APPENDIX

A P P E N D I X 'A'

United States Court of Appeals for the Eleventh Circuit Decision

USCA11 Case 24-13918

Decided 07/01/2025

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13918

BRIAN WILLIAM SCHUMAKER,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cv-04076-JPB

ORDER:

Brian Shumaker is a federal prisoner serving a 360-month sentence for traveling across state lines to engage in a sexual act with a minor, use of a computer to entice a minor to engage in sexual activity, and possession of child pornography. Shumaker is appealing the district court's dismissal of his *pro se* 28 U.S.C. § 2255 motion as successive. Shumaker now moves for a certificate of appealability ("COA"), as construed from his notice of appeal, *in forma pauperis* ("IFP"), and to supplement the record.

Generally, a prisoner seeking to appeal a district court's denial of habeas relief must obtain a COA. *See* 28 U.S.C. § 2253(c)(1)(B). However, a COA is not required if the district court's order is not a "final order" under 28 U.S.C. § 2253(c). *Hubbard v. Campbell*, 379 F.3d 1245, 1247 (11th Cir. 2004).

Here, a COA is not required because Shumaker's § 2255 motion was denied as successive without discussion of the merits of that motion. *See id.* Accordingly, Shumaker's motion for a COA is DENIED AS UNECESSARY.

As to his motion for IFP, his appeal is subject to a frivolity determination. 28 U.S.C. § 1915(e)(2)(B). An action "is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001).

Here, there are no non-frivolous issues, as the district court properly dismissed Shumaker's § 2255 motion as successive, given that he previously filed a § 2255 motion, regarding the same convictions as here, in 2016, which was denied, and he has not received

authorization from this Court to file a subsequent motion. *See* 28 U.S.C. § 2255(h).

Further, the court properly concluded that Shumaker's case was unlike *Stewart*, as the newly discovered evidence that Shumaker asserts in his § 2255 motion, specifically his argument that federal officials cannot prosecute federal crimes committed in Georgia, could have been raised previously. *See Stewart v. United States*, 646 F.3d 856, 859, 863 (11th Cir. 2011).

Accordingly, Shumaker's motion for IFP is DENIED as his motion to supplement the record is DENIED AS MOOT.

/s/ Nancy G. Abudu

UNITED STATES CIRCUIT JUDGE

A P P E N D I X 'B'

United States District Court, Atlanta Division Decision

USDC Case No. 1:07-cr-00289-JPB-CMS

Decided 11/06/2024

followed by a term of supervised release. [Doc. 302]. The Eleventh Circuit Court of Appeals affirmed Movant's convictions and sentence. [Doc. 336]. Then, on September 27, 2013, Movant filed a § 2255 motion challenging his convictions. [Doc. 341]. Shortly thereafter, this Court denied Movant's § 2255 motion on the merits. [Doc. 367]. The Eleventh Circuit declined to grant Movant a certificate of appealability as to this Court's denial of § 2255 relief. [Doc. 383].

In Movant's pending § 2255 motion, he claims that he has newly discovered evidence showing that his convictions are infirm for lack of jurisdiction because the United States does not have the authority to prosecute crimes committed within the State of Georgia. [Doc. 396-1, p. 2]. The "new evidence" that Movant points to is a letter from the office of the Georgia Secretary of State responding to a freedom of information request submitted by Movant. See id. at 16–19. In the letter, the Georgia Secretary of State informs Movant that it does not have copies of any letters in which the federal government provided notice that it intended to exercise jurisdiction over the enforcement of federal laws or other documents that indicate that the State of Georgia had ceded legislative jurisdiction to the federal government. Id. Movant argues that this "newly discovered evidence" shows that the federal government lacked jurisdiction to bring a case against him in Georgia, and Movant argues that his trial counsel refused to raise or investigate these jurisdictional issues. Id. at 4–5, 9.

In evaluating the merits of Movant's instant § 2255 motion, the Magistrate Judge determined that this Court lacks jurisdiction over the motion because it is successive, and Movant has not sought authorization from the Eleventh Circuit to file a successive motion. [Doc. 399, pp. 2–3]; see 28 U.S.C. § 2244(b). As such, the Magistrate Judge recommends that the instant Motion to Vacate be dismissed without prejudice. Id. at 4.

II. Legal Standard

A district judge has broad discretion to accept, reject or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection *de novo* and any non-objected-to portion under a "clearly erroneous" standard. Notably, a party objecting to a recommendation "must specifically identify those findings objected to. Frivolous, conclusive, or general objections need not be considered by the district court." Marsden v. Moore, 847 F.2d 1536, 1548 (11th Cir. 1988) (citation omitted). It is reasonable to place this burden on the objecting party because "[t]his rule facilitates the opportunity for district judges to spend more time on matters actually contested and produces a result compatible with the

purposes of the Magistrates Act." United States v. Schultz, 565 F.3d 1353, 1361 (11th Cir. 2009).

III. Discussion

Most of Movant's objections consist of pseudo-legalese statements that are reminiscent of sovereign citizen arguments, such as his contention that he has no corporate identity and his invocation of the Uniform Commercial Code and admiralty law. See generally [Doc. 401, pp. 1–2]. In his sole valid objection, Movant contends that his pending § 2255 motion should not be considered second or successive under the Eleventh Circuit's opinion in Stewart v. United States. 646 F.3d 856 (11th Cir. 2011). In Stewart, the Eleventh Circuit held that, because the basis for a petitioner's numerically second § 2255 claim did not exist when he filed his initial § 2255 motion, the petitioner's "numerically second motion is not 'second or successive,' and § 2255(h)'s gatekeeping provision does not apply." Id. at 865.

However, unlike the petitioner in Stewart, Movant relies upon a claim for which the basis *did* exist prior to the filing of his initial § 2255 motion. See id. at 864–65. The "new" evidence that Movant points to—the purported fact that federal officials cannot prosecute federal crimes committed in the State of

Georgia—could have been discovered prior to his trial.[1] Finally, Movant's claim that this Court lacked jurisdiction because the federal government cannot prosecute him for illegal activities committed in Georgia without the State's permission is entirely frivolous and devoid of merit.

IV. Conclusion

For the reasons stated, this Court agrees with the Magistrate Judge that Movant's Motion to Vacate [Doc. 396] must be dismissed as impermissibly successive and for this Court's lack of subject matter jurisdiction. Accordingly, the R&R [Doc. 399] is **ADOPTED** as the order of the Court, the pending motion [Doc. 396] is **DISMISSED** and a certificate of appealability is **DENIED**. The Clerk is **DIRECTED** to close this case.

SO ORDERED this 6th day of November, 2024.

J. P. BOULEE
United States District Judge

[1] The Eleventh Circuit in Stewart also stated that "'[c]laims based on a *factual* predicate not previously discoverable are successive,' but '[i]f . . . the purported defect did not arise, or the claim did not ripen, until after the conclusion of the previous petition, the later petition based on that defect may be non-successive.'" 646 F.3d at 863 (quoting Leal Garcia v. Quarterman, 573 F.3d 214, 221 (5th Cir. 2009)). In addition to being previously discoverable, the "new" evidence Movant cites in support of his pending § 2255 motion appears factual in nature, thus further foreclosing the possibility that belated discovery of the evidence renders the instant motion non-successive.

A P P E N D I X 'C'

August 15, 2024 Letter from GEORGIA Sec.-of-State Office
cited at Page 10
with Petitioner's FOIA/Open Records Act Request

The Office of Secretary of State

August 15, 2024

VIA U.S. MAIL

Brian-William Schumaker [Reg. #59309-019]
FCI Fort Dix
Federal Correctional Institution
P.O. Box 2000
Joint Base MDL, NJ 08640

RE: OPEN RECORDS REQUEST

Dear Mr. Schumaker:

The Secretary of State's Office does not retain records responsive to your request. These records may be held with another agency or entity.

Sincerely,

Open Records Staff

Brian-William:Schumaker
P.O.Box 2000, Joint Base MDL, NEW JERSEY [near 08640]

Governor Brian Kemp, GOVERNOR for the
State of GEORGIA
142 State Capitol
Atlanta, GEORGIA [near 30334]

August 1, 2024

Attn: Office of General Counsel
for GOVERNOR Kemp

Dear Governor:

RE: "Notice of Acceptance" Open Records Act/FOIA Request

Greetings. We require your kindest assistance and cooperation in furthering a certain cause of action within the public interest and "in the interest of justice". We have come upon information that the UNITED STATES Government is seriously infringing upon the liberty interests reserved to the Sovereign powers of the State of GEORGIA and protected under the 10th Amendment of the Constitution of the United States. We desire the herein requested information authorized under your state open records act to confirm or withdraw furtherance of this concern.

Under Title 40 USC §3112; a copy of which is enclosed for your reference, it states in pertinent part,

"the individual shall indicate acceptance of jurisdiction on behalf of the government by filing [N]otice of [A]cceptance with the Governor of the State" and that, "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction".

Also please find enclosed a (3) page copy of such a Notice of Acceptance from then U.S.Attorney General Janet Reno addressed to then Washington State Governor Gary Locke that confirms and reinforces our concern; which states at Pg.1,¶3:

"Federal law provides that a state's cession of legislative jurisdiction to the United States does not take effect until accepted by the head of the federal department that has custody over the land." and, "This letter constitutes the United States' acceptance of criminal and civil jurisdiction over the site of the [SEATAC detention] facility".

These authorities affirm our concerns. We kindly request your assistance with providing confirmation and copies of your State Legislature's "cession of legislative jurisdiction" and the "Notice of Acceptance" that are allegedly on file WITH your State office or within your State Legislative Archives to the certain locations identified below either by street address, by county, or specific name:

1) An alleged territory known as the " NORTERN DISTRICT OF [illegible] GEORGIA " comprising of the counties of: Cherokee, Clayton, Cobb, DeKalb, Douglas, Fulton, Gwinnett, Henry, Newton, and Rockdale known as "ATLANTA DIVISION"; with court held in Atlanta;

... cont'tn

-and-

2) an alleged territory(ies) with the commonly known street addresses of:

- 5530 Windward Parkway, Alpharetta, GEORGIA [near 30004] at the corner of Windward and Deerfield Parkways;
- 75 Spring Street SW, [Room 2211] Atlanta, GEORGIA [near 30303].

Should there in fact be no such records responsive to this request, we require for our purposes some Official correspondence signed by either yourself, being the GEORGIA State Governor, or otherwise by the GEORGIA Secretary of State WITH the Official Recorder within the GEORGIA State Land Titles Registry.

Your assistance in this matter well serves the "ends and interest of Justice", and will provide TRUE Disclosure to the Public Interest at large.

We thank you in advance, appreciate, and trust that you will manage this FOIA Request accordingly as,

We Remain, Without Prejudice,

Brian-William:Schumaker

cc. Advisors and Counsel

enclosures: (1) Page of Title 40 USC §3112
(3) Page letter Dated March 20, 1997 from AG Janet Reno to Gary Locke

A P P E N D I X 'D'

AG Janet Reno's 'Notice of Acceptance' date March 1997

cited at Page 10

UNITED STATES Constitution, Article I, Sctn.8, Cls.17 (Art.I, §8.17)

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;-And

[redacted]

Title 40 USC
§ 3112. Federal jurisdiction

APPENDIX "A2(b)'

(a) Exclusive jurisdiction not required. It is not required that the Federal Government obtain exclusive jurisdiction in the United States over land or an interest in land it acquires.

(b) Acquisition and acceptance of jurisdiction. When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

(c) Presumption. It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

** (Aug. 21, 2002, P. L. 107-217, § 1, 116 Stat. 1144.)

United States v. Benson, 495 F.2d 475,481(5th Cir.1974)

APPENDIX 'A3'

JURISDICTION

Appellants both challenge the government's proof of the jurisdictional facts requisite to conviction under Title 18 U.S.C. Sec. 2111, which provides that "whoever, within the special maritime and territorial jurisdiction of the United States, by force and violence, or by intimidation, takes from the person or presence of another anything of value, shall be imprisoned not more than fifteen years." Counsel for appellants moved for judgment of acquittal at the close of the government's case in each trial and assert here that the denial of that motion was error because of the government's failure to prove that Fort Rucker, Alabama is within the special territorial jurisdiction of the United States.

It is axiomatic that the prosecution must always prove territorial jurisdiction over a crime in order to sustain a conviction thereafter. We held in Krull v. United States, 6 Cir. 1967, 240 F.2d 122, 127, a case involving a location (Chickamauga and Chattanooga National Parks, Georgia) allegedly under the exclusive jurisdiction of the United States, that one element of proof required of the prosecution is "to establish the situs where [the crime was] committed and show that such situs was within the jurisdiction of the United States." But the argument of the appellants fails to take into account the factor of judicial notice, which is a valid substitute for proof in connection with jurisdictional questions as well as other matters of evidence. " (The) court will take judicial notice of (the) facts which vest the United States with jurisdiction : . . ", Hudspeth v. United States, 5 Cir. 1919, 257 F.46. 8 223 F.2d 848, citing Brown v. United States, 5 Cir. 1955,

That both robberies took place within the territorial limits of Fort Rucker was testified to by Lock in each (495 F.2d 482) trial.

Office of the Attorney General
Washington, D. C. 20530

Appendix 'A4' - (1) of (3) Pages

March 20, 1997

RECEIVED

MAR 27 1997

OFFICE OF THE GOVERNOR

BY CERTIFIED MAIL

The Honorable Gary Locke
Governor of Washington
P.O. Box 40002
Olympia, WA 98504

Dear Governor Locke:

On behalf of the United States, I hereby accept concurrent legislative jurisdiction over the site of a Federal Bureau of Prisons facility, near Seattle and Tacoma, Washington, to be used for prisoner detention, correction, and other purposes. As you may know, construction of the facility, presently known as FDC Seatac, is well under way. The facility is soon expected to begin operations.

The State of Washington has consented to the acquisition by the United States of land acquired for federal purposes, see Wash. Rev. Code Ann. § 37.04.010, and has ceded concurrent criminal and civil legislative jurisdiction over such land to the United States for all purposes for which the United States acquired the land, see Wash. Rev. Code Ann. § 37.04.020; see also Department of Labor and Industries v. Dirt & Aggregate, Inc., 120 Wash.2d 49, 52-53, 837 P.2d 1018, 1021 (Wash. 1992) (holding that the state may cede legislative jurisdiction to the United States, and that the scope of the federal jurisdiction is governed by the terms of the cession).

Federal law provides that a state's cession of legislative jurisdiction to the United States does not take effect until accepted by the head of the federal department that has custody over the land. 40 U.S.C. § 255. This letter constitutes the United States' acceptance of concurrent criminal and civil jurisdiction over the site of the facility. Copies of the

Declaration of Taking and general warranty deeds for the site are enclosed.

Concurrent legislative jurisdiction will mutually benefit the State of Washington and the United States. Absent federal legislative jurisdiction, the state would have the entire burden of prosecuting offenses that might be committed at the facility, except those offenses that violate federal law even when committed outside areas of federal legislative jurisdiction. Concurrent jurisdiction enables the United States to investigate and prosecute certain offenses when appropriate, without displacing state authorities. Criminal offenses perpetrated by or against federal prisoners confined at the institution can be investigated by the Federal Bureau of Investigation and prosecuted by the United States Attorney. Thus, cession of concurrent jurisdiction may relieve the State of some of the burden of investigating and prosecuting criminal offenses that occur at the federal institution. In some situations, it might be more appropriate for the State to investigate and prosecute violations of state law, and the State could do so.

Please execute the acknowledgment of receipt of this letter on the enclosed copy, and return that copy to:

Michael E. Wall
United States Department of Justice
Environment & Natural Resources Division
Policy, Legislation and Special Litigation Section
950 Pennsylvania Avenue, NW, Room 2133
P.O. Box 4390
Washington, DC 20044-4390

Should you need any further information, please have your staff contact Mr. Wall on (202) 514-1442, or Jeffrey J. Limjoco, an attorney with the Federal Bureau of Prisons, on (202) 307-1240.

I appreciate your assistance in this important area of federal-state cooperation.

Sincerely,

Janet Reno

Enclosures

Receipt of the above notice of acceptance of concurrent legislative jurisdiction over the site of the Federal Detention Center near Seattle and Tacoma, Washington (FDC Seatac) is hereby acknowledged this 11th day of April, 1997.

Governor of Washington

A P P E N D I X 'E'

Adams v. United States, 319 US 312(1943) Entire Text

Qty. 5-pages

87 LED 1421, 319 US 312 ADAMS v. UNITED STATES

RICHARD PHILIP ADAMS, John Walter Brodenave and Lawrence Mitchell,

vs.

UNITED STATES OF AMERICA and John S. Ryan, Warden.

[87 L Ed 1421] (319 US 312-315.)

[No. 889.]

Argued May 10, 1943. Decided May 24, 1943.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Courts, § 748 - Federal - criminal jurisdiction.

1. Unless and until notice of acceptance of jurisdiction has been given, Federal courts are without jurisdiction to punish under criminal laws of the United States an act committed on lands acquired by the United States, where the applicable statute (Act of Oct. 9, 1940, 40 USC § 255) provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing notice with the governor of the state, or by taking other similar appropriate action, and that unless and until the United States has so accepted jurisdiction it shall be conclusively presumed that no such jurisdiction has been accepted.

Statutes, § 155 - administrative construction - force.

2. The views of governmental agencies co-operating in developing a statute as to its interpretation are entitled to great weight in construing it.

Courts, § 748 - Federal criminal jurisdiction - effect of state statute authorizing.

3. That state statutes authorize the United States to take jurisdiction over land acquired by the United States within the state cannot confer jurisdiction upon Federal courts to punish under criminal laws of the United States an act committed thereon, where at the time of the alleged offense notice of acceptance of jurisdiction contemplated by the Act of Oct. 9, 1940, 40 USC § 255, had not been given.

ON CERTIFICATE from the United States Circuit Court of Appeals for the Fifth Circuit, certifying questions stated in the opinion.

Held:

First question answered in the affirmative; the second in the negative.

APPEARANCES OF COUNSEL ARGUING CASE

Thurgood Marshall, of New York City, argued the cause, and, with William H. Hastie, of Washington, D.C., W. Robert Ming, Jr., of Chicago, Illinois, Joseph Thornton, of New Orleans, Louisiana, and Milton R. Konvitz, of Newark, New Jersey, filed a brief for Richard Philip Adams et al.:<*pg. 1422>

Revised Statute, § 355, as amended February 1, 1940 (40 USCA § 255, 9A FCA title 40, § 255) provides that the United States shall obtain "exclusive or partial" jurisdiction over lands only by filing an acceptance of such jurisdiction with the appropriate state authority. Since no acceptance was filed, the United States did not have jurisdiction over the land upon which the crime was alleged to have been committed.

The District Court did not have jurisdiction to try and sentence the appellants for the offense of rape.

Robert L. Stern, of Washington, D.C., argued the cause, and, with Solicitor General Fahy, Assistant Attorney General Wendell Berge, Special Assistant to the Attorney General Oscar A. Provost, and W. Marvin Smith, also of Washington, D.C., filed a brief for the United States et al.:

The United States had not accepted jurisdiction over the lands upon which the crime was committed and therefore the District Court was without jurisdiction to try and sentence the defendants.

Revised Statute § 355, as amended February 1, 1940, 40 USCA § 255, 9A FCA title 40, § 255, has been interpreted to reach cases of concurrent jurisdiction by the agencies of the Government which have authority over the land in question in this case.

OPINION

Mr. Justice Black delivered the opinion of the Court:

The Circuit Court of Appeals for the Fifth Circuit has certified to us two questions of law pursuant to § 239 of the Judicial Code, 28 USCA § 346, 8 FCA title 28, § 346. The certificate shows that the three defendants were soldiers and were convicted under 18 USCA §§ 451, 457, 7 FCA title 18, §§ 451, 457, in the federal District Court for the Western District of Louisiana, for the rape of a civilian woman. The alleged offense occurred within the confines of Camp Claiborne, Louisiana, a government military camp, on land to which the government had acquired title at the time of the crime. The ultimate question is

[319 US 313]

whether the camp was, at the time of the crime, within the federal criminal jurisdiction.

The Act of October 9, 1940, 40 USCA § 255, 9A FCA title 40, § 255, passed prior to the acquisition of the land on which Camp Claiborne is located, provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing a notice with the Governor of the state on which the land is located or by taking other similar appropriate action. The Act provides further: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." The government had not given notice of acceptance of jurisdiction at the time of the alleged offense.[1]

The questions certified are as follows:

"1. Is the effect of the Act of Oct. 9, 1940, above quoted, to provide that, as to lands within a State thereafter acquired by the United States, no jurisdiction exists in the United States to enforce the criminal laws embraced in United States Code Title 18, Chapter 11, and especially § 457 relating to rape, by virtue of § 451, Third, as amended June 11, 1940, unless and until a consent to accept jurisdiction over such lands is filed in behalf of the United States as provided in said Act?

"2. Had the District Court of the Western District of Louisiana jurisdiction, on the facts above set out, to try and sentence the appellants for the offense of rape committed within the bounds of Camp Claiborne on May 10, 1942?"<*pg. 1423>

[1]Since the government had not given the notice required by the 1940 Act, it clearly did not

have either "exclusive or partial" jurisdiction over the camp area. The only possible

[319 US 314]

reason suggested as to why the 1940 Act is inapplicable is that it does not require the government to give notice of acceptance of "concurrent jurisdiction." This suggestion rests on the assumption that the term "partial jurisdiction" as used in the Act does not include "concurrent jurisdiction."

The legislation followed our decisions in James v. Dravo Contracting Co. 302 US 134, 82 L ed 155, 58 S Ct 208, 114 ALR 318; Silas Mason Co. v. Tax Commission, 302 US 186, 82 L ed 187, 58 S Ct 233; and Collins v. Yosemite Park & C. Co. 304 US 518, 82 L ed 1502, 58 S Ct 1009. These cases arose from controversies concerning the relation of federal and state powers over government property and had pointed the way to practical adjustments. The bill resulted from a cooperative study by government officials, and was aimed at giving broad discretion to the various agencies in order that they might obtain only the necessary jurisdiction.[2] The Act created a definite method of acceptance of jurisdiction so that all persons could know whether the government had obtained "no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction."[3]

[2]Both the Judge Advocate General of the Army[4] and the Solicitor of the Department of Agriculture[5] have construed the 1940 Act as requiring that notice of acceptance be filed if the government is to obtain concurrent jurisdiction. The Department of Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding,

[319 US 315]

and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation. Cf. Bowen v. Johnston, 306 US 19, 29, 30, 83 L ed 455, 462, 463, 59 S Ct 442. Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.

[3]Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.[6]

Our answer to certified question No. 1 is Yes and to question No. 2 is No.

It is so ordered.

FOOTNOTES

[1] Exclusive jurisdiction over the lands on which the Camp is located was accepted for the federal government by the Secretary of War in a letter to the Governor of Louisiana, effective January 15, 1943.

[2] In the words of a sponsor of the bill, the object of the act was flexibility, so "that the head of the acquiring agency or department of the Government could at any time designate what type of jurisdiction is necessary; that is, either exclusive or partial. In other words, it definitely contemplates leaving the question of extent of jurisdiction necessary to the head of the land-acquiring agency." Hearings, House Committee on Buildings and Grounds, HR 7293, 76th Cong 1st Sess p. 5.

[3] Id. 7.

[4] Ops. J. A. G. 680.2.

[5] Opinion No. 4311, Solicitor, Department of Agriculture.

[6] Dart's Louisiana Stat (Supp) § 2898. In view of the general applicability of the 1940 Act it is unnecessary to consider the effect of the Weeks Forestry Act, 16 USCA § 480, 5 FCA title 16, § 480, and the Louisiana statute dealing with jurisdiction in national forests, Dart's Louisiana Stat § 3329, even though the land involved here was originally acquired for forestry purposes.

A P P E N D I X 'F'

United States v. Charles King, 781 F.Supp.315(D.C.N.J.1991)

3-pages

United States v. Charles King, 781 F.Supp.315,318-19(D.C.N.J.1991)

Second, and more importantly, the government has not shown that it has exerted such jurisdiction by filing the requisite notice with the Governor under 40 U.S.C. § 255, which has been required by Congress since 1940, as discussed below. Under that statute, the authorized officer{1991 U.S. Dist. LEXIS 8} of the acquiring federal agency -- here, the General Services Administration -- must notify the Governor of the state that the federal government is taking concurrent jurisdiction over the land. In *Schuster*, the giving of such notice by the Navy to the Governor of Virginia was of crucial importance, and the court was able to find that 40 U.S.C. § 255 had been satisfied. The statute reads in relevant part:

> The head or other authorized officer of any department . . . of the Government . . . may indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.Where the federal government has not filed an acceptance of jurisdiction, section 255 establishes the conclusive presumption that no jurisdiction exists. The statute, enacted in 1940, applies to all lands acquired after 1940, 1 *see Pratt v. Kelly*, 585 F.2d 692 (4th Cir. 1978) (no federal jurisdiction over civil action between {1991 U.S. Dist. LEXIS 9} non-diverse parties concerning an auto accident that occurred on the Blue Ridge Parkway, a federally owned highway, where the state of Virginia had expressly reserved jurisdiction over civil cases arising from use of the highway and the federal government never sought concurrent jurisdiction pursuant to 40 U.S.C. § 255); *see also Dupuis v. Submarine Base Credit Union, Inc. et al.*, 365 A.2d 1093, 1095, 170 Conn. 344 (1975) (Naval Credit Union not exempt from local zoning laws where federal government had acquired land after 1940 and had not filed {781 F. Supp. 318} notice of acceptance of jurisdiction with the governor, and "in the absence of an acceptance of either partial or exclusive jurisdiction the United States' possession of lands is that of an ordinary proprietor.") 2 The government has not complied with the mandate of 40 U.S.C. § 255 with respect to the leased parking lot at issue here.

Under the alternate theory of section 7(3), above, has the federal portion of the parking lot been "purchased or otherwise acquired by the United States by consent of the legislature of [New Jersey] for the erection of a fort, magazine, arsenal, dockyard, or other needful building"? As noted above, the leasing of property satisfies the "otherwise acquired" clause. Similarly, under New Jersey law, the State has given broad consent for federal acquisition of New Jersey lands for federal buildings. Thus, the law provides at N.J.S.A. 52:30-1, in relevant part:

> The consent of this state is hereby given to the acquisition by the United States by purchase, condemnation or otherwise, of any land within this state for the erection of dockyards, custom house, courthouses, post offices or other needful buildings.This means that the State of New Jersey has consented to the federal government's acquisition of land for federal{1991 U.S. Dist. LEXIS 11} courthouse purposes, logically including leasing of land for use as a federal court parking lot. Such a parking lot, being part of the operation of the federal courthouse even though two blocks away, is within the contemplation of both New Jersey's broad consent to jurisdiction under N.J.S.A. 52:30-1 and within the "needful building" clause of 18 U.S.C. § 7(3).

The sole remaining jurisdictional question is whether the United States is required to file the notice of acceptance of jurisdiction with the Governor under 40 U.S.C. § 255, above, under the "purchased or otherwise acquired" clause of subsection 7(3). Shortly after section 255 was enacted in 1940, the Supreme Court was called upon to interpret it in *Adams v. United States*, 319 U.S. 312, 87 L. Ed. 1421, 63 S. Ct. 1122 (1943). In *Adams*, the defendant soldiers had been convicted of raping a civilian woman at Camp Claiborne, Louisiana, a military camp to which the government had acquired

title at the time of the crime. Defendants argued that since the federal government had not complied with the then-recently enacted 40 U.S.C. § 255 by filing a notice of jurisdiction with the governor, the federal government did not have concurrent{1991 U.S. Dist. LEXIS 12} criminal jurisdiction over their alleged crime. The Court found that section 255 created a method of federal acceptance of jurisdiction, so that all persons could know whether the United States was asserting "no jurisdiction, concurrent jurisdiction, or exclusive jurisdiction" over its acquired land. *Id.* at 314 (citation omitted). The Court held that such notice was required to be given in order to vest either exclusive, partial or concurrent jurisdiction over such acquired land. *Id.* at 315. The court therefore overturned the convictions.

Although the issue has arisen infrequently, the various Courts of Appeals have consistently interpreted section 255 as requiring the head of the acquiring federal agency to give notice of acceptance of jurisdiction to the Governor of the State where the acquired land is situated, in order to thereafter assert federal jurisdiction over the land pursuant to the Assimilated Crimes Act. *United States v. Gliatta*, 580 F.2d 156 (5th Cir.), *cert. denied*, 439 U.S. 1048, 58 L. Ed. 2d 708, 99 S. Ct. 726 (1978) (defendant was convicted for passing double yellow line and disobeying post office security officer; {1991 U.S. Dist. LEXIS 13} court affirmed principle of *Adams* and would have dismissed for lack of jurisdiction since federal government did not comply with 40 U.S.C. § 255, but held that a subsequently enacted federal statute authorized concurrent jurisdiction for postal security officers without requiring the federal government to comply with 40 U.S.C. § 255); *United States v. Johnson*, 426 F.2d 1112, 1115 (7th Cir.), *cert. denied*, 400 U.S. 842 (1970) (jurisdiction recognized because the land involved had been acquired by the federal government in 1918, twenty-two years prior {781 F. Supp. 319} to the enactment of 40 U.S.C. § 255, and "the presumption against the acceptance of jurisdiction in that statute is applicable only to land acquired subsequent to the 1940 amendment."); *Pratt v. Kelly*, *supra*.

The various district courts also agree that Congress intended that federal acceptance of jurisdiction over lands acquired after 1940 may be indicated solely by the giving of notice of acceptance under section 255. *Fountain v. New Orleans Public Service, Inc.*, 265 F. Supp. 630, 638 (E.D.La. 1967) (if government did not acquire land in question {1991 U.S. Dist. LEXIS 14} prior to 1940, "express and positive acceptance [is] required, in the absence of which rejection is conclusively presumed") (citations omitted); *United States v. Schuster*, *supra*. This criminal case, arising under the Assimilated Crimes Act, is not governed by the principle of inherent federal jurisdiction, arising under the property clause of the constitution, empowering the government to regulate access and use of its own property under federal law. 3 No case has been found that would dispense with the section 255 requirement of filing acceptance of jurisdiction for property acquired after 1940 in an Assimilated Crimes Act case, and this court is constrained to agree.

{1991 U.S. Dist. LEXIS 15} It is apparent, then, that Congress has limited the power of the United States to prosecute criminal offenses under the Assimilated Crimes Act, 18 U.S.C. § 13(a), to crimes committed upon places within the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. § 7. Under § 7(3), the United States has the burden of proving that it has acquired jurisdiction over such a place -- here, the privately-owned parking lot -- where a portion is leased to the government month-to-month. Although the court recognizes that this leasehold interest may be sufficient to support the proposition that this land has been "acquired" by or for use of the United States, this court holds that the United States has not accepted jurisdiction over this property in the exclusive manner prescribed by Congress for property acquired after 1940, that is, pursuant to 40 U.S.C. § 255, and that this property does not lie within the special maritime and territorial jurisdiction of the United States.

Accordingly, the court holds that the United States has not established that this court has criminal

jurisdiction over the rented parking lot at Merchant and Stockton Streets in Trenton, {1991 U.S. Dist. LEXIS 16} New Jersey, for purposes of the Assimilated Crimes Act in 18 U.S.C. § 13(a). **The criminal complaint must be dismissed for lack of federal jurisdiction**, without prejudice to prosecution by local authorities.

The accompanying Order of Dismissal will be entered.

JEROME B. SIMANDLE, UNITED STATES MAGISTRATE JUDGE