No. 25-7130

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD RODERICK - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

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QUESTIONS PRESENTED

1. Whether a defendant can be procedurally barred from raising ineffective assistance of counsel claims before a court that lacked jurisdiction to hear the case.

2. Does a jurisdiction limiting clause in a statute only apply if the statute is charged?

3. Does the weight of a jurisdictional question allow for a bypass of any time bars?

4. Can a question of a court's jurisdiction be muted by a claim of procedural default?

5. Can a proceeding be time barred if the imposing court never had the power to bring / prosecute a given charge?

6. As established, jurisdiction of a court is the first element examined before a court proceeds. When a question pertaining to the jurisdiction of a lower court is brought to the appellate court is that to be included in the primary examination of elements?

7. When is a deployed, active member of the Armed Forces not subject to MEJA and/or UCMJ?

8. Does 18 USC §2252A have extraterritorial reach to include active military personnel located overseas in Poland?

9. Whether 18 USC §2252A apply to conduct that occurs in Poland when an individual engages in the criminal conduct not on any land controlled by the U.S. government.

10. Does a charge under 18 USC §2252A allow the courts to disregard clear directives (statutes) from Congress; if so, is the unsolicited receipt of child pornography in a foreign country a crime that allows the courts to ignore Congress' directives as outlined in 18 USC §3261(d); if not how is the restriction on the district court dismissed by the district court when a defendant falls squarely within the class in 18 USC §3261, and as such was supposed to have the charge heard pursuant to the UCMJ.

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LIST OF PARTIES

The caption set out above contains the names of all the parties.

LIST OF CASES DIRECTLY RELATED TO THIS CASE

1. United States Court of Appeals for the Fourth Circuit
2. Case No. 25-6398
3. United States of America v. Donald Roderick
4. Date of Judgment: September 23, 2025

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Writ of Habeas Corpus under 28 U.S.C. §2255 was appealed to the United States Court of Appeals for the Fourth Circuit, which dismissed the Petitioner for a Writ of Habeas Corpus and denied issuing a certificate of appealability, Case No. 25-6398, September 23, 2025.

JURISDICTION STATEMENT

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on September 23, 2025. Rehearing was sought but dismissed as untimely. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

The Petitioner, Donald Roderick, was convicted of Count Three of the indictment charging him with receipt of child pornography, in violation of 18 USC §2252A. The indictment was filed in the Eastern District of Virginia in the United States District Court. However, at the time of the offense conduct, Roderick was deployed in Poland as Roderick was a member of the Armed Forces.

The U.S. District Court did not have jurisdiction over that offense conduct because a violation of 18 USC §2252A does not apply extraterritorially to the United States and because, as a member of the Armed Forces stationed in Poland, Roderick could only be charged under the Military Extraterritorial Jurisdiction Act ("MEJA").

Neither the Appellate Court nor the District Court addressed the merits of Roderick's arguments. This Court's decision will affect those similarly situated to Roderick, specifically, determining the jurisdiction of the United States District Court and the application of the Military Extraterritorial Jurisdiction Act to active members of the Armed Forces whose offens conduct occurs while they are stationed outside of the special maritime and territorial jurisdiction of the United States.

REASONS FOR GRANTING THE WRIT

I. The District Court and Appellate Court's Decisions Violates the Intent of Congress and Creates a Needless Conflict Amongst The Circuits

Roderick's argument to the district and appellate court was that his conviction on Count 3 - which solely occurred while he was stationed in Poland with the military, constituted an impermissible extraterritorial application of 18 USC §2252(a)(2).

Roderick argued in the District Court that since he was a member of the military and stationed in Poland at the time of the offense, that he should have been tried in a Military Court, not the district court, under the Military Extraterritorial Jurisdiction Act ("MEJA").

"The Military Extraterritorial Jurisdiction Act ("MEJA"), 18 U.S.C. §3261 - a statute passed to file a "jurisdictional gap" that left extraterritorial crimes committed principally by persons who were never subject to [the Uniform Code of Military Justice] UCMJ, such as civilian dependents and military conctractors, unprosecutable." United States v. Santiago, 966 F.Supp.2d 247, 250 (2d Cir. 2012). "No prosecution may be commenced against a member of the Armed Forces subject to chapter 47 of title 10 [10 USC §§801 et. seq.] (the Uniform Code of Military Justice)...unless such member ceases to be subject to such chapter; or an indictment or information charges the member committed the offense with one or more other defendants, at least one of which is not subject to such chapter [UCMJ]." 18 U.S.C. §3261(d)(1) and (2).

The immediate impetus for MEJA was the Second Circuit's decision in United States v. Gaitlin, 26 F.3d 207 (2d Cir. 2000). The defendant in that case sexually assualted his stepdaughter in the family's home on a military base in Germany,

where the defendant's wife, a member of Armed Forces, was stationed. Her husband, a civilian, was not subject to military jurisdiction; German authorities had no interest in prosecuting a crime committed by a U.S. citizen that took place on U.S. property.

The defendant in Gaitlin had last resided in the Eastern District of New York, so the U.S. Attorney's office in that District indicted Gaitlin; it theorized that his crimes had been committed within the special maritime and territorial jurisdiction of the United States, 18 U.S.C. §7(3). The defendant pleaded guilty but appealed his conviction on jurisdictional grounds, and the Second Circuit overturned Gaitlin's conviction, ruling the 18 U.S.C. §7(3) did not give a United States District Court jurisdiction over conduct committed outside the United States. Pointing out that "jurisdictional gap" that allowed criminal conduct committed outside the United States on military posts and in theaters of war to go unprosecuted unless the perpetrator was subject to the UCMJ, the Second Circuit forwarded its opinion to the U.S. Senators from New York. MEJA followed on the decision's heels in 2001.

Roderick's case is the anti-thesis of Gaitlin. Here, there is no "jurisdictional gap" to fill; Roderick "was a military man, and whatever he did was done while subject to the UCMJ and the authority of his commanding officer." United States v. Santiago, 966 F.Supp.2d 247, 255 (S.D.N.Y. 2013).

"MEJA's test indicates that servicemen and women who commit crimes while on active duty re to be prosecuted under the UCMJ; indeed 18 U.S.C. §3621(d) specifically prohibits the use of MEJA to try active duty service personnel who are subject to court-martial, unless the servicemen or servicewoman committed the crime with someone who was not subject to USMJ jurisdiction." Id. This result is

supported by the MEJA's legislative history:

> Subsection (d) limits prosecutions under new section 3621 against persons who, at the time they committed the crime, were members of the Armed Forces. The committee recognizes that the military has the predominant interest in disciplining its members and subsection (d) enacts the general preference that military members to be tried by court-martial for their crimes. See, H.R. Rep. No. 106-778(I)(2000), 2000 WL 1008725, at *16.

In this case, the U.S. Attorney's Office chose to prosecute Roderick "despite Congress' plain directive that active duty service personnel should be tried by court martial, not in civilian courts." United States v. Santiago, 966 F.Supp.2d 247, 258 (S.D.N.Y. 2013). "It is the unprecedented nature of this prosecution" that demands this court's attention. Id.

The Santiago court made clear that "it is patent that Congress intended for active duty service personnel to be tried in military courts, not in a United States District Court." Id. at 269.

Trying an active serviceman like Roderick "in a civilian court for a crime that was committed and investigated, but not court-martialed, while he was in service is an exercise fraught with peril." Id.

Importantly, Count Three charged a violation of 18 U.S.C. §2252A(a)(2), for Roderick receiving child pornography while he was stationed in Poland. As such, in order for Roderick to be validly charged, Section 2252A(a)(2) must apply to extraterritorial conduct. Here, it does not.

18 U.S.C. §2252A(a)(2) specifically states that the offense conduct must be within the "special maritime and territorial jurisdiction of the United States." "It is true that Congress's statutes may be applied extraterritorially only when their text makes clear that such application is intended." United States v. Harris,

The 'special maritime and territorial jurisdiction of the United State" is defined in a separate statutory provision, 18 U.S.C. §7(3), to include "[a]ny lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof." In United States v. Erdos, 474 F.2d 157 (4th Cir. 1973), the Fourth Circuit held that this definition extends to overseas United States facilities - there, a U.S. embassy in Equatorial Guinea. The Court followed "that a federal manslaughter statute covering killings committed "within the special maritime and territorial jurisdiction of the United States" - the same language used in §2252A - 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 2252A(4)(a)'s reference to the same "special maritime and extraterritorial jurisdiction," incorporating the same definition in §7(3), would authorize extraterritorial application of that statute as well.

But there is a potential complication, because after the Fourth Circuit's decision in Erdos, Congress amended §7, adding to the definition of "special maritime and territorial jurisdiction" a provision that expressly addresses that status of "United States diplomatic, counsular, [or] military...missions or entities in foreign states." 18 U.S.C. §7(9), like the U.S. military bases in Poland where Roderick was posted. Under the new provision, those overseas entities do fall within the definition, but - due to a series of amendments and carveouts - not with respect to "member(s) of the Armed Forces subject to...the Uniform Code of Military Justice. id; 18 U.S.C. §3621(a), unless they fall within certain exceptions not relevant here, id. at §3621(a), (d).

The district court found Roderick's argument "unpersuasive because he was not charged or prosecuted under §3621", the MEJA. However, that was the point of Roderick's argument before the district court: Because he was in Poland and stationed in the military, he could only be charged in the district court under §3621, which clearly did not happen. Moreover, because Roderick was in Poland, he could not be charged under 18 USC §2252(a)(2), as that statute does not allow for any extraterritorial application. As such, since he was with the military in Poland, the Petitioner could only be charged with a violation of 18 USC §2252(a)(2) under the MEJA. If Roderick was not charged under the MEJA, then the district court lacked any jurisdiction over Roderick for his offenses committed while he was in Poland.

In United States v. Martinelli, 62 M.J. 52 (CAAF 2004), the court determined that 18 USC §2252(A) did not apply extraterritorially to Martinelli's conduct in Germany. As in Martinelli, the principal issue regarding jurisdiction is whether the Child Pornography Prevention Act ("CPPA") and specifically, 18 USC §2252A applies to Roderick's conduct in Poland.

If the Court were to find that the CPPA is not applicable to Roderick's conduct in Poland, then the Court must consider whether, due to the nature of his usage of the internet, his conduct fell within the domestic application of the CPPA. This issue has never been resolved on the merits of Roderick's lack of jurisdiction argument.

Roderick's argument, at its core, is that his conviction on Count 3 - which solely occurred while he was stationed in Poland - constituted an impermissible extraterritorial application of §2252A(a)(2). Notably, "[i]t is a long standing 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", Morrison v. Nat'l Austl. Bank Ltd., 561 U.S. 247, 254, 130 S.Ct. 2869, 177 L.Ed.2d 535 (2010).

Courts thus "presume that federal statutes apply" only domestically, "within the territorial jurisdiction of the United States." WesternGeo LLC. v. ION Geophysical Corp., 138 S.Ct. 2129, 2136, 201 L.Ed.2d 584 (2018). The Fourth Circuit has recognized that this presumption - known as the presumption against extraterritoriality - extends to federal criminal statutes, like §2252A. See, United States v. Avesh, 702 F.3d 162, 166 (4th Cir. 2012).

A plain reading of the CPPA does not find any indication in the text and structure of the statute of a congressional purpose to extend its coverage. See, Bradley Scott Shannon, The Jurisdictional Limits of Federal Criminal Child Pornography Law, 21 Hawaii L. Rev. 73, 106 (1999)(noting that the language of the CPPA "does not clearly express an intent" that the statute is to apply extraterritorially).

There are two aspects of the statutory language in §2252A(a)(1)-(a)(5) that could possibly be read as expressing congressional intention as to extraterritorial effect - (1) the reference to "interstate or foreign commerce" and (2) the situs language in §2252A(a)(4)(A), (a)(5)(A). In terms of the former, they are not, in and of themselves, a "clear expression" of any congressional intention that the acts proscribed by the statute constitute a federal crime no matter where in the world they occur. Rather, courts "view them as straightforward reference to the source authority of Congress for proscribing these acts as criminal in the first

instance, i.e., the Commerce Clause of the United States Constitution:

> Many Acts of Congress are based on the authority of that body to regulate commerce among the several States, and the parts of these Acts setting forth the basis for legislative jurisdiction will obviously refer to such commerce in one way of another. If we were to permit possible, or even plausible, interpretation of language such as that involved here to override the presumption against extraterritorial application, there would be little left of the presumption." United States v. Martinelli, 62 M.J. 52, 60 (CAAF 2004)(citing Equal Employment Opportunity Commission v. Arabian American Oil Co. (Aramco), 499 U.S. 244, 253, 113 L.Ed.2d 274, 111 S.Ct. 1227 (1991). The use of the term "foreign commerce" in addition to "interstate commerce" does not alter that conclusion, as the Supreme Court "has repeatedly held" that even statutes that expressly refer to "foreign commerce" do not apply abroad. Id. at 251.

As such, courts have conclusively held "that the text and structure of the CPPA do not express any clear intent by Congress that the statute apply extraterritorially"...the legislative history "is devoid of any reference to issues of extraterritoriality, much less any clear expression of congressional intent in that regard." United States v. Martinelli, 62 M.J. at 61. See, S. Rep. No. 104-358, at 12-23 (1996).

Accordingly, the district court erred when it view 18 U.S.C. §2252A(a)(2) as overcoming the presumption against extraterritorial application dictated by Aramco and United States v. Bowman, 260 U.S. 94, 98-103, 67 L.Ed.2d 149, 43 S.Ct. 39 (1922). There was not a scintilla of evidence that would suggest that Roderick was in the United States at the time he received the child pornography images. To the contrary, the uncontroverted evidence clearly demonstrates that Roderick was stationed in Poland at the time he received the images. The charges against

Roderick fall squarely within the example the President described in the Manual for Courts-Martial, i.e., "a person may not be punished under clause 3 of Article 134 when the act occurred in a foreign country merely because that act would have been an offense under the United States Code had the act occurred in the United States." MCM, pt. IV, P. 60.c.(4)(c)(i). As a result, there is a substantial basis in law and fact for viewing Roderick's guilty plea to Count Three as improvident.

In the instant case, Counsel was ineffective for failing to argue that Count Three failed to place facts on the record to establish that Roderick was in the Eastern District of Virginia at the time he received the images and failed to establish the extraterritorial jurisdiction of the charging statute, 18 U.S.C. §2252A(a)(2). The district court completely lacked jurisdiction to proceed on Count Three against Roderick. "Subject matter jurisdiction is not subject to waiver and to that extent, [defendant's] claim is reviewable on collateral attack." Reho v. United States, 2022 U.S. Dist. LEXIS 110896 at 4 (N.D. Ohio June 22, 2022).

Roderick, as a member of the Armed Forces stationed in Poland at the time of the offense conduct in Count Three, was required to either be court-martialed or be charged under 18 U.S.C. §3261. Counsel was clearly ineffective for failing to raise the jurisdictional issue prior to the guilty plea. As a result, Roderick has been subjected to an improperly imposed lengthy sentence. "[W]hat reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison..." Rosales-Mireles v. United States, 138 S.Ct. 1897, 1906-09, 201 L.Ed.2d 376 (2018). Both the district and the appellate court refused to adjudicate the merits of Roderick's

arguments and as a result, he "lingers" in federal prison even though the district court never had jurisdiction over his offense conduct.

Importantly, 18 USC §7 specifically states, "[n]othing 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 USC §3261(a)]."

This Court should find that as a uniformed service member stationed in Poland, Roderick was unquestionably subject to the jurisdiciton of the UCMJ. See, Articles 2(a)(1) and 5, UCMJ, 10 U.S.C. §802(a)(1), 805 (2000).

As such, the district court "was without jurisdiction to impose such a sentence." United States v. Pierce, 2023 U.S. Dist. LEXIS 4210 at 6 (D.S.C. Jan. 9, 2023).

The district court held that Roderick's jurisdiction claim was procedurally defaulted, because they were not raised on direct appeal. However, Roderick specifically requested counsel to appeal his sentence and conviction and counsel was ineffective for failing to do so, which inhibited Roderick from raising any issues on direct appeal.

"A prisoner procedurally defaults on a claim if he fails to raise an argument in his initial criminal proceeding or on direct appea." United States v. McClammy, 2023 U.S. App. LEXIS 18793 at 6 (4th Cir. 2023). The Court "may excuse such a default only if a prisoner can demonstrate either cause and actual prejudice or that he is actually innocent." Id.

Regarding "cause", circuit courts have found that "cause" sufficient to excuse a procedural default occurs where a "claim is so novel that its legal basis [wa]s not reasonably available to counsel at the time of the direct appeal."

United States v. Snyder, 871 F.3d 1122, 1127 (10th Cir. 2017). This Court should find the jurisdictional claim regarding the application of 18 U.S.C. §3621 is a novel issue that Counsel failed to address both at the district court and appellate court level. Importantly, counsel conceded that she did not research the jurisdictional issue of Count Three.

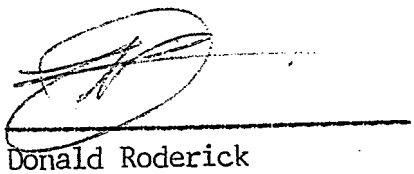
Moreover, courts including this Honorable Court have found that ineffective assistance of counsel constitutes "cause" to defeat a procedural default. See, Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986) ("Ineffective assistance of counsel, then, is a cause of a procedural default"); Bell v. Fizer, 242 Fed. Appx. 445 (9th Cir. 2007)(attorney error can constitute "cause" for purposes of cause and prejudice necessary to lift a procedural bar to habeas corpus relief); Sanders v. Hobbs, 2011 U.S. Dist. LEXIS 36205 at 12 (E.D. Ark. 2011)("a trial counsel's ineffectiveness for failing to preserve a claim for review may constitute cause to lift a procedural bar").

As to "prejudice", courts have found that "[a]ctual prejudice' sufficient to excuse a procedural default occurs where the error of which the defendant complained was "an error of constitutional dimension that worked to his actual and substantial disadvantage." United States v. Snyder, 871 F.3d 1122, 1128 (10th Cir. 2017). "A petitioner can establish cause and prejudice by showing that counsel rendered constitutionally-ineffective assistance." United States v. McGrew, 397 Fed. Appx. 87, 91 (5th Cir. 2010). See also, United States v. Patten, 40 F.3d 774, 776 (5th Cir. 1994)("Ineffective assistance of counsel satisfies the cause and prejudice standard").

CONCLUSION

For the reasons stated herein, this Petition for a writ of certiorari should, therefore, be granted.

Respectfully Submitted,



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