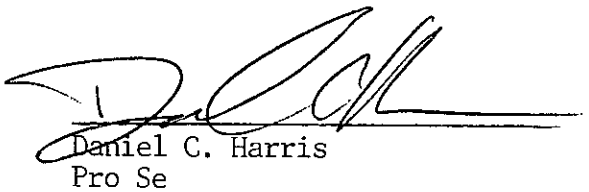
ledged the split when it said "Congress enacted MEJA in response to the Second Circuit's ... interpretation of 18 U.S.C. §7(3) in [Gatlin], an interpretation that conflicts with Erdos and [Corey]." Harris, 2:18cv140 at 15, n. 8.

In the end, it cannot be that service members are under one jurisdiction for overseas conduct in one state and not in another. It also cannot be that so many circuits can read the plain language of a statute so differently when any confusion is dispelled in the notes of the bill written by Congress. This may seem like a simple statement and that is because it is. However, only this Court is in the unique position to correct this issue that effects every man and woman in our Armed Forces and return uniformity to law. This writ squarely presents this issue for this Court to decide.

CONCLUSION

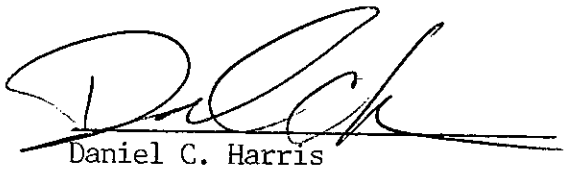
For the foregoing reasons, petitioner, Daniel Harris, respectfully prays that a writ of certiorari issue to review the judgment of the Fourth Circuit Appellate Court.

Respectfully submitted,



Daniel C. Harris
Pro Se

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Daniel C. Harris