No. 18-5702

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

Petitioner's Reply to the United States' Brief in Opposition to the Petition for a Writ of Certiorari

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Petitioner's Reply to the United States' Brief in Opposition to the Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

The petition should issue. First, the parties agree there is a circuit split over whether the government has the burden in MDLEA cases of proving that subject-matter jurisdiction exists. Second, the Eleventh Circuit clearly affirmed the district court's exercise of Article III subject-matter jurisdiction on the basis of a presumption rather than evidence proving the jurisdictional facts beyond a reasonable doubt.

I. The United States agrees that the circuits are divided over Congress' attempt to predicate subject-matter jurisdiction in MDLEA cases on presumed facts.

The United States acknowledges that "disagreement exists in the courts of appeals" over whether Congress can confer subject-matter jurisdiction over a crime on the basis of presumed rather than established facts. Response at 8. The parties, thus, agree there is a circuit split over this important issue, which results in convictions that violate Article III and frustrates the exercise of the right to trial.

A side-effect of the split is that it encourages very expensive forum-shopping by the government. In many cases, the Coast Guard brings MDLEA suspects from the Pacific Ocean through the Panama Canal to be indicted in Miami, rather than in San Diego, because the government's burden of proof is lower in the Eleventh Circuit than in the Ninth Circuit.

II. The Eleventh Circuit explicitly held that Congress can predicate subject-matter jurisdiction over federal crimes on presumptions rather than evidence.

The record starkly raises the question presented — *i.e.* whether Congress can legislate that assumed, rather than actual, facts can give rise to Article III subject-matter jurisdiction. Contrary to the government's assertion, Response at 12, the court of appeals

expressly held that Article III jurisdiction in this case was established by a statutory presumption of the seized vessel's statelessness — not its actual statelessness. The record could not be any clearer: The Eleventh Circuit held that jurisdiction was established by the bare fact that "the Venezuelan government ... could neither confirm nor deny" immediately at the time of boarding whether the subject vessel was registered in that country. Opinion at A-6. The Court of Appeals affirmed the conviction on that basis, holding that Article III jurisdiction under the MDLEA "turns on the response of the foreign government and *not the vessel's 'actual statelessness.'*" Opinion at A-8 (emphasis added).

The challenged statutory provision relieves the government of its traditional, long-standing burden of establishing federal subject-matter jurisdiction in every prosecution. This Court held long ago that "the government [is] bound to establish" with competent record evidence the facts giving rise to federal jurisdiction over a crime. *Smith v. United States*, 151 U.S. 50, 55 (1894). Yet, the MDLEA purports to confer subject-matter jurisdiction in the absence of any evidence. Under the Eleventh Circuit's view, nothing prevents Congress from legislating that federal jurisdiction exists whenever a federal prosecutor certifies that it does.

That the petitioner in this case pleaded guilty rather than standing trial is irrelevant. Subject-matter jurisdiction rests in this case on the assumption that the subject vessel was stateless since Venezuela could not say immediately whether it was registered. As a practical matter, because no country can respond to that inquiry quickly enough, the presumption always applies. *See United States v. Trinidad*, 839 F.3d 112, 122 (CA1 2016) (Torruella, J., dissenting). The presumption would have applied in the exact same way had the petitioner

stood trial. The statute frustrates the right to trial by removing facts essential to conviction from the jury's consideration and that occurs even if the defendant pleads guilty.

The statute authorizes the Executive Branch to manufacture jurisdiction with a bare assertion, violating Article III. *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("[N]o action of the parties can confer subject-matter jurisdiction upon a federal court."). Relieving the government of the burden of proving jurisdictional facts in every MDLEA case is the admitted purpose of the challenged provision. *See* President Clinton's Statement on Coast Guard Authorization Act of 1996, 1996 WL 600505 at *1 ("In particular, the Act makes clear that persons arrested in international waters will not be able to challenge the arrest on the ground that the vessel was of foreign registry unless such claim was affirmatively and unequivocally verified by the nation of registry when the vessel was targeted for boarding."). Thus, while conceding that "[t]he 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,'" the government asserts that "[t]hat principle does not apply here" because Congress said so. Response at 8.

The United States urges this Court to ignore these constitutional issues, despite the lower courts' admitted need for guidance. The government wrongly claims that this Court has addressed this jurisdictional issue. Response at 9–11. *Ford v. United States*, 273 U.S. 593 (1927), has nothing to do with subject-matter jurisdiction. Unlike the petitioner, the *Ford* defendants were not on the high seas on a boat incapable of reaching the United States. They were aboard a British vessel off San Francisco Bay illegally smuggling liquor into the United States. *Id.* at 601. The federal courts plainly had subject-matter jurisdiction in *Ford*.

Ford asked whether *personal* jurisdiction existed, despite an allegedly illegal arrest. The defendants sought to vacate their conviction because they were seized in violation of a treaty with Great Britain. Applying a settled rule, this Court held that the defendants waived any to challenge personal jurisdiction by failing to raise it before pleading not guilty. There was, thus, no reason to present evidence regarding the location of the seizure to the jury:

> The issue whether the ship was seized within the prescribed limit did not affect the question of the defendants' guilt or innocence. It only affected the right of the court to hold their persons for trial. It was necessarily preliminary to that trial. The proper way of raising the issue of fact of the place of seizure was by a plea to the jurisdiction. A plea to the jurisdiction must precede that plea of not guilty. Such a plea was not filed. The effect of the failure to file it was to waive the question of the jurisdiction of the persons of defendants. It was not error, therefore, to refuse to submit to the jury on the trial the issue as to the place of the seizure.

273 U.S. at 606 (citations omitted). The United States takes bits of this quotation out of context, but the full paragraph and the authorities it cited[*] confirm that *Ford* did not have

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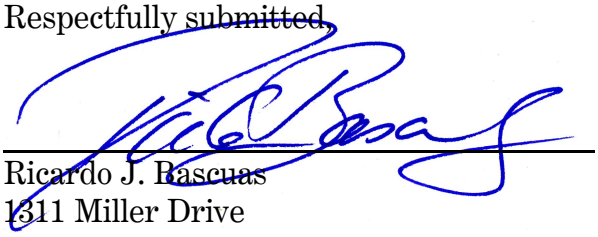
[*]The authorities supporting *Ford*'s holding provided that an objection to personal jurisdiction, *e.g.,* an illegal arrest, an irregular term of court, or improper venue, is waived unless asserted before pleading to the charge. *See, e.g.*, *Dowdell v. United States*, 221 U.S. 325, 332 (1911) (holding that an objection "to the want of proper arrest" "must be taken before pleading to the general issue" or is waived); *Albrecht v. United States*, 273 U. S. 1, 8 (1927) ("Where there was an appropriate accusation either by indictment or information, a court may acquire jurisdiction over the person of the defendant by his voluntary appearance."); *Gardner v. United States*, 5 Ind. T. 150, 156 (CAIT 1904) (holding that the defendant waived his objection that there was no legal court term in session by submitting to a jury trial); *Connecticut v. Bishop*, 7 Conn. 181, 182 (1828) (holding that an objection to improper venue was waived "[b]y the plea of *not guilty*"); *Rhode Island v. Watson*, 20 R.I. 354, 39 A. 193, 194–95 (1898) (holding that "a demurrer, a plea in abatement, plea in bar or any other special plea whatever, shall precede the plea of not guilty" or is waived); *Iowa v. Kinney*, 41 Iowa 424, 424–25 (1875) (holding that "any error or irregularity in taking defendant before the justice rendering the judgment ... was waived by the failure to raise objection founded thereon at the proper time"); *In re Roszcynialla*, 99 Wis. 534, 538 (1898) ("For a prisoner to go to trial without objection not only waives prior irregularities, but objections going to the jurisdiction of the person."); *Minnesota ex rel. Brown v. Fitzgerald*,

anything to do with how subject-matter jurisdiction must be proven.

Consequently, because (1) there is a circuit split on a serious question regarding how Article III subject-matter jurisdiction can be established in criminal cases, (2) the opinion below brings the issue into stark relief, and (3) none of this Court's precedents provide any guidance, the writ should issue.

Respectfully submitted,



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51 Minn. 534, 535 (1892) ("[A]s defects in jurisdiction of the person may be waived, and as in general they are to be deemed waived by failure to make objection seasonably, the relator must be held to have waived the objection by pleading to the complaint without making it."); *In re Brown*, 62 Kan. 648, 64 P. 76, 77 (1901) ("Having submitted himself to the jurisdiction of the district court of Montgomery county on the trial of the offense charged, without raising the question of the legality of his preliminary examination, he may not in this proceeding raise that question."); *South Carolina v. Browning*, 70 S.C. 466, 50 S. E. 185, 186 (1905) (holding that, even if venue was improper, "such objection related to the jurisdiction of the person, and was waived when the defendant contested the case upon the merits"); *Hollibaugh v. Hehn*, 13 Wyo. 269, 79 P. 1044, 1045 (1905) ("The fact that the arrest of petitioners was made without a warrant is not a jurisdictional defect, if any, in view of their subsequent presence in court and arraignment, without objection, on that ground. That the court then had jurisdiction of their persons cannot be doubted."); *In re Blum*, 30 N.Y.S. 396, 397 (1894) ("Having demanded and stood trial, without objection, he cannot be heard, after conviction, to claim that the court had no jurisdiction of his person."); 2 Bishop, *New Criminal Procedure* § 730 (2d ed. 1913) (stating that a demurrer or plea in abatement must be made prior to arraignment "or not at all; for his right to do either is waived by the plea of guilty or not guilty"); *id.* § 746 ("[A]n appearance in court and answering to the charge takes away the right of objecting to the want of a summons").

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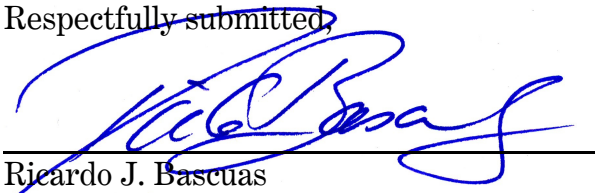
Certificate of Service

I certify that on 8 November 2018, copies of Miguel Mejia's Reply Brief in support of his Petition for Writ of Certiorari was served by electronic mail upon the United States Attorney for the Southern District of Florida, 99 NE Fourth Street, Miami, Florida, 33132, and upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C., 20530-0001, through this Court's electronic filing system.

Respectfully submitted,



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