

No. 20-5087

IN THE SUPREME COURT OF THE UNITED STATES

ITALO EBARISTO NAPA MOREIRA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record

BRIAN C. RABBITT
Acting Assistant Attorney General

JAMES I. PEARCE
Attorney

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

QUESTIONS PRESENTED

Petitioner was convicted of committing drug-related offenses while on board a vessel in international waters, in violation of the Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. 70501 et seq. The questions presented are:

1. 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.

2. Whether the Coast Guard must provide warnings under Miranda v. Arizona, 384 U.S. 436 (1966), when boarding a vessel and questioning its crew about the vessel's nationality.

3. Whether 46 U.S.C. 70502(d)(1)(B) -- a provision of the MDLEA under which a vessel is deemed to be without nationality if the master or individual in charge fails to make a claim of nationality or registry -- is void for vagueness.

ADDITIONAL RELATED PROCEEDINGS

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

United States v. Napa Moreira, No. 19-cr-20069 (Feb. 5, 2019)

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

United States v. Napa Moreira, No. 19-12853, (Apr. 14, 2020)

IN THE SUPREME COURT OF THE UNITED STATES

ITALO EBARISTO NAPA MOREIRA, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A5) is not published in the Federal Reporter but is reprinted at 810 Fed. Appx. 702.

JURISDICTION

The judgment of the court of appeals was entered on April 14, 2020. The petition for a writ of certiorari was filed on July 16, 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 Florida, petitioner was convicted on

one count of conspiring 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, in violation of 46 U.S.C. 70503(a)(1) and 70506(b). Judgment 1; see Pet. App. A2. The district court sentenced petitioner to 135 months of imprisonment, to be followed by two years of supervised release. Judgment 2-3; see Pet. App. C2-C3. The court of appeals affirmed. Pet. App. A1-A5.

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); 46 U.S.C. 70506(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 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." 46 U.S.C. 70502(d)(1)(B).

In January 2019, the U.S. Coast Guard intercepted a vessel approximately 386 nautical miles south of Puerto Quetzal, Guatemala, in international waters. Pet. App. A3; Presentence

Investigation Report (PSR) ¶ 6. Petitioner was one of four crew members on board. Pet. App. A3. The vessel had no indicia of nationality, and neither petitioner nor the other crew members claimed any nationality for it when questioned. Ibid. The Coast Guard searched the vessel and found 46 bales (approximately 1852 kilograms) of cocaine. Ibid.

A federal grand jury in the Southern District of Florida indicted petitioner and the other crew members on one count of conspiring to possess with intent to distribute and possessing with intent to distribute five kilograms or more of cocaine while on a vessel subject to the jurisdiction of the United States, in violation of the MDLEA; and one count of possession with intent to distribute five kilograms or more of cocaine while on a vessel subject to the jurisdiction of the United States, in violation of the MDLEA. Indictment 1-3; Pet. App. B1-B3. In accordance with a plea agreement, petitioner pleaded guilty to the conspiracy count and the government agreed to the dismissal of the possession count. See Pet. App. C1; D. Ct. Doc. 42 (Apr. 9, 2019). The district court sentenced petitioner to 135 months of imprisonment. Pet. App. C2.

2. The court of appeals affirmed in an unpublished per curiam opinion. Pet. App. A3-A5. The court observed that petitioner had failed to present any of his claims on appeal to the district

court, and that plain-error review therefore applied. Id. at A3; see Fed. R. Crim. P. 52(b). It found no such error.

The court of appeals first rejected petitioner's contention that the MDLEA violates the Due Process Clause because it does not require the government to prove a specific connection between the offense conduct and the United States. Pet. App. A3-A4. The court determined that "[petitioner's] challenge fails under plain-error review" because the court had previously "held that 'the conduct proscribed by the MDLEA need not have a nexus to the United States.'" Id. at A4 (quoting United States v. Campbell, 743 F.3d 802, 810 (11th Cir.), cert. denied, 574 U.S. 1025 (2014)) (brackets omitted).

The court of appeals also rejected petitioner's contention that "the MDLEA violates the Fifth Amendment's constitutional guarantees as applied in" Miranda v. Arizona, 384 U.S. 436 (1966), because it does not require federal officials to provide Miranda warnings when questioning crew members about the nationality of their vessels. Pet. App. A4. The court determined that petitioner had "waived" any as-applied claim "by his guilty plea," and that his facial challenge could not satisfy the plain-error standard. Ibid. The court observed that it had previously held that "the Coast Guard's routine stop, boarding and inspection of [a] vessel on the high seas does not normally rise to the level of custodial detention * * * requiring Miranda warnings." Ibid. (quoting

United States v. Rioseco, 845 F.2d 299, 302-303 (11th Cir. 1988) (per curiam)).

Finally, the court of appeals rejected petitioner's contention that 46 U.S.C. 70502(d)(1)(B) -- the provision of the MDLEA under which a vessel is deemed to be without nationality if the master or individual in charge fails, on request, to make a claim of nationality or registry -- is void for vagueness. Pet. App. A5. The court found that petitioner "abandoned any argument that § 70502(d)(1)(C) is unconstitutionally vague because he failed to properly raise it in an initial brief." Ibid. And the court determined that petitioner could not show plain error, given that "no binding precedent * * * supports his assertion" and given that the court had previously rejected "constitutional vagueness challenges" to the MDLEA and its predecessor statutes. Ibid. (citing Campbell, 743 F.3d at 810-812; United States v. Marino-Garcia, 679 F.2d 1373, 1383-1384 (11th Cir. 1982), cert. denied, 459 U.S. 1114 (1983)).

ARGUMENT

Petitioner renews his contentions (Pet. 5-18) that prosecutions under the MDLEA in the absence of a connection between the offense conduct and the United States violate the Due Process Clause; that his questioning by the Coast Guard without warnings violated Miranda v. Arizona, 384 U.S. 436 (1966); and that 46 U.S.C. 70502(d)(1)(B)'s definition of stateless vessels is void

for vagueness. The court of appeals correctly determined that those contentions are subject only to plain-error review, and it correctly rejected them. Further review is unwarranted.

1. Petitioner contends (Pet. 9-13) that the Due Process Clause of the Fifth Amendment requires a connection or “nexus” between the offense conduct and the United States for prosecutions under the MDLEA. 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. The Court has repeatedly denied certiorari on the issue. See Lopez v. United States, No. 19-8513, 2020 WL 3405981 (June 22, 2020); Garcia Ramirez v. United States, 140 S. Ct. 1299 (2020) (No. 19-6546); Vargas v. United States, 140 S. Ct. 895 (2020) (No. 19-6039); Valencia v. United States, 140 S. Ct. 656 (2019) (No. 18-9263); Valencia v. United States, 140 S. Ct. 631 (2019) (No. 18-9328); Cruickshank v. United States, 139 S. Ct. 96 (2018) (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); 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); Brant-Epigmelio v. United States, 565 U.S. 1203 (2012) (No. 11-6306); Sanchez-Salazar v. United States, 556 U.S. 1185 (2009) (No. 08-8036); Aguilar v. United States, 556 U.S. 1184 (2009) (No. 08-7048). The same result is warranted here.

a. As an initial matter, the court of appeals correctly observed that, because petitioner had failed to raise his due-process contention in the district court, that contention is subject to review only for plain error. Pet. App. A3; see Fed. R. Crim. P. 52(b). To establish reversible plain error, a defendant must demonstrate (1) error (2) that is plain or obvious (3) that affected substantial rights and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. See, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009). The court of appeals determined that petitioner could not satisfy the plain-error standard, see Pet. App. A3-A4, and petitioner makes no meaningful effort to argue otherwise.

Petitioner contends (Pet. 5-9) that, under Class v. United States, 138 S. Ct. 798 (2018), “there is no procedural or substantive bar to [his] raising this issue.” Pet. 5 (capitalization and emphasis omitted). In Class, this Court held that a plea of guilty does not bar a criminal defendant from appealing a conviction on the ground that the statute of conviction violates the Constitution. See 138 S. Ct. at 801-802. But the government has not argued, and the court of appeals did not hold,

that the petitioner's guilty plea barred him from raising the due-process claim. The court instead relied on Class to bar only a case-specific Miranda claim. See Pet. App. A4; see also p. 11, infra. With respect to the due-process claim, the court found only that petitioner had forfeited it by failing to raise it in the district court, and that it was accordingly subject only to plain-error review. See Pet. App. A3-A4. Petitioner neither contests the forfeiture nor attempts to demonstrate plain error.

b. In any event, petitioner's argument does not show any error, plain or otherwise. 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 specifically 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, No. 15-2377, 2020 WL 284546 (1st Cir. Jan. 17, 2020) (ordering rehearing en banc on certain MDLEA issues relating to stateless vessels).

By contrast, the Ninth Circuit has read into the MDLEA a “nexus” requirement with respect to foreign-registered vessels, not as an element of the substantive offense but as a “‘judicial gloss’” on the MDLEA. United States v. Zakharov, 468 F.3d 1171, 1177 (2006) (quoting United States v. Klimavicius-Viloria, 144 F.3d 1249, 1257 (9th Cir. 1998), cert. denied, 528 U.S. 842 (1999)), cert. denied, 550 U.S. 927 (2007). 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.” United States v. Perlaza, 439 F.3d 1149, 1161 (2006) (brackets and citation omitted). Accordingly, no court of appeals would require the government to prove a specific connection between the offense conduct and the United States where, as here, the MDLEA is applied to an offense committed on a stateless vessel.

Petitioner invokes (Pet. 11-12) the Fifth Circuit's decision in United States v. Lawrence, 727 F.3d 386 (2013), cert. denied, 571 U.S. 1222 (2014), and the Second Circuit's decision in United States v. Yousef, 327 F.3d 56, cert. denied, 540 U.S. 933, and 540 U.S. 993 (2003). The courts in those cases asserted that the extraterritorial application of criminal law requires a connection between the United States and the criminal conduct abroad, see Lawrence, 727 F.3d at 396; Yousef, 327 F.3d at 111, but neither decision invalidated a conviction on that ground, and neither case involved application of the MDLEA. See Lawrence, 727 F.3d at 388-389, 396 (affirming conviction for conspiracy to possess drugs aboard an aircraft with intent to distribute, in violation of 21 U.S.C. 959(b) and 963); Yousef, 327 F.3d at 84, 111 (affirming conviction for conspiracy to bomb a civil aircraft registered in a foreign country, in violation of 18 U.S.C. 32(b)(3)). They thus presented no questions analogous to those involving a stateless vessel on the high seas, and neither opinion considered the issue in light of explicit congressional findings, like those about drug-trafficking contained in 46 U.S.C. 70501(1). Indeed, the Second and Fifth Circuits have precedent in accord with the decision below on the application of the MDLEA to stateless vessels. See United States v. Van Der End, 943 F.3d 98, 105 (2d Cir. 2019), petition for cert. pending, No. 19-8832 (filed June 26, 2020); Suerte, 291 F.3d at 375 (5th Cir.).

The decisions cited by petitioner accordingly do not indicate a conflict on the question presented here. And given the plain-error posture, this case would in any event be a poor vehicle for resolving such a conflict.

2. Petitioner next contends (Pet. 14-16) that the Coast Guard violated his rights under the Fifth Amendment by questioning him about the nationality of his vessel without providing Miranda warnings. That contention likewise does not warrant this Court's review.

First, the court of appeals correctly determined that petitioner had "waived" an as-applied Miranda claim "by his guilty plea." Pet. App. A4. 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." Brady v. United States, 397 U.S. 742, 748 (1970). "A valid guilty plea [thus] renders irrelevant -- and thereby prevents the defendant from appealing -- the constitutionality of case-related government conduct that takes place before the plea is entered." Class, 138 S. Ct. at 805. Just as a valid guilty plea relinquishes a Fourth Amendment claim, Haring v. Prosise, 462 U.S. 306, 320 (1983), it would also relinquish any challenge to questioning without Miranda warnings in this case.

Second, the court of appeals correctly observed that, because petitioner had failed to raise any Miranda claim in the district

court, such a claim is subject only to plain-error review. Pet. App. A3-A4. The court determined that petitioner's claim failed under plain-error review, see Pet. App. A4, and petitioner nowhere addresses that determination, see Pet. 14-16.

Finally, petitioner also fails to show that the MDLEA is defective under Miranda, either facially or as applied. "Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" Oregon v. Mathiason, 429 U.S. 492, 495 (1977) (per curiam). Courts of appeals have uniformly found that the Coast Guard's routine questioning of crew members during a boarding of the vessel does not amount to a custodial interrogation requiring Miranda warnings. See e.g., United States v. Li, 206 F.3d 78, 83 (1st Cir.) ("[N]otwithstanding any suspicion that the [vessel in question] was smuggling aliens into the United States, the Coast Guard's routine stop, boarding, and inspection of a vessel on the high seas is not considered 'custodial.'"), cert. denied, 531 U.S. 956 (2000); United States v. Rioseco, 845 F.2d 299, 303 (11th Cir. 1988) (per curiam) (similar); United States v. Gray, 659 F.2d 1296, 1301 (5th Cir. Oct. 1981) (similar); see also Berkemer v. McCarty, 468 U.S. 420, 428-435 (1984) (rejecting the claim that traffic stops inherently amount to Miranda custody). Petitioner identifies no decision from any court of appeals concluding otherwise.

3. Petitioner finally contends (Pet. 16-18) that the MDLEA's definition of a vessel without nationality is void for vagueness. That contention likewise does not warrant this Court's review.

As an initial matter, the court of appeals determined that petitioner "abandoned any argument that [the MDLEA] is unconstitutionally vague" by "fail[ing] to properly raise it in his initial brief." Pet. App. A5. The court stated that petitioner had made a reference to that claim "in a footnote," but that such a reference was insufficient to "raise a challenge to the constitutionality of that provision." Ibid. Petitioner offers no response to the court of appeals' abandonment determination. See Pet. 16-18.

In addition, the court of appeals correctly determined that, because petitioner failed to raise his claim of vagueness in the district court, that claim was subject to review only for plain error. Pet. App. A3, A5. The court explained that petitioner's claim failed under plain-error review, see id. at A5, and petitioner fails to address that holding, see Pet. 14-16.

In all events, petitioner's contention lacks merit. This Court has applied the void-for-vagueness doctrine to "two kinds of criminal laws": those that "define" the elements of criminal offenses and those that "fix the permissible sentences" for those offenses. Beckles v. United States, 137 S. Ct. 886, 892 (2017)

(emphasis omitted). But the United States' jurisdiction over a vessel for purposes of the MDLEA "is not an element of an offense" to be established at trial, but is instead a "preliminary question[] of law to be determined solely by the trial judge." 46 U.S.C. 70504(a); see United States v. Vilches-Navarrete, 523 F.3d 1, 19 (1st Cir.), cert. denied, 555 U.S. 897 (2008). Petitioner has thus failed to establish that the void-for-vagueness doctrine even applies to the provision he challenges. And even if the doctrine did apply, the provision would satisfy it. The MDLEA is "clear" both "that the possession of drugs with intent to distribute on a vessel without nationality violates United States law" and "about how the United States decides whether a vessel is stateless." United States v. Clark, 266 F. Supp. 3d 573, 588 (D. P.R. 2017); see 46 U.S.C. 70502(d)(1).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

BRIAN C. RABBITT
Acting Assistant Attorney General

JAMES I. PEARCE
Attorney

SEPTEMBER 2020