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**Date and Time:** Wednesday, July 31, 2019 10:36:00 AM EDT

**Job Number:** 94001601

## Document (1)

1. [18 USCS § 3261](#)

**Client/Matter:** -None-

**Search Terms:** 18 USC 3261

**Search Type:** Natural Language

## 18 USCS § 3261

Current through Public Law 116-29, approved July 5, 2019 (with gaps of 116-22 and 116-25).

*United States Code Service* > **TITLE 18. CRIMES AND CRIMINAL PROCEDURE (§§ 1 — 6005)** > **Part II. Criminal Procedure (Chs. 201 — 238)** > **CHAPTER 212. Military extraterritorial jurisdiction (§§ 3261 — 3267)**

### **§ 3261. Criminal offenses committed by certain members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States**

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(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.

(b) No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the United States, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Attorney General or the Deputy Attorney General (or a person acting in either such capacity), which function of approval may not be delegated.

(c) Nothing in this chapter [[18 USCS §§ 3261](#) et seq.] may be construed to deprive a court-martial, military commission, provost court, or other military tribunal of concurrent jurisdiction with respect to offenders or offenses that by statute or by the law of war may be tried by a court-martial, military commission, provost court, or other military tribunal.

(d) 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 other defendants, at least one of whom is not subject to such chapter.

### **History**

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#### **HISTORY:**

Added Nov. 22, 2000, P. L. 106-523, § 2(a), *114 Stat.* 2488.

Annotations

### **Notes**

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**HISTORY; ANCILLARY LAWS AND DIRECTIVES****Short titles:**

Act Nov. 22, 2000, P. L. 106-523, § 1, *114 Stat. 2488*, provides: "This Act [adding [18 USCS §§ 3261](#) et seq.] may be cited as the 'Military Extraterritorial Jurisdiction Act of 2000'."

**NOTES TO DECISIONS**

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**1. Application, generally****2. Miscellaneous****1. Application, generally**

Crux of defendant's jurisdictional challenge to his conviction was not be that his citizenship or that of his victim was "foreign" vis ` vis U.S., but that, against that backdrop, his alleged crime occurred in place foreign both to him and to prosecuting sovereign; however, that was precisely what Military Extraterritorial Jurisdiction Act contemplated by its specific application to "conduct outside United States," and it could hardly have been unanticipated by Congress that at least some persons employed overseas by Department of Defense contractors or subcontractors would not be American citizens. [United States v. Brehm, 691 F.3d 547 \(4th Cir.\)](#), cert. denied, *568 U.S. 1076, 133 S. Ct. 808, 184 L. Ed. 2d 596 (2012)*.

It was defendant's status as employee of Department of Defense contractor that brought his actions within criminal misconduct that Military Extraterritorial Jurisdiction Act was enacted to govern; his status as "foreign" employee was irrelevant, as were attributes of victim. [United States v. Brehm, 691 F.3d 547 \(4th Cir.\)](#), cert. denied, *568 U.S. 1076, 133 S. Ct. 808, 184 L. Ed. 2d 596 (2012)*.

Although Kandahar Airfield was not technically territory of United States, American influence was so pervasive that it was suitable proxy for due process purposes, such that imposition of American criminal law there was not arbitrary. [United States v. Brehm, 691 F.3d 547 \(4th Cir.\)](#), cert. denied, *568 U.S. 1076, 133 S. Ct. 808, 184 L. Ed. 2d 596 (2012)*.

Motion to dismiss indictment was denied because Congress clearly intended Military Extraterritorial Jurisdiction Act of 2000 (MEJA) to be applied extraterritorially and such extraterritorial application of MEJA did not offend international law [United States v. Williams, 722 F. Supp. 2d 1313 \(M.D. Ga. 2010\)](#), remanded, [509 Fed. Appx. 899 \(11th Cir. 2013\)](#).

**2. Miscellaneous**

Defendant was entitled to new trial after jury found her guilty of committing voluntary manslaughter while accompanying Armed Forces of United States in Turkey in violation of [18 USCS § 1112\(a\)](#) and in violation of [18 USCS § 3261\(a\)](#); district court committed reversible error in refusing to give jury instruction on lesser-included offense of involuntary manslaughter because testimony of defendant and defense forensic pathologist provided some evidence to support defendant's theory that stabbing death of her serviceman husband was accidental. [United States v. Arnt, 474 F.3d 1159 \(9th Cir. 2007\)](#).

*Unpublished decision:* While defendant argued his prosecution invoking jurisdiction under Military Extraterritorial Jurisdiction Act of 2000, [18 USCS §§ 3261–3267](#), for crimes he committed in Japan while his military wife was stationed there, violated Sixth Amendment right to compulsory process in that district court lacked subpoena power

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over foreign nationals residing outside U.S., argument failed because he had made no attempt to name any material and favorable witness. [United States v. Williams, 509 Fed. Appx. 899 \(11th Cir. 2013\)](#).

Defendant's convictions for second-degree murder and witness tampering were supported by sufficient evidence, as he had requisite mental state for murder when he participated in violent hazing ritual near air force base, he made threats to other participants to cover up information about victim's death, and jurisdictional requirements of Military Extraterritorial Jurisdiction Act of 2000 were satisfied. [United States v. Williams, 836 F.3d 1, 425 U.S. App. D.C. 381 \(D.C. Cir. 2016\)](#), reh'g denied, [2017 U.S. App. LEXIS 2687 \(D.C. Cir. Feb. 15, 2017\)](#).

Government satisfied jurisdictional requirements of Military Extraterritorial Jurisdiction Act of 2000 with respect to prosecution of defendant for murder and witness tampering because it established that he "resided with" his wife, who was member of Air Force, and that he was not "national of" or "ordinarily resident" of Germany when crimes occurred. [United States v. Williams, 836 F.3d 1, 425 U.S. App. D.C. 381 \(D.C. Cir. 2016\)](#), reh'g denied, [2017 U.S. App. LEXIS 2687 \(D.C. Cir. Feb. 15, 2017\)](#).

Court had jurisdiction over extraterritorial RICO claims by laborers employed to serve military base in Iraq because [18 USCS § 3261](#) was not limited to special maritime and territorial jurisdiction and Nepali laborers and surviving family members of deceased laborers satisfied effects test for extraterritorial jurisdiction by showing that U.S. contractor allegedly engaged in racketeering activity consisting of human trafficking and that enterprise passed money through U.S. banking system and contracts were funded by U.S. taxpayers. [Adhikari v. Daoud & Partners, 697 F. Supp. 2d 674 \(S.D. Tex. 2009\)](#).

In case in which defendant was charged with sexually assaulting his step-daughter while stationed at Yokota Air Base in Japan, in violation of [18 USCS §§ 2241\(c\)](#) and [7](#), he unsuccessfully argued district court lacked jurisdiction because government was required to bring case under [18 USCS § 3261](#); that argument was misplaced because MEJA did not go into effect until November 22, 2000, it was possible that alleged sexual assault occurred prior to MEJA's enactment, and, prior to enactment of MEJA, such crimes would have been prosecuted under extraterritorial jurisdiction statutes, such as §§ 2241 and 7. [United States v. Holmes, 699 F. Supp. 2d 818 \(E.D. Va. 2010\)](#), aff'd, [670 F.3d 586 \(4th Cir. 2012\)](#).

## Research References & Practice Aids

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### Am Jur:

21 Am Jur 2d, Criminal Law §§ 445, 447, 451.

44B Am Jur 2d, International Law §§ 89, 92.

### Law Review Articles:

Peters. On Law, Wars, and Mercenaries: The Case for Courts-Martial Jurisdiction over Civilian Contractor Misconduct in Iraq. [2006 BYU L Rev 367, 2006](#).

Schmitt. Closing the gap in criminal jurisdiction over civilians accompanying the armed forces abroad—a first person account of the creation of the Military Extraterritorial. [51 Cath U L Rev 55, Fall 2001](#).

### Hierarchy Notes:

[18 USCS, Pt. II](#)

[18 USCS, Pt. II, Ch. 212](#)

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