

IN THE SUPREME COURT OF THE UNITED STATES

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MIGUEL ANGEL MEJIA, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTIONS PRESENTED

Petitioner was convicted of committing a drug-related offense while on board a vessel in international waters, in violation of the Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 et seq. The questions presented are:

1. Whether petitioner was entitled under the Sixth Amendment to a jury determination that the vessel at issue was "subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1) (Supp. IV 2016), when the MDLEA specifies that the jurisdictional question "is not an element of an offense" but a "preliminary question[ ] of law to be determined solely by the trial judge," 46 U.S.C. 70504(a).

2. Whether 46 U.S.C. 70502(d)(2), which provides that a foreign nation's response to a claim of registry made by the master of a vessel "is proved conclusively by certification of the Secretary of State" or his designee, infringes the separation of powers in violation of Article III of the Constitution.

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No. 18-5702

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A8) is reported at 734 Fed. Appx. 731.

JURISDICTION

The judgment of the court of appeals was entered on May 22, 2018. The petition for a writ of certiorari was filed on August 20, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

Following a guilty plea in the United States District Court for the Southern District of Florida, petitioner was convicted of conspiracy to possess with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70506(b). Pet. App. A9. He was sentenced to 120 months of imprisonment, to be followed by five years of supervised release. Id. at A10-A11. The court of appeals affirmed. Id. at A1-A8.

1. The Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 et seq., makes it unlawful for any person to possess with the intent to distribute a controlled substance, or to attempt or conspire to do so, 46 U.S.C. 70503(a) (Supp. IV 2016); 46 U.S.C. 70506(b), on board "a vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1) (Supp. IV 2016).<sup>1</sup> Congress enacted the MDLEA because it found that "trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States." 46 U.S.C. 70501(1). Congress accordingly provided that the MDLEA

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<sup>1</sup> The MDLEA was amended in February 2016. See Coast Guard Authorization Act of 2015, Pub. L. No. 114-120, Tit. III, § 314(a)-(b), 130 Stat. 59. The amendments, which are not otherwise relevant to this case, moved the phrase "vessel subject to the jurisdiction of the United States" from Section 70503(a)(1) to Section 70503(e)(1). Because the relevant language is unchanged, this brief cites the current version of the statute.

would apply to any "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e) (1) (Supp. IV 2016), "even though the act is committed outside the territorial jurisdiction of the United States," 46 U.S.C. 70503(b) (Supp. IV 2016).

As relevant here, the MDLEA defines a "vessel subject to the jurisdiction of the United States" to include "a vessel without nationality." 46 U.S.C. 70502(c) (1) (A). A "vessel without nationality" is defined to include "a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." 46 U.S.C. 70502(d) (1) (C). The MDLEA provides that the foreign nation's "response \* \* \* to a claim of registry \* \* \* may be made by radio, telephone, or similar oral or electronic means, and is proved conclusively by certification of the Secretary of State or the Secretary's designee." 46 U.S.C. 70502(d) (2). The MDLEA further provides that the "[j]urisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge." 46 U.S.C. 70504(a).

2. In October 2016, a Marine Patrol Aircraft detected a go-fast vessel approximately 115 nautical miles north of Bonaire, in international waters in the Caribbean. Stipulated Factual

Proffer, D. Ct. Doc. No. 40, at 1 (Jan. 5, 2017). The aircraft radioed its observation to a British Royal Fleet Auxiliary ship, which was on patrol in the area with a United States law enforcement detachment aboard. Ibid. Two smaller vessels and a helicopter were launched to investigate. Ibid. When the crew of the go-fast vessel spotted the helicopter, the crew began jettisoning packages overboard. Ibid. After warning shots fired from the helicopter proved ineffective, snipers disabled the vessel's port engine. Id. at 1-2. Law enforcement officers boarded the vessel and identified petitioner, along with four other individuals. Id. at 2.

The vessel's self-declared master, Mervis Ramos, stated that the purpose of the voyage was "travel of cocaine." D. Ct. Doc. No. 40, at 2. Ramos claimed Venezuelan nationality for himself and the vessel. Ibid. In response to Ramos's nationality claim, "the Government of Venezuela was contacted and responded that they could neither confirm nor deny nationality for the vessel." Ibid. The vessel was therefore treated as a vessel without nationality and subject to the jurisdiction of the United States. Ibid. Officers recovered from the water the jettisoned packages, which were found to contain cocaine, and they located other bales of cocaine on board the vessel. Ibid. In total, the officers recovered and seized approximately 350 kilograms of cocaine. Ibid.

3. A federal grand jury in the Southern District of Florida indicted petitioner on one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a), 70506(a) (2012), 46 U.S.C. 70506(b), and 21 U.S.C. 960(b)(1)(B)(ii); and one count of possession with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a), 70506(a) (2012), and 21 U.S.C. 960(b)(1)(B)(ii). Pet. 7; Indictment 1-2.

Petitioner pleaded guilty to the conspiracy count, and the district court later dismissed the possession with intent to distribute count. Pet. 8. As part of his plea agreement, petitioner signed a stipulated factual proffer in which he admitted knowing that the vessel was transporting at least five kilograms of cocaine for him and his crewmates to deliver upon arrival at their final destination. D. Ct. Doc. 40, at 2-3. Petitioner also admitted in the stipulated proffer that "the Government of Venezuela was contacted and responded that they could neither confirm nor deny [the claimed] nationality for the vessel" interdicted "in international waters." Id. at 1-2.

During the plea colloquy, the district court found, "pursuant to [46 U.S.C. 70502(d)(2)], that the Factual Proffer establishes that [petitioner] was on board a vessel subject to the jurisdiction

of the United States; therefore, I find that the Government has carried its burden and established the vessel in which [petitioner] was apprehended was subject to the jurisdiction of the United States, pursuant to the statute and [United States v. Iguaran, 821 F.3d 1335 (11th Cir. 2016)].” D. Ct. Doc. No. 96, at 34-35 (Aug. 9, 2017).<sup>2</sup> The court then accepted petitioner’s plea and the plea agreement, and entered a conviction on the conspiracy charge. Ibid.

4. The court of appeals affirmed. Pet. App. A1-A8. As relevant here, the court rejected petitioner’s contention that Section 70502(d) of the MDLEA, which states that a foreign government’s response to a claim of registry for a vessel “is proved conclusively by certification of the Secretary of State” or his designee, prescribes a method of establishing jurisdiction that is impermissible under Article III. Id. at A7-A8. As an initial matter, the court concluded that petitioner’s constitutional challenge to Section 70502(d) was “unavailing” because the government did not invoke, and the district court did not rely on, a certification from the Secretary of State to establish jurisdiction; instead, the district court “relied on [petitioner’s] factual proffer in finding that the vessel was

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<sup>2</sup> In Iguaran, the court of appeals ordered a limited remand in an MDLEA case in which the defendant had pleaded guilty because the record did not establish that the vessel on which the defendant was apprehended was subject to the jurisdiction of the United States. 821 F.3d at 1336.



within the jurisdiction of the United States.” Id. at A7. Petitioner admitted in the proffer that, in response to the claim of Venezuelan registry by the master of the vessel, the Venezuelan government responded that it could neither confirm nor deny the vessel’s nationality. Id. at A6. The court of appeals also determined, in any event, that Section 70502(d) (2) does not violate the separation of powers because the certification procedure “only provide[s] the Executive Branch with a method to show that it had obtained a foreign nation’s response to a claim of registry,” but does not “deprive[ ] the district court of its power to determine whether the MDLEA’s jurisdictional requirements have been met.” Id. at A8.

#### ARGUMENT

Petitioner contends (Pet. 8-20) that the district court’s determination that his vessel was within the jurisdiction of the United States violated separation of powers principles and his Sixth Amendment jury-trial right.<sup>3</sup> This Court has recently and repeatedly declined to review such claims, and it should follow the same course here.

1. Petitioner first contends (Pet. 8-15) that the MDLEA violates the Sixth Amendment by providing that the United States’ jurisdiction over a vessel is a “preliminary question[ ] of law to

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<sup>3</sup> Similar issues are raised in the petition for a writ of certiorari in Carrasquilla-Lombada v. United States, No. 18-5534 (filed Aug. 6, 2018).

be determined solely by the trial judge” and “is not an element of an offense.” 46 U.S.C. 70504(a). In petitioner’s view, the question of jurisdiction is an “element” that the Sixth Amendment requires the jury to decide. Pet. 13. That contention lacks merit, and although some disagreement exists in the courts of appeals, this Court has repeatedly declined to review the question. See Cruickshank v. United States, No. 17-8953 (Oct. 1, 2018); Campbell v. United States, 135 S. Ct. 704 (2014) (No. 13-10246); Tam Fuk Yuk v. United States, 565 U.S. 1203 (2012) (No. 11-6422); Sanchez-Salazar v. United States, 556 U.S. 1185 (2009) (No. 08-8036); Aguilar v. United States, 556 U.S. 1184 (2009) (No. 08-7048); Moreno v. United States, 549 U.S. 1343 (2007) (No. 06-8332); Estupinan v. United States, 549 U.S. 1267 (2007) (No. 06-8104). The Court should follow the same course here.

a. The Constitution affords “a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged.” United States v. Gaudin, 515 U.S. 506, 511 (1995). That principle does not apply here, however, because the MDLEA expressly provides that “[j]urisdiction of the United States with respect to a vessel subject to [the MDLEA] is not an element of an offense” and is instead a “preliminary question[ ] of law to be determined solely by the trial judge.” 46 U.S.C. 70504(a). Because the question whether a vessel is subject to the jurisdiction of the United States is a

preliminary question of law and not an element of the offense, a defendant has no constitutional right to have a jury decide that issue. See, e.g., United States v. Vilches-Navarrete, 523 F.3d 1, 20 (1st Cir.) (Lynch and Howard, JJ., opinion of the court in part and concurring in part) ("This issue is not an element of the crime \* \* \* and may be decided by a judge."), cert. denied, 555 U.S. 897 (2008); United States v. Tinoco, 304 F.3d 1088, 1109-1110 (11th Cir. 2002) ("[The MDLEA's] jurisdictional requirement is not an essential ingredient or an essential element of the MDLEA substantive offense, and, as a result, it does not have to be submitted to the jury for proof beyond a reasonable doubt."), cert. denied, 538 U.S. 909 (2003).

This Court's decision in Ford v. United States, 273 U.S. 593 (1927), is controlling. In Ford, the defendants were charged with conspiring to violate the National Prohibition Act when their British vessel, laden with liquor, was seized "in the high seas off the Farallon Islands, territory of the United States, twenty-five miles west from San Francisco." Id. at 600. The defendants argued that it was "error \* \* \* to refuse to submit to the jury on the trial the issue as to the place of the [ship's] seizure," but this Court disagreed. Id. at 606. The Court reasoned that a jury trial was not required because "[t]he issue whether the ship was seized within the prescribed [territorial] limit did not affect the question of the defendants' guilt or innocence," but instead

"only affected the right of the court to hold [them] for trial." Ibid. Contrary to petitioner's suggestion (Pet. 14-15), the Court squarely held that not only the evidentiary issue of the seizure's validity, but also the "general issue" of "the place of the seizure," was properly resolved by the court rather than the jury. Ford, 273 U.S. at 605-606.

The Court's reasoning in Ford is equally applicable here. The question whether a vessel is subject to the jurisdiction of the United States "does not raise factual questions that traditionally would have been treated as elements of an offense under the common law." Tinoco, 304 F.3d at 1108. As in Ford, whether the United States has jurisdiction over the vessel does not pertain to petitioners' participation in, or blameworthiness for, his drug-related offenses, but instead to the court's authority to try him for those offenses. Id. at 1108-1109 (explaining that the MDLEA's jurisdictional determination "does not go to the actus reus, causation, or the mens rea of the defendant"; nor does it "affect the defendant's blameworthiness or culpability"). "Congress inserted the requirement that a vessel be subject to the jurisdiction of the United States into the statute as a matter of diplomatic comity," not to define the defendant's culpability. Vilches-Navarrete, 523 F.3d at 22; see Tinoco, 304 F.3d at 1109 ("[T]he statutory jurisdictional requirement \* \* \* is unique because it is not meant to have any

bearing on the individual defendant, but instead is meant to bear only on the diplomatic relations between the United States and foreign governments."); cf. S. Rep. No. 530, 99th Cong., 2d Sess. 16 (1986) ("In the view of the Committee, only the flag nation of a vessel should have a right to question whether the Coast Guard has boarded that vessel with the required consent. The international law of jurisdiction is an issue between sovereign nations. Drug smuggling is universally recognized criminal behavior, and defendants should not be allowed to inject these collateral issues into their trials.").

That result is consistent with this Court's holdings in other contexts that factual issues bearing on a defendant's susceptibility to prosecution may be resolved by the trial judge rather than the jury when they are not elements of the offense. For example, the determination whether a defendant has previously been placed in jeopardy for the charged offense, has been denied the right to a speedy trial, or has been selected for prosecution on an impermissible basis may all turn in part on findings of historical fact. Those factual questions, however, are routinely entrusted to judicial resolution. See, e.g., Wayte v. United States, 470 U.S. 598, 607-610 (1985); Oregon v. Kennedy, 456 U.S. 667, 669-670, 679 (1982); Barker v. Wingo, 407 U.S. 514, 530-536 (1972).

b. As petitioner notes (Pet. 13), the courts of appeals have taken different approaches to the submission of jurisdictional issues under the MDLEA to juries. The First and Eleventh Circuits have upheld the constitutionality of having the judge, not the jury, make the jurisdictional determination as provided by Section 70504(a). See, e.g., Vilches-Navarrete, 523 F.3d at 19-23; Tinoco, 304 F.3d at 1107-1112. But the Ninth Circuit has concluded that when the statutory question whether a vessel is "'subject to the jurisdiction of the United States'" depends on a "disputed factual question," the Fifth and Sixth Amendments require the factual issue to be resolved by a jury. United States v. Perlaza, 439 F.3d 1149, 1165, 1168 (2006) (citation omitted); see id. at 1165-1168. To the extent that the jurisdictional inquiry poses only a question of law, however, the Ninth Circuit agrees with the other courts of appeals that it may be resolved by the court. Id. at 1164.

This case would not be an appropriate vehicle in which to address the disagreement in the courts of appeals. As a threshold matter, petitioner did not press a Sixth Amendment jury-trial argument in the lower courts, and those courts did not decide the issue. Consistent with this Court's role as a "court of review, not of first view," Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) the Court's "traditional rule \* \* \* precludes a grant of certiorari" when, as is the case here, the question presented "'was

not pressed or passed upon below.’” United States v. Williams, 504 U.S. 36, 41 (1992) (citation omitted).

In any event, this case does not directly implicate the disagreement among the courts of appeals. In Perlaza, there was conflicting evidence about whether the vessel at issue was stateless. See 439 F.3d at 1165-1166. Here, by contrast, no conflicting evidence raised any factual dispute. Petitioner admitted in his factual proffer that the master of the vessel made a claim of registry in Venezuela, and that “the Government of Venezuela was contacted and responded that they could neither confirm nor deny nationality for the vessel.” D. Ct. Doc. No. 40, at 2. That was sufficient to satisfy the statutory definition of a “vessel without nationality,” because the “claimed nation of registry” did not “affirmatively and unequivocally assert that the vessel [wa]s of its nationality.” 46 U.S.C. 70502(d)(1)(C). Accordingly, it is likely that no jury determination would have been required even in the Ninth Circuit. Cf. United States v. Zakharov, 468 F.3d 1171, 1176 (9th Cir. 2006) (finding “no factual question pertaining to statutory jurisdiction for the jury to decide”), cert. denied, 550 U.S. 927 (2007).

2. Petitioner further contends (Pet. 8-13, 15-20) that, by allowing the statelessness of his vessel to be “proved conclusively” by a certification of the Secretary of State, 46 U.S.C. 70502(d)(2), the MDLEA “violates Article III by invading

the court's core fact-finding function and reassigning it to the Executive Branch." Pet. 11. That contention lacks merit, and the Court has previously declined to review that issue as well. See Tam Fuk Yuk, supra (No. 11-6422); Brant-Epigmelio v. United States, 565 U.S. 1203 (2012) (No. 11-6306).

That contention is also not implicated by petitioner's conviction in this case. As the court of appeals observed, Pet. App. A7, the district court here did not rely on a certification from the Secretary of State in order to establish that petitioner's vessel was within the jurisdiction of the United States. Instead, the district court "relied on [petitioner's] factual proffer," including his admission that the government of Venezuela declined to confirm the claim of registry for his vessel. Ibid. Because "the MDLEA's certification procedure did not apply to the district court's exercise of jurisdiction in this case," ibid., the constitutionality of that certification procedure is not properly before this Court.

In any event, contrary to petitioner's contention (Pet. 19), the MDLEA's process for certifying the response of a foreign government to a claim of registry for a vessel does not unduly trench on judicial power. "[T]he statutory jurisdictional requirement \* \* \* is meant to bear only on the diplomatic relations between the United States and foreign governments." Tinoco, 304 F.3d at 1109. And the certification process simply



provides a way for the Executive Branch to inform courts that, as a matter of international relations, the vessel is one that the relevant countries treat as stateless and that the exercise of United States jurisdiction is therefore appropriate. See Pet. App. A8. As the court of appeals has explained, “[n]egotiation with a foreign nation for permission to impose United States law in that nation’s territory is \* \* \* not an inherently judicial function.” United States v. Rojas, 53 F.3d 1212, 1214-1215 (11th Cir. 1995), cert. denied, 516 U.S. 976 (1995). Although the MDLEA provides that a foreign nation’s response to a claim of registry made by the master of a vessel “is proved conclusively” by certification, “nothing in th[at] provision deprives the district court of its power to determine whether the MDLEA’s jurisdictional requirements have been met.” Id. at A8. For that reason, there is no conflict between the MDLEA and this Court’s decisions in United States v. Klein, 80 U.S. (13 Wall.) 128 (1872), or Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

Petitioner does not cite any decision holding, or suggesting, that Section 70502(c)(2)(B) is unconstitutional as violative of the separation of powers. Indeed, the unpublished decision here does not establish precedent on the issue even within the Eleventh Circuit. See 11th Cir. R. 36-2. Particularly in the absence of any disagreement, further review in this Court is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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