

No. 19-6546

IN THE SUPREME COURT OF THE UNITED STATES

ELMER MISAEL GARCIA RAMIREZ, 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

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

BRIAN A. BENCZKOWSKI
Assistant Attorney General

KELLEY BROOKE HOSTETLER
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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. 70506(b). 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.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Ramirez, No. 17-cr-10018 (July 9, 2018)

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

United States v. Ramirez, No. 18-13035 (Sept. 5, 2019)

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-11) is not published in the Federal Reporter but is reprinted at 785 Fed. Appx. 758.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2019. The petition for a writ of certiorari was filed on November 1, 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. 70506(b). Judgment 1. The district court sentenced petitioner to 168 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals affirmed. Pet. App. 1-11.

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. V 2017); 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. V 2017), "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 May 2017, the U.S. Coast Guard intercepted a vessel approximately 560 nautical miles south of the Mexico-Guatemala border. Pet. App. 2; Presentence Investigation Report ¶ 8. The Coast Guard took control of the vessel and found four people on board: petitioner (a Guatemalan national), a Colombian national,

and two Ecuadorian nationals. Pet. App. 2. The Colombian national claimed that the vessel was Colombian, but the Colombian government neither confirmed nor denied the registration. Ibid. The Coast Guard recovered approximately 760 kilograms of cocaine that had been thrown from the vessel. Ibid.

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); and 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). Indictment 1-3. Pursuant to a plea agreement, petitioner pleaded guilty to the conspiracy count and the government agreed to dismiss the drug-possession count. Pet. App. 4. The district court accepted the plea and sentenced petitioner to 168 months of imprisonment. Judgment 2-3.

The court of appeals affirmed. Pet. App. 1-11. As relevant here, the court rejected petitioner's contention "that the United States does not have jurisdiction over this case because there was not a sufficient nexus between his conduct and the United States." Id. at 8 n.1. The court observed, and petitioner acknowledged,

that binding circuit precedent foreclosed that contention. Ibid. (citing United States v. Campbell, 743 F.3d 802, 809-810 (11th Cir.), cert. denied, 574 U.S. 1025 (2014)). And the court found no error in the district court's finding of jurisdiction under the MDLEA, noting the unchallenged factual proffer at petitioner's plea hearing regarding the claim of Colombian registry and the submission of a proper State Department certification regarding the lack of confirmation or denial of such registry by the Colombian government. Id. at 7-9; see id. at 3.

ARGUMENT

Petitioner renews (Pet. 6-13) 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 and violate the Due Process Clause. Those contentions lack merit, and this Court has recently and repeatedly declined to review petitions presenting the same issues. Further review is likewise unwarranted in this case.

1. Petitioner argues (Pet. 8-12) 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, U.S. Const. Art. I, § 8, Cl. 10. That contention lacks merit, and this Court has repeatedly declined to review it. See Vargas v. United States, 2020 WL 129689 (Jan. 13, 2020) (No. 19-6039); 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, 574 U.S. 1025 (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. 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, 574 U.S. 1025 (2014); see also United States v. Aybar-Ulloa, No. 15-2377, 2020 WL 284546 (1st Cir. Jan. 17, 2020) (ordering rehearing en banc on certain MDLE issues relating to stateless vessels).

Petitioner's reliance (Pet. 10-11) on United States v. Furlong, 18 U.S. (5 Wheat.) 184 (1820), and United States v. Palmer, 16 U.S. (3 Wheat.) 610 (1818) -- which addressed the interpretation of a statute prohibiting murder and robbery on the high seas -- is misplaced, as neither decision held, as a matter of constitutional interpretation, that Congress lacked the power to punish crimes like the one at issue here. See, e.g., Suerte, 291 F.3d at 374 (interpreting Palmer to support such authority).

2. Petitioner also contends (Pet. 12-13) that even if the criminalization of drug trafficking on the high seas without proof of a connection 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 Vargas, supra (No. 19-6039); Valencia v. United States, 2019 WL 6689659 (Dec. 9, 2019) (No. 18-9328); Valencia v. United States, 2019 WL 6689658 (Dec. 9, 2019) (No. 18-9263); Cruickshank, supra (No. 17-8953); Wilchcombe v. United States, 137 S. Ct. 2265 (2017) (No. 16-1063); Cruickshank, supra (No. 16-7337); Persaud, supra (No. 14-10407); Campbell, supra (No. 13-10246); Tam Fuk Yuk v. United States, 565 U.S. 1203 (2012) (No. 11-6422); Brant-Epigmelio, supra (No. 11-6306); 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 convictions 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). The Ninth Circuit, for its part, 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). But the Ninth Circuit has 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 argues (Pet. 13) that the Second Circuit’s decisions support his rule. But the Second Circuit recently recognized that “due process does not require that there be a nexus between the United States and MDLEA violations that transpire on a vessel without nationality.” United States v. Van Der End, 943

F.3d 98, 105 (2d Cir. 2019). Petitioner invokes (Pet. 13) the Second Circuit's decision in United States v. Yousef, 327 F.3d 56, cert. denied, 540 U.S. 993 (2003). But although the court in Yousef suggested that the extraterritorial application of criminal law requires a connection between the United States and the criminal conduct abroad, see id. at 111, the decision did not invalidate a conviction on that ground, and it did not involve application of the MDLEA, see id. 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) (1994)). Yousef thus presented no question analogous to the one in this case, involving a stateless vessel on the high seas, and it did not consider the issue in light of explicit congressional findings like those about drug-trafficking contained in 46 U.S.C. 70501(1). In any event, any intracircuit disagreement between the Second Circuit's decisions in Yousef and Van der End would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

BRIAN A. BENCZKOWSKI
Assistant Attorney General

KELLEY BROOKE HOSTETLER
Attorney

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