

IN THE SUPREME COURT OF THE UNITED STATES

CAMILO ANDRES LANDAZURI VARGAS, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner was convicted of committing drug-related offenses 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 the MDLEA exceeds Congress's powers under the Piracies and Felonies Clause, U.S. Const. Art. I, § 8, Cl. 10, by criminalizing drug trafficking on board a vessel in international waters without requiring proof of a connection between the drug trafficking and the United States.

2. Whether, in a prosecution under the MDLEA for a drug offense committed on board a vessel in international waters, the Due Process Clause of the Fifth Amendment requires the government to prove a connection between the offense conduct and the United States.

3. Whether petitioner was entitled under the Fifth and Sixth Amendments 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).

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Valencia, No. 17-cr-60268 (June 20, 2018)

United States v. Hernandez, No. 17-cr-60266 (July 17, 2018)

United States Court of Appeals (11th Cir.):

United States v. Vargas, No. 18-13175 (June 24, 2019)

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No. 19-6039

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A17) is not published in the Federal Reporter but is reprinted at 781 Fed. Appx. 815.

JURISDICTION

The judgment of the court of appeals was entered on June 24, 2019. The petition for a writ of certiorari was filed on September 20, 2019. 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 the 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)(1) (Supp. IV 2016). Pet. App. A18. The district court sentenced petitioner to 120 months of imprisonment, to be followed by five years of supervised release. Id. at A19-A20. The court of appeals affirmed. Id. at A1-A17.

1. The Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 et seq., makes it unlawful for any person to possess a controlled substance with the intent to distribute it, or to attempt or conspire to do so, on board "a vessel subject to the jurisdiction of the United States." 46 U.S.C. 70503(a) and (e)(1) (Supp. IV 2016); 46 U.S.C. 70506(b). 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 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).

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 “[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 2017, the U.S. Coast Guard intercepted a vessel approximately “205 nautical miles southwest of the border between Costa Rica and Panama.” Pet. App. A2; see Presentence Investigation Report (PSR) ¶¶ 8-9. After the people on board the vessel disregarded both commands to stop and warning shots, a Coast Guard marksman disabled the vessel’s engines. PSR ¶ 9. The Coast Guard observed a package being discarded from the boat. PSR ¶ 10.

The Coast Guard later took control of the vessel. PSR ¶ 10. Petitioner, who had been on board, claimed that the vessel was of Colombian nationality, but he provided no proof of registration, and the Government of Colombia neither confirmed nor denied the registration. PSR ¶ 11. Although no cocaine was found on board, PSR ¶ 12, petitioner acknowledged throwing cocaine into the ocean, Pet. App. A2.

3. A federal grand jury indicted petitioner for conspiracy to possess with the 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)(1) (Supp. IV 2016), 46 U.S.C. 70506(b), and 21 U.S.C. 960(b)(1)(B) (2012); possessing 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)(1) and 70506(a) (Supp. IV 2016), and 21 U.S.C. 960(b)(1)(B) (2012); and failing to obey an order to "heave to" on a vessel subject to the jurisdiction of the United States, in violation of 18 U.S.C. 2237(a)(1). Indictment 1-2.

The district court denied petitioner's motion to dismiss the indictment, rejecting petitioner's contention that the MDLEA violates the Constitution. D. Ct. Doc. 28, at 1 (Feb. 26, 2018). The court explained that the Eleventh Circuit had repeatedly "upheld the constitutionality of this statute." Ibid.

Pursuant to a plea agreement, petitioner pleaded guilty to the conspiracy count and the district court dismissed the remaining counts. Pet. App. A3, A18. As part of the agreement, petitioner signed a stipulated factual proffer in which he admitted that the Colombian government had failed to confirm or deny the registration of the vessel, which was in international waters. D. Ct. Doc. 51, at 2 (Mar. 14, 2018). During the plea colloquy, the district court found the facts "sufficient to constitute the crime of conspiracy to possess with the intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States." Plea Tr. 30. The court accepted petitioner's plea, id. at 31, and sentenced him to 120 months of imprisonment, Pet. App. A19.

4. The court of appeals affirmed. Pet. App. A1-A17. The court rejected numerous constitutional and statutory challenges to the conviction and sentence, explaining that each was foreclosed by circuit precedent. Id. at A4.

As relevant here, the court of appeals first rejected petitioner's contention that the MDLEA's application to vessels "without a U.S. nexus" exceeded Congress's enumerated powers. Pet. App. A6-A7. The court observed that the Constitution grants Congress the power to "define and punish Piracies and Felonies committed on the high Seas," id. at A4 (quoting U.S. Const. Art. I, § 8, Cl. 10), and that "[circuit] precedent holds that the MDLEA as applied to drug trafficking on stateless vessels in

international waters -- the conduct to which [petitioner] pled guilty -- is a valid exercise of Congress's Felonies Clause power, even without a U.S. nexus," id. at A6-A7. The court of appeals also rejected petitioner's contention that "the MDLEA's lack of a nexus requirement violates due process," citing its prior determination "that the Due Process Clause does not require that the proscribed conduct [under the MDLEA] demonstrate a nexus with the United States." Id. at A8 (citing United States v. Valois, 915 F.3d 717, 722 (11th Cir. 2019), cert. denied, No. 19-5166 (Oct. 7, 2019), petition for cert. pending, No. 18-9263 (filed May 9, 2019), and petition for cert. pending, No. 18-9328 (filed May 13, 2019)).

The court of appeals likewise rejected petitioner's contention that the MDLEA violated the Fifth and Sixth Amendments by providing 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.'" Pet. App. A8 (quoting 46 U.S.C. 70504(a)) (brackets in original). As a threshold matter, the court determined that, "by pleading guilty," petitioner "waived his right to bring this challenge." Id. at A9. It observed that "[a] valid guilty plea forgoes not only a fair trial, but also other accompanying constitutional guarantees," including the right to a "jury trial." Ibid. (quoting Class v. United States, 138 S. Ct. 798, 805 (2018)). And it noted that petitioner "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,' which would bring it within the MDLEA's definition of vessels subject to U.S. jurisdiction." Ibid. (citation omitted). The court further determined that, in any event, petitioner's contention "also fails on the merits." Ibid. The court explained that it had previously determined "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 A10 (quoting United States v. Tinoco, 304 F.3d 1088, 1109-1109 (11th Cir. 2002), cert. denied, 538 U.S. 909 (2003)) (brackets in original).

ARGUMENT

Petitioner renews (Pet. 8-29) his contentions that prosecutions under the MDLEA without proof of a specific connection between the offense conduct and the United States exceed Congress's enumerated powers, that such prosecutions violate the Due Process Clause, and that the provision allowing a judge to determine whether a vessel is subject to the MDLEA violates his right to trial by jury. Those contentions lack merit, and this Court has recently and repeatedly declined to review petitions presenting each of those issues. Further review is likewise unwarranted in this case.

1. Petitioner first contends (Pet. 8-19) that, in the absence of proof of a specific connection between the offense conduct and the United States, application of the MDLEA exceeds Congress's authority under the Piracies and Felonies Clause. That contention lacks merit, and this Court has repeatedly declined to review it. See Cruickshank v. United States, 139 S. Ct. 96 (2018) (No. 17-8953); Alexander v. United States, 138 S. Ct. 2652 (2018) (No. 17-7879); Cruickshank v. United States, 137 S. Ct. 1435 (2017) (No. 16-7337); Persaud v. United States, 136 S. Ct. 534 (2015) (No. 14-10407); Campbell v. United States, 135 S. Ct. 704 (2014) (No. 13-10246); Brant-Epigmelio v. United States, 565 U.S. 1203 (2012) (No. 11-6306); Cardales-Luna v. United States, 565 U.S. 1034 (2011) (No. 10-10731); Renegifo v. United States, 565 U.S. 835 (2011) (No. 10-10382); Estrada-Obregon v. United States, 555 U.S. 997 (2008) (No. 08-5044); 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 same result is warranted here.

The Piracies and Felonies Clause empowers Congress "[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. Every court of appeals to consider the question has determined that the MDLEA's application to stateless vessels falls within that grant of authority, because the Clause authorizes Congress to punish offenses "on the high Seas" and because trafficking in narcotics is universally condemned by law-abiding

nations. See United States v. Aybar-Ulloa, 913 F.3d 47, 51-55 (1st Cir. 2019); United States v. Ledesma-Cuesta, 347 F.3d 527, 531-532 (3d Cir. 2003); United States v. Suerte, 291 F.3d 366, 375 (5th Cir. 2002); United States v. Perlaza, 439 F.3d 1149, 1158-1160 (9th Cir. 2006); United States v. Campbell, 743 F.3d 802, 809-810 (11th Cir.), cert. denied, 135 S. Ct. 704 (2014).

Petitioner acknowledges (Pet. 10) that “[i]t has generally been agreed, by the Courts of Appeals that have reviewed the MDLEA, that the statute is an exercise of Congress’ power to define and punish Felonies under [the Piracies and Felonies Clause].” Petitioner relies (Pet. 12, 15-16), however, on dissenting opinions issued by Judge Torruella. But those dissenting opinions do not establish a circuit conflict warranting this Court’s review. See Sup. Ct. R. 10. And in any event, Judge Torruella has asserted only that the Piracies and Felonies Clause requires a nexus between the offense and the United States in cases involving “foreign nationals on a foreign-flag ship.” United States v. Angulo-Hernández, 576 F.3d 59, 60 (1st Cir.) (Torruella, J., dissenting from the denial of rehearing en banc), cert. denied, 558 U.S. 1063 (2009). Judge Torruella has acknowledged that his “analysis may be quite different” where, as here, the vessel at issue is stateless. Id. at 63 n.3; see United States v. Cardales-Luna, 632 F.3d 731, 747 (1st Cir.) (Torruella, J., dissenting) (acknowledging that Congress has broader authority to regulate stateless vessels), cert. denied, 565 U.S. 1034 (2011).

2. Petitioner next contends (Pet. 19-26) that even if the criminalization of drug trafficking on the high seas without proof of a “nexus” between the offense conduct and the United States is within Congress’s enumerated powers, the Due Process Clause nonetheless requires such proof. That contention lacks merit, and no court of appeals has imposed such a requirement where, as here, the MDLEA is applied to conduct on a stateless vessel in international waters. Although the Ninth Circuit has inferred such a requirement in cases involving foreign-registered vessels, that divergence from other circuits is not at issue here, has not been of practical consequence to date, and does not warrant this Court’s review. This Court has repeatedly denied certiorari on the issue. See Cruickshank, 139 S. Ct. 96 ; Wilchcombe v. United States, 137 S. Ct. 2265 (2017); Cruickshank, 137 S. Ct. 1435; Persaud v. United States, 136 S. Ct. 534 (2015) (No. 14-10407); Campbell, 135 S. Ct. 704; Tam Fuk Yuk v. United States, 565 U.S. 1203 (2012) (No. 11-6422); Brant-Epigmelio, 565 U.S. 1203; 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). The same result is warranted here.

Congress explicitly 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). And courts have repeatedly upheld prosecutions

under the MDLEA (and its statutory predecessor) even in the absence of evidence that the drug trafficking was directed at the United States. See, e.g., Campbell, 743 F.3d at 810.

With the exception of the Ninth Circuit, every court of appeals to consider the issue has determined that the MDLEA validly applies to vessels on the high seas without any showing of a specific connection between the offense conduct and the United States. See, e.g., United States v. Cardales, 168 F.3d 548, 552-553 (1st Cir.), cert. denied, 528 U.S. 838 (1999); United States v. Martinez-Hidalgo, 993 F.2d 1052, 1056 & n.6 (3d Cir. 1993), cert. denied, 510 U.S. 1048 (1994); Suerte, 291 F.3d at 375; United States v. Rendon, 354 F.3d 1320, 1325 (11th Cir. 2003), cert. denied, 541 U.S. 1035 (2004).

By contrast, the Ninth Circuit has read into the MDLEA a "nexus" requirement with respect to foreign-registered vessels, not as an element of the substantive offense but as a "'judicial gloss'" on the MDLEA. United States v. Zakharov, 468 F.3d 1171, 1177 (2006) (quoting United States v. Klimavicius-Viloria, 144 F.3d 1249, 1257 (9th Cir. 1998), cert. denied, 528 U.S. 842 (1999)), cert. denied, 550 U.S. 927 (2007). The Ninth Circuit has nonetheless clarified that, "if a vessel is deemed stateless, there is no requirement that the government demonstrate a nexus between those on board and the United States before exercising jurisdiction over them." Perlaza, 439 F.3d at 1161 (brackets and citation omitted). Accordingly, no court of appeals would require the

government to prove a specific connection between the offense conduct and the United States where, as here, the MDLEA is applied to an offense committed on a stateless vessel.

Petitioner invokes (Pet. 21) the Second Circuit's decision in United States v. Yousef, 327 F.3d 56, cert. denied, 540 U.S. 933, and 540 U.S. 993 (2003), and the Fourth Circuit's unpublished decision in United States v. Mohammad-Omar, 323 Fed. Appx. 259 (per curiam), cert. denied 558 U.S. 908 (2009). The courts in those cases suggested that the extraterritorial application of criminal law requires a connection between the United States and the criminal conduct abroad, see Yousef, 327 F.3d at 111; Mohammad-Omar, 323 Fed. Appx. at 262, but neither decision invalidated a conviction on that ground, and neither case involved application of the MDLEA. See Yousef, 327 F.3d at 84, 111 (affirming conviction for conspiracy to bomb a civil aircraft registered in a foreign country, in violation of 18 U.S.C. 32(b)(3) (1988)); Mohammad-Omar, 323 Fed. Appx. at 260, 262 (affirming convictions for conspiracy to import one kilogram or more of heroin, in violation of 21 U.S.C. 952(a), 959, 963, and 960(b)(1)(A) (2006), and conspiracy to possess with intent to distribute heroin, in violation of 21 U.S.C. 846 (2006)). They thus presented no questions analogous to those involving a stateless vessel on the high seas, and neither opinion considered the issue in light of explicit congressional findings, like those about drug-trafficking contained in 46 U.S.C. 70501(1).

3. Petitioner finally contends (Pet. 26-29) that the MDLEA violates the Fifth and Sixth Amendments by providing that the United States' jurisdiction over a vessel is a "preliminary question[] of law to be determined solely by the trial judge" and "is not an element of an offense." 46 U.S.C. 70504(a). Petitioner relinquished that contention by pleading guilty. In addition, that contention lacks merit, and, despite some disagreement in the courts of appeals, this Court has repeatedly declined to review the question. See Mejia v. United States, 139 S. Ct. 593 (2018) (No. 18-5702); Carrasquilla-Lombada v. United States, 139 S. Ct. 480 (2018) (No. 18-5534); Cruickshank, 139 S. Ct. 96; Cruickshank, 137 S. Ct. 1435; Campbell, 135 S. Ct. 704; Tam Fuk Yuk, 565 U.S. 1203; Sanchez-Salazar, 556 U.S. 1185; Aguilar, 556 U.S. 1184; Moreno, 549 U.S. 1343; Estupinan, 549 U.S. 1267. The Court should follow the same course here.

a. This Court has explained that a guilty plea "is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial." Brady v. United States, 397 U.S. 742, 748 (1970). "[A] valid guilty plea 'forfeits not only a fair trial, but also other accompanying constitutional guarantees,'" including "the jury trial right." Class v. United States, 138 S. Ct. 798, 805 (2018) (citation omitted). In this case, petitioner pleaded guilty to conspiracy to possess with the intent to possess five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the

United States, in violation of the MDLEA. And he "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,' which would bring it within the MDLEA's definition of vessels subject to U.S. jurisdiction." Pet. App. A9 (citation omitted). The court of appeals thus correctly observed that, "by waiving his right to a jury trial, [petitioner] also waived any argument that a jury and not a judge should have decided the jurisdictional issue." Ibid. Petitioner does not address that aspect of the court's decision in his petition. See Pet. 26-29.

b. In any event, as the court of appeals correctly determined, petitioner's challenge "also fails on the merits." Pet. App. A9. 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.) (“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) (“[T]he [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), confirms that conclusion. In Ford, the defendants were charged with conspiring to violate the National Prohibition Act, ch. 85, 41 Stat. 305, 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 the 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.

That reasoning applies equally 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 petitioner’s 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 (Lynch and Howard, J.J., opinion of the court in part and concurring in part); 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, 606-610 (1985); Oregon v. Kennedy, 456 U.S. 667, 669-670, 679 (1982); Barker v. Wingo, 407 U.S. 514, 530-536 (1972).

c. As petitioner notes (Pet. 27-29), the courts of appeals have taken different approaches to the submission of jurisdictional issues under the MDLEA to juries. In addition to the court below, the First Circuit has upheld the constitutionality of submitting the jurisdictional issue to the judge. See Vilches-Navarrete, 523 F.3d at 19-23 (Lynch and Howard, J.J., opinion of the court in part and concurring in part); Tinoco, 304 F.3d at 1107-1112. The Ninth Circuit agrees that the jurisdictional issue may be submitted to a judge when it poses only a question of law, but has concluded that, when the issue depends on a "disputed

factual question," that question must be submitted to a jury. Perlaza, 439 F.3d at 1165; see id. at 1163-1167; cf. Zakharov, 468 F.3d at 1176 (finding that the jurisdictional issue could be submitted to the judge in that case because there was "no factual question pertaining to statutory jurisdiction for the jury to decide").

This case, however, does not implicate that disagreement. As just noted, the Ninth Circuit has required the submission of the jurisdictional issue to the jury only where the issue depends on the resolution of a "disputed factual question." Perlaza, 439 F.3d at 1165. The Ninth Circuit applied that requirement in a case involving conflicting evidence about whether the vehicle at issue was stateless. See id. at 1165-1166. In this case, by contrast, petitioner pleaded guilty, "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 was a vessel without nationality,'" and has not offered any conflicting evidence raising a factual dispute. Pet. App. A9 (citation omitted). Accordingly, it is likely that no jury determination would have been required even in the Ninth Circuit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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