

No. _____

In the
Supreme Court of the United States of America

MIGUEL MEJIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On a Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

**Appendix to
Petition for Writ of Certiorari**

Ricardo J. Bascuas
1311 Miller Drive
Coral Gables, Florida 33146
305-284-2672
r.bascuas@miami.edu

Table of Contents to Appendix

Opinion of the Court of Appeals for the Eleventh Circuit.	A-1
Judgment of the District Court for the Southern District of Florida.	A-9

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 17-11542
Non-Argument Calendar

D.C. Docket No. 1:16-cr-20880-JAL-5

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

MIGUEL ANGEL MEJIA,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Florida

(May 22, 2018)

Before MARCUS, JULIE CARNES and HULL, Circuit Judges.

PER CURIAM:

Miguel Mejia appeals his conviction for conspiracy and possession with intent to distribute more than five kilograms of cocaine while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70506(b)

of the Maritime Drug and Law Enforcement Act (“MDLEA”). Mejia argues that: (1) the district court lacked subject matter jurisdiction to prosecute him because the court gave the government’s unsubstantiated assertion that his go-fast vessel (“GFV”) was stateless conclusive weight without making an independent finding as to the vessel’s alleged statelessness; and (2) 46 U.S.C. § 70502(d)(2), as amended in 2006, is unconstitutional because it strips the judiciary of its power to determine jurisdiction and gives that power to the Executive Branch, in violation of the separation of powers doctrine, and in direct conflict with our decision in United States v. Rojas, 53 F.3d 1212, 1214 (11th Cir. 1995), superseded by statute as stated in United States v. Campbell, 743 F.3d 802, 803-04 (11th Cir. 2014). After careful review, we affirm.

We review a district court’s determination of subject matter jurisdiction de novo. United States v. Rendon, 354 F.3d 1320, 1324 (11th Cir. 2003); United States v. Giraldo-Prado, 150 F.3d 1328, 1329 (11th Cir. 1998).

The MDLEA criminalizes knowingly or intentionally manufacturing or possessing a controlled substance, with or without intent to distribute, aboard a vessel subject to the jurisdiction of the United States. 46 U.S.C. § 70503(a)(1). Section 70506(b) of the MDLEA provides that “[a] person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.” Id. § 70506(b). Under the MDLEA, a

“vessel subject to the jurisdiction of the United States” includes “a vessel without nationality.” Id. § 70502(c)(1)(A). In turn, the term “vessel without nationality” includes a vessel for which the claimed nation of registry “does not affirmatively and unequivocally assert that the vessel is of its nationality.” Id. § 70502(d)(1)(C); see also United States v. Tinoco, 304 F.3d 1088, 1115 (11th Cir. 2002) (response from Colombian government that it could not confirm nor deny a vessel’s registry did not affirmatively and unequivocally assert that the vessel was of Colombian nationality). A verbal claim of nationality by the master or person in charge of the vessel counts as a claim of nationality or registry. 46 U.S.C. § 70502(e)(3).

We have interpreted the “on board a vessel subject to the jurisdiction of the United States” provision of the MDLEA as a congressionally imposed limit on a court’s subject matter jurisdiction. United States v. De La Garza, 516 F.3d 1266, 1271 (11th Cir. 2008); see also Tinoco, 304 F.3d at 1107. The government bears the burden of establishing MDLEA jurisdiction. Tinoco, 304 F.3d at 1114. Notably, jurisdictional issues arising under the MDLEA are not elements of the offense, but instead are “preliminary questions of law to be determined solely by the trial judge.” 46 U.S.C. § 70504(a). Therefore, “for a district court to have adjudicatory authority over a charge that a defendant violated [§ 70506(b)], the [g]overnment must preliminarily show that the conspiracy’s vessel was, when apprehended, subject to the jurisdiction of the United States.” De La Garza, 516

F.3d at 1272 (quotations omitted). Parties to a criminal case may not stipulate jurisdiction but may stipulate to facts that bear on the jurisdictional inquiry. United States v. Iguaran, 821 F.3d 1335, 1337 (11th Cir. 2016).

In 2006, Congress amended § 70502(d)(2) into its current form, which states that certification by the Secretary of State or the Secretary’s designee is conclusive proof of a foreign nation’s response to a claim of registry. 46 U.S.C. § 70502(d)(2); United States v. Hernandez, 864 F.3d 1292, 1300-01 (11th Cir. 2011). A foreign nation’s “response” includes a denial, a non-denial or non-confirmation, or a confirmation. Hernandez, 864 F.3d at 1301. Prior to this amendment, the conclusive proof provision only applied to a foreign nation’s denial of a claim of registry. 46 U.S.C. § 70502(d)(2) (2006).

The separation of powers doctrine is implicated when the actions of another branch “threaten an Article III court’s independence and impartiality in the execution of its decisionmaking function.” Rojas, 53 F.3d at 1214. In Rojas, we rejected a separation of powers challenge to a prior version of the MDLEA’s certification provision,¹ concluding that the provision “merely provid[ed] a method by which the Executive Branch [might] evidence that it ha[d] obtained a foreign

¹ The version of the MDLEA at issue in Rojas provided that “[c]onsent or waiver of objection by a foreign nation to the enforcement of United States law by the United States . . . may be proved by the certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. app. § 1903(c)(1) (emphasis added); see Rojas, 53 F.3d at 1213-14. The statute further provided that the denial of a claim of registry “may be proved by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. app. § 1903(c)(2) (emphasis added).

nation's consent [or waiver of objection] to jurisdiction." Id. We explained that the MDLEA did not dictate a court's jurisdictional decision because "[n]othing in the certification procedure deprive[d] the court of its ability and obligation to determine whether the requirements of the MDLEA ha[d] been met, [and] [u]nder the MDLEA, courts [were] free to determine . . . whether a proffered certificate [was] sufficient evidence of jurisdiction." Id. at 1214-15. Moreover, we've held that, under the amended MDLEA, "courts must still determine whether the MDLEA's jurisdictional requirements have been met." United States v. Wilchcombe, 838 F.3d 1179, 1186 (11th Cir. 2016).

Under the revised MDLEA, the government is still required to prove that a vessel was without nationality, in accordance with § 70502(d)(1), and thus a vessel subject to U.S. jurisdiction under § 70502(c)(1)(A). See Hernandez, 864 F.3d at 1298-99. In Hernandez, we held that the district court properly determined that the vessel was a vessel within the jurisdiction of the United States because the government provided a certificate by the Secretary of State's designee, which declared that the self-identified master of the vessel claimed that the ship was registered in Guatemala, and in response to the U.S. Coast Guard's request for confirmation of that claim, the Guatemalan government stated that it could neither confirm nor deny Guatemalan registry of the vessel. Id. We rejected the defendants' argument that the vessel was actually registered in Guatemala and

noted: “MDLEA statelessness does not turn on actual statelessness, but rather on the response of the foreign government. Arguing actual registry against the certification therefore misses the mark.” Id. at 1299.

Here, the district court properly determined that Mejia’s GFV was a vessel subject to the jurisdiction of the United States because it was a vessel without nationality within the meaning of the plain text of the MDLEA. Contrary to Mejia’s argument, the record is not devoid of any evidence that the GFV satisfied the statutory requirements for jurisdiction. In his factual proffer, Mejia admitted that: (1) his codefendant claimed that the vessel was registered in Venezuela; (2) the Coast Guard asked the Venezuelan government to confirm or deny the vessel’s registry; and (3) the Venezuelan government responded that it could neither confirm nor deny the vessel’s nationality. Moreover, Mejia confirmed the veracity of these facts at his change-of-plea hearing.

As the self-identified master of the vessel, Mejia’s codefendant’s verbal claim of Venezuelan nationality constituted a claim of nationality or registry under § 70502(e)(3). In turn, the Venezuelan government’s response to this claim -- that it could neither confirm nor deny the vessel’s nationality -- meant that Venezuela did not “affirmatively and unequivocally assert” the vessel’s registry within the meaning of § 70502(d)(1)(C). See Hernandez, 864 F.3d at 1299. The absence of such an assertion rendered Mejia’s GFV a vessel without nationality, see 46 U.S.C.

§ 70502(d)(1)(C), and therefore, a vessel subject to U.S. jurisdiction, see id. § 70502(c)(1)(A), to which the MDLEA’s criminal prohibition against conspiracy to possess a controlled substance with distributary intent applied, see id. §§ 70503(a)(1), 70506(b). Mejia thus stipulated to facts that gave rise to the district court’s proper exercise of subject matter jurisdiction under the MDLEA. See Iguaran, 821 F.3d at 1337. Therefore, the district court did not err in finding that, based on his factual proffer, the government satisfied its burden in establishing that Mejia’s vessel was subject to U.S. jurisdiction. See De La Garza, 516 F.3d at 1272; Tinoco, 304 F.3d at 114.

As for Mejia’s constitutional challenge, the district court relied on Mejia’s factual proffer in finding that his vessel was within the jurisdiction of the United States, not a certificate provided by the Secretary of State or his designee. As a result, Mejia’s argument regarding the constitutionality of § 70502(d)(2) is unavailing, since the MDLEA’s certification procedure did not apply to the district court’s exercise of jurisdiction in his case.

In any event, § 70502(d)(2)’s conclusive proof provision does not violate the separation of powers doctrine or relieve the government of its burden of establishing subject matter jurisdiction. First, Mejia’s reliance on Rojas to support his separation of powers argument is misplaced. In Rojas, we held that the MDLEA’s certification procedure did not violate the Constitution’s separation-of-

powers doctrine because it did not dictate a court’s jurisdictional decision. See Rojas, 53 F.3d at 1214-15. Rather, the certification procedure only provided the Executive Branch with a method to show that it had obtained a foreign nation’s response to a claim of registry. See Rojas, 53 F.3d at 1214-15. Moreover, while § 70502(d)(2) now provides that the foreign nation’s response is “proved conclusively” by certification, nothing in the provision deprives the district court of its power to determine whether the MDLEA’s jurisdictional requirements have been met. See Wilchcombe, 838 F.3d at 1186.

Further, as we noted in Hernandez, whether a vessel is without nationality, in accordance with § 70502(d)(1), and thus subject to U.S. jurisdiction, pursuant to § 70502(c)(1)(A), turns on the response of the foreign government and not the vessel’s “actual statelessness.” See Hernandez, 53 F.3d at 1299. Therefore, the government must still show that the foreign nation’s response in the proffered certificate results in statutory statelessness in order for the district court to exercise jurisdiction, and Mejia’s argument that the government failed to establish that his vessel was actually stateless is without merit. See id. at 1298-99.

Accordingly, we affirm Mejia’s conviction and sentence.

AFFIRMED.

UNITED STATES DISTRICT COURT
Southern District of Florida
Miami Division

UNITED STATES OF AMERICA
v.
MIGUEL ANGEL MEJIA

JUDGMENT IN A CRIMINAL CASE

Case Number: **16-20880-CR-LENARD**
USM Number: **09679-104**

Counsel For Defendant: **Sky Smith**
Counsel For The United States: **Joseph Schuster**
Court Reporter: **Lisa Edwards**

The defendant pleaded guilty to count 1 of the Indictment.

The defendant is adjudicated guilty of these offenses:

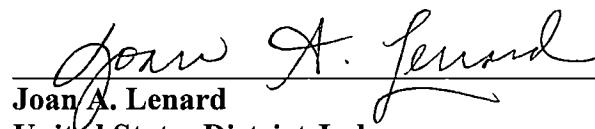
TITLE & SECTION	NATURE OF OFFENSE	OFFENSE ENDED	COUNT
46 U.S.C. § 70506(b)	Conspiracy to Possess With Intent to Distribute Cocaine on board a Vessel Subject to USA Jurisdiction	10/27/2016	1

The defendant is sentenced as provided in the following pages of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

All remaining counts are dismissed on the motion of the government.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Date of Imposition of Sentence: **3/17/2017**


Joan A. Lenard
United States District Judge

Date: 3/21/17

DEFENDANT: MIGUEL ANGEL MEJIA
CASE NUMBER: 16-20880-CR-LENARD

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **120 months as to count 1**.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

**DEFENDANT: MIGUEL ANGEL MEJIA
CASE NUMBER: 16-20880-CR-LENARD**

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years**.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer and shall submit a truthful and complete written report within the first fifteen days of each month;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: MIGUEL ANGEL MEJIA
CASE NUMBER: 16-20880-CR-LENARD

SPECIAL CONDITIONS OF SUPERVISION

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Surrendering to Immigration for Removal After Imprisonment - At the completion of the defendant's term of imprisonment, the defendant shall be surrendered to the custody of the U.S. Immigration and Customs Enforcement for removal proceedings consistent with the Immigration and Nationality Act. If removed, or the defendant voluntarily leaves the United States, he shall not reenter the United States without the prior written permission of the Secretary of Homeland Security. The term of supervised release shall be non-reporting while the defendant is residing outside the United States. If the defendant reenters the United States within the term of supervised release, the defendant is to report to the nearest U.S. Probation Office within 48 hours of the defendant's arrival.

DEFENDANT: MIGUEL ANGEL MEJIA
 CASE NUMBER: 16-20880-CR-LENARD

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	\$0.00	\$0.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>NAME OF PAYEE</u>	<u>TOTAL LOSS*</u>	<u>RESTITUTION ORDERED</u>	<u>PRIORITY OR PERCENTAGE</u>

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: **MIGUEL ANGEL MEJIA**
 CASE NUMBER: **16-20880-CR-LENARD**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. Lump sum payment of \$100.00 due immediately.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

**U.S. CLERK'S OFFICE
 ATTN: FINANCIAL SECTION
 400 NORTH MIAMI AVENUE, ROOM 08N09
 MIAMI, FLORIDA 33128-7716**

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

<u>CASE NUMBER</u>	<u>TOTAL AMOUNT</u>	<u>JOINT AND SEVERAL AMOUNT</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES (INCLUDING DEFENDANT NUMBER)</u>		

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.