

## **APPENDIX**

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United States Court of Appeals, Eleventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,  
v.

Alexander Rafael SANTOS-SANTANA,  
Paulino **Vasquez-Rijo**, Defendants-Appellants.

No. 22-10367

1

Non-Argument Calendar

1

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Appeals from the United States District Court for the Southern District of Florida, D.C. Docket No. 1:21-cr-20384-BB-2

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Before Newsom, Grant, and Lagoa, Circuit Judges.

#### Opinion

PER CURIAM:

\*1 In this consolidated appeal, Alexander Santos-Santana and Paulino **Vasquez-Rijo** (collectively, "Defendants") challenge their convictions and sentences of 120 months' imprisonment for conspiracy to possess cocaine while on board a vessel subject to the jurisdiction of the United States. On appeal, Defendants make several arguments.

First, they argue that **46 U.S.C. § 70502(d)(1)(C)** of the Maritime Drug Law Enforcement Act ("MDLEA") is

facially invalid under the Felonies Clause, U.S. Const. art. I, § 8, cl. 10, because the MDLEA expands jurisdiction to vessels that make a verbal claim of nationality without any corroboration by the named nation. They contend that, under customary international law, a verbal claim of nationality without corroboration constitutes proof of the vessel's nationality, and that the Felonies Clause should be read in conjunction with customary international law because the clause contains international law terms. Santos-Santana also asks us to adopt the First Circuit's decision in **United States v. Davila-Reyes**, 23 F.4th 153 (1st Cir. 2022), *reh'g en banc granted, op. withdrawn*, 38 F.4th 288 (1st Cir. 2022), which held that Congress exceeded its power by defining a "vessel without nationality" to include vessels for which the crew claimed a nationality but the nation neither confirmed nor denied. They also argue that the MDLEA is unconstitutional as applied to them because the vessel was in the Dominican Republic's Exclusive Economic Zone ("EEZ"), which customary international law excludes from the high seas.

Second, Defendants contend that the district court clearly erred in determining that they did not qualify for safety-valve relief. While the United States Coast Guard ("USCG") found a firearm on board the boat Defendants were on, Defendants argue that there was no evidence that they possessed that firearm, as the firearm was found in a plastic bag underneath an unused engine in the rear of the boat and unloaded with no ammunition present on the boat. They argue that the district court applied the incorrect standard because it confused the safety valve with the firearm enhancement, pursuant to **U.S.S.G. § 2D1.1**. Third, Santos-Santana argues that the district court clearly erred in determining that he did not qualify for a minor-role reduction because he testified that **Vasquez-Rijo** had greater responsibility on the vessel than he did.

For the reasons discussed below, we affirm.

#### I. BACKGROUND

##### A. Factual Background Common to Both Defendants

In 2021, a federal grand jury charged Defendants each with one count of conspiracy to possess a controlled substance aboard a vessel subject to the jurisdiction of the United States,

in violation of § 46 U.S.C. § 70506(b) (Count One), and one count of possession with intent to distribute a controlled substance aboard a vessel subject to the jurisdiction of the United States, in violation of § 46 U.S.C. § 70506(a)(1) (Count Two). Both Defendants pleaded guilty, without a plea agreement, to Count One, with the understanding that the government would move to dismiss Count Two at the time of sentencing.

\*2 According to the stipulated factual proffers each signed by Defendants, on July 5, 2021, “a maritime patrol aircraft (MPA) detected a go-fast vessel (GFV) approximately 80 miles southwest of Mona Island, Puerto Rico, in international waters and upon the high seas.” The MPA observed two people and multiple packages on board the GFV with no flag or any other indicia of nationality. The USCG arrived on the scene and found Defendants on board the GFV. While neither identified themselves as the master of the GFV, **Vasquez-Rijo** made a verbal claim of Dominican nationality for the vessel. USCG contacted the Dominican Republic’s government, which could neither confirm nor deny the nationality of the GFV. The USCG boarding team recovered 12 bales consisting of approximately 357 kilograms of cocaine, and a shotgun. The parties stipulated that the vessel “was a vessel without nationality” and subject to United States jurisdiction, pursuant to § 46 U.S.C. § 70502(c).

At the change of plea hearing, both Defendants were sworn. In relevant part, the government summarized the factual basis as it appeared in the stipulated factual proffers, and both Defendants admitted to the facts as detailed. The district court found that the United States had jurisdiction over the vessel as a vessel without nationality, pursuant to § 70502(c). And the district court accepted each Defendant’s plea of guilty.

The U.S. Probation Office generated both Defendants’ individual presentence investigation reports (“PSI”), describing the offense conduct with the stipulated factual proffer. Each PSI further provided that the firearm found onboard was unloaded and no ammunition was located on the GFV. The PSIs stated that neither Defendant qualified for an aggravating or mitigating role adjustment because the evidence did not suggest that one of the conspirators was the captain or navigator of the vessel. The PSIs also stated that neither Defendant qualified for safety-valve relief under § U.S.S.G. § 5C1.2 because they possessed a firearm in connection with the offense.

Pursuant to § U.S.S.G. § 2D1.1, their base offense level was 36 because the offense involved at least 150 kilograms but less than 450 kilograms of cocaine. Pursuant to § 2D1.1(b)(1), they each received a two-level increase because there was a firearm aboard the vessel. Pursuant to § U.S.S.G. § 3E1.1(a) and (b), they each received a total 3-level reduction for their acceptance of responsibility, resulting in a total offense level of 35. They each were assigned zero criminal history points, resulting in a criminal history category of I. Santos-Santana’s PSI noted that Santos-Santana had been employed as a boat driver. The statutory maximum term of imprisonment for each was life imprisonment, and the minimum term was ten years. Based on their total offense level of 35 and criminal history category of I, each of their guideline ranges was 168 to 210 months’ imprisonment.

Santos-Santana objected to the two-level increase for possession of a firearm because there was no evidence that the firearm was used to commit the crime, no ammunition on the boat, and no evidence that he possessed the firearm or intended to possess the firearm. He objected that he should have received a two-level minor-role reduction to his offense level, arguing that his role compared to **Vasquez-Rijo**’s was minor because the evidence showed that he (1) did not obtain the boat; (2) did not have relationships with anyone in Colombia related to the conspiracy; (3) had no connection to the firearm; and (4) received instructions from **Vasquez-Rijo** as to his role in the conspiracy. He contended that **Vasquez-Rijo**’s conduct included planning and organizing the conspiracy while his conduct included accompanying **Vasquez-Rijo**. He also objected that he should have received safety-valve relief, pursuant to § U.S.S.G. § 5C1.2, despite the unloaded firearm found on the boat. He argued that constructive possession was insufficient to preclude safety-valve relief and that there was no evidence that he actually possessed the firearm in connection with the offense.

\*3 **Vasquez-Rijo** objected to the two-level increase pursuant to § 2D1.1(b)(1) because the firearm was unloaded, no ammunition was recovered aboard the vessel, and he did not claim ownership of the gun. He also argued that he should have received safety-valve relief, pursuant to § 5C1.2, because he did not actually possess the firearm, as it was found in a black plastic bag underneath an engine on

the vessel, and because there was no evidence that he induced anyone to possess the firearm.

The government responded that the two-level increase was proper because the firearm was present on the vessel and neither Defendant had shown that the connection between the firearm and the offense was clearly improbable. The government contended that Defendants' constructive possession of the firearm was sufficient to preclude safety-valve relief. The government argued that the firearm was connected to the offense because the vessel was small and contained both the firearm and the cocaine. The government also argued that Santos-Santana did not qualify for a minor-role reduction because the record did not support his claims about his role in the conspiracy; the conduct he was being held accountable for was attempting to smuggle 357 kilograms of cocaine through a vessel, for which his and **Vasquez-Rijo's** roles were the same.

### B. Vasquez-Rijo's Sentencing Hearing

At **Vasquez-Rijo's** sentencing hearing, the district court confirmed that both the government and **Vasquez-Rijo** agreed that the firearm was found in a black plastic trash bag underneath the secondary engine near the rear of the vessel. The district court asked the government where the firearm was in relation to the drugs, to which the government answered that the drugs, firearm, fuel drums, and spare engine were scattered and distributed throughout "a very small area of the boat," which was thirty-feet long with approximately twenty-feet of length constituting the vessel's interior.

As to his objections, **Vasquez-Rijo** argued that there was no evidence that he owned or brought the firearm on board the vessel nor evidence of who initially possessed the firearm, who brought the firearm on board, or the condition of the firearm when it was placed on the vessel. He argued that the firearm was unloaded, that he lacked access to ammunition, and that the firearm was not easily accessible because it was wrapped in a bag underneath an engine. He reiterated there was no evidence that he possessed the firearm or evidence to link the possession of the firearm to anyone involved in the instant offense conduct. As to safety-valve relief, he argued that he did not actually possess the firearm and that there was a difference between his two objections, i.e., the lower burden for safety-valve relief and the fact that a defendant may receive the firearm enhancement while still being eligible for safety-valve relief. In response, the government argued

that: it had satisfied its burden to show a firearm was present because it was undisputed a firearm was found on the vessel; **Vasquez-Rijo** failed to establish that it was not connected to drugs; and he was not eligible for safety-valve relief because he physically and constructively possessed the firearm by having dominion and control over the area of the vehicle in which it was found, given that there were only two people aboard the vessel.

The district court found the government satisfied its burden pursuant to **P**§ 2D1.1(b)(1) in showing that the firearm was present. While considering the fact that the firearm was unloaded and within a plastic bag, the district court noted that it was close in proximity to the drugs because it was in a small, 30-foot vessel and underneath an unconnected motor within the belly of the vessel. The district court concluded that "to find that the connection is clearly improbable would be to ignore the facts in this case." The district court overruled the objections, finding that the government met its burden by the greater weight of the evidence of proving the firearm enhancement applied. After confirming there were no further objections, the district court found that, with a total offense level of 35 and a criminal history category of I, **Vasquez-Rijo's** total Guideline range was 168 to 210 months' imprisonment. The district court imposed the mandatory minimum sentence of 120 months' imprisonment, followed by 5 years of supervised release. And the government moved to dismiss Count Two, which the district court granted.

### C. Santos-Santana's Sentencing Hearing

\*4 As to Santos-Santana, he testified to the following at his sentencing hearing. **Vasquez-Rijo** was involved in organizing the drug trip and obtaining the vessel, not Santos-Santana. **Vasquez-Rijo** had prior relationships with the individuals in Colombia because he had made two previous trips to Colombia for drugs, and he managed and supervised Santos-Santana on the trip. **Vasquez-Rijo** owned the firearm and never disclosed its purpose, and Santos-Santana never touched it. The firearm was never displayed or used during the offense conduct, and Santos-Santana did not try to induce **Vasquez-Rijo** into using or bringing it.

On cross-examination, Santos testified to the following. He first met **Vasquez-Rijo** when getting on the boat and only found out they were transporting cocaine, and not marijuana, when the drugs were placed on the vessel in Colombia. He worked before on boats as a sailor, acting as an aid to the

captain, but did not have sufficient experience to drive a boat from the Dominican Republic to Colombia. He, however, drove the vessel at times during the offense conduct; but he did not drive the boat after it left Colombia. His role was to provide gasoline to the engines, hold the GPS, and look out for law enforcement.

As to minor-role reduction, Santos-Santana argued that the relevant conduct for sentencing was transporting the cocaine because he was not involved in acquiring the vessel, did not have any relationships with regards to organizing and executing the trip, and had no connection to the firearm found on the vessel, unlike **Vasquez-Rijo**. He contended that **Vasquez-Rijo** had a better understanding of the scope and structure of the criminal activity, participated in the planning or organizing of the criminal activity, and exercised decision-making authority as captain of the vessel. As to safety-valve relief, he asserted that the firearm was not connected to the offense because he testified that he was not involved with the firearm. He contended that nothing in the record about his own conduct established possession of the firearm. And he informed the court he would not argue against **§ 2D1.1(b) (1)** enhancement.

The government largely adopted the arguments it made in **Vasquez-Rijo**'s sentencing hearing. It also argued that Santos-Santana was not credible and that he knew the purpose of the voyage, willingly participated in it, and knew of the existence of the firearm. The government argued he constructively possessed the firearm, noting that he was an experienced mariner, knew the conduct was illegal by looking out for law enforcement, and helped operate the GPS. And the government contended there was no distinction between him and his codefendant because they were both equally culpable.

As to the minor-role reduction, the district court found that Santos-Santana did not meet his burden and overruled his objection. The district court found that, based on the testimony, **Vasquez-Rijo** did not supervise the drug trip; rather, Defendants were coequal participants regarding the conspiracy, despite the fact they played different roles at times. The district court noted Santos-Santana testified that they were a team and that he was aware of the firearm before boarding the vessel and was aware there were drugs.

As to safety-valve relief, the district court found that the firearm, even though unloaded and in a bag, was in close proximity to the drugs, as it was inside the small vessel. The district court further found that the firearm was within Santos-

Santana's dominion and control during the offense conduct. As to the relevant conduct, the district court explained that he was on the vessel for a long period of time, operated the vessel, served as the lookout, operated the GPS at night, and was aware of the amount of drugs on board. Thus, the district court overruled his objection because Santos-Santana had not met his burden to prove that the firearm was not possessed in connection with the offense.

\*5 The district court found that, with a total offense level of 35 and a criminal history category of I, Santos-Santana's total Guideline range was 168 to 210 months' imprisonment. The district court imposed the mandatory minimum sentence of 120 months' imprisonment, followed by 5 years of supervised release. The government filed a motion to dismiss Count Two, which the district court granted.

\* \* \* \*

This consolidated appeal ensued.

## II. ANALYSIS

Our analysis is divided into three parts. First, we address Defendants' arguments about the MDLEA. Second, we address Defendants' safety-valve relief arguments. Last, we address Santos-Santana's minor-role reduction arguments.

### A. MDLEA

A district court's subject-matter jurisdiction "is a question of law that we review *de novo* even when it is raised for the first time on appeal." **United States v. Igúaran**, 821 F.3d 1335, 1336 (11th Cir. 2016). We review for clear error the district court's factual findings relevant to jurisdiction. *Id.* While parties may not stipulate to jurisdiction, they may "stipulate to facts that bear on our jurisdictional inquiry." **Id.** at 1337 (emphasis in original) (quoting **Eng'g Contractors Ass'n v. S. Fla. v. Metro Dade County**, 122 F.3d 895, 905 (11th Cir. 1997)). Further, arguments as to subject matter jurisdiction may not be waived. **United States v. De La Garza**, 516 F.3d 1266, 1271 (11th Cir. 2008).

Likewise, we review *de novo* the constitutionality of a criminal statute. **United States v. Wright**, 607 F.3d 708, 715

(11th Cir. 2010). Although a guilty plea generally waives a defendant's right to appeal his conviction, it does not waive the right to challenge the constitutionality of the statute underlying the conviction. See *Class v. United States*, 138 S. Ct. 798, 803 (2018). But when a non-jurisdictional constitutional challenge is raised for the first time on appeal, our review is only for plain error. *Wright*, 607 F.3d at 715; *United States v. Vereen*, 920 F.3d 1300, 1312 (11th Cir. 2019). Plain error occurs when “(1) there was error, (2) that was plain, (3) that affected the defendant's substantial rights, and (4) that seriously affected the ‘fairness, integrity, or public reputation of judicial proceedings.’” *Wright*, 607 F.3d at 715 (quoting *United States v. Jones*, 289 F.3d 1260, 1265 (11th Cir. 2002)). “When neither this Court nor the Supreme Court have resolved an issue, there can be no plain error in regard to that issue.” *Vereen*, 920 F.3d at 1312.

Under our prior-panel-precedent rule, “a prior panel's holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the

Supreme Court or by [us] sitting *en banc*.” *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). “[A] prior panel precedent cannot be circumvented or ignored on the basis of arguments not made to or considered by the prior panel.” *In re Lambrix*, 776 F.3d 789, 794 (11th Cir. 2015) (quoting *Tippitt v. Reliance Standard Life Ins. Co.*, 357 F.3d 1227, 1234 (11th Cir. 2006)). However, we are bound only by explicit jurisdictional holdings, and where a jurisdictional issue was not presented and explicitly addressed by the prior precedent, we will not be bound by a prior implicit jurisdictional holding.

*In re Bradford*, 830 F.3d 1273, 1278 (11th Cir. 2016).

Article I of the Constitution empowers Congress “[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.” U.S. Const. art. I, § 8, cl. 10. This Clause contains three distinct grants of power: (1) “the power to define and punish piracies”; (2) “the power to define and punish felonies committed on the high seas”; and (3) “the power to define and punish offenses against the law of nations.” *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1248 (11th Cir. 2012). The Felonies Clause represents the second of the three grants of power. *See id.*

\*6 Pursuant to the Felonies Clause, Congress enacted the MDLEA to prohibit knowing and intentional possession with intent to distribute a controlled substance onboard a vessel subject to the jurisdiction of the United States.

*United States v. Campbell*, 743 F.3d 802, 805 (11th Cir. 2014); 46 U.S.C. § 70503(a)(1). The MDLEA describes several circumstances in which a vessel is subject to the jurisdiction of the United States, including when it is “a vessel without nationality.” 46 U.S.C. § 70502(c)(1)(A), (C). A vessel without nationality includes “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.” *Id.* § 70502(d)(1)(C). A claim of nationality or registry may be made, in relevant part, by “a verbal claim of nationality or registry by the master or individual in charge of the vessel.” *Id.* § 70502(e). “[W]hether a vessel is subject to the jurisdiction of the United States is not an element of [an MDLEA] offense, but instead is solely an issue of subject matter jurisdiction that should be treated as a preliminary question of law for the court's determination.” *United States v. Tinoco*, 304 F.3d 1088, 1105 (11th Cir. 2002); accord *Campbell*, 743 F.3d at 805. We have construed the “‘on board a vessel subject to the jurisdiction of the United States’ portion of the MDLEA as a congressionally imposed limit on courts' subject-matter jurisdiction.” *De La Garza*, 516 F.3d at 1271. The government must show that the statutory requirements of MDLEA subject-matter jurisdiction are met. *Tinoco*, 304 F.3d at 1114.

A person charged with a violation of the MDLEA “does not have standing to raise a claim of failure to comply with international law as a basis for a defense.” 46 U.S.C. § 70505; accord *United States v. Hernandez*, 864 F.3d 1292, 1301 (11th Cir. 2017). Such a claim “may be made only by a foreign nation” and “does not divest a court of jurisdiction.” § 70505. Accordingly, “any battle over the United States' compliance with international law in obtaining MDLEA jurisdiction should be resolved nation-to-nation in the international arena, not between criminal defendants and the United States in the U.S. criminal justice system.” *Hernandez*, 864 F.3d at 1302.

We have held that Congress did not exceed its power under the Felonies Clause in enacting the MDLEA. *Id.* at 1303 (holding that the argument that the MDLEA was unconstitutional under the Felonies Clause as to stateless vessels on the high seas without a proven nexus to the United

States was foreclosed by precedent); *Campbell*, 743 F.3d at 810–12 (holding that the MDLEA was constitutional under the Felonies Clause as to stateless vessels lacking any nexus to the United States and committing drug trafficking offenses); *United States v. Estupinan*, 453 F.3d 1336, 1338–39 (11th Cir. 2006) (holding that the MDLEA was constitutional under the Felonies Clause to punish drug trafficking). Notably, “[w]e have always upheld extraterritorial convictions under our drug trafficking laws as an exercise of power under the Felonies Clause.” *Campbell*, 743 F.3d at 810 (quoting *Bellaizac-Hurtado*, 700 F.3d at 1257). Congress “may assert extraterritorial jurisdiction over vessels in the high seas that are engaged in conduct that ‘has a potentially adverse effect and is generally recognized as a crime by nations that have reasonably developed legal systems.’” *Id.* (quoting *Tinoco*, 304 F.3d at 1108). Moreover, because narcotics trafficking is condemned universally by law-abiding nations, there is “no reason to conclude that it is ‘fundamentally unfair’ for Congress to provide for the punishment of persons apprehended with narcotics on the high seas.” *Estupinan*, 453 F.3d at 1339 (quoting *United States v. Martinez-Hidalgo*, 993 F.2d 1052, 1056 (3d. Cir. 1993)).

“Prior to giving extraterritorial effect to a penal statute, we consider whether doing so would violate general principles of international law.” *United States v. MacAllister*, 160 F.3d 1304, 1308 (11th Cir. 1998). The law of nations permits the exercise of criminal jurisdiction by a nation, in relevant part, under the “protective” principle. *Id.* at 1308 n.9. The protective principle permits the United States to assert jurisdiction over a person whose conduct outside the country threatens its security or the operation of its governmental functions. *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1379 n.5 (11th Cir. 2011). We held in *Campbell* 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.” *Campbell*, 743 F.3d at 810; *see also United States v. Cruickshank*, 837 F.3d 1182, 1188 (11th Cir. 2016) (holding that the lack of a nexus requirement does not render the MDLEA unconstitutional).

\*7 We have held that the MDLEA is constitutional as applied to vessels on the high seas under the Piracies and Felonies Clause. *United States v. Cabezas-Montano*, 949

F.3d 567, 587 (11th Cir. 2020). That said, Congress lacks the power to proscribe drug trafficking in the territorial waters of another state. *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1258 (11th Cir. 2012). The United Nations Convention on the Law of the Sea provides that “[e]very State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles.” 21 I.L.M. 1245, 1272, pt. II, § 2, art. 3. Accordingly, the United States “generally recognizes the territorial seas of foreign nations up to twelve nautical miles adjacent to recognized foreign coasts.” *United States v. McPhee*, 336 F.3d 1269, 1273 (11th Cir. 2003).

According to regulations, the territorial sea extends up to 12 nautical miles adjacent to the coast of a nation for territorial jurisdiction purposes. 33 C.F.R. § 2.22. The territorial sea baseline is the line defining the shoreward extent of the territorial sea of a nation. *Id.* § 2.20. For territorial jurisdiction purposes, high seas refer to “all waters seaward of the territorial sea baseline.” *Id.* § 2.32(a). Under customary international law, high seas refer to all waters that are not included in the EEZ, territorial sea, or internal water of a nation. *Id.* § 2.32(d).

Here, because Defendants failed to raise the constitutional argument before the district court, plain-error review is appropriate. Because there is no binding precedent from us or the Supreme Court that directly addresses the specific issue of whether § 70502(d)(1)(C) is constitutional under the Felonies Clause, Santos-Santana and Vasquez-Rijo cannot show that any error was plain. Likewise, even if we deem their argument relates to the district court’s subject-matter jurisdiction and review it *de novo*, it still fails, as we have consistently found that the MDLEA is a permissible exercise of congressional power under the Felonies Clause. *See, e.g.*, *Hernandez*, 864 F.3d at 1303; *Campbell*, 743 F.3d at 810–12; *Estupinan*, 453 F.3d at 1338. And we decline to adopt the holding of the First Circuit’s now-withdrawn opinion in *Davila-Reyes* given our precedent concluding that other provisions of the MDLEA are constitutional under the Felonies Clause.

Defendants also cannot show that § 70502(d)(1)(C) was unconstitutional as applied to them. While they argue that they are not subject to jurisdiction under the stipulated facts, jurisdiction was proper because the USCG located their vessel in the high seas. While they argue that the EEZ is excluded from the high seas, regulations provide that the territorial

definition of the high seas includes all waters seaward of the territorial sea baseline, which can extend no farther than twelve nautical miles adjacent to the coast of a nation. Further, prior panel precedent compels us to hold that their vessel was in the high seas, as it was not within the twelve nautical miles of a nation's coast. *See*  *Cabezas-Montano*, 949 F.3d at 587;  *McPhee*, 336 F.3d at 1273;  *Archer*, 531 F.3d at 1352. Accordingly, we affirm as to this issue.

### B. Safety-Valve Relief

We review a district court's factual findings and subsequent denial of safety-valve relief for clear error. *United States v. Cruz*, 106 F.3d 1553, 1557 (11th Cir. 1997).

The safety-valve provisions of  18 U.S.C. § 3553(f) and  U.S.S.G. § 5C1.2(a) enable a district court to disregard the statutory minimum sentence if five requirements are met. Relevant here, the second requirement for safety-valve relief is that the defendant did not possess a gun "in connection with the offense."  18 U.S.C. § 3553(f)(2);  U.S.S.G. § 5C1.2(a)(2). The defendant has the burden of showing that he meets the factors for relief by a preponderance of the evidence, including it is more likely than not that he did not possess a firearm in connection with the offense.  *United States v. Carillo-Ayala*, 713 F.3d 82, 90 (11th Cir. 2013). The term "defendant," as used in  § 5C1.2(a)(2), "limits the accountability of the defendant to his own conduct and conduct that he aided or abetted, counseled, commanded, induced, procured, or willfully caused."  U.S.S.G. § 5C1.2 cmt. n.4.

\*8 "Our cases interpreting guidelines that require a 'connection' have consistently recognized that a firearm which facilitates or has the potential to facilitate an offense is possessed 'in connection with' that offense."  *Carillo-Ayala*, 713 F.3d at 93. Additionally, in considering the safety-valve, we have held that "[a] firearm found in close proximity to drugs or drug-related items simply 'has'—without any requirement for additional evidence—the potential to facilitate the drug offense."  *Id.* at 92 (emphasis in original). We explained that "[a] defendant seeking relief under the safety valve, despite his possession of a weapon found in proximity to drug-related items, will have a difficult

task in showing that, even so, there is no connection with the drug offense so the safety valve applies." *Id.* We also explained that:

[w]hile other facts, such as whether the firearm is loaded, or inside a locked container, might be relevant to negate a connection, there is a strong presumption that a defendant aware of the weapon's presence will think of using it if his illegal activities are threatened. The firearm's *potential* use is critical. The Sentencing Commission gives special status to guns found in proximity to drugs.

*Id.* (emphasis in original). A firearm can facilitate a drug offense by emboldening the defendant who could display or discharge the weapon. *Id.* at 96.

The Guidelines provide for a two-level increase if the defendant is convicted of a crime involving drug trafficking and " 'a dangerous weapon (including a firearm) was possessed' in connection with" that offense. *United States v. Delgado*, 981 F.3d 889, 902 (11th Cir. 2020) (quoting  U.S.S.G. § 2D1.1(b)(1)). The enhancement applies if the government shows by a preponderance of the evidence that "the weapon was present, unless it is clearly improbable that the weapon was connected to the offense."  U.S.S.G. § 2D1.1(b)(1) cmt. n.11(A); accord  *United States v. Hall*, 46 F.3d 62, 63–64 (11th Cir. 1995).

"[N]ot all defendants who receive the enhancement under  § 2D1.1(b)(1) are precluded from" safety-valve relief.  *Carillo-Ayala*, 713 F.3d at 91. If the enhancement applies but the defendant also seeks safety-valve relief, "the district court must determine whether the facts of the case show that a 'connection' between the firearm and the offense, though possible, is not probable." *Id.* "The number of defendants who meet both guidelines will undoubtedly be rare." *Id.* This determination is "consistent with Congress's intention that the safety valve [would] apply only to a 'narrow class of defendants, those who are the least culpable participants in such offenses.'" *Id.*

As an initial matter, the district court did not apply the wrong standard when determining whether the firearm barred safety-valve relief because the court articulated the correct burden. The district court did not clearly err in finding that Santos-Santana and **Vasquez-Rijo** did not qualify for the safety valve because the appellants failed to show that the firearm was not connected to the offense. The record shows that the firearm was found in close proximity to the drugs because the vessel that held the firearm and the drugs was small and confined, as depicted in the photograph submitted by the government. We therefore affirm as to this issue.

### C. Minor-Role Reduction

We review the district court's determination of a defendant's role for clear error. **United States v. Rodriguez De Varon**, 175 F.3d 930, 937 (11th Cir. 1999) (en banc). “[T]he district court has considerable discretion in making this fact-intensive determination.” **United States v. Boyd**, 291 F.3d 1274, 1277–78 (11th Cir. 2002). As long as the “court's decision is supported by the record and does not involve a misapplication of law,” the “‘choice between two permissible views of the evidence’ as to the defendant's role in the offense will rarely constitute clear error.” **Cruickshank**, 837 F.3d at 1192 (quoting **Rodriguez De Varon**, 175 F.3d at 945). Any potential sentencing error that the district court may have committed is harmless when the defendant received the statutory minimum sentence. **United States v. Tigua**, 963 F.3d 1138, 1144 (11th Cir. 2020).

\*9 **U.S.S.G. § 3B1.2** directs the sentencing court to decrease a defendant's offense level by two levels “[i]f the defendant was a minor participant in any criminal activity.” A minor participant is one “who is less culpable than most other participants in the criminal activity, but whose role could not be described as minimal.” **Id. § 3B1.2 cmt. n.5**. In determining whether to apply an adjustment, courts consider the totality of the circumstances and the following non-exhaustive list of factors:

- (i) the degree to which the defendant understood the scope and structure of the criminal activity;
- (ii) the degree to which the defendant participated in planning or organizing the criminal activity;

(iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;

(iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;

(v) the degree to which the defendant stood to benefit from the criminal activity.

*Id.* § 3B1.2 cmt. n.3(C). The defendant has the burden of proving his minor role in the offense by a preponderance of the evidence. **Rodriguez De Varon**, 175 F.3d at 939. Determining whether a defendant played a minor role in the offense is a fact-intensive inquiry “where no one factor ‘is more important than another.’” **Cruickshank**, 837 F.3d at 1195 (quoting **Rodriguez De Varon**, 175 F.3d at 945). “[A] district court is not required to make any specific findings other than the ultimate determination of the defendant's role in the offense.” **De Varon**, 175 F.3d at 940.

Additionally, the district court must consider: (1) the defendant's role in the relevant conduct for which he has been held accountable at sentencing; and (2) his role compared to that of the other participants in his relevant conduct.

**Cruickshank**, 837 F.3d at 1192. “[W]here the relevant conduct attributed to a defendant is identical to [his] actual conduct,” he cannot prove that he is “entitled to a minor role adjustment simply by pointing to some broader criminal scheme” in which he “was a minor participant but for which [he] was not held accountable.” **Rodriguez De Varon**, 175 F.3d at 941. In determining the defendant's role compared to that of other participants, it is only those participants who were involved in the relevant conduct attributed to the defendant who are relevant to this inquiry. **United States v. Martin**, 803 F.3d 581, 591 (11th Cir. 2015). “Even if a defendant played a lesser role than the other participants, that fact does not entitle [him] to a role reduction ‘since it is possible that none are minor or minimal participants.’” *Id.* (quoting **United States v. Stanley**, 739 F.3d 633, 654 (11th Cir. 2014)).

The district court did not clearly err in declining to apply the minor-role reduction because Santos-Santana was not a

minor participant in the conspiracy to possess cocaine on a vessel, as he and **Vasquez-Rijo** knowingly participated in the transportation of a large quantity of cocaine on a vessel and were important to that scheme. And, in any event, any potential sentencing error as to the minor-role reduction here was harmless, as Santos-Santana received the statutory minimum sentence. *See Tigua*, 963 F.3d at 1144.

### III. CONCLUSION

For all these reasons, we affirm both Defendants' sentences.

**AFFIRMED.**

**All Citations**

Not Reported in Fed. Rptr., 2022 WL 17973602

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**A-10**

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF FLORIDA**  
**MIAMI DIVISION**

UNITED STATES OF AMERICA

v.

**PAULINO VASQUEZ-RIJO****§ JUDGMENT IN A CRIMINAL CASE**

§

§

§

Case Number: **1:21-CR-20384-BB(1)**§ USM Number: **02410-506**

§

§ Counsel for Defendant: **Joaquin E. Padilla**§ Counsel for United States: **Yvonne Rodriguez-Schack****THE DEFENDANT:**

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	<b>1 of the indictment.</b>
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

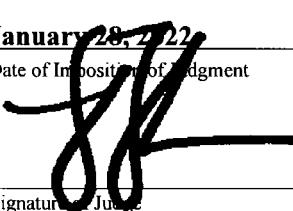
<b>Title &amp; Section / Nature of Offense</b>	<b>Offense Ended</b>	<b>Count</b>
46 U.S.C. § 70506(B) Conspiracy To Possess Cocaine While On Board A Vessel Subject To The Jurisdiction Of The United States	07/05/2021	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s)  
 Count(s) 2  is are dismissed on the motion of the United States

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.

January 28, 2022  
 Date of Imposition of Judgment



Signature of Judge

**BETH BLOOM**  
**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

January 28, 2022  
 Date

DEFENDANT: PAULINO VASQUEZ-RIJO  
CASE NUMBER: 1:21-CR-20384-BB(1)

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

**120 months as to Count 1.** Defendant is to receive credit from date of arrest, July 5, 2021.

The court makes the following recommendations to the Bureau of Prisons: that the defendant be designated to a South Florida facility.

The defendant is remanded to the custody of the United States Marshal.  
 The defendant shall surrender to the United States Marshal for this district:

at  a.m.  p.m. on

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
 before 2 p.m. on  
 as notified by the United States Marshal.  
 as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PAULINO VASQUEZ-RIJO  
CASE NUMBER: 1:21-CR-20384-BB(1)

## **SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **five (5) years.**

## **MANDATORY CONDITIONS**

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4.  You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (*check if applicable*)
5.  You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6.  You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7.  You must participate in an approved program for domestic violence. (*check if applicable*)

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: PAULINO VASQUEZ-RIJO  
 CASE NUMBER: 1:21-CR-20384-BB(1)

## STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

## U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at [www.flsp.uscourts.gov](http://www.flsp.uscourts.gov).

Defendant's Signature \_\_\_\_\_ Date \_\_\_\_\_

DEFENDANT: PAULINO VASQUEZ-RIJO  
CASE NUMBER: 1:21-CR-20384-BB(1)

## **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: PAULINO VASQUEZ-RIJO  
 CASE NUMBER: 1:21-CR-20384-BB(1)

## CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
<b>TOTALS</b>	\$100.00	\$0.00	\$0.00		

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.  
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the schedule of payments page may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution  
 the interest requirement for the  fine  restitution is modified as follows:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$0.00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

\* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

\*\* Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

\*\*\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: PAULINO VASQUEZ-RIJO  
CASE NUMBER: 1:21-CR-20384-BB(1)

## 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 payments of \$100.00 due immediately, balance due

**It is ordered that the Defendant shall pay to the United States a special assessment of \$100.00 for Count 1, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:**

**U.S. CLERK'S OFFICE  
ATTN: FINANCIAL SECTION  
400 NORTH MIAMI AVENUE, ROOM 8N09  
MIAMI, FLORIDA 33128-7716**

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.

Joint and Several  
See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall forfeit the defendant's interest in the following property to the United States:  
**FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.**

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

**A-17**

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. § 70501  
Formerly cited as 46 App. USCA § 1902

§ 70501. Findings and declarations

Effective: October 13, 2008  
Currentness

Congress finds and declares that (1) 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 and (2) operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism, and presents a specific threat to the safety of maritime navigation and the security of the United States.

**CREDIT(S)**

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1685; Pub.L. 110-407, Title II, § 201, Oct. 13, 2008, 122 Stat. 4299.)

**46 U.S.C.A. § 70501, 46 USCA § 70501**

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

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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: December 23, 2022

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;

(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; and

(D) a vessel aboard which no individual, on request of an officer of the United States authorized to enforce applicable provisions of United States law, claims to be the master or is identified as the individual in charge, and that has no other claim of nationality or registry under paragraph (1) or (2) of subsection (e).

**(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; Pub.L. 117-263, Div. K, Title CXV, § 11519, Dec. 23, 2022, 136 Stat. 4142.)

46 U.S.C.A. § 70502, 46 USCA § 70502

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

**A-21**

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. § 70503

Formerly cited as 46 App. USCA § 1903

§ 70503. Prohibited acts

Effective: February 8, 2016

Currentness

**(a) Prohibitions.**--While on board a covered vessel, an individual may not knowingly or intentionally--

(1) manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance;

(2) destroy (including jettisoning any item or scuttling, burning, or hastily cleaning a vessel), or attempt or conspire to destroy, property that is subject to forfeiture under section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)); or

(3) conceal, or attempt or conspire to conceal, more than \$100,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, or compartment of or aboard the covered vessel if that vessel is outfitted for smuggling.

**(b) Extension beyond territorial jurisdiction.**--Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.

**(c) Nonapplication.**--

(1) **In general.**--Subject to paragraph (2), subsection (a) does not apply to--

(A) a common or contract carrier or an employee of the carrier who possesses or distributes a controlled substance in the lawful and usual course of the carrier's business; or

(B) a public vessel of the United States or an individual on board the vessel who possesses or distributes a controlled substance in the lawful course of the individual's duties.

(2) **Entered in manifest.**--Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel's manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes.

**(d) Burden of proof.**--The United States Government is not required to negative a defense provided by subsection (c) in a complaint, information, indictment, or other pleading or in a trial or other proceeding. The burden of going forward with the evidence supporting the defense is on the person claiming its benefit.

**(e) Covered vessel defined.**--In this section the term "covered vessel" means--

- (1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or
- (2) any other vessel if the individual is a citizen of the United States or a resident alien of the United States.

#### **CREDIT(S)**

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1687; Pub.L. 114-120, Title III, § 314(a), (b), (e)(1), Feb. 8, 2016, 130 Stat. 59.)

46 U.S.C.A. § 70503, 46 USCA § 70503

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

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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. § 70504  
Formerly cited as 46 App. USCA § 1903

§ 70504. Jurisdiction and venue

Effective: December 12, 2017  
Currentness

**(a) Jurisdiction.**--Jurisdiction 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.

**(b) Venue.**--A person violating section 70503 or 70508--

(1) shall be tried in the district in which such offense was committed; or

(2) if the offense was begun or committed upon the high seas, or elsewhere outside the jurisdiction of any particular State or district, may be tried in any district.

#### CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 110-407, Title II, § 202(b)(2), Oct. 13, 2008, 122 Stat. 4300; Pub.L. 115-91, Div. A, Title X, § 1012(a), Dec. 12, 2017, 131 Stat. 1546.)

46 U.S.C.A. § 70504, 46 USCA § 70504

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

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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. § 70505

Formerly cited as 46 App. USCA § 1903

§ 70505. Failure to comply with international law as a defense

Effective: October 13, 2008

Currentness

A person charged with violating section 70503 of this title, or against whom a civil enforcement proceeding is brought under section 70508, does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

#### **CREDIT(S)**

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 110-407, Title II, § 202(b)(3), Oct. 13, 2008, 122 Stat. 4300.)

46 U.S.C.A. § 70505, 46 USCA § 70505

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

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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. § 70506  
Formerly cited as 46 App. USCA § 1903

§ 70506. Penalties

Effective: February 8, 2016  
Currentness

**(a) Violations.**--A person violating paragraph (1) of section 70503(a) of this title shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act (21 U.S.C. 962(b)), the person shall be punished as provided in section 1012 of that Act (21 U.S.C. 962).

**(b) Attempts and conspiracies.**--A person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.

**(c) Simple possession.**--

**(1) In general.**--Any individual on a vessel subject to the jurisdiction of the United States who is found by the Secretary, after notice and an opportunity for a hearing, to have knowingly or intentionally possessed a controlled substance within the meaning of the Controlled Substances Act (21 U.S.C. 812) shall be liable to the United States for a civil penalty of not to exceed \$5,000 for each violation. The Secretary shall notify the individual in writing of the amount of the civil penalty.

**(2) Determination of amount.**--In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

**(3) Treatment of civil penalty assessment.**--Assessment of a civil penalty under this subsection shall not be considered a conviction for purposes of State or Federal law but may be considered proof of possession if such a determination is relevant.

**(d) Penalty.**--A person violating paragraph (2) or (3) of section 70503(a) shall be fined in accordance with section 3571 of title 18, imprisoned not more than 15 years, or both.

#### CREDIT(S)

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 111-281, Title III, § 302, Oct. 15, 2010, 124 Stat. 2923; Pub.L. 114-120, Title III, § 314(c), Feb. 8, 2016, 130 Stat. 59.)

46 U.S.C.A. § 70506, 46 USCA § 70506

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.

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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. § 70507

Formerly cited as 46 App. USCA § 1904

§ 70507. Forfeitures

Effective: February 8, 2016

Currentness

**(a) In general.**--Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 or 70508 of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

**(b) Prima facie evidence of violation.**--Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including--

(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;

(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;

(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

(6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.

(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

#### **CREDIT(S)**

(Pub.L. 109-304, § 10(2), Oct. 6, 2006, 120 Stat. 1688; Pub.L. 114-120, Title III, § 314(d), Feb. 8, 2016, 130 Stat. 59.)

#### **46 U.S.C.A. § 70507, 46 USCA § 70507**

Current through P.L. 117-327. Some statute sections may be more current, see credits for details.