

APPENDIX

Decision of the Court of Appeals for the Eleventh Circuit,

United States v. Vargas, No. 18-13175

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-13175
Non-Argument Calendar

D.C. Docket No. 0:17-cr-60268-WPD-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CAMILO ANDRES LANDAZURI VARGAS,

Defendant - Appellant.

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

(June 24, 2019)

Before TJOFLAT, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

Camilo Andres Landazuri Vargas¹ pled guilty to one count of conspiracy to possess with intent to distribute five or more kilograms of cocaine, in violation of the Maritime Drug Law Enforcement Act (“MDLEA”), 46 U.S.C. §§ 70501-70508, and was sentenced to a mandatory minimum of 120 months’ imprisonment. He now appeals his conviction and sentence, bringing a host of constitutional challenges against the MDLEA. After careful review, we conclude that our precedent forecloses each of his challenges and requires us to affirm.

I. FACTUAL, PROCEDURAL, AND STATUTORY BACKGROUND

The U.S. Coast Guard detained Vargas, a 19-year-old Colombian national, while he was aboard a go-fast vessel traveling in international waters about 205 nautical miles southwest of the border between Costa Rica and Panama. In the factual proffer submitted as part of his guilty plea, Vargas admitted that after the Coast Guard disabled the vessel’s engines, he and the other people on board jettisoned cocaine from the vessel into the ocean. Neither Vargas’s guilty plea nor his factual proffer provided any facts demonstrating that Vargas had a plan or intent to bring the cocaine to the United States. He was held at sea for 17 days before entering the United States.

¹ The record contains inconsistent spellings for one of Vargas’s middle names. In the signed plea agreement and factual proffer, it is spelled “Landazuri,” and Vargas’s signature appears to match that spelling. *See* Doc. 50 at 5; Doc. 51 at 3. We therefore use Landazuri. “Doc. #” refers to the numbered entry on the district court’s docket.

Before Vargas pled guilty, the government moved for a pretrial determination of jurisdiction and appended to its motion a certification from the U.S. Secretary of State's designee. The certification stated that, on the day it seized the go-fast vessel, the Coast Guard had asked the Government of Colombia to confirm whether the vessel was registered in Colombia, and the Government of Colombia had responded that it could neither confirm nor refute the vessel's registry. Under 46 U.S.C. § 70502(d)(1)(C), "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" qualifies as a "[v]essel without nationality." Vargas later admitted in his factual proffer that the vessel was without nationality.

The district court denied Vargas's motion to dismiss the indictment, which challenged the MDLEA's constitutionality. The MDLEA prohibits a person from knowingly or intentionally possessing with intent to distribute a controlled substance while on board a "covered vessel," 46 U.S.C. § 70503(a), which includes a "vessel subject to the jurisdiction of the United States," *id.* § 70503(e)(1). In turn, a vessel without nationality is subject to U.S. jurisdiction. *Id.* § 70502(c)(1)(A). Vargas pled guilty to conspiring to possess with intent to distribute five or more kilograms of cocaine, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(b) and 21 U.S.C. § 960(b)(1)(B).

At sentencing, Vargas argued that he was eligible for safety valve relief under the version of 18 U.S.C. § 3553(f) then in place, which would permit the court to sentence him below the statutory mandatory minimum of 120 months' imprisonment prescribed in 21 U.S.C. § 960(b)(1)(B). But the district court determined that Vargas could not access the safety valve and imposed the mandatory minimum. This is his appeal.

II. STANDARD OF REVIEW

We review *de novo* whether a statute is constitutional, *United States v. Tinoco*, 304 F.3d 1088, 1099 (11th Cir. 2002), and a district court's interpretation of a statute, *United States v. Pertuz-Pertuz*, 679 F.3d 1327, 1328 (11th Cir. 2012).

III. DISCUSSION

Vargas challenges the MDLEA and his sentence on five constitutional grounds and one statutory interpretation ground. Because our precedents foreclose each of his challenges, however, we must affirm his conviction and sentence.

A. The MDLEA as Applied to Vargas's Conduct Is a Valid Exercise of Congress's Power Under the Felonies Clause.

The U.S. Constitution grants Congress the power “[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.” U.S. Const. art. I, § 8, cl. 10. “The Supreme Court has interpreted that Clause to contain three distinct grants of power: the power to define and punish piracies, the power to define and punish felonies committed on the high seas, and

the power to define and punish offenses against the law of nations.” *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1248 (11th Cir. 2012).

Vargas’s Article I argument draws from scholarship by Eugene Kontorovich. According to Kontorovich, because piracy is both a felony and an offense against the law of nations, we must avoid reading these three clauses as unnecessarily redundant or superfluous. Eugene Kontorovich, *The “Define and Punish” Clause and the Limits of Universal Jurisdiction*, 103 Nw. U.L. Rev. 149, 152, 163-64, 167 (2009). Thus, Kontorovich posits, “Piracies” refers to the universal jurisdiction crime of piracy;² “Felonies” refers to serious crimes that both have a nexus with the United States and were committed in international waters; and “Offences against the Law of Nations” refers to crimes against international law that have a nexus with the United States. *See id.* at 159, 167-68, 192-93, 198, 203; *see also* Eugene Kontorovich, *Beyond the Article I Horizon: Congress’s Enumerated Powers and Universal Jurisdiction over Drug Crimes*, 93 Minn. L. Rev. 1191, 1194-95, 1208 (2009). When the U.S. Constitution was ratified, piracy was the only universal jurisdiction crime, so Kontorovich allows that a modern reading of “Piracies” could include all “offenses that today’s law of nations treats as universally cognizable, such as genocide and crimes against humanity”—even

² “[P]iracy is, by definition, robbery on the high seas.” *Bellaizac-Hurtado*, 700 F.3d at 1248 (citing *United States v. Furlong*, 18 U.S. (5 Wheat.) 184, 198 (1820)).

without a U.S. nexus. Kontorovich, *The “Define and Punish” Clause*, at 152, 165, 199-200.

Based on Kontorovich’s research, Vargas argues that Congress may criminalize extraterritorial conduct only if it (1) qualifies as a universal jurisdiction offense and thus comes within a modern reading of the Piracies Clause or (2) presents a U.S. nexus and thus comes within the Felonies Clause. Because drug trafficking is not a crime of universal jurisdiction and no U.S. nexus has been proven, Vargas contends, Congress cannot reach his conduct under the Piracies, Felonies, or Offences Clauses.

As a panel, we may not consider whether Vargas’s arguments based on Kontorovich’s analysis of the Piracies, Felonies, and Offences Clauses call into question the correctness of this Court’s prior interpretations of the MDLEA and predecessor statutes because we are bound by the prior panel opinions of this Court “unless and until [they are] overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*.” *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008); *see also In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015) (explaining that “an overlooked reason or argument” in a prior panel’s opinion provides no exception to the “prior-panel-precedent rule”). Our precedent holds that the MDLEA as applied to drug trafficking on stateless vessels in international waters—the conduct to which Vargas pled guilty—is a valid

exercise of Congress's Felonies Clause power, even without a U.S. nexus. *See, e.g., United States v. Hernandez*, 864 F.3d 1292, 1303 (11th Cir. 2017) (“[T]he MDLEA [i]s a constitutional exercise of Congressional authority under the Felonies Clause, and . . . the conduct proscribed by the MDLEA need not have a nexus to the United States.”), *cert. denied*, 138 S. Ct. 938 (2018), 138 S. Ct. 1019 (2018), 138 S. Ct. 1025 (2018), 138 S. Ct. 1043 (2018); *id.* at 1297-99 (concluding that the vessel was stateless and seized in international waters). We need not reach the questions of whether the Piracies Clause permits Congress to assert jurisdiction over other universal jurisdiction crimes without a U.S. nexus and whether drug trafficking is a universal jurisdiction crime because the Felonies Clause alone suffices to uphold the MDLEA as applied to Vargas.³

B. No U.S. Nexus Is Required for the MDLEA To Comport with the Fifth Amendment's Due Process Clause.

Vargas invites us to follow the Ninth Circuit, which has held that a nexus with the United States is a necessary condition for extraterritorial jurisdiction to comply with the Fifth Amendment's Due Process Clause when the vessel is registered in a foreign country. *See United States v. Perlaza*, 439 F.3d 1149, 1160,

³ We previously have held that operating a stateless vessel on the high seas is a universal jurisdiction crime. *See United States v. Marino-Garcia*, 679 F.2d 1373, 1382-83 (11th Cir. 1982). Whether the MDLEA's definitions of a vessel without nationality comport with international law definitions, *cf.* Kontorovich, *Beyond the Article I Horizon*, at 1228-29, 1251-52, is a question we need not address, however. Based on our precedent, the Felonies Clause alone suffices as the Article I authority for Congress's enactment of the MDLEA.

1168-69 (9th Cir. 2006); *see also United States v. Yousef*, 327 F.3d 56, 111-12 (2d Cir. 2003) (holding that a U.S. nexus must be demonstrated for a federal criminal statute to apply extraterritorially, but not reaching the vessel registry issue because it was not presented). However, the Ninth Circuit has not imposed a nexus requirement when reviewing prosecutions of people who, like Vargas, were seized on stateless vessels. *See Perlaza*, 439 F.3d at 1161.

Regardless of what other circuits have held in terms of due process requirements for foreign-flagged and stateless vessels, we are bound by our prior panel precedent, which holds that the Due Process Clause does not require that the proscribed conduct demonstrate a nexus with the United States. *See, e.g., United States v. Valois*, 915 F.3d 717, 722 (11th Cir. 2019) (“The defendants’ MDLEA convictions do not violate their due process rights even if the offenses lack a nexus to the United States.”). We thus reject Vargas’s argument that the MDLEA’s lack of a nexus requirement violates due process.

C. The MDLEA’s Removal of the Jurisdictional Issue from Jury Consideration Does Not Violate Due Process or the Right to a Jury Trial.

The MDLEA provides that the question of whether a vessel is subject to the Act “is not an element of [the] offense” and is a “preliminary question[] . . . to be determined solely by the trial judge.” 46 U.S.C. § 70504(a). Vargas urges us to adopt the Ninth Circuit’s position that the MDLEA violates the Fifth and Sixth Amendments by excluding the jurisdictional issue from the elements of the offense

and from jury consideration. *See Perlaza*, 439 F.3d at 1166-67 (holding that MDLEA jurisdictional questions must be submitted to the jury).

As an initial matter, we conclude that Vargas, by pleading guilty, waived his right to bring this challenge. “[A] valid guilty plea forgoes not only a fair trial, but also other accompanying constitutional guarantees. . . . [T]hose simultaneously relinquished rights include . . . the jury trial right[] and the right to confront accusers” *Class v. United States*, 138 S. Ct. 798, 805 (2018) (internal quotation marks omitted). Vargas expressly stipulated in the factual proffer accompanying his plea agreement that there was “enough of a factual basis for the Court to make a finding that the vessel in this case was a vessel without nationality,” Doc. 51 ¶ 5, which would bring it within the MDLEA’s definition of vessels subject to U.S. jurisdiction, 46 U.S.C. § 70502(c)(1)(A). His Fifth and Sixth Amendment challenge would “contradict th[is] admission[]” that he “necessarily made upon entry of [his] voluntary plea of guilty.” *Class*, 138 S. Ct. at 805 (internal quotation marks omitted). Thus by waiving his right to a jury trial, Vargas also waived any argument that a jury and not the judge should have decided the jurisdictional issue.

Nevertheless, because our precedent squarely addresses Vargas’s argument, we note that it also fails on the merits. Vargas is correct that the Fifth Amendment’s Due Process Clause and the Sixth Amendment’s Jury Trial Clause

together require a matter to be submitted to the jury for proof beyond a reasonable doubt if the matter is an element of the offense that involves a determination of fact or a mixed determination of law and fact, *see United States v. Gaudin*, 515 U.S. 506, 511-12, 522-23 (1995); *Tinoco*, 304 F.3d at 1103, and that Congress may not “manipulate” this requirement simply by defining the jurisdictional hook as a non-element of the offense, *Harris v. United States*, 536 U.S. 545, 557-58 (2002), *overruled on other grounds by Alleyne v. United States*, 570 U.S. 99, 116 (2013).

But a panel of this Court has already examined whether 46 U.S.C. § 70504(a) was an unconstitutional effort by Congress to remove from the jury’s consideration an essential element of an MDLEA offense and concluded that it was not. *See Tinoco*, 304 F.3d at 1109-11. Instead, our precedent holds that the MDLEA’s jurisdictional hook is a “diplomatic courtesy” that bears “only on the diplomatic relations between the United States and foreign governments” and “d[oes] not affect the question of [a] defendant[’s] guilt or innocence.” *Id.* at 1108-09 (internal quotation marks omitted). Therefore, the district court did not err in declining to submit to the jury the question of whether the vessel on which Vargas was seized came within the MDLEA’s definition of a “vessel without nationality,” 46 U.S.C. § 70502(d)(1)(C), which would make it a “[v]essel subject to the jurisdiction of the United States,” *id.* § 70502(c)(1)(A).

D. MDLEA Convictions Entered Prior to the Enactment of the First Step Act Do Not Qualify for Safety Valve Relief, and the Distinction Between Territorial Versus Extraterritorial Drug Trafficking Does Not Violate Equal Protection.

1. Vargas's Statutory Argument

While Vargas's appeal was pending, Congress added MDLEA offenses to the safety valve statute, 18 U.S.C. § 3553(f). *See* First Step Act of 2018, Pub. L. No. 115-391, § 402(a)(1)(A)(ii), 132 Stat. 5194, 5221 (adding 46 U.S.C. §§ 70503 and 70506 to 18 U.S.C. § 3553(f)). However, Congress made the amendment applicable to convictions entered only on and after the date of enactment, *id.* § 402(b), which means that Vargas may not benefit from the amendment.

When Vargas was convicted, the safety valve statute permitted district courts to sentence a defendant under the U.S. Sentencing Guidelines “without regard to” a statutory mandatory minimum only for “offense[s] under” 21 U.S.C. §§ 841, 844, 846, 960, and 963. 18 U.S.C. § 3553(f) (amended on December 21, 2018, after Vargas's conviction). Vargas pled guilty to conspiring to possess with intent to distribute five or more kilograms of cocaine in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(b) and 21 U.S.C. § 960(b)(1)(B). Section 70506(b) provides, “A person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.” Section 70503(a)(1) provides, “While on board a covered vessel [e.g., a “vessel subject to the jurisdiction of the United States,” *id.* § 70503(e)(1)], an individual may not

knowingly or intentionally . . . possess with intent to . . . distribute[] a controlled substance.” Section 70506(a) provides, “A person violating paragraph (1) of section 70503(a) of this title shall be punished as provided in . . . 21 U.S.C. [§] 960” Section 960(b)(1)(B)(ii) prescribes a mandatory minimum of 120 months’ imprisonment and a maximum of life imprisonment for first-time offenses involving five or more kilograms of cocaine.

Vargas points us to a recent pre-First Step Act case in which the D.C. Circuit concluded that MDLEA offenses qualify as “offense[s] under” 21 U.S.C. § 960. *United States v. Mosquera-Murillo*, 902 F.3d 285, 292 (D.C. Cir. 2018). The D.C. Circuit observed that “§ 960 supplies the offense elements of drug-type and drug-quantity—5 or more kilograms of cocaine, and 100 or more kilograms of marijuana—[that] bear on the degree of culpability and determine the statutory sentencing range.” *Id.* at 293 (citing 21 U.S.C. § 960(b)(1)(B), (2)(G)). Thus, the D.C. Circuit held, “the defendants’ crime [wa]s ‘an offense under’ *both* the MDLEA *and* § 960, drawing offense elements from each.” *Id.* The D.C. Circuit found further support for its conclusion in *Apprendi v. New Jersey*, in which the Supreme Court held that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury[] and proved beyond a reasonable doubt.” 530 U.S. 466, 490 (2000); *see Mosquera-Murillo*, 902 F.3d at 293. The “drug-type and drug-quantity elements set out in § 960(b) qualify as

elements for purposes of *Apprendi* because they establish the maximum sentence,” the D.C. Circuit held, and so the defendants’ convictions “involve[d] ‘an offense under’ § 960 for purposes of safety-valve eligibility.” *Id.*

Once again, we are bound by this Court’s precedent to reject Vargas’s argument. Prior to the enactment of the First Step Act of 2018, this Court held that “[a]lthough 46 U.S.C. § 70506(a) references section 960 as the penalty provision for violations of 46 U.S.C. § 70503, section 960 does not incorporate section 70503 by reference as an ‘offense under’ section 960.” *Pertuz-Pertuz*, 679 F.3d at 1329. “Therefore, the plain text of the statutes shows that convictions under Title 46 of the U.S. Code—like Defendant’s—entitle a defendant to no safety-valve sentencing relief.” *Id.* Vargas’s statutory safety valve argument based on the pre-First Step Act version of 18 U.S.C. § 3553(f) fails.

2. Vargas’s Constitutional Argument

Vargas observes that our pre-First Step Act caselaw excluding 46 U.S.C. § 70503 offenses from 18 U.S.C. § 3553(f)’s safety valve means that people convicted of trafficking drugs extraterritorially prior to the First Step Act’s enactment receive harsher sentences than people convicted of trafficking drugs inside the United States. This distinction, he argues, lacks a rational basis and

therefore violates the equal protection component of the Fifth Amendment's Due Process Clause.⁴

Again, though, our precedent requires us to reject his argument. This Court has held that "Congress has legitimate reasons to craft strict sentences for violations of the Act. In contrast with domestic drug offenses, international drug trafficking raises pressing concerns about foreign relations and global obligations." *United States v. Castillo*, 899 F.3d 1208, 1213 (11th Cir. 2018), *cert. denied*, 139 S. Ct. 796 (2019) (citing article 17 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Dec. 20, 1988, 1582 U.N.T.S. 95, which obligates the United States to "co-operate to the fullest extent possible to suppress illicit traffic by sea"). "Moreover, the inherent difficulties of policing drug trafficking on the vast expanses of international waters suggest that Congress could have rationally concluded that harsh penalties are needed to deter would-be offenders." *Id.* The pre-First Step Act safety valve's distinction between domestic versus extraterritorial drug trafficking therefore does not violate equal protection.

⁴ Vargas concedes that rational basis review applies because the distinction he has identified "does not infringe fundamental rights or concern a suspect class." *United States v. Castillo*, 899 F.3d 1208, 1213 (11th Cir. 2018) (alterations adopted) (internal quotation marks omitted), *cert. denied*, 139 S. Ct. 796 (2019).

E. The MDLEA’s Certification Procedure Does Not Violate Vargas’s Rights to Due Process, a Jury Trial, or To Confront Witnesses.

The MDLEA permits the government to establish that a vessel is a “[v]essel without nationality” using a “certification of the Secretary of State or the Secretary’s designee” that the nation whose registry is claimed has not “affirmatively and unequivocally assert[ed] that the vessel is of its nationality.” 46 U.S.C. § 70502(d)(1)(C), (2). Vargas raises three challenges to this certification procedure. First, he argues that it deprived him of the opportunity to present evidence on the facts surrounding the certification process in his case, in violation of the Fifth Amendment’s Due Process Clause. Second, he argues that the jurisdictional issue is an element of the offense that must be submitted to a jury for proof beyond a reasonable doubt to comply with the Due Process Clause and the Sixth Amendment’s Jury Trial Clause. Third, Vargas argues that the certification procedure deprived him of the opportunity to cross-examine government officials involved in certifying that the vessel was stateless, in violation of the Sixth Amendment’s Confrontation Clause.

As in Part III.C, we conclude that Vargas’s decision to plead guilty means that he waived his right to challenge the MDLEA’s certification procedure. Waiving his right to a jury trial necessarily required Vargas to waive his rights to (1) present evidence (2) to a jury and (3) cross-examine government witnesses. *See Class*, 138 S. Ct. at 805. His challenge to the certification procedure

necessarily conflicts with his admission that he was aboard a stateless vessel. *See id.*

That being said, because our precedent squarely addresses Vargas's arguments, we again note that they fail on the merits. We reject his first and second arguments for the reasons stated in Part III.C. Because the jurisdictional hook is not an element of the offense, it does not implicate the Fifth Amendment's Due Process Clause or the Sixth Amendment's Jury Trial Clause. *See Tinoco*, 304 F.3d at 1108-10. Precedent also forecloses his third argument. "The Confrontation Clause protects a defendant's trial right to confront testimony offered against him to establish his guilt" *United States v. Campbell*, 743 F.3d 802, 808 (11th Cir. 2014); *see also Cruz v. New York*, 481 U.S. 186, 190 (1987) ("Ordinarily, a witness is considered to be a witness 'against' a defendant for purposes of the Confrontation Clause only if his testimony is part of the body of evidence that the jury may consider in assessing his guilt."). Because "the certification does not implicate either the guilt or [the] innocence of a defendant charged with an offense under the [MDLEA]," the certification procedure does not trigger the need for protection under the Confrontation Clause. *Campbell*, 743 F.3d at 809.

IV. CONCLUSION

Although Vargas raises thought-provoking arguments about the proper interpretation and reach of the MDLEA, our precedents foreclose each of the bases on which he seeks to reverse his conviction and alter his sentence. Thus we affirm his conviction and sentence.

AFFIRMED.

UNITED STATES DISTRICT COURT

Southern District of Florida

Fort Lauderdale Division

UNITED STATES OF AMERICA

v.

CAMILO ANDRES LANDAZUIR VARGAS

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-60268-CR-DIMITROULEAS

USM Number: 16715-104

Counsel For Defendant: Timothy Day, AFPD

Counsel For The United States: Donald Chase, AUSA

Court Reporter: Francine Salopek

The defendant pleaded guilty to count(s) One.

The defendant is adjudicated guilty of these offenses:

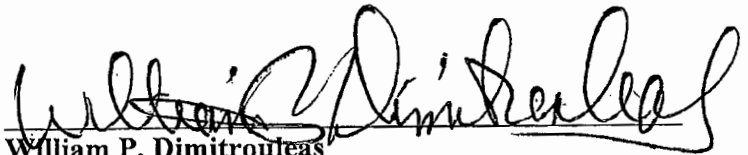
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
46 USC 70503(a)(1)	Conspiracy to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States	10/13/2017	One

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.

Count(s) Two and Three are dismissed on the motion of the United States.

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: 7/17/2018



William P. Dimitrouleas
United States District Judge

Date: July 17, 2018

DEFENDANT: CAMILO ANDRES LANDAZUIR VARGAS
CASE NUMBER: 17-60268-CR-DIMITROULEAS

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**.

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: CAMILO ANDRES LANDAZUIR VARGAS
CASE NUMBER: 17-60268-CR-DIMITROULEAS

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: CAMILO ANDRES LANDAZUIR VARGAS
CASE NUMBER: 17-60268-CR-DIMITROULEAS

SPECIAL CONDITIONS OF SUPERVISION

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, the defendant shall not reenter the United States without the prior written permission of the Undersecretary for Border and Transportation 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 72 hours of the defendant's arrival.

If not removed:

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.

DEFENDANT: CAMILO ANDRES LANDAZUIR VARGAS
CASE NUMBER: 17-60268-CR-DIMITROULEAS

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>
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* 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: CAMILO ANDRES LANDAZUIR VARGAS

CASE NUMBER: 17-60268-CR-DIMITROULEAS

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</u>
<u>DEFENDANT AND CO-DEFENDANT NAMES</u>		<u>AMOUNT</u>
<u>(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.

United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle VII. Security and Drug Enforcement (Refs & Annos)

Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70501

Formerly cited as 46 App. USCA § 1902

§ 70501. Findings and declarations

Effective: October 13, 2008

Currentness

Congress finds and declares that (1) 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 and (2) operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism, and presents a specific threat to the safety of maritime navigation and the security of the United States.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1685; Pub.L. 110-407, Title II, § 201, Oct. 13, 2008, 122 Stat. 4299.)

Notes of Decisions (2)

46 U.S.C.A. § 70501. 46 USCA § 70501

Current through P.L. 116-56.

United States Code

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United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle II. Vessels and Seamen
Part E. Merchant Seamen Licenses, Certificates, and Documents
Chapter 75. General Procedures for Licensing, Certification, and Documentation

46 U.S.C.A. § 7502

§ 7502. Records

Effective: October 15, 2010

Currentness

(a) The Secretary shall maintain records, including electronic records, on the issuances, denials, suspensions, and revocations of licenses, certificates of registry, merchant mariners' documents, and endorsements on those licenses, certificates, and documents.

(b) The Secretary may prescribe regulations requiring a vessel owner or managing operator of a commercial vessel, or the employer of a seaman on that vessel, to maintain records of each individual engaged on the vessel subject to inspection under chapter 33 on matters of engagement, discharge, and service for not less than 5 years after the date of the completion of the service of that individual on the vessel. The regulations may require that a vessel owner, managing operator, or employer shall make these records available to the individual and the Coast Guard on request.

(c) A person violating this section, or a regulation prescribed under this section, is liable to the United States Government for a civil penalty of not more than \$5,000.

CREDIT(S)

(Pub.L. 98-89, Aug. 26, 1983, 97 Stat. 545; Pub.L. 101-380, Title IV, § 4114(e), Aug. 18, 1990, 104 Stat. 517; Pub.L. 111-281, Title VI, § 605, Oct. 15, 2010, 124 Stat. 2967.)

46 U.S.C.A. § 7502, 46 USCA § 7502

Current through P.L. 116-56.

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United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle II. Vessels and Seamen

Part E. Merchant Seamen Licenses, Certificates, and Documents

Chapter 75. General Procedures for Licensing, Certification, and Documentation

46 U.S.C.A. § 7503

§ 7503. Dangerous drugs as grounds for denial

Effective: August 13, 2018

Currentness

A license, certificate of registry, or merchant mariner's document authorized to be issued under this part may be denied to an individual who--

(1) within 10 years before applying for the license, certificate, or document, has been convicted of violating a dangerous drug law of the United States or of a State; or

(2) when applying, has ever been a user of, or addicted to, a dangerous drug unless the individual provides satisfactory proof that the individual is cured.

CREDIT(S)

(Pub.L. 98-89, Aug. 26, 1983, 97 Stat. 545; Pub.L. 99-36, § 1(a)(9)(D), May 15, 1985, 99 Stat. 68; Pub.L. 101-380, Title IV, § 4103(a)(2)(B), Aug. 18, 1990, 104 Stat. 511; Pub.L. 115-232, Div. C, Title XXXV, § 3545(a), Aug. 13, 2018, 132 Stat. 2326.)

46 U.S.C.A. § 7503. 46 USCA § 7503

Current through P.L. 116-56.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted/Validity Called into Doubt by United States v. Prado, 2nd Cir.(N.Y.), Aug. 05, 2019

United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle VII. Security and Drug Enforcement (Refs & Annos)
Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70504
Formerly cited as 46 App. USCA § 1903

§ 70504. Jurisdiction and venue

Effective: December 12, 2017
Currentness

(a) **Jurisdiction.**--Jurisdiction 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.

(b) **Venue.**--A person violating section 70503 or 70508--

(1) shall be tried in the district in which such offense was committed; or

(2) if the offense was begun or committed upon the high seas, or elsewhere outside the jurisdiction of any particular State or district, may be tried in any district.

CREDIT(S)

(Pub.L. 109-364, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 110-407, Title II, § 202(b)(2), Oct. 13, 2008, 122 Stat. 4300; Pub.L. 115-91, Div. A, Title X, § 1012(a), Dec. 12, 2017, 131 Stat. 1546.)

Notes of Decisions (25)

46 U.S.C.A. § 70504, 46 USCA § 70504
Current through P.L. 116-56.

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United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle VII. Security and Drug Enforcement (Refs & Annos)

Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70505

Formerly cited as 46 App. USCA § 1903

§ 70505. Failure to comply with international law as a defense

Effective: October 13, 2008

Currentness

A person charged with violating section 70503 of this title, or against whom a civil enforcement proceeding is brought under section 70508, does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 110-407, Title II, § 202(b)(3), Oct. 13, 2008, 122 Stat. 4300.)

Notes of Decisions (2)

46 U.S.C.A. § 70505. 46 USCA § 70505

Current through P.L. 116-56.

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by U.S. v. Bellaizac-Hurtado, 11th Cir (Fla.), Nov. 06, 2012

United States Code Annotated

Title 46. Shipping (Refs & Annos)

Subtitle VII. Security and Drug Enforcement (Refs & Annos)

Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70506

Formerly cited as 46 App. USCA § 1903

§ 70506. Penalties

Effective: February 8, 2016

Currentness

(a) Violations.--A person violating paragraph (1) of section 70503(a) of this title shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act (21 U.S.C. 962(b)), the person shall be punished as provided in section 1012 of that Act (21 U.S.C. 962).

(b) Attempts and conspiracies.--A person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.

(c) Simple possession.--

(1) In general.--Any individual on a vessel subject to the jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act (21 U.S.C. 812) shall be liable to the United States for a civil penalty of not to exceed \$5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.

(2) Determination of amount.--In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(3) Treatment of civil penalty assessment.--Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.

(d) Penalty.--A person violating paragraph (2) or (3) of section 70503(a) shall be fined in accordance with section 3571 of title 18, imprisoned not more than 15 years, or both.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 111-281, Title III, § 302, Oct. 15, 2010, 124 Stat. 2923; Pub.L. 114-120, Title III, § 314(c), Feb. 8, 2016, 130 Stat. 59.)

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

2006 Acts.

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
70506(a).....	46 App.:1903(g).	Pub.L. 96-350, § 3(g), (j), Sept. 15, 1980, 94 Stat. 1160; Pub.L. 99-570, title III, § 3202, Oct. 27, 1986, 100 Stat. 3207-97; Pub.L. 99-640, § 17, Nov. 10, 1986, 100 Stat. 3554; Pub.L. 101-647, title XII, § 1203, Nov. 29, 1990, 104 Stat. 4830.
70506(b).....	46 App.:1903(j).	

In subsection (b), the words “the commission of which was the object of the attempt or conspiracy” are omitted as unnecessary.

House Report No. 109-170, see 2006 U.S. Code Cong. and Adm. News, p. 972.

References in Text

The Controlled Substances Act, referred to in subsec. (c)(1), is Title II of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I of chapter 13 of Title 21, 21 U.S.C.A. § 801. For complete classification, see Short Title note set out under 21 U.S.C.A. § 801 and Tables.

Amendments

2016 Amendments. Subsec. (a). Pub.L. 114-120, § 314(c)(1), struck out “A person violating section 70503” and inserted “A person violating paragraph (1) of section 70503(a)”.

Subsec. (d). Pub.L. 114-120, § 314(c)(2), added subsec. (d).

2010 Amendments. Subsec. (c). Pub.L. 111-281, § 302, added subsec. (c).

RESEARCH REFERENCES

ALR Library

63 American Law Reports, Federal 2nd Series 411, What Constitutes “Vessel Without Nationality.” So as to be Subject to Jurisdiction of United States Under Maritime Drug Law Enforcement Act, 46 U.S.C.A. § 70502(D)(1), and Predecessor Statutes.

79 American Law Reports, Federal 113, Sufficiency of Evidence that Possessor of Marijuana Had Intent to Distribute It, So as to Violate 21 U.S.C.A. § 841(A)(1).





80 American Law Reports, Federal 397, Sufficiency of Evidence that Possessor of Cocaine Had Intent to Distribute It, So as to Violate 21 U.S.C.A. § 841(A)(1).

Relevant Notes of Decisions (1)

[View all 29](#)

Notes of Decisions listed below contain your search terms.

Sentence and punishment

Defendant's sentence of 135 months for role in cocaine smuggling conspiracy was substantively reasonable; although defendant's co-conspirator received 48 month sentence, co-conspirator pleaded guilty to only a single count of indictment pursuant to a negotiated plea agreement and there was some indication that co-conspirator may have been experiencing medical complications that influenced duration of his sentence, and district court articulated an eminently plausible rationale for defendant's sentence in consideration of sentencing factors, large quantity of drugs involved, and defendant's vital role in the smuggle. *U.S. v. Perez*, C.A.1 (Puerto Rico) 2016, 819 F.3d 541, certiorari denied 137 S.Ct. 111, 196 L.Ed.2d 90, Conspiracy  51; Sentencing and Punishment  56; Sentencing and Punishment  66; Sentencing and Punishment  67

46 U.S.C.A. § 70506, 46 USCA § 70506

Current through P.L. 116-56.

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United States Code Annotated
Title 46. Shipping (Refs & Annos)
Subtitle VII. Security and Drug Enforcement (Refs & Annos)
Chapter 705. Maritime Drug Law Enforcement

46 U.S.C.A. § 70507
Formerly cited as 46 App. USCA § 1904

§ 70507. Forfeitures

Effective: February 8, 2016
Currentness

(a) **In general.**--Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 or 70508 of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

(b) **Prima facie evidence of violation.**--Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including--

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

- (G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.
- (2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.
- (3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.
- (4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.
- (5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.
- (6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.
- (7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.
- (8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.
- (9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 114-120, Title III, § 314(d), Feb. 8, 2016, 130 Stat. 59.)

Notes of Decisions (3)

46 U.S.C.A. § 70507, 46 USCA § 70507
Current through P.L. 116-56.

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