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IN THE  
SUPREME COURT OF THE UNITED STATES

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No:

ITALO EBARISTO NAPA MOREIRA,  
*Petitioner,*

v.

UNITED STATES OF AMERICA,  
*Respondent.*

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Eleventh Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTIONS PRESENTED**

Petitioner was onboard a boat in international waters in the Eastern Pacific Ocean when the United States Coast Guard (“USCG”) detained him for cocaine trafficking. Petitioner is an Ecuadorian citizen, the boat was not registered in the United States, there was no evidence the cocaine was destined for the United States, and there was no nexus between the Petitioner and the United States. Yet, Petitioner was charged in the Southern District of Florida for two violations of the Maritime Drug Law Enforcement Act (“MDLEA”). Petitioner pled guilty to one of them, conspiracy to possess with intent to distribute cocaine in violation of 46 U.S.C. §§70503(a)(1), 70506(b). This petition presents two critical questions about the constitutionality of the MDLEA:

1. Whether the MDLEA is unconstitutional because the Government is not required to prove any “minimum contacts” or “nexus” between a defendant and the United States to establish jurisdiction over the cause.
2. Whether the MDLEA Violates Due Process Because It Does Not Comply With *Miranda* and *Johnson* In The Prosecution Of A Defendant Aboard a “Stateless Vessel” Under 46 U.S.C. §70502(d)(1)(B).

## **PARTIES TO THE PROCEEDING**

Respondent United States of America was the plaintiff in the district court, the appellee in the direct appeal to the U.S. Court of Appeals for the Eleventh Circuit, and is an interested party to the petition in this Honorable Court.

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**PETITION FOR WRIT OF CERTIORARI**

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Petitioner Italo Ebaristo Napa Moreira respectfully petitions the Supreme Court of the United States for a writ of *certiorari* to review *United States v. Napa Moreira*, 2020 WL 1867907 (11<sup>th</sup> Cir. April 14, 2020).

**OPINION BELOW**

The decision of the Court of Appeals was set forth in an unpublished opinion in *United States v. Napa Moreira*, 2020 WL 1867907 (11<sup>th</sup> Cir. April 14, 2020).

## **STATEMENT OF JURISDICTION**

The Court of Appeals issued its opinion on April 14, 2020. This petition is timely. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This petition presents issues involving violations of Due Process under the Fifth Amendment as well as Constitutional violations arising from application of the provisions of 46 U.S.C. §§70502, 70503, and 70506.

## **STATEMENT OF THE CASE**

### **A. Course Of Proceedings And Disposition In The Lower Tribunal.**

On January 30, 2019, Plaintiff/Respondent United States of America (“Government”) filed a criminal complaint alleging that Jose Manuel Caicedo Vera, Jose Serapio Cuero Tenorio, Italo Ebaristo Napa Moreira (“Napa”), and Ever Valencia Prado (collectively “defendants”) violated 46 U.S.C. §70503(a)(1) and §70506(b), conspiracy to possess with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States. DE1.<sup>1</sup> On February 5, 2019, a grand jury returned an indictment against all four defendants alleging: a) in count 1, the defendants conspired to possess with the

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<sup>1</sup> References to the record below will be denoted by “DE” followed by the docket entry number. Specific page numbers may be referenced after a colon.

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 Title 46 U.S.C. §§70503(a)(1), 70506(b); and b) in count 2, they possessed with the intent to distribute five or more kilograms of cocaine in violation of 46 U.S.C. §70503(a)(1) and 18 U.S.C. §2. DE10.

The Honorable Chief Judge Kevin Michael Moore (“Judge”) was assigned to this case. On April 9, 2019, U.S. Magistrate Judge Jacqueline Becerra conducted a change of plea hearing for Napa pursuant to a written Plea Agreement [DE42] and Stipulated Factual Proffer [DE43]. On April 18, 2019, Judge Becerra filed a report (“R&R”) recommending the Judge accept Napa’s guilty plea. DE51. On May 3, 2019, the Judge adopted the R&R that Judge Becerra had issued as to each of the defendants and adjudicated them guilty of the offenses charged. DE56.

On July 17, 2019, the Judge conducted Napa’s sentencing hearing. DE78; DE95. The Judge imposed a sentence of 135 months imprisonment followed by two years supervised release as to count 1. The Judge granted the Government’s *ore tenus* motion to dismiss count 2. The final judgment was filed on July 17, 2019. DE82. On July 23, 2019, Napa filed a timely notice of appeal of that final judgment. DE 84. On April 14, 2020, the Eleventh Circuit issued its opinion in *United States v. Napa Moreira*, 2020 WL 1867907 (11<sup>th</sup> Cir. April 14, 2020).

## B. Statement Of The Facts.

The essential facts relating to the offense conduct are described in the Factual Proffer [DE40] and the Presentence Investigation Report [DE59]. On January 5, 2019, the United States Coast Guard (“USCG”) was on patrol in the Eastern Pacific Ocean when a marine patrol aircraft detected a target of interest dead in the water. That vessel matched the description of a low-profile go-fast vessel (“GFV”) located approximately 386 nautical miles south of Puerto Quetzal, Guatemala in international waters. The USCG Cutter *Alert* was on routine patrol approximately sixty nautical miles northeast and diverted to intercept the GFV. When thirty miles from the GFV, the *Alert* launched a small boat to intercept the GFV. USCG District 11 granted full authority for the crew members of the small boat to board and treat the GFV as a vessel without nationality. The small boat came alongside the GFV and took control over it. DE1:4.

District 11 authorized the boarding team to conduct a destructive search to locate and remove any contraband and to treat the four suspects on board as detainees. *Id.* The boarding team discovered forty-six bales wrapped in black packaging with no insignia. The four occupants of the GFV were Napa and the three defendants. DE1:5. The USCG conducted field tests and confirmed the forty-six bales contained approximately 1,852 kilograms of cocaine. *Id.* The

defendants were transferred to the *Alert* and processed. The USCG sank the vessel because it was a hazard to navigation. On January 29, 2019, law enforcement officers transported the defendants to the Southern District of Florida where they first entered the United States. DE1:5. The vessel did not have any indicia of nationality. According to the Government, the defendants were questioned, but they did not make a claim of nationality for the vessel. DE59:5.

### **REASONS FOR GRANTING THE PETITION**

I. THE SUPREME COURT SHOULD GRANT THE WRIT TO DECIDE IF THE MDLEA IS UNCONSTITUTIONAL BECAUSE THE GOVERNMENT IS NOT REQUIRED TO PROVE “MINIMUM CONTACTS” OR A “NEXUS” BETWEEN A DEFENDANT AND THE UNITED STATES FOR A DISTRICT COURT TO ESTABLISH JURISDICTION OVER THE CAUSE.

#### **A. There Is No Procedural Or Substantive Bar To Napa Raising This Issue.**

In *Class v. United States*, 138 S. Ct. 798 (2018), the Supreme Court reversed and remanded a case which had been affirmed by the District of Columbia Circuit. The question presented was: “Does a guilty plea bar a criminal defendant from later appealing his conviction on the ground that the statute of conviction violates the Constitution?” Writing for the Court, Justice Breyer held: “In our view, a guilty plea by itself does not bar that appeal.” *Id.* At 801-02. In

*Class v. United States*, 138 S. Ct. 798 (2018), the defendant was charged with possession of firearms in his vehicle which was parked on U.S. Capitol grounds. *Id.* at 802. In his written plea agreement, the defendant agreed not to raise certain claims on direct appeal, including those based upon statute of limitations defenses or as to the sentence unless it exceeded the guidelines range. However, the defendant did not waive other potential claims, including newly-discovered evidence, ineffective assistance of counsel, and certain statutes providing for sentence reductions. The plea agreement stated that there were no other “agreements, promises, understandings, or representations” by the parties or their counsel. The agreement did not mention anything about the defendant’s “right to raise on direct appeal a claim that the statute of conviction was unconstitutional.” *Class, supra*, at 802.

In *Class, supra*, even though the defendant’s negotiated plea did not include a direct appeal waiver of constitutional claims, the Government argued that, by entering a guilty plea, the defendant necessarily had given up that category of claims. Justice Breyer agreed the guilty plea did “implicitly waive some claims, including some constitutional claims.” *Id.* at 805. For example, a defendant gives up certain trial rights such as the right to a jury trial, the right against self-incrimination, and the right to confront accusers. Yet, as the *Class* Court held, the

defendant’s “statutory right to appeal his conviction ‘cannot in any way be characterized as part of the trial.’” *Class v. United States*, 138 S. Ct. 798, 805 (2018)(citing *Lafler v. Cooper*, 566 U.S. 156, 165 (2012)). A guilty plea makes “irrelevant” the constitutionality of the Government’s conduct which takes place before the plea is entered. *Id.* For example, a defendant who pleads guilty cannot challenge the admissibility of evidence in violation of the Fourth Amendment, or that the grand jury was unconstitutionally selected. However, in *Class*, that was of no moment because those types of claims were not at issue. *Class v. United States*, 138 S. Ct. 798, 805 (2018). Put simply, the defendant did not deny that “he did it.” Rather, on direct appeal he raised a claim which, “judged on its face, based upon the existing record, would extinguish the Government’s power ‘to constitutionally prosecute’ the defendant if the claim were successful.” *Id.* at 806 (citations omitted).

The second argument the Government made was that Fed. R. Crim. P. 11(a)(2) governs “conditional” guilty pleas.” However, Justice Breyer pointed out that, “by its own terms, the Rule itself does not say whether it sets forth the *exclusive* procedure for a defendant to preserve a constitutional claim following a guilty plea. At the same time, the drafters’ notes acknowledge that the ‘Supreme Court has held that certain kinds of constitutional objections may be raised after a

plea of guilty.’’ *Class v. United States*, 138 S. Ct. 798, 806 (2018)(citation omitted). The Government’s third argument was the defendant “expressly waived” his right to appeal his constitutional claim. However, the written plea agreement did not contain that specific type of waiver but rather only that he was “giving up [his] right to appeal [his] conviction.” *Id.* at 806-07.

**B. Class Supports Napa’s Right To Appeal His Conviction.**

Napa pled guilty to count 1 of the two-count indictment pursuant to a written plea agreement. DE42:1-5. Count 1 charged a violation of 46 U.S.C. §70506(b), conspiracy to possess with the intent to distribute cocaine while on board a vessel subject to the jurisdiction of the United States. The plea agreement did not contain an appeal waiver. In the Stipulated Factual Proffer which supported the plea agreement, Napa admitted, among other things, that: a) the GFV on which he was present was located in international waters when the USCG intercepted it; b) the USCG conducted a “destructive search” of the GFV and seized forty-six bales of cocaine; c) three of the GFV occupants, including Napa, were from Ecuador, the other from Colombia; d) the GFV did not have any “indicia of nationality”; e) “none of the crew members claimed nationality for the GFV when questioned by the U.S. Coast Guard thereby giving the United States jurisdiction over it as a vessel without nationality.” DE43:1-2.

In light of the above, Napa had the right to raise the claims he did in his direct appeal because: a) he was not subject to an appeal waiver; and b) each of the claims presented “challenge[d] the Government’s power to criminalize [Napa’s] (admitted) conduct” not that “he didn’t do it.” Put differently, these claims “call into question the Government’s power to “constitutionally prosecute him.”” *Class v. United States*, 138 S. Ct. 798, 805 (2018)(citations omitted).

C. There Is No Evidence There Existed Any “Minimum Contacts” Between Napa And the United States.

To proceed with an MDLEA prosecution the Government first must prove a basis for jurisdiction. This means the GFV had to qualify as a vessel “covered” by 46 U.S.C. §70502. A “covered vessel” is defined as “a vessel subject to the jurisdiction of the United States.” 46 U.S.C. §70503(c)(1). A vessel “subject to the jurisdiction of the United States” includes one “without nationality.” 46 U.S.C. §70502(c)(1)(A). In the Factual Proffer, Napa agreed the United States had jurisdiction over the GFV as a vessel without nationality. DE43:2. However, as explained above, “the constitutional claim at issue here is consistent with [Napa’s] admission that he engaged in the conduct alleged in the indictment.”<sup>2</sup>

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<sup>2</sup> The admission of facts under the statutory prescription to establish jurisdiction is not a concession that the MDLEA complies with Due Process requirements. *See Class v. United States*, 138 S. Ct. 798, 806-07 (2018).

The Government had no evidence the cocaine transported on the GFV was destined for the United States. The Eleventh Circuit does not require the Government prove a “nexus” to the United States. In fact, its precedent forecloses that issue as a ground for dismissal in a Title 46 case. *See, e.g., United States v. Cruickshank*, 837 F.3d 1182, 1188 (11<sup>th</sup> Cir. 2016). In *J. McIntyre Mach., LTD. v. Nicastro*, 564 U.S. 873, 879 (2011)(plurality op.), the Supreme Court held: “The Due Process Clause protects an individual’s right to be deprived of life, liberty, or property *only* by the exercise of lawful power.” (emphasis supplied). The Supreme Court has handed down a line of cases which require “minimum contacts” in civil litigation. Those minimum contacts fulfill the need for a constitutionally-mandated “nexus” between the United States and a defendant. Without such “minimum contacts,” a defendant cannot be “haled into court.” However, the Supreme Court has yet to address whether the same Due Process protections apply to criminal statutes relying on extraterritorial jurisdiction like the MDLEA.

Under current Eleventh Circuit precedent the Government can arrest and prosecute: a) foreign citizens or residents found on the high seas *anywhere* in the world; b) charge them with violating United States drug laws; c) even though they are occupants of a vessel not registered in the United States; d) even though the

vessel is not operating within United States territorial waters; and e) even though there is no evidence the drugs were destined for the United States. On the other hand, in the Ninth Circuit, the Government must prove the drugs had a nexus to the United States if the vessel is of a foreign nationality. *See, e.g., United States v. Perlaza*, 439 F.3d 1149, 1160 (9<sup>th</sup> Cir. 2006).

In *Perlaza, supra*, the Ninth Circuit held that Due Process requires the Government to demonstrate that there exists a sufficient nexus between the conduct condemned and the United States. *Id.* at 1168-69; *see also United States v. Klimavicius-Viloria*, 144 F.3d 1249, 1257 (9<sup>th</sup> Cir. 1998)(nexus to United States required); *United States v. Greer*, 956 F. Supp. 531, 536 (D. Vt. 1997)(nexus required “to satisfy the requirements of the Due Process Clause”). Courts which have required a nexus to the United States reason that, even if there is nothing in the statute’s text on that issue, constitutional principles cannot be ignored simply because they are not stated in a criminal or civil law.

It must be noted that the above-cited Ninth Circuit cases, holding that the Government must prove a United States nexus, applies only to vessels where a foreign nation has confirmed their registration. Other Circuits have adopted the nexus requirement. *See, e.g., United States v. Youseff*, 327 F.3d 56, 111-112 (2d Cir. 2003). Napa argues that there is no rational difference in a case: a) where a

foreign nation confirms registration or nationality of a vessel; and b) and one where the occupants claim registration or nationality which a foreign nation does *not confirm* but also does *not deny*. The reason is so obvious that it can be easily overlooked: constitutionally-mandated protections cannot depend on the efficiency *vel non* of foreign governments, some of which are notoriously tardy, or simply disinterested, in providing United States officials with information about their citizens or residents. A fundamental constitutional right cannot depend on foreign governmental action.

In *United States v. Lawrence*, 727 F.3d 386, 396-97 (5<sup>th</sup> Cir. 2013), the Fifth Circuit appears to have sided with the Ninth Circuit albeit regarding a different drug statute. In *Lawrence*, the Fifth Circuit found the nexus requirement was met because a non-U.S. citizen was residing in Houston, and the conspiracy was formed in the United States. Here, the record is devoid of facts to satisfy a “minimum contacts” or nexus requirement.

The Circuits which do not agree with the foregoing Due Process analysis in the Ninth and Second Circuits hold the only requirement under the MDLEA is that it not be applied in an “arbitrary or fundamentally unfair” manner. *See, e.g.*, *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1378 (11<sup>th</sup> Cir. 2011). The reasoning is a foreigner prosecuted under the MDLEA is “on notice” the United

States could exercise jurisdiction over him if the country of registration gives consent *or* that engaging in drug smuggling is recognized as illegal anywhere in the world.

Napa argues this reasoning rests upon a very weak foundation: someone who resides in another country thousands of miles from the United States is *not* “on notice” about conduct not even *remotely* connected to the United States: a) he can be apprehended by United States law enforcement officials *anywhere* in the world; b) taken to the United States; c) haled into one of its courts; d) convicted of crimes with no nexus to the United States; and e) be severely punished, perhaps with a sentence of imprisonment for the rest of his life or close to it. That scenario has occurred all too often under the MDLEA, resulting in thousands of years of imprisonment being meted out to mostly indigent, uneducated foreign nationals.

II. THE SUPREME COURT SHOULD GRANT THE WRIT TO DECIDE  
IF THE MDLEA VIOLATES DUE PROCESS BECAUSE THE  
GOVERNMENT DOES NOT HAVE TO COMPLY WITH *MIRANDA*  
AND *JOHNSON* WHEN PROSECUTING A DEFENDANT ABOARD A  
“STATELESS VESSEL” UNDER 46 U.S.C. §70502(d)(1)(B).

A. 46 U.S.C. §70502(d)(1)(B) Violates Fundamental Constitutional Guarantees.

The MDLEA’s §70502(c)(1)(A) provides for prosecution of individuals on

board vessels deemed “without nationality.” A vessel can be declared “without nationality” under several circumstances. The subsection at issue here is §70502(d)(1)(B), “a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel.” The above bare-bones prescription to trigger jurisdiction under this provision does not have any standards to govern the interaction between a law enforcement officer and suspect on board the vessel who is under investigation.

#### B. Violation Of *Miranda v. Arizona*.

The above provision cannot pass constitutional scrutiny in light of several watershed Supreme Court cases. For example, in *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court held that a person in custody subjected to interrogation: a) must be informed in clear and unequivocal terms that he has the right to remain silent; b) that anything he says can and will be used against him in a court of law; and c) that he has the right to have counsel present at the interrogation. *Id.* at 468-69. Without advising a suspect that he has these constitutional rights, *Miranda* has been violated. In an MDLEA case, this is a routine, backdoor method for the Government to secure jurisdiction over individuals found on vessels traveling in international waters.

Under §70502(d)(1)(B), a United States official does not have an obligation to provide *Miranda* warnings to the master or person in charge of a vessel stopped on the high seas. The Government may argue that the crew members are not “in custody,” but that view clearly does not have any teeth. One need only imagine the scene in the case before this Court where the GFV is intercepted 386 miles off the coast of Guatemala in international waters. DE43:1. The foreign crew members are not “free to leave.” For all intents and purposes they are “in custody” from the moment of confrontation with heavily-armed enforcement officials pointing their weapons at them. These persons have no knowledge about Title 46 and its legal framework. They are questioned by law enforcement officials about matters which shall clothe a United States court with power to adjudicate and severely punish them. Title 46 does not have any requirement to advise foreign nationals about their *Miranda* rights even though they can be haled into United States courts. The lack of such a standard is a Due Process violation.

Title 46 has another blatant constitutional infirmity: there is no standard for an official to follow when he makes a “request” to “the master or individual in charge...to make a claim of nationality or registry” for the vessel. For one thing, there is no requirement the official inform the person his answer is needed as part of a determination as to whether he has violated United States law and be subject

to prosecution in a United States court. If a person were aware that his failure to respond could lead to that draconian result, he certainly might agree to provide the requested information. However, without being apprised of the consequences of that failure, he unwittingly may just decide not to cooperate and remain silent.<sup>3</sup>

### C. Violation Of *Johnson v. United States*.

The Fifth Amendment guarantees that “no person shall...be deprived of life, liberty, or property, without due process of law.” Title 46 fails to comply with this fundamental constitutional principle. In *Johnson v. United States*, 135 S. Ct. 2551 (2015), the Supreme Court reiterated that its precedent holds the Government violates the Fifth Amendment “under a criminal law so vague that it fails to give ordinary people notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.” *Id.* at 2556. The class of individuals interdicted on small fishing boats in international waters are “ordinary people.”<sup>4</sup>

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<sup>3</sup> Without knowing the consequences of his failure to answer that question, the individual very likely will maintain an erroneous belief: the worst that could happen is that any contraband discovered would be seized or destroyed, but he would not be arrested and transported thousands of miles away for prosecution and punishment in a United States court.

<sup>4</sup> There have been many hundreds of Title 46 cases which have made their way to federal appellate courts. The individuals prosecuted almost without exception are illiterate and dirt-poor. They receive very lengthy sentences due to the large quantities of drugs involved. These individuals clearly fall within what the Supreme Court characterizes as “ordinary people.”

“The prohibition of “vagueness” in criminal statutes ‘is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law,’ and a statute that flouts it ‘violates the first essential of due process.’” *Johnson v. United States*, 135 S. Ct. 2551, 2556-57 (2015)(citation omitted). Under §70502(d)(1)(B), an official is not bound by any standards in his communications with suspects destined to be prosecuted in United States courts and sentenced to lengthy prison terms. To comply with §70502(d)(1)(B), the official simply has to “request” that the “master or person in charge...make a claim of nationality or registry for that vessel.” The official need not explain: a) what it means to “make a claim” of that sort; b) the reason why he is requesting such a claim be made; c) the dire legal consequences of a criminal prosecution to the crew members if the master or person in charge fails to make such a claim; d) whether there is a difference between “nationality” and “registry”; e) the foreign country will be contacted to verify or deny such a claim; nor f) what the consequences are for a verification or denial. Also, the statute does not contain a requirement that the official ask the master or person in charge whether he has documents which can prove nationality or registry.<sup>5</sup>

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<sup>5</sup> The Eleventh Circuit casts the USCG’s interrogation of crew members as “routine boarding questions.” *See United States v. Napa Moreira*, 2020 WL 1867907 \*3 (11<sup>th</sup> Cir. April 14, 2020). In reality, these questions have nothing to

The failure of the MDLEA to comport with fundamental guarantees under *Miranda v. Arizona*, 384 U.S. 436 (1966), and *Johnson v. United States*, render it unconstitutional in violation of the Due Process Clause of the Fifth Amendment.

### **CONCLUSION**

For all of the reasons set forth in this petition, this Honorable Court should intervene to correct these constitutional violations which federal appellate courts have ignored or glossed over for several decades. It is prayed that this Court accept jurisdiction over this cause for further briefing, oral argument, and consideration for the entry of just relief.

Respectfully submitted,

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Dated: July 9, 2020

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do with safety concerns or other innocuous matters but rather are crafted to secure Title 46 jurisdiction for the Government so it can prosecute such individuals in district courts for drug trafficking on the high seas.

## **APPENDIX A**

2020 WL 1867907

Only the Westlaw citation is currently available.

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007.

See also U.S. Ct. of App. 11th Cir. Rule 36-2.  
United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

Italo Ebaristo **NAPA MOREIRA**,  
Defendant-Appellant.

No. 19-12853

|

Non-Argument Calendar

|

(April 14, 2020)

### Synopsis

**Background:** Defendant pled guilty in the United States District Court for the Southern District of Florida, 1:19-cr-20069-KMM-3, [K. Michael Moore](#), Chief Judge, of conspiracy to possess with intent to distribute a controlled substance while on board a vessel subject to jurisdiction of the United States, pursuant to Maritime Drug Law Enforcement Act (MDLEA). Defendant appealed.

**Holdings:** The Court of Appeals held that:

[1] district court did not commit plain error in failing to find a facial due process violation in the lack of a minimum contacts or nexus requirement in MDLEA;

[2] lack of a minimum contacts or nexus requirement in MDLEA did not violate due process as applied;

[3] guilty plea waived as-applied challenge to MDLEA under privilege against self-incrimination;

[4] district court did not commit plain error in failing to find MDLEA provision governing a federal official's request for claim of nationality or registry facially violated privilege against self-incrimination; and

[5] district court did not commit plain error in failing to find MDLEA provision governing request for claim of nationality or registry was unconstitutionally vague.

Affirmed.

West Headnotes (7)

**[1]      Criminal Law** **Constitutional questions**

Plain error review applied to defendant's arguments challenging constitutionality of Maritime Drug Law Enforcement Act (MDLEA) as violative of due process and privilege against self-incrimination following his guilty plea to drug conspiracy under MDLEA, where defendant failed to challenge constitutionality of MDLEA before district court. [U.S. Const. Amend. 5](#); [46 U.S.C.A. §§ 70503\(a\)\(1\), 70503\(e\)\(1\), 70506\(b\)](#).

**[2]      Criminal Law** **Constitutional questions**

District court did not commit plain error in failing to find that Maritime Drug Law Enforcement Act (MDLEA), providing for prosecution of a foreign national for drug trafficking aboard a stateless vessel on the high seas, facially violated due process on the basis of its lack of requirement that the government prove that a defendant had minimum contacts with, and committed an offense that had a nexus to, the United States, where there was no precedent from Court of Appeals or Supreme Court applying the minimum contacts standard to MDLEA, and Court of Appeals' precedent foreclosed any "nexus" claim. [U.S. Const. Amend. 5](#); [46 U.S.C.A. § 70503\(a\)\(1\)](#).

**[3]      Constitutional Law** **Extraterritorial application of penal laws**

**Criminal Law** **Offenses on the high seas or beyond the jurisdiction of any state**

Absence of a requirement in Maritime Drug Law Enforcement Act (MDLEA) that the government

prove defendant had minimum contacts with, and committed an offense that had a nexus to, the United States did not violate due process as applied to defendant who pled guilty to drug conspiracy under MDLEA, where defendant was present aboard a stateless vessel thereby conferring extraterritorial jurisdiction. [U.S. Const. Amend. 5; 46 U.S.C.A. § 70503\(a\) \(1\).](#)

**[4] [Criminal Law](#) 🔑 [Waiver of Rights, Defenses, and Objections](#)**

Defendant's guilty plea waived his as-applied challenge, under Fifth Amendment privilege against self-incrimination, to provision of Maritime Drug Law Enforcement Act (MDLEA) governing a federal official's request for a claim of nationality or registry. [U.S. Const. Amend. 5; 46 U.S.C.A. § 70502\(d\)\(1\)\(B\).](#)

**[5] [Criminal Law](#) 🔑 [Constitutional questions](#)**

District court did not commit plain error in failing to find that Maritime Drug Law Enforcement Act (MDLEA) provision governing a federal official's request for a claim of nationality or registry facially violated Fifth Amendment privilege against self-incrimination as applied in *Miranda*, where no precedent from Court of Appeals or Supreme Court held that a federal official's request for a claim of nationality or registry constituted a custodial interrogation. [U.S. Const. Amend. 5; 46 U.S.C.A. § 70502\(d\) \(1\)\(B\).](#)

**[6] [Criminal Law](#) 🔑 [Points and authorities](#)**

Defendant abandoned appellate review of any argument that Maritime Drug Law Enforcement Act (MDLEA) provision governing a federal official's request for a claim of nationality or registry was unconstitutionally vague in violation of due process; claim was not plainly and prominently raised, as defendant's initial brief referred to provision in a footnote within a separate argument section of brief. [U.S. Const. Amend. 5; 46 U.S.C.A. § 70502\(d\)\(1\)\(B\).](#)

**[7] [Criminal Law](#) 🔑 [Constitutional questions](#)**

District court did not commit plain error in failing to find that Maritime Drug Law Enforcement Act (MDLEA) provision governing a federal official's request for a claim of nationality or registry was unconstitutionally vague in violation of due process, as applied to defendant who pled guilty to drug conspiracy under MDLEA, where no binding precedent from Court of Appeals or Supreme Court supported that assertion, and Court of Appeals had repeatedly rejected constitutional vagueness challenges to the jurisdictional provisions in MDLEA's predecessors, as well as due process claims regarding exercise of extraterritorial jurisdiction under MDLEA. [U.S. Const. Amend. 5; 46 U.S.C.A. § 70502\(d\)\(1\)\(B\).](#)

### Attorneys and Law Firms

[Jonathan Colan](#), Emily M. Smachetti, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, Miami FL, [Kathryn Dalzell](#), Assistant U.S. Attorney, U.S. Attorney's Office, Miami, FL, for Plaintiff-Appellee

[Martin Alan Feigenbaum](#), [Martin A. Feigenbaum](#), Esq., Surfside, FL, for Defendant-Appellant

Appeal from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:19-cr-20069-KMM-3

Before [NEWSOM](#), [LAGOA](#), and [HULL](#), Circuit Judges.

### Opinion

PER CURIAM:

\*1 Italo Ebaristo [Napa Moreira](#) appeals his conviction for conspiracy to possess with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of [46 U.S.C. §§ 70503\(a\) \(1\), 70506\(b\)](#). He raises three arguments on appeal. First, he asserts that the statute governing his offense, the Maritime Drug Law Enforcement Act ("MDLEA"), is unconstitutional under the Due Process Clause because it does not require the government to prove that the defendant had "minimum

contacts" with, and committed an offense that has a "nexus" to, the United States. Second, he contends that 46 U.S.C. § 70502(d)(1)(B), the provision in the MDLEA governing a federal official's request for a claim of nationality or registry, violates the Fifth Amendment privilege against self-incrimination under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Third, he argues that § 70502(d)(1)(B) is unconstitutionally vague in light of *Johnson v. United States*, — U.S. —, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015).

We will affirm.

## I

A grand jury indicted **Napa Moreira**<sup>1</sup> and three co-defendants for conspiracy to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1), 70506(b) (Count 1), and possession with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70503(a)(1) and 18 U.S.C. § 2 (Count 2).

**Napa Moreira** entered into a written plea agreement in which he agreed to plead guilty to Count 1 in return for the government's promise to dismiss Count 2 at sentencing. The stipulated factual proffer provided that the U.S. Coast Guard intercepted a vessel matching the description of a "Low Profile Go-Fast" approximately 386 nautical miles south of Puerto Quetzal, Guatemala, in international waters. After boarding the vessel, the Coast Guard located and seized 46 bales of contraband that tested positive for cocaine and weighed approximately 1,852 kilograms. **Napa Moreira** was one of four crew members aboard the vessel. The proffer provided that, because neither **Napa Moreira** nor the other crew members claimed nationality for the vessel when questioned, and the vessel did not have any indicia of nationality, it was subject to the jurisdiction of the United States as a vessel without nationality.

A magistrate judge held a change of plea hearing with the parties' consent. At the hearing, the government read the factual proffer and **Napa Moreira** pleaded guilty. The magistrate judge entered a report and recommendation, recommending that the district court accept **Napa Moreira**'s plea as to Count 1 and adjudge him guilty.

The district court adopted the Report and Recommendation and, accepting **Napa Moreira**'s plea, found him guilty. It sentenced **Napa Moreira** to 135 months' imprisonment, followed by two years of supervised release, as to Count 1. At the government's request, the court dismissed Count 2.

\*2 **Napa Moreira** appealed.

## II

[1] As an initial matter, plain-error review applies to each of **Napa Moreira**'s three arguments because he failed to challenge the constitutionality of the MDLEA before the district court. While we ordinarily review the constitutionality of the statute of conviction *de novo*, a defendant's claims raised for the first time on appeal are reviewed for plain error. *United States v. Wright*, 607 F.3d 708, 715 (11th Cir. 2010) (applying plain-error review to Commerce Clause challenge). An error is not plain if there is no precedent from this Court or the Supreme Court directly resolving the issue. *United States v. Vereen*, 920 F.3d 1300, 1312 (11th Cir. 2019). Further, "we are bound to follow [our] prior binding precedent unless and until it is overruled by this [C]ourt en banc or by the Supreme Court." *United States v. Vega-Castillo*, 540 F.3d 1235, 1236 (11th Cir. 2008) (per curiam) (quotation omitted).

## III

**Napa Moreira** first challenges the constitutionality of the MDLEA under the Due Process Clause. "The Due Process Clause prohibits the exercise of extraterritorial jurisdiction over a defendant when it would be arbitrary or fundamentally unfair." *United States v. Baston*, 818 F.3d 651, 669 (11th Cir. 2016) (quotation omitted). A defendant challenging the facial validity of a statute must show that "no set of circumstances exists under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987).

Exercising its authority under the Piracies and Felonies Clause, U.S. Const. art. I, § 8, cl. 10, Congress enacted the MDLEA to define and punish felonies committed on the high seas. *United States v. Campbell*, 743 F.3d 802, 805 (11th Cir. 2014). The MDLEA prohibits, among other offenses, conspiracy to possess with intent to distribute a controlled substance while on board "a vessel subject to the jurisdiction of the United States." 46 U.S.C. §§ 70503(a)(1), (e)(1),

70506(b). Its provisions apply even when the defendant's offense was "committed outside the territorial jurisdiction of the United States." *Id.* § 70503(b).

The MDLEA describes a number of circumstances in which a vessel is subject to the jurisdiction of the United States, including when it is "a vessel without nationality." *Id.* § 70502(c)(1)(A). A vessel without nationality includes "a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel." *Id.* § 70502(d)(1)(B).

**Napa Moreira** asserts that the MDLEA is unconstitutional because it does not require the government to prove that the defendant had "minimum contacts" with, and committed an offense that has a "nexus" to, the United States. Because we have previously rejected this argument, **Napa Moreira**'s challenge fails under plain-error review.

In *Campbell*, we held that "the conduct proscribed by the [MDLEA] need not have a nexus to the United States because universal and protective principles support its extraterritorial reach." 743 F.3d at 810. We explained that the Piracies and Felonies Clause empowers Congress to prosecute crimes committed on the high seas and, given that trafficking narcotics is "condemned universally by law-abiding nations," it is not "fundamentally unfair" to punish those who traffic drugs on the high seas. *Id.* (quotation omitted). We further stated that the prosecution of a foreign national for "drug trafficking aboard [a] stateless vessel[ ] on the high seas" is not prohibited by the Due Process Clause, as the MDLEA "provides clear notice that all nations prohibit" such conduct. *Id.* at 812.

\*3 [2] [3] Here, **Napa Moreira** fails to demonstrate that the absence of a "minimum contacts" or "nexus" requirement in the MDLEA violates the Due Process Clause, facially or as applied to his case, under plain-error review. He points to no precedent from this Court or the Supreme Court applying the "minimum contacts" standard to the MDLEA and concedes that his "nexus" claim is foreclosed by our precedent. Moreover, he fails to demonstrate that the MDLEA is unconstitutional as applied to him, given that his presence aboard a stateless vessel is sufficient to confer extraterritorial jurisdiction, and we do not require the government to show that his offense had a nexus to the United States.

## IV

**Napa Moreira** next argues that § 70502(d)(1)(B) of the MDLEA violates the Fifth Amendment's constitutional guarantees as applied in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). Asserting that those aboard a vessel intercepted by the United States are "in custody" for purposes of *Miranda*, **Napa Moreira** argues that the absence of any standards in the MDLEA that require federal officials to provide a *Miranda* warning violates the Fifth Amendment. He contends that the lack of standards governing an official's request for a claim of nationality or registry, including a requirement that the official apprise a crew member of the legal consequences of his failure to respond, is also unconstitutional, given that the crew member's response may subject him to prosecution in the United States.

[4] [5] To the extent that **Napa Moreira** asserts that the MDLEA is unconstitutional as applied to the facts of his case, his claim is waived by his guilty plea. *See Class v. United States*, — U.S. —, 138 S. Ct. 798, 804–05, 200 L.Ed.2d 37 (2018). In addition, the assertion that § 70502(d)(1)(B) is facially unconstitutional in light of *Miranda* fails under plain-error review. *See Wright*, 607 F.3d at 715. **Napa Moreira** does not point to any precedent from this Court or the Supreme Court holding that a federal official's request for a claim of nationality or registry constitutes a custodial interrogation. *See Vereen*, 920 F.3d at 1312.

In fact, although we have not considered a constitutional challenge to any provision of the MDLEA, including § 70502(d)(1)(B), on the basis that it violates the Fifth Amendment privilege against self-incrimination as applied in *Miranda*, our prior precedent still forecloses his facial challenge. "This [C]ircuit has long recognized that the Coast Guard's routine stop, boarding and inspection of an American vessel on the high seas does not normally rise to the level of custodial detention thus requiring *Miranda* warnings." *United States v. Rioseco*, 845 F.2d 299, 302–03 (11th Cir. 1988) (per curiam). The Court in *Rioseco*, for example, concluded that the defendant was not in custody for purposes of *Miranda* when Coast Guard officers, having probable cause, initially boarded the vessel and ordered the crew members to remain in a particular area of the boat. *Id.* at 303. It determined that an ordinary man would not believe that he was in custody, given that the officers did not tell the defendant "that he was

in custody or under arrest" and their conduct "was simply routine procedure in a usual boarding action." *Id.*

## V

[6] Finally, **Napa Moreira** argues that § 70502(d)(1)(B) of the MDLEA does not put ordinary people, such as those interdicted on the high seas, on notice that they may be subject to the jurisdiction of, and prosecution within, the United States, and is therefore unconstitutionally vague under *Johnson v. United States*, — U.S. —, 135 S. Ct. 2551, 192 L.Ed.2d 569 (2015).

**Napa Moreira** abandoned any argument that § 70502(d)(1)(C) is unconstitutionally vague because he failed to properly raise it in his initial brief. *United States v. Britt*, 437 F.3d 1103, 1104–05 (11th Cir. 2006) (per curiam). **Napa Moreira**'s reference § 70502(d)(1)(C) in a footnote within a separate argument section in his initial brief is not sufficient to "plainly and prominently" raise a challenge to the constitutionality of

that provision. See *Brown v. United States*, 720 F.3d 1316, 1332 (11th Cir. 2013) (quotation omitted).

\*4 [7] In addition, **Napa Moreira** cannot show plain error, as he points to no binding precedent from this Court or the Supreme Court that supports his assertion. See *Wright*, 607 F.3d at 715; *Vereen*, 920 F.3d at 1312. Furthermore, this Court has repeatedly rejected constitutional vagueness challenges to the jurisdictional provisions in the MDLEA's predecessors, as well as due process claims regarding the exercise of extraterritorial jurisdiction under the MDLEA. See, e.g., *Campbell*, 743 F.3d at 810–12; *United States v. Marino-Garcia*, 679 F.2d 1373, 1383–84 (11th Cir. 1982). His argument therefore fails.

## AFFIRMED.

### All Citations

--- Fed.Appx. ----, 2020 WL 1867907

### Footnotes

1 Although the district court proceedings referred to the defendant as "Moreira," on appeal defense counsel refers to him as "Napa." For clarity, we use both names.

## **APPENDIX B**

Feb 5, 2019

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

ANGELA E. NOBLE  
CLERK U.S. DIST. CT.  
S.D. OF FLA. - MIAMI

Case No. **19-20069-CR-MOORE/BECERRA**

**46 U.S.C. § 70506(b)**

**46 U.S.C. § 70503(a)(1)**

**46 U.S.C. § 70507(a)**

**UNITED STATES OF AMERICA**

**vs.**

**JOSE MANUEL CAICEDO VERA,  
JOSE SERAPIO CUERO TENORIO,  
ITALO EBARISTO NAPA MOREIRA, and  
EVER VALENCIA PRADO,**

**Defendants.**

**INDICTMENT**

The Grand Jury charges that:

**COUNT 1**

Beginning on an unknown date and continuing through on or about January 5, 2019, upon the high seas and elsewhere outside the jurisdiction of any particular State or district, the defendants,

**JOSE MANUEL CAICEDO VERA,  
JOSE SERAPIO CUERO TENORIO,  
ITALO EBARISTO NAPA MOREIRA, and  
EVER VALENCIA PRADO,**

did knowingly and willfully combine, conspire, confederate and agree with each other and with other persons unknown to the Grand Jury, to possess with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of Title 46, United States Code, Section 70503(a)(1); all in violation of Title 46, United States Code, Section 70506(b).

With respect to all defendants, the controlled substance involved in the conspiracy attributable to them as a result of their own conduct, and the conduct of other conspirators reasonably foreseeable to them, is five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine, in violation of Title 46, United States Code, Section 70506(a) and Title 21, United States Code, Section 960(b)(1)(B).

**COUNT 2**

On or about January 5, 2019, upon the high seas and elsewhere outside the jurisdiction of any particular State or district, the defendants,

**JOSE MANUEL CAICEDO VERA,  
JOSE SERAPIO CUERO TENORIO,  
ITALO EBARISTO NAPA MOREIRA, and  
EVER VALENCIA PRADO,**

did knowingly and intentionally possess with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of Title 46, United States Code, Section 70503(a)(1) and Title 18, United States Code, Section 2.

Pursuant to Title 46, United States Code, Section 70506(a) and Title 21, United States Code, Section 960(b)(1)(B), it is further alleged that this violation involved five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine.

**FORFEITURE ALLEGATIONS**

1. The allegations of Counts 1 and 2 of this Indictment are re-alleged and incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of property in which the defendants, **JOSE MANUEL CAICEDO VERA, JOSE SERAPIO CUERO TENORIO, ITALO EBARISTO NAPA MOREIRA, and EVER VALENCIA PRADO**, have an interest.

2. Upon conviction of either of the violations alleged in Counts 1 and 2 of this Indictment, the defendants so convicted shall forfeit to the United States any property that is used or intended for use to commit, or facilitate the commission of, such violations.

All pursuant to Title 46, United States Code, Section 70507(a), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable by Title 28, United States Code, Section 2461(c).

A TRUE BILL

~~FOREPERSON~~

Ariana Fajardo Orshan  
ARIANA FAJARDO ORSHAN  
UNITED STATES ATTORNEY

Robert J. Emery  
ROBERT J. EMERY  
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. \_\_\_\_\_

v.

JOSE MANUEL CAICEDO VERA, et al.

## CERTIFICATE OF TRIAL ATTORNEY\*

Defendants. \_\_\_\_\_ /

## Superseding Case Information:

Court Division: (Select One)

 Miami     Key West  
 FTL     WPB     FTPNew Defendant(s) \_\_\_\_\_  
Number of New Defendants \_\_\_\_\_  
Total number of counts \_\_\_\_\_

Yes \_\_\_\_\_ No \_\_\_\_\_

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) Yes  
List language and/or dialect Spanish
4. This case will take 5 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I    0 to 5 days	<input checked="" type="checkbox"/> Petty
II    6 to 10 days	<input type="checkbox"/> Minor
III    11 to 20 days	<input type="checkbox"/> Misdem.
IV    21 to 60 days	<input type="checkbox"/> Felony
V    61 days and over	<input type="checkbox"/>

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge: Lenard

Case No. \_\_\_\_\_

(Attach copy of dispositive order)

Has a complaint been filed in this matter?

(Yes or No) Yes

If yes:

Magistrate Case No. \_\_\_\_\_

[will insert when issued] \_\_\_\_\_

Related Miscellaneous numbers:

Defendant(s) in federal custody as of \_\_\_\_\_

January 29, 2019

Defendant(s) in state custody as of \_\_\_\_\_

\_\_\_\_\_

Rule 20 from the District of \_\_\_\_\_

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes \_\_\_\_\_ No

*WT* *10*  
 ROBERT J. EMERY  
 ASSISTANT UNITED STATES ATTORNEY  
 COURT I.D. No. A5501892

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JOSE MANUEL CAICEDO VERA

Case No: \_\_\_\_\_

Count #: 1

Conspiracy to possess with intent to distribute cocaine on board a vessel subject to  
the jurisdiction of the United States

Title 46, United States Code, Section 70506(b)

\*Max. Penalty: Life Imprisonment

Count #: 2

Possession with intent to distribute cocaine on board a vessel subject to the jurisdiction  
of the United States

Title 46, United States Code, Section 70503(a)

\*Max. Penalty: Life Imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: JOSE SERAPIO CUERO TENORIO

Case No: \_\_\_\_\_

Count #: 1

Conspiracy to possess with intent to distribute cocaine on board a vessel subject to  
the jurisdiction of the United States

Title 46, United States Code, Section 70506(b)

\*Max. Penalty: Life Imprisonment

Count #: 2

Possession with intent to distribute cocaine on board a vessel subject to the jurisdiction  
of the United States

Title 46, United States Code, Section 70503(a)

\*Max. Penalty: Life Imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: ITALO EBARISTO NAPA MOREIRA

Case No: \_\_\_\_\_

Count #: 1

Conspiracy to possess with intent to distribute cocaine on board a vessel subject to  
the jurisdiction of the United States

Title 46, United States Code, Section 70506(b)

\*Max. Penalty: Life Imprisonment

Count #: 2

Possession with intent to distribute cocaine on board a vessel subject to the jurisdiction  
of the United States

Title 46, United States Code, Section 70503(a)

\*Max. Penalty: Life Imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: EVER VALENCIA PRADO

Case No: \_\_\_\_\_

Count #: 1

Conspiracy to possess with intent to distribute cocaine on board a vessel subject to  
the jurisdiction of the United States

Title 46, United States Code, Section 70506(b)

\*Max. Penalty: Life Imprisonment

Count #: 2

Possession with intent to distribute cocaine on board a vessel subject to the jurisdiction  
of the United States

Title 46, United States Code, Section 70503(a)

\*Max. Penalty: Life Imprisonment

**\*Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

## **APPENDIX C**

**UNITED STATES DISTRICT COURT**  
**Southern District of Florida**  
**Miami Division**

**UNITED STATES OF AMERICA**  
**v.**  
**ITALO EBARIsto NAPA MOREIRA (3)**

**JUDGMENT IN A CRIMINAL CASE**

Case Number: **113C 1:19CR20069**  
USM Number: **17968-104**

Counsel For Defendant: **Martin A. Feigenbaum**  
Counsel For The United States: **Sharad A. Motiani**  
Court Reporter: **Gilda Pastor-Hernandez**

**The defendant pleaded guilty to Count One of a Two Count Indictment.**

The defendant is adjudicated guilty of these offenses:

<b><u>TITLE &amp; SECTION</u></b>	<b><u>NATURE OF OFFENSE</u></b>	<b><u>OFFENSE ENDED</u></b>	<b><u>COUNT</u></b>
46 U.S.C. § 70506(b)	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	01/05/2019	1

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.

**All remaining counts are dismissed on the motion of the government.**

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: **7/17/2019**

**K. Michael Moore**

Digitally signed by K. Michael Moore  
DN: cn=K. Michael Moore, o=Southern District of Florida, ou=United States District Court, email=k\_michael\_moore@flsd.uscourts.gov, c=US  
Date: 2019.07.17 16:32:15 -04'00'

**K. MICHAEL MOORE**  
**United States Chief District Judge**

Date: July 17th, 1951

**DEFENDANT: ITALO EBARISTO NAPA MOREIRA (3)  
CASE NUMBER: 113C 1:19CR20069**

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **135 Months as to Count One**.

**The court makes the following recommendations to the Bureau of Prisons:**

## Designation to a facility as close as possible to family in South Florida

**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.

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## UNITED STATES MARSHAL

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DEPUTY UNITED STATES MARSHAL

**DEFENDANT: ITALO EBARIsto NAPA MOREIRA (3)**

**CASE NUMBER: 113C 1:19CR20069**

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **Two (2) Years as to Count One**.

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 not possess a firearm, ammunition, destructive device, or any other dangerous weapon.**

**The defendant shall cooperate in the collection of DNA as directed by the probation officer.**

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: ITALO EBARISTO NAPA MOREIRA (3)**

**CASE NUMBER: 113C 1:19CR20069**

**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.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

**DEFENDANT: ITALO EBARISTO NAPA MOREIRA (3)**

**CASE NUMBER: 113C 1:19CR20069**

**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>
<b>TOTALS</b>	\$100.00	\$0.00	\$0.00

\*\*Assessment due immediately unless otherwise ordered by the Court.

**DEFENDANT: ITALO EBARIsto NAPA MOREIRA (3)**

**CASE NUMBER: 113C 1:19CR20069**

**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.

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.

## **APPENDIX D**

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. § 70502

Formerly cited as 46 App. USCA § 1903

§ 70502. Definitions

Effective: October 13, 2008

[Currentness](#)

**(a) Application of other definitions.**--The definitions in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to this chapter.

**(b) Vessel of the United States.**--In this chapter, the term “vessel of the United States” means--

(1) a vessel documented under chapter 121 of this title or numbered as provided in chapter 123 of this title;

(2) a vessel owned in any part by an individual who is a citizen of the United States, the United States Government, the government of a State or political subdivision of a State, or a corporation incorporated under the laws of the United States or of a State, unless--

(A) the vessel has been granted the nationality of a foreign nation under article 5 of the 1958 Convention on the High Seas; and

(B) a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States who is authorized to enforce applicable provisions of United States law; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was sold to a person not a citizen of the United States, placed under foreign registry, or operated under the authority of a foreign nation, whether or not the vessel has been granted the nationality of a foreign nation.

**(c) Vessel subject to the jurisdiction of the United States.**--

(1) **In general.**--In this chapter, the term “vessel subject to the jurisdiction of the United States” includes--

(A) a vessel without nationality;

**(B)** a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas;

**(C)** a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

**(D)** a vessel in the customs waters of the United States;

**(E)** a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and

**(F)** a vessel in the [contiguous zone of the United States](#), as defined in [Presidential Proclamation 7219](#) of September 2, 1999 ([43 U.S.C. 1331](#) note), that--

**(i)** is entering the United States;

**(ii)** has departed the United States; or

**(iii)** is a hovering vessel as defined in section 401 of the Tariff Act of 1930 ([19 U.S.C. 1401](#)).

**(2) Consent or waiver of objection.**--Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (1)(C) or (E)--

**(A)** may be obtained by radio, telephone, or similar oral or electronic means; and

**(B)** is proved conclusively by certification of the Secretary of State or the Secretary's designee.

**(d) Vessel without nationality.--**

**(1) In general.**--In this chapter, the term "vessel without nationality" includes--

**(A)** 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;

**(B)** a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and

**(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.

**(2) Response to claim of registry.**--The response of a foreign nation to a claim of registry under paragraph (1)(A) or (C) 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.

**(e) Claim of nationality or registry.**--A claim of nationality or registry under this section includes only--

**(1)** possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;

**(2)** flying its nation's ensign or flag; or

**(3)** a verbal claim of nationality or registry by the master or individual in charge of the vessel.

**(f) Semi-submersible vessel; submersible vessel.**--In this chapter:

**(1) Semi-submersible vessel.**--The term "semi-submersible vessel" means any watercraft constructed or adapted to be capable of operating with most of its hull and bulk under the surface of the water, including both manned and unmanned watercraft.

**(2) Submersible vessel.**--The term "submersible vessel" means a vessel that is capable of operating completely below the surface of the water, including both manned and unmanned watercraft.

**CREDIT(S)**

([Pub.L. 109-304](#), § 10(2), Oct. 6, 2006, 120 Stat. 1685; [Pub.L. 109-241, Title III, § 303](#), July 11, 2006, 120 Stat. 527; [Pub.L. 110-181](#), Div. C, Title XXXV, § 3525(a)(6), (b), Jan. 28, 2008, 122 Stat. 601; [Pub.L. 110-407, Title II, § 203](#), Oct. 13, 2008, 122 Stat. 4300.)

[Notes of Decisions \(72\)](#)

46 U.S.C.A. § 70502, 46 USCA § 70502

Current through P.L. 114-254. Also includes P.L. 114-256 to 114-280, 114-282 to 114-288, 114-290 to 114-314, 114-316, 114-318 to 114-321, 114-325, and 114-326. Title 26 current through 114-329.

## **APPENDIX E**

## **United States Constitution Amendment Five**

**No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.**