

No. 19-8832

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IN THE SUPREME COURT OF THE UNITED STATES

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STEFAN VAN DER END, PETITIONER

v.

UNITED STATES OF AMERICA

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

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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 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).

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.N.Y.):

United States v. Van Der End, No. 16-cr-453 (Sept. 11, 2017)

United States Court of Appeals (2d Cir.):

United States v. Van Der End, No. 17-2926 (Nov. 14, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-18) is reported at 943 F.3d 98. The order of the district court (Pet. App. 20-36) is not published in the Federal Supplement but is available at 2017 WL 2417016.

JURISDICTION

The judgment of the court of appeals was entered on November 14, 2019. A petition for rehearing was denied on January 22, 2020 (Pet. App. 19). The petition for a writ of certiorari was filed on June 18, 2020. 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 New York, petitioner was convicted on one count of conspiring to manufacture, distribute, and 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); and one count of manufacturing, distributing, and possessing 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) and 70506(a). Judgment 1. The district court sentenced petitioner to 300 months of imprisonment, to be followed by five years of supervised release. Judgment 2. The court of appeals affirmed. Pet. App. 1-18.

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, in turn, to include "a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed." 46 U.S.C. 70502(d)(1)(A). 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. On May 23, 2016, a Coast Guard cutter intercepted a vessel in international waters roughly 300 nautical miles northeast of Bermuda. Pet. App. 20. Coast Guard officers found

three men, including petitioner, on board. Ibid. The master stated that the vessel was registered in Saint Vincent and the Grenadines (St. Vincent); that he and his fellow crew members were Dutch citizens; and that they were sailing from Grenada to Nova Scotia, Canada. Ibid. Officers noticed that the vessel was sitting low in the water -- suggesting that it was weighed down by something heavy on board -- and that the crew had not pulled into port to fix malfunctioning equipment or to avoid turbulent weather. Ibid. Consistent with a bilateral treaty between the United States and St. Vincent, officers boarded the vessel and conducted a search, which uncovered more than 600 kilograms of cocaine below deck. Id. at 3-4. The vessel then began to sink after one crewmember attempted to scuttle it. Id. at 4. The government later learned that the vessel had contained an additional 640 kilograms of cocaine. Ibid.

The Coast Guard later inquired with St. Vincent authorities about the vessel's registration. Pet. App. 4. St. Vincent authorities informed U.S. authorities that the vessel's registration had expired in February 2016 and that St. Vincent did not consider the vessel to be subject to its jurisdiction. Ibid.

3. A grand jury in the Southern District of New York indicted petitioner and the other crew members on one count of conspiring to manufacture, distribute, and 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) and 21 U.S.C. 960(b)(1)(B); and one count of manufacturing, distributing, and possessing 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) and 70506(a), and 21 U.S.C. 960(b)(1)(B). Pet. App. 21-22. The government also filed a certification from the Department of State stating that St. Vincent had denied the vessel's registry, and that the government had therefore determined that the vessel was without nationality and subject to U.S. jurisdiction. Id. at 24. The district court orally denied petitioner's motion to dismiss the indictment, id. at 22, and petitioner entered an unconditional guilty plea to both counts in the indictment, which the court accepted, ibid.

The district court later issued a written opinion on petitioner's motion to dismiss. Pet. App. 20-36. The court found that petitioner's vessel "was subject to the jurisdiction of the United States" for purposes of the MDLEA. Id. at 24. It observed that "the government ha[d] produced a certification from the United States Department of State, which indicates that the [St. Vincent] government 'refuted the vessel's claimed nationality.'" Ibid. (citation omitted). And it reasoned that, because "the 'response of a foreign nation to a claim of registry is proved conclusively by certification of the Secretary of State or the Secretary's

designee,'" the government had "conclusively demonstrated that [the master's] claim to [St. Vincent] registration was in fact denied by [St. Vincent's] government." Ibid. (quoting 46 U.S.C. 70502(d)(2)) (alteration and ellipsis omitted).

The district court rejected petitioner's contention that the question should be submitted to a jury, observing that, "under the MDLEA," the "[j]urisdiction of the United States with respect to a vessel \* \* \* is not an element" and that disputes on that question "are preliminary questions of law to be determined solely by the trial judge." Pet. App. 25 (quoting 46 U.S. 70504(a)). The court further rejected petitioner's argument that "the right to due process guaranteed by the Fifth Amendment and the right to jury trial under the Sixth Amendment require the jury to resolve factual disputes relevant to a ship's jurisdictional status." Id. at 26. The court explained that those constitutional guarantees "are not implicated where, as here, the question to be resolved -- the issue of jurisdiction -- neither alters 'the presumption of a defendant's innocence' nor 'subjects the defendant to an increased penalty,' and there was 'no evidence that Congress was attempting to evade defendants' constitutional rights.'" Id. at 27 (quoting United States v. Vilches-Navarrete, 523 F.3d 1, 20 (1st Cir.) (brackets omitted)), cert. denied, 555 U.S. 897 (2008)). Finally, the court observed that, "under historical practice the determination of whether a vessel is subject to the jurisdiction

of the United States would not be an essential element of the offense." Id. at 28. (quoting Vilches-Navarrete, 523 F.3d at 21) (brackets omitted)).

The district court also rejected petitioner's claim that application of the MDLEA violates due process because no connection exists between the vessel and the United States or between him and the United States. Pet. App. 29. The court explained that "stateless vessels on the high seas are, by virtue of their statelessness, subject to the jurisdiction of the United States even absent proof that the vessel's operators intended to distribute their cargo in the United States." Id. at 30 (citation and ellipsis omitted). The court observed that, because "vessels without nationality are international pariahs, and those aboard stateless vessels lack the protections of any country's law," it is not "arbitrary or fundamentally unfair to prosecute those who have renounced the legal world and constitute a potential threat to the order and stability of navigation on the high seas." Ibid. (brackets and citation omitted).

4. The court of appeals affirmed. Pet. App. 1-18.

As relevant here, the court of appeals rejected petitioner's claim that "the district court was required to submit to a jury the question of whether the [vessel] was subject to the jurisdiction of the United States." Pet. App. 12. The court stated that it had "recently recognized that, if the issue were

properly presented for appellate review, Section '70504(a)'s provision that the jurisdiction of the United States be determined solely by the trial judge' might be stricken as violative of a criminal defendant's right to a jury trial." Ibid. (citation omitted). The court observed, however, that in this case, "the district court had no opportunity to submit the question to a jury because [petitioner] pled guilty after the district court made the preliminary determination MDLEA requires." Id. at 13. The court reasoned that, "[b]y pleading guilty, [petitioner] waived his right to a jury trial" and thus forwent the opportunity to challenge Section 70504. Id. at 12.

The court of appeals also rejected petitioner's contention that the Due Process Clause of the Fifth Amendment requires "a nexus between the United States and MDLEA violations that transpire on a vessel without nationality." Pet. App. 15. The court explained that "stateless 'vessels are international pariahs' that 'subject themselves to the jurisdiction of all nations solely as a consequence of the vessel's status as stateless.'" Id. at 16 (quoting United States v. Caicedo, 47 F.3d 370, 372 (9th Cir. 1995)). The court further explained that, "[b]ecause stateless vessels do not fall within the veil of another sovereign's territorial protection, all nations can treat them as their own territory and subject them to their laws." Ibid. (quoting Caicedo, 47 F.3d at 373). The court stated that, under the Due Process

Clause, the "ultimate question" is whether extraterritorial application of U.S. criminal laws would be "arbitrary or fundamentally unfair." Ibid. (citations omitted). And the court determined that prosecutions of individuals like petitioner "are not arbitrary, since any nation may exercise jurisdiction over stateless vessels, and they are not unfair, since persons who traffic drugs may be charged with knowledge that such activity is illegal and may be prosecuted somewhere." Id. at 17.

#### ARGUMENT

Petitioner renews his contentions that the MDLEA violates the Fifth and Sixth Amendments by allowing the judge rather than the jury to determine U.S. jurisdiction over a vessel (Pet. 8-17), and that prosecutions under the MDLEA without proof of a specific connection between the offense conduct and the United States violate the Due Process Clause (Pet. 17-20). 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. A writ of certiorari is not warranted to review petitioner's contention (Pet. 8-17) 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 waived that

contention by pleading guilty, and the court of appeals accordingly did not address it. In any event, that contention lacks merit, and, despite some disagreement in the courts of appeals, this Court has repeatedly declined to review the question. See Perez-Cruz v. United States, 140 S. Ct. 2520 (2020) (No. 19-7484); Barrera-Montes v. United States, 140 S. Ct. 2519 (2020) (No. 19-6901); Vargas v. United States, 140 S. Ct. 895 (2020) (No. 19-6039); Valencia v. United States, 140 S. Ct. 631 (2019) (No. 18-9328); 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 v. United States, 139 S. Ct. 96 (2018) (No. 17-8953); Campbell v. United States, 574 U.S. 1025 (2014) (No. 13-10246); Tam Fuk Yuk v. United States, 565 U.S. 1203 (2012) (No. 11-6422); Sanchez-Salazar v. United States, 556 U.S. 1185 (2009) (No. 08-8036); Aguilar v. United States, 556 U.S. 1184 (2009) (No. 08-7048); Moreno v. United States, 549 U.S. 1343 (2007) (No. 06-8332); Estupinan v. United States, 549 U.S. 1267 (2007) (No. 06-8104). The Court should follow the same course here.

a. A valid 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 -- a waiver of his right to trial before a jury." Brady v. United States, 397 U.S. 742, 748 (1970). A defendant who has pleaded guilty has thus "necessarily waived

his right to a jury trial." Hurst v. Florida, 136 S. Ct. 616, 623 (2016).

Applying that principle here, the court of appeals correctly recognized that petitioner "waived his right to a jury trial" -- including any purported right to a jury trial on the issue of U.S. jurisdiction with respect to the vessel -- when he pleaded guilty to the MDLEA offenses. Pet. App. 12. Other courts of appeals have likewise recognized that a defendant's unconditional guilty plea renders any constitutional challenge to Section 70504(a) "a moot issue." United States v. González, 311 F.3d 440, 444 (1st Cir. 2002), cert. denied, 540 U.S. 826 (2003); see United States v. De La Garza, 516 F.3d 1266, 1271 (11th Cir. 2008), cert. denied, 556 U.S. 1151 (2009); United States v. Perlaza, 439 F.3d 1149, 1167 n.21 (9th Cir. 2006); United States v. Moreno-Morillo, 334 F.3d 819, 825-826 (9th Cir. 2003), cert. denied, 540 U.S. 1156 (2004).

Petitioner errs in contending otherwise. Noting (Pet. 15) that he pleaded guilty after the district court had determined that he lacked a constitutional right to a jury determination on U.S. jurisdiction over the vessel, he asserts (Pet. 16) that, if this Court now overturns that determination, the Court's ruling would mean that his "guilty plea was, as a matter of law, unknowing and involuntary." That is incorrect. This Court has explained that "a voluntary plea of guilty intelligently made in the light

of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty premise" -- including a faulty premise relating to jury-trial rights. Brady, 397 U.S. at 757; see id. at 746.

Moreover, during the plea colloquy, the district court specifically discussed petitioner's potential "appellate arguments" regarding "whether [the] vessel is stateless." Pet. App. 65. It explained that the court of appeals could find that petitioner had "not preserved" those arguments and that petitioner was "out of luck by pleading guilty." Ibid. Petitioner responded: "Yes. I'm aware of that." Ibid. The district court continued: "I just want to make sure that [you are] aware that that is at least a possibility. I don't want you to come back six months from now and say, had I known that, I never would have pled guilty." Ibid. Petitioner responded: "I understand." Ibid. As that exchange makes plain, petitioner fully understood that, by pleading guilty, he relinquished the contention that he now presses.

b. In any event, petitioner's constitutional challenge to Section 70504(a) lacks merit. 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) ("[The MDLEA's] jurisdictional requirement is not an essential ingredient or an essential element of the MDLEA substantive offense, and, as a result, it does not have to be submitted to the jury for proof beyond a reasonable doubt."), cert. denied, 538 U.S. 909 (2003).

This Court's decision in Ford v. United States, 273 U.S. 593 (1927), 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." 273 U.S. 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; cf. S. Rep. No. 530, 99th Cong., 2d Sess. 16 (1986) ("In the view of the Committee, only the flag nation of a vessel should have a right to question

whether the Coast Guard has boarded that vessel with the required consent. The international law of jurisdiction is an issue between sovereign nations. Drug smuggling is universally recognized criminal behavior, and defendants should not be allowed to inject these collateral issues into their trials.").

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

Petitioner errs in contending (Pet. 14-15) that this Court's decision in Morrison v. National Australia Bank Ltd., 561 U.S. 247 (2010), requires assigning the question whether a vessel is subject to U.S. jurisdiction to a jury. In Morrison, the Court observed that the question of a statute's extraterritorial reach ordinarily presents a "merits question" rather than an issue of subject-

matter jurisdiction. Id. at 254. Similarly here, the MDLEA's reference to U.S. "jurisdiction" over the vessel, 46 U.S.C. 70503(e)(1), "refers to the general authority of the U.S. government over the ship at issue," not to "the power of the district court in particular over prosecutions." United States v. Delgado-Garcia, 374 F.3d 1337, 1342 (D.C. Cir. 2004); see González, 311 F.3d at 443. But the potential denomination of it as a "merits question" as opposed to a question of the district court's own "jurisdiction" does not compel the conclusion that it is an element of the offense that must be submitted to the jury, rather than a preliminary question of law to be resolved by the district court. And for all of the reasons stated above, it is the latter, not the former.

c. As petitioner notes (Pet. 11-12), the courts of appeals have taken different approaches to the submission of statelessness issues under the MDLEA to juries. The First and Eleventh Circuits have upheld the constitutionality of submitting the issue to the judge. See Vilches-Navarrete, 523 F.3d at 19-23; Tinoco, 304 F.3d at 1107-1112. The Ninth Circuit agrees that the 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 1164-1168; cf. United States v. Zakharov, 468 F.3d 1171, 1176 (9th Cir. 2006)

(concluding that the 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"), cert. denied, 550 U.S. 927 (2007).

Even setting aside petitioner's guilty plea, however, it is far from clear that this case implicates 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. And the Ninth Circuit has applied that requirement in a context involving conflicting evidence about whether the vessel at issue was stateless. See id. at 1165-1166. In this case, in contrast, the district court correctly observed the absence of any conflicting evidence on any issue of material fact. Pet. App. 24-25. Petitioner acknowledged that his vessel was intercepted in international waters, id. at 63, and he does not dispute that the Department of State had certified that the Government of St. Vincent had informed the United States that it denied the registry of the vessel in St. Vincent, see Pet. 4. That certification made the vessel subject to United States jurisdiction as a vessel without nationality. See 46 U.S.C. 70502(d)(2).

In any event, this case would be a poor vehicle for resolving any disagreement among the circuit courts. As discussed above,

the court of appeals determined that petitioner waived any right to a jury trial by pleading guilty, and that determination independently justifies the court's judgment irrespective of the merits of petitioner's constitutional challenge to Section 70504(a). At a minimum, the Court would need to address the waiver issue, and resolve it in petitioner's favor, in order to reach the question presented. In addition, petitioner acknowledges (Pet. 15) that, because the court determined that petitioner had waived any right to a jury trial, it "avoid[ed] definitively resolving, in this case, the question of whether jurisdiction is an element of the offense to be submitted to a jury." Petitioner identifies no sound reason for this Court -- which is "a court of review, not of first view," Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005) -- to resolve a question on which the court of appeals has not passed.

2. Petitioner also contends (Pet. 17-20) that the Due Process Clause requires proof of a connection between his offense conduct and the United States in order for his prosecution to proceed. 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 Lopez v. United States, No. 19-8513 (Jun. 22, 2020); Ramirez v. United States, 140 S. Ct. 1299 (2020) (No. 19-6546); Vargas, supra (No. 19-6039); Valencia v. United States, 140 S. Ct. 656 (2019) (No. 18-9263); Valencia, supra (No. 18-9328); Cruickshank, supra (No. 17-8953); Wilchcombe v. United States, 137 S. Ct. 2265 (2017) (No. 16-1063); 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, supra (No. 13-10246); Tam Fuk Yuk, supra (No. 11-6422); Brant-Epigmelio v. United States, 565 U.S. 1203 (2012) (No. 11-6306); Sanchez-Salazar, supra (No. 08-8036); Aguilar v. United States, supra (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., United States v. Campbell, 743 F.3d 802, 810 (11th Cir.), cert. denied, 574 U.S. 1025 (2014).

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); United States v. Suerte, 291 F.3d 366, 375 (5th Cir. 2002); United States v. Rendon, 354 F.3d 1320, 1325 (11th Cir. 2003), cert. denied, 541 U.S. 1035 (2004); see also United States v. Aybar-Ulloa, 947 F.3d 121 (1st Cir. 2020) (ordering rehearing en banc on certain MDLEA issues relating to stateless vessels). 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. Zakharov, 468 F.3d at 1177 (quoting United States v. Klimavicius-Viloria, 144 F.3d 1249, 1257 (9th Cir. 1998), cert. denied, 528 U.S. 842 (1999)). 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 1167 (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.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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SEPTEMBER 2020