

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

No:

LIVER GRUEZO,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Maritime Drug Law Enforcement Act (“MDLEA”), 46 U.S.C. §70501, *et. seq.*, violates Due Process because its enforcement procedures are vague and ambiguous.
2. Whether the MDLEA violates Due Process because it violates *Miranda v. Arizona*, 384 U.S. 436 (1966), when an individual is detained on board a vessel declared “stateless” under 46 U.S.C. §70502(d)(1)(B).
3. Whether the MDLEA violates Due Process because the Government is not required to prove any “minimum contacts” or “nexus” between a defendant and the United States to establish jurisdiction over the cause.

INTERESTED PARTIES

Petitioner is Liver Gruezo. He, Wilmar Estupinan Padilla, and Yiminson Caicedo Vallecilla were defendants in the district court. Liver Gruezo was the only defendant who filed a direct appeal to the Eleventh Circuit court of appeals. The United States of America (“Government”) prosecuted the defendants in the district court and was the appellee in the court of appeals. There are no other interested parties.

RELATED PROCEEDINGS

Petitioner Liver Gruezo was the only defendant who filed a direct appeal of his conviction to the Eleventh Circuit court of appeals in Case No. 22-11342. The Eleventh Circuit issued a published opinion denying relief on March 30, 2023, *United States v. Gruezo*, 66 F.4th 1284 (11th Cir. 2023).

The defendants were listed in the following order in the indictment in the district court proceedings, assigned to The Honorable Kevin Michael Moore, under Case No. 21-20327-CR-KMM: Wilmar Estupinan Padilla, Yiminison Caicedo Vallecilla, and Liver Gruezo.

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On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Petitioner Liver Gruezo respectfully petitions the Supreme Court of the United States for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in *United States v. Gruezo*, 66 F.4th 1284 (11th Cir. 2023), on March 30, 2023, which affirmed the April 20, 2022 judgment and commitment of the United States District Court for the Southern District of Florida in Case No. 21-20327-CR-KMM.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1). This opinion was published, *United States v. Gruezo*, 66 F.4th 1284 (11th Cir. 2023).

STATEMENT OF JURISDICTION

The Court of Appeals issued its opinion on March 30, 2023 and, therefore, this petition is timely, pursuant to Sup. Ct. R. 13.1. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), and Part III of the Rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition presents questions involving constitutional violations under the Due Process Clause of the Fifth Amendment, more specifically, by the application of 46 U.S.C. §§70502 of the Maritime Drug Law Enforcement Act.

STATEMENT OF THE CASE

A. Course Of Proceedings And Disposition In The Lower Tribunals.

On June 1, 2021, an indictment was returned in the Southern District of Florida against Wilmar Estupinan Padilla (“Estupinan”), Yiminson Caicedo Vallecilla (“Caicedo”), and petitioner Liver Gruezo (“Gruezo”). It alleged: a) in count 1, the defendants conspired to possess with the intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of Title 46 U.S.C. §§70503(a)(1), 70506(b); and b) in count 2, they possessed with the intent to distribute five or more kilograms of cocaine in violation of 46 U.S.C. §70503(a)(1) and 18 U.S.C. §2.

The Honorable Kevin Michael Moore (“Judge”) was assigned to the case. On November 3, 2021, Gruezo filed a motion to dismiss the indictment for lack of jurisdiction. The motion was referred to a magistrate judge who issued a report (“R&R”) recommending the motion be denied. Gruezo filed objections to the R&R. The Judge denied those objections and adopted the R&R. On January 26, 2022, Gruezo pled guilty counts 1 and 2 of the indictment. On April 20, 2022 the Judge sentenced Gruezo to 135 months imprisonment. On April 22, 2022, Gruezo filed a timely notice of appeal from the final judgment. On March 30, 2023, the Eleventh Circuit Court of Appeals issued a published opinion denying all relief

that Gruezo had sought on direct appeal of his conviction and sentence, *United States v. Gruezo*, 66 F.4th 1284 (11th Cir. 2023).

B. Statement Of Facts.

On May 5, 2021, a United States Marine Patrol aircraft detected a low-profile vessel (“LPV”) about 350 nautical miles north northwest of Darwin Island, Ecuador in international waters. A United States Coast Guard (“USCG”) cutter, the “*Active*,” was patrolling the area and changed course to try and intercept the LPV by launching a helicopter and two small boats with a law enforcement detachment (“LEDET”). The LPV did not display any indicia of nationality while was heading on a course known for drug trafficking. The small boats and helicopter and were able to force the LPV to stop.

On board the LPV were three Colombian nationals, the defendants in this case. The LPV did not have any markings showing a name, registration number, or nationality. Estupinan was identified as the “master.” He did not make a claim of any nationality for the LPV. Consequently, the USCG treated the LPV as “stateless” and conducted a full law enforcement boarding. The USCG discovered packages containing 1,390 kilograms of cocaine in the centerline compartment. Two weeks later, on May 19, 2021, the *Active* arrived in San Diego, California where the defendants were taken to interview rooms. After *Miranda* warnings,

Coast Guard Investigative Services agents asked them to give statements about their involvement in the drug transport. When the USCG interdicted the LPV on the high seas two weeks earlier, its officers did not give the defendants *Miranda* warnings or any other cautionary instructions before interrogating them.

During his interrogation in San Diego, Gruezo told the investigators that he worked as a small boat engine mechanic in Tumaco, Colombia. There he met “El Caballo,” a customer for whom he had done repair work. El Caballo wanted Gruezo to do work on boat engines in a town called Pital. Gruezo agreed and traveled there where he repaired four engines. He received around \$256 for that work which lasted three days. El Caballo then told Gruezo there was one more engine to repair. It was then that he learned he was going to participate in a drug transport. Gruezo initially refused, but he was threatened by armed guards.

REASONS FOR GRANTING THE PETITION

I. THE SUPREME COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER THE MDLEA VIOLATES DUE PROCESS BECAUSE ITS ENFORCEMENT PROCEDURES ARE VAGUE AND AMBIGUOUS.

The Judge agreed with the R&R’s conclusion that the Government had established jurisdiction under 46 U.S.C. §70502(d)(1)(B). However, the way that statute is written does not require the USCG to explain to the master or person-in-

charge (“PIC”) what it means to “make a claim of nationality or registry for the vessel.” Consequently, these questions are too vague and ambiguous to comport with notions of fair play.¹ Nor were USCG officials obligated to advise Estupinan and the other occupants what it meant *if they did not* make such a claim for their vessel, that is, the dire consequences of being prosecuted in the United States for drug trafficking. The MDLEA’s failure to provide such a fair warning during a high-seas custodial interrogation violates reasonable Due Process protections, thereby rendering MDLEA enforcement procedures unconstitutional. This follows because this Court does not allow for the enforcement of vague and ambiguous statutory prescriptions. *See, e.g., United States v. Davis*, 139 S. Ct. 2319 (2019), where, writing for the Court, Justice Gorsuch, stated:

In our constitutional order, a vague law is no law at all. Only the people’s elected representatives in Congress have the power to write new federal criminal laws. And when Congress exercises that power, it has to write statutes *that give ordinary people fair warning about what the law demands of them*. Vague laws transgress both of those constitutional requirements. They hand all the legislature’s responsibility for defining criminal behavior to unelected prosecutors and judges, and they leave people with no sure way to know what consequences will

¹ For example, the USCG is not required to, and as far as this writer knows never does, explain to the master or PIC that “nationality” means where the vessel has its home port, nor that “registry” means that a government entity has a record the vessel belongs to that country. In light of the very serious consequences of MDLEA prosecutions, the USCG should be required to explain what these terms mean to an ordinary person due comply with Due Process guarantees.

attach to their conduct. When Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, *but to treat the law as a nullity* and invite Congress to try again. *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019)(emphasis supplied).

There was no evidence that these three defendants were individuals who would not be considered “ordinary persons.”

II. THE SUPREME COURT SHOULD GRANT THE WRIT TO DECIDE WHETHER THE MDLEA VIOLATES *MIRANDA v. ARIZONA* WHEN AN INDIVIDUAL IS DETAINED ON BOARD A VESSEL DECLARED “STATELESS” UNDER 46 U.S.C. §70502(d)(1)(B).

There is another fundamental constitutional defect in the MDLEA separate from the USCG not having to explain to detainees what is meant by “a claim of nationality or registry” for a vessel under 46 U.S.C. §70502(d)(1)(B). This second fatal infirmity in the MDLEA relates to the lack of constitutional protections required under *Miranda v. Arizona*, 384 U.S. 436 (1966). The MDLEA does not require that a USCG official inform the persons on board that failure to make a claim of nationality or registry for the vessel will subject them to criminal prosecution in the United States. Here, the USCG never advised the defendants that not making such a claim meant that they would be arrested and taken to the United States to face very serious drug trafficking charges. These defendants did

not have any legal training about the consequences of their not responding to this essential question. Estupinan did make a claim of Colombian *nationality for himself and the other two crew members*. Therefore, it is beyond the pale of reason that Estupinan would not have readily agreed to also *make a claim of nationality for the LPV* if the USCG Spanish-speaking officer had explained to him what that claim meant, warning him failure to do so meant facing criminal charges in the United States with a potential for a sentence of life imprisonment.

Title 46 violates fundamental constitutional guarantees because it does not afford a defendant Due Process guarantees required under *Miranda v. Arizona*, 384 U.S. 436 (1966). In *Miranda*, the Supreme Court held the Constitution obligates the Government to warn a defendant that anything he says can be used against him in a court of law, that is, to incriminate him which may result in the loss of his liberty. In a Title 46 case, the same serious issue exists, albeit the warning needed is that an individual's silence can and will be used against him. The Government then uses such silence to establish MDLEA extraterritorial jurisdiction so it can bring a United States prosecution resulting in the loss of an individual's liberty. In a real sense, the warning the Constitution requires in an MDLEA case properly can be characterized as a “reverse *Miranda* warning.”

In Gruezo's case, such a “reverse *Miranda* warning” would have convinced

Estupinan and the other defendants to make a claim of nationality or registry for the vessel under 46 U.S.C. §70502(d)(1)(B). The fact that the USCG did not have to provide them this warning, about the serious consequences of *not* making a claim of nationality or registry for the LPV, leaps out as a blatant denial of well-established notions of fair play and substantial justice. This fundamental defect in the MDLEA can be analogized to *Miranda v. Arizona*, 384 U.S. 436 (1966), where the Supreme Court held:

The warning of the right to remain silent must be accompanied by the *explanation* that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also *of the consequences of forgoing it*. It is only through an awareness of these consequences that there can be any assurance of real understanding and intelligent exercise of the privilege. Moreover, this warning may serve to make the individual more acutely aware that he is faced with *a phase of the adversary system* -- that he is not in the presence of persons acting solely in his interest.

Id. at 469 (emphasis supplied).

This same holding applies here. The USCG needed to provide a warning to the three defendants that their failure to make a claim of nationality or registry for the LPV would result in it being declared “stateless,” subjecting the individuals aboard to prosecution in the United States for drug trafficking. As the Supreme Court stated in *Miranda*, *supra*, regarding the right to have counsel present during interrogation, “*only by effective and express explanation* to the indigent of this

right can there be assurance that he was truly in a position to exercise it.”

Miranda v. Arizona, 384 U.S. 436, 473 (1966)(emphasis supplied).

The Government convinced the district court to find that it had established jurisdiction under 46 U.S.C. §70502(d)(1)(B). However, the procedures the Government utilized to accomplish that result did not include having to provide the defendants with any explanation, let alone a meaningful one, about the consequences of its questions of them after boarding the LPV in international waters. There can be no dispute the defendants were “in custody” at that point because they were “not free to leave” an interdicted vessel hundreds of miles from shore. For that reason, MDLEA procedures violate Due Process notions of fair play and substantial justice.

The MDLEA is devoid of any requirement to advise persons detained on the high seas how their answers to initial USCG questioning may subject them to a drug prosecution in a United States court. Because questions about the nationality or registry of a vessel directly impact whether MDLEA jurisdiction can be established, they fall within the category of essential elements of the crime albeit one the court rather than a jury determines. Consequently, detainees aboard vessels in international waters also must be given the same protections defendants are afforded under *Miranda v. Arizona*, 384 U.S. 436 (1966).

III. THE SUPREME COURT SHOULD GRANT THE WRIT TO
DECIDE WHETHER THE MDLEA VIOLATES DUE PROCESS BECAUSE
THE GOVERNMENT IS NOT REQUIRED TO PROVE ANY “MINIMUM
CONTACTS” OR “NEXUS” BETWEEN A DEFENDANT AND THE UNITED
STATES TO ESTABLISH JURISDICTION OVER THE CAUSE.

There is no evidence there existed any “minimum contacts between Gruezo and the United States. To proceed with an MDLEA prosecution the Government first must prove a basis for jurisdiction. This means the LPV had to qualify as a vessel “covered” by 46 U.S.C. §70502. A “covered vessel” is defined as “a vessel subject to the jurisdiction of the United States.” 46 U.S.C. §70503(c)(1). A vessel “subject to the jurisdiction of the United States” includes one “without nationality.” Gruezo’s “constitutional claim at issue here is consistent with [his] admission that he engaged in the conduct alleged in the indictment.”²

The Government had no evidence the cocaine transported on the LPV was destined for the United States. However, the Eleventh Circuit does not require the Government prove such a “nexus” to the United States. In fact, its precedent in Title 46 cases forecloses that issue as a ground for dismissal. Also, there is no

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

requirement the persons on board a vessel have a nexus to the United States. *See, e.g.*, *United States v. Cruickshank*, 837 F.3d 1182, 1188 (11th Cir. 2016). Gruezo argues the lack of a nexus requirement violates substantive Due Process.

In *J. McIntyre Mach., LTD. v. Nicastro*, 564 U.S. 873, 879 (2011)(plurality op.), this Court held: “The Due Process Clause protects an individual’s right to be deprived of life, liberty, or property *only* by the exercise of lawful power.” (emphasis supplied). The Supreme Court has established a line of cases requiring “minimum contacts” in civil litigation. Those minimum contacts fulfill the need for a constitutionally-mandated “nexus” between the United States and a defendant. Without such “minimum contacts,” a defendant cannot be “haled into court.” However, this Court has yet to address whether the same Due Process protections are not applicable to the MDLEA.

In the Eleventh Circuit, the Government can prosecute: a) foreign citizens or residents found on the high seas *anywhere* in the world; b) charge them with violating United States drug laws; c) even though they are occupants of a vessel not registered in the United States; d) even though the vessel is not operating within United States territorial waters; and e) even though there is no evidence the drugs were destined for the United States. On the other hand, in the Ninth Circuit, the Government must prove a nexus to the United States once a vessel is shown to

have a foreign nationality. *See, e.g., United States v. Perlaza*, 439 F.3d 1149, 1160 (9th Cir. 2006). In *Perlaza, supra*, the Ninth Circuit held that Due Process requires the Government to demonstrate there exists a sufficient nexus between the conduct condemned and the United States. *Id.* at 1168-69. Courts requiring a nexus to the United States reason that, even if there is nothing in the statute's text on that issue, constitutional principles cannot be ignored simply because they are not stated in a criminal or civil law. In *United States v. Davis*, 905 F.2d 245, 248-49 (9th Cir. 1990), the Ninth Circuit held that, to apply extraterritorially to a federal criminal statute consistent with Due Process, there must be a sufficient nexus between the defendant and the United States so that such application would not be arbitrary or fundamentally unfair." *See also United States v. Yousef*, 327 F.3d 56, 111-112 (2d Cir. 2003)(citing *Davis, supra*, at 248-49).

Gruezo advances the proposition that there is no rational difference in a case: a) where a foreign nation confirms nationality or registry of a vessel; b) one where the occupants either claim nationality or registry for the vessel that a foreign nation does *not confirm* or *deny*; and c) one where the detainees do not make a claim of nationality or registry. One of the reasons would be that a person's liberty should not have to depend on the efficiency *vel non* of a foreign government, some of which are notoriously tardy, or simply disinterested, in

providing United States officials with information about the nationality or registry of one of their vessels. More importantly, there is no good reason to ignore the same Due Process protections the Supreme Court applied in *J. McIntyre Mach., LTD. v. Nicastro*, 564 U.S. 873, 879 (2011)(plurality op.), to criminal cases, particularly those which have to rely on extraterritorial jurisdiction. By exempting MDLEA prosecutions from the Due Process guarantees announced in *Nicastro*, a defendant can “be deprived of life, liberty, or property” with no minimum contacts or nexus between him, the vessel, the drugs, and the United States. Just as in *J. McIntyre Mach., LTD. v. Nicastro*, 564 U.S. 873, 879 (2011)(plurality op.), because there were no such “minimum contacts,” Gruezo never should have been “haled into court.”

In *United States v. Lawrence*, 727 F.3d 386, 396-97 (5th Cir. 2013), the Fifth Circuit sided with the Ninth Circuit albeit regarding a different drug statute. In *Lawrence*, the Fifth Circuit found the nexus requirement was met because a non-U.S. citizen was residing in Houston, and the conspiracy was formed in the United States. Here, the record is devoid of any facts which could satisfy that “minimum contacts” or nexus requirement. The Eleventh Circuit currently does not agree with the above “minimum contacts” principle. Rather, it holds that the only requirement under the MDLEA is that it not be applied in an “arbitrary or

fundamentally unfair” manner. *See, e.g., United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1378 (11th Cir. 2011). Gruezo respectfully argues that limitation is overly broad and must give way to the principle of “minimum contacts.” Without the notion of “minimum contacts” as the constitutional litmus test, the MDLEA allows for the taking of an individual’s liberty where: a) he resides in another country thousands of miles from the United States; b) he is not on notice about the existence of the MDLEA; c) he can be apprehended by United States officials *anywhere* in the world; d) he can be taken to the United States and prosecuted for drug crimes; e) he can be convicted of crimes which have no nexus to the United States; and f) he can be punished for that conviction with a lengthy prison sentence. That scenario has occurred thousands of times since the MDLEA was enacted in the 1980s, resulting in tens of thousands of years of imprisonment being meted out to mostly indigent, uneducated foreign nationals.

It is not fair or reasonable to exempt extraterritorial federal criminal statutes, like the MDLEA, from the Due Process requirement of “minimum contacts” inherent in federal civil litigation. In fact, because an individual’s liberty interest is at stake in a criminal case, this Due Process standard should be considered as much more important than in civil cases involving only monetary damages. Gruezo asks this Court to intervene by granting this petition because there is no

nexus of any type between him, the vessel, the drugs, and the United States necessary to comport with Due Process. *See, e.g., United States v. Davis*, 905 F.2d 245, 248-49 (9th Cir. 1990). (extraterritorial jurisdiction in a criminal case has to be consistent with Due Process; there must be a sufficient nexus between the defendant and the United States to ensure a judicial proceeding is not arbitrary or fundamentally unfair).

CONCLUSION

Gruezo respectfully prays that this Honorable Court grant this petition to decide the essential questions raised here about the MDLEA's failure to comply with fundamental Due Process guarantees.

Respectfully submitted,

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Surfside, Florida
June 24, 2023

A-1



Neutral
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United States v. Gruezo

United States Court of Appeals for the Eleventh Circuit

March 30, 2023, Filed

No. 22-11342 Non-Argument Calendar

Reporter

66 F.4th 1284 *; 2023 U.S. App. LEXIS 7517 **; 2023 WL 2706261

UNITED STATES OF AMERICA, Plaintiff-Appellee,
versus LIVER GRUEZO, Defendant-Appellant.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.*

Prior History: [\[**1\]](#) Appeal from the United States District Court for the Southern District of Florida. D.C. Docket No. 1:21-cr-20327-KMM-3.

Disposition: AFFIRMED.

Core Terms

vessel, nationality, district court, magistrate judge, reduction, registry, marks, quotation, minor-role, sentence, argues, high seas, master of the vessel, conspiracy, vagueness, team, minor participant, motion to dismiss, guilty plea, boarding, cocaine

Case Summary

Overview

HOLDINGS: [1]-Defendant's argument that the Maritime Drug Law Enforcement Act (MDLEA) was overly vague and ambiguous because it did not require the Coast Guard to explain what it means to "make a claim of nationality or registry for the vessel" failed because the text of [46 U.S.C.S. § 70502\(d\)\(1\)\(B\)](#) was sufficiently clear to give ordinary people notice that, without a claim of nationality or registry for the vessel upon request, the vessel would be considered stateless for purposes of jurisdiction under the MDLEA; [2]-Defendant failed to show that the absence of a "minimum contacts" or "nexus" requirement in the MDLEA violated the Due Process Clause because he pointed to no precedent applying the "minimum contacts" standard to the MDLEA, and his "nexus" argument was foreclosed by

precedent.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Business & Corporate
Compliance > ... > Transportation Law > Water
Transportation > Licensing & Registration

Transportation Law > Water
Transportation > Maritime Drug Enforcement Act

Criminal Law &
Procedure > ... > Possession > Intent to
Distribute > Elements

Criminal Law & Procedure > Jurisdiction &
Venue > Jurisdiction

HN1 Water Transportation, Licensing & Registration

The Maritime Drug Law Enforcement Act makes it a crime to possess with intent distribute a controlled substance or conspire to do so while on board a covered vessel. [46 U.S.C.S. § 70503\(a\)](#). A vessel is covered by the Maritime Drug Law Enforcement Act if it is subject to the jurisdiction of the United States. [§ 70503\(e\)\(1\)](#). A vessel is subject to the jurisdiction of the United States if it is a vessel without nationality. [§ 70502\(c\)\(1\)\(A\)](#).

Evidence > Burdens of Proof > Allocation

Transportation Law > Water
Transportation > Maritime Drug Enforcement Act

[HN2](#) **Burdens of Proof, Allocation**

The government bears the burden of establishing that the statutory requirements of Maritime Drug Law Enforcement Act jurisdiction are met.

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Jurisdiction

[HN3](#) **De Novo Review, Jurisdiction**

An appellate court reviews de novo a district court's subject matter jurisdiction even when it is raised for the first time on appeal. An appellate court reviews for clear error the district court's factual findings relevant to jurisdiction. While parties may not stipulate to jurisdiction, they may stipulate to facts that bear on this Court's jurisdictional inquiry. A court's task is to determine whether the stipulated facts give rise to jurisdiction.

Criminal Law & Procedure > ... > Standards of Review > Deferential Review > Credibility & Demeanor Determinations

[HN4](#) **Deferential Review, Credibility & Demeanor Determinations**

An appellate court accords great deference to a district court's credibility determinations. An appellate court will not reverse a district court's factual finding concerning credibility unless the finding is contrary to the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it.

Governments > Legislation > Interpretation

[HN5](#) **Legislation, Interpretation**

The plain text of [46 U.S.C.S. § 70502\(d\)\(1\)\(B\)](#) uses the word or to connect nationality and registry, [46 U.S.C.S. § 70502\(d\)\(1\)\(B\)](#), and or is almost always disjunctive. Of course, statutory context can overcome the ordinary, disjunctive meaning of or.

Governments > Legislation > Interpretation

[HN6](#) **Legislation, Interpretation**

An appellate court reviews de novo the constitutionality of a criminal statute.

Admiralty & Maritime Law > Practice & Procedure > Jurisdiction > Statutory Sources

Transportation Law > Water
Transportation > Maritime Drug Enforcement Act

Business & Corporate
Compliance > ... > Transportation Law > Water
Transportation > Licensing & Registration

[HN7](#) **Jurisdiction, Statutory Sources**

This challenge is unpersuasive, as the text of [46 U.S.C.S. § 70502\(d\)\(1\)\(B\)](#) is sufficiently clear to give ordinary people notice that, without a claim of nationality or registry for the vessel upon request, the vessel will be considered stateless for purposes of jurisdiction under the Maritime Drug Law Enforcement Act. [46 U.S.C.S. § 70502\(d\)\(1\)\(B\)](#).

Criminal Law & Procedure > ... > Entry of Pleas > Guilty Pleas > Appeals

[HN8](#) **Guilty Pleas, Appeals**

A valid guilty plea renders irrelevant—and thereby prevents a defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered.

Business & Corporate
Compliance > ... > Transportation Law > Water
Transportation > Licensing & Registration

[HN9](#) **Water Transportation, Licensing & Registration**

The Coast Guard's routine stop, boarding, and inspection of an American vessel on the high seas does not normally rise to the level of custodial detention thus requiring warnings.

Enhancements > Mitigating Role

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

[HN10](#) Procedural Due Process, Scope of Protection

The Due Process Clause prohibits the exercise of extraterritorial jurisdiction over a defendant when it would be arbitrary or fundamentally unfair. A defendant challenging the facial validity of a statute must show that no set of circumstances exists under which the statute would be valid.

Business & Corporate
Compliance > ... > Transportation Law > Water Transportation > Licensing & Registration

Transportation Law > Water
Transportation > Maritime Drug Enforcement Act

International Law > Territorial Boundaries

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

[HN11](#) Water Transportation, Licensing & Registration

Congress enacted the Maritime Drug Law Enforcement Act to define and punish felonies committed on the high seas. The conduct proscribed by the Maritime Drug Law Enforcement Act need not have a nexus to the United States because universal and protective principles support its extraterritorial reach. The prosecution of a foreign national for drug trafficking aboard a stateless vessel on the high seas is not prohibited by the Due Process Clause, as the Maritime Drug Law Enforcement Act provides clear notice that all nations prohibit such conduct.

Criminal Law & Procedure > ... > Appeals > Standards of Review > Clear Error Review

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments &

[HN12](#) Standards of Review, Clear Error Review

An appellate court reviews for clear error a district court's determination of a defendant's role. The district court has considerable discretion in making this fact-intensive determination. As long as the district court's decision is supported by the record and does not involve a misapplication of the law, the choice between two permissible views of the evidence as to the defendant's role in the offense will rarely constitute clear error.

Criminal Law & Procedure > Trials > Burdens of Proof > Defense

Evidence > Burdens of Proof > Allocation

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Mitigating Role

Evidence > Burdens of Proof > Preponderance of Evidence

[HN13](#) Burdens of Proof, Defense

[U.S. Sentencing Guidelines Manual § 3B1.2](#) directs the sentencing court to decrease a defendant's offense level by two levels if the defendant was a minor participant in any criminal activity. [U.S. Sentencing Guidelines Manual § 3B1.2](#). 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. [U.S. Sentencing Guidelines Manual § 3B1.2, cmt. 5](#). The defendant bears the burden of proving a mitigation role in the offense by a preponderance of the evidence.

Criminal Law & Procedure > Sentencing > Imposition of Sentence > Factors

[HN14](#) Imposition of Sentence, Factors

A defendant's role in the offense may not be determined on the basis of criminal conduct for which the defendant was not held accountable at sentencing.

Counsel: For UNITED STATES OF AMERICA, Plaintiff

- Appellee: Jonathan Colan, Daniel Matzkin, Lisa Tobin Rubio, U.S. Attorney Service - Southern District of Florida, U.S. Attorney Service - SFL, MIAMI, FL.

For LIVER GRUEZO, Defendant - Appellant: Martin Alan Feigenbaum, Martin A. Feigenbaum, Esq., SURFSIDE, FL.

Judges: Before NEWSOM, GRANT, and HULL, Circuit Judges.

Opinion

[*1286] PER CURIAM:

Defendant Liver Gruzo appeals his convictions and 135-month sentence for (1) conspiracy to possess with intent to distribute five kilograms or more of cocaine while on board a vessel subject [*1287] to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(b) (Count 1) and (2) possession with intent to distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(a) (Count 2).

On appeal, Gruzo argues that (1) the district court did not have jurisdiction under the Maritime Drug Law Enforcement Act ("MDLEA"), (2) the MDLEA is unconstitutional, and (3) the district court erred when it did not apply the minor-role reduction to decrease his offense level by two levels. After careful [**2] review of the record and the parties' briefs, we affirm Gruzo's convictions and sentence.

I. BACKGROUND

On June 2, 2021, a federal grand jury charged Gruzo and two codefendants—Wilmar Estupinan Padilla and Yiminson Caicedo Vallecilla—with the drug crimes in Counts 1 and 2. Initially, Gruzo pled not guilty.

A. Motion to Dismiss

On November 3, 2021, Gruzo moved to dismiss the indictment for lack of jurisdiction under the MDLEA. Gruzo's motion asserted that the Coast Guard failed to make all the necessary inquiries about the vessel's nationality, as required by the MDLEA. Gruzo requested an evidentiary hearing and proffered that, if

granted an evidentiary hearing, he would testify to material facts demonstrating that the district court did not have jurisdiction.

On December 8, 2021, a magistrate judge held an evidentiary hearing on Gruzo's motion to dismiss. At that hearing, the government called U.S. Coast Guard Petty Officer Diego Rivera, who testified to the following events.

On May 5, 2021, Rivera's team intercepted a vessel. Gruzo, Estupinan, and Caicedo were all onboard the vessel. The team noticed that the vessel did not have (1) markings indicating its country of origin, (2) [**3] registration documents, (3) a country's flag, or (4) any other indicia of nationality.

Rivera, who spoke Spanish, acted as an interpreter. Rivera asked right-of-visit questions to determine the vessel's nationality. As Rivera did so, another officer transcribed the responses in a document called a Victor Report. Rivera testified that the purpose of a Victor Report is to determine the nationality of a vessel and to establish jurisdiction. The Victor Report here stated there were no registration documents on the vessel and no registration number on the vessel's hull.

During Rivera's questioning, Estupinan stated that he was the master of the vessel. Rivera asked Estupinan if he claimed a nationality for the vessel, and Estupinan responded "no." Rivera then asked whether the vessel had a nationality, and Estupinan responded "no." Both Gruzo and Caicedo remained silent during Rivera's questioning and did not interject at any point to claim nationality of the vessel.

Rivera's team reported the information to the Coast Guard Command Center, which directed them to treat the boat as without nationality and indicated that the team had the authority to conduct law enforcement boarding.

On cross-examination, [**4] Rivera testified that his team wrote another report that day called the Alpha Report. Rivera explained that the purpose of the Alpha Report was broader and typically described "the whole construction of the vessel, where we're at, [and] what we are observing." The Alpha Report here listed the nationality of the vessel as Colombian. Rivera testified that this was inaccurate and likely caused by a transcription error or an "honest mistake." Rivera explained that (1) the team's original reports, which were written with a grease pen on the vessel, were later rewritten to improve legibility, and (2) the version of the

Alpha Report [*1288] introduced by the defense was the rewritten version, as evidenced by the fact it was not written in grease pen.

Following the evidentiary hearing, the magistrate judge issued a report recommending that the district court deny Gruzo's motion to dismiss ("R&R"). First, the magistrate judge found that Estupinan had not made a claim of Colombian nationality for the vessel. The magistrate judge explained that (1) although Rivera's testimony conflicted with the Alpha Report, that Report was created under unclear circumstances and (2) the magistrate judge "afford[ed] [*5] little weight to the Alpha Report, recognizing its potential for impeachment, but credit[ed] . . . Rivera's testimony."

Second, the magistrate judge found that (1) under § 70502(d)(1)(B), an officer is required to ask about either nationality or registry of the vessel, and (2) Rivera had provided credible testimony that when he asked the vessel's master whether he claimed nationality for it, Estupinan replied "no." The magistrate judge concluded that the vessel was appropriately deemed stateless and was subject to the jurisdiction of the United States.

Gruzo objected to the R&R. The district court overruled Gruzo's objections, adopted the R&R, and denied Gruzo's motion to dismiss.

B. Guilty Plea

On January 26, 2022, Gruzo pled guilty to both counts in the indictment, without the benefit of a written plea agreement. Gruzo signed a factual proffer recounting the following specific events that he stipulated the government could prove beyond a reasonable doubt.

On May 5, 2021, while on patrol in the eastern Pacific Ocean, a U.S. Marine Patrol Aircraft detected a low-profile vessel north of Darwin Island, Ecuador, in international waters. Coast Guard officers intercepted the vessel and observed (1) no [*6] vessel name, (2) no registration number, (3) no markings on the vessel, and (4) no other indicia of nationality.

Once on board, the officers asked the master of the vessel whether he claimed a nationality for it, and the master of the vessel did not do so. "Based on the master's failure to make a claim of nationality, the Coast Guard authorized the treatment of the vessel as one without nationality and conducted a full law enforcement boarding."

In doing so, the officers opened a hatch in the vessel and observed packages consistent with contraband. After removing the packages, officers conducted a field test of the packages' contents for narcotics. The test returned positive for cocaine, weighing approximately 1,390 kilograms, which the defendants were knowingly transporting. Gruzo conspired with Estupinan and Caicedo, as well as people in Colombia, to possess with intent to distribute five kilograms or more of cocaine while on board a vessel that was without nationality in international waters.

The magistrate judge presided over Gruzo's change of plea hearing and recommended that the district court accept Gruzo's guilty plea. Gruzo did not object to this recommendation, and the district [*7] court adopted it and accepted Gruzo's guilty plea.

C. Presentence Investigation Report ("PSR") and Gruzo's Objections

The probation officer prepared a PSR, which described the offense conduct consistent with the factual proffer. The PSR also provided information from interviews of Estupinan, Caicedo, and Gruzo.

[*1289] The PSR recommended an adjusted offense level of 33, consisting of (1) a base offense level of 38, (2) a two-level reduction under U.S.S.G. § 2D1.1(b)(18) because Gruzo met the criteria set forth in U.S.S.G. § 5C1.2(a)(1)—(5), and (3) a three-level reduction for acceptance of responsibility under U.S.S.G. § 3E1.1(a) and (b).

With no criminal history points, Gruzo's criminal history category was I. Gruzo's advisory guidelines range was 135 to 168 months' imprisonment. As to both counts, Gruzo's statutory minimum term of imprisonment was 10 years and his statutory maximum was life imprisonment. See 46 U.S.C. § 70506(a); 21 U.S.C. § 960(b)(1)(B)(ii).

Gruzo objected to the PSR and moved for a downward variance. In his objections, Gruzo argued that he should receive a two-level reduction because he was a minor participant in the criminal activity. Gruzo emphasized that the PSR had identified several uncharged individuals who were directly involved in the commission of the drug scheme. Gruzo [*8] contended that those individuals, as well as Estupinan, played a much larger role in the planning and execution of the scheme than he had. Gruzo argued that he had

merely served as a crewman on the drug boat and was involved in the scheme only for a brief period. In his motion for a downward variance, Gruezo requested a total sentence of "around" 70 months.

D. Gruezo's Sentencing

At sentencing, Gruezo reiterated his objection, emphasizing the roles of the other individuals involved and how his conduct, in comparison, was lesser and thus warranted a minor-role reduction. Citing *United States v. De Varon*, 175 F.3d 930 (11th Cir. 1999) (en banc), the district court explained that a minor-role reduction was not appropriate:

[Gruezo] is being charged in an indictment involving himself and two others. He is not being charged with some larger conspiracy, so he's only being charged in connection with his conduct and his relationship to the two other individuals that are involved in that conspiracy, and not some larger conspiracy.

So I believe pursuant to United States vs. De Varon, that the probation officer has correctly calculated the guidelines, and the Court will deny the motion for an adjustment for either a minor or a minimal role in the offense. [**9] Okay?

The district court sentenced Gruezo to 135 months' imprisonment as to each count, to be served concurrently, followed by two years of supervised release. Gruezo renewed all his objections, written and oral.

Gruezo timely appealed.

II. JURISDICTION

On appeal, Gruezo argues that the district court did not have jurisdiction under the MDLEA. First, we provide an overview of MDLEA jurisdiction and our standard of review. Second, we explain why jurisdiction exists and Gruezo's arguments fail.

A. MDLEA Jurisdiction

HN1 The MDLEA makes it a crime to possess with intent distribute a controlled substance or conspire to do so "[w]hile on board a covered vessel." 46 U.S.C. § 70503(a). A vessel is covered by the MDLEA if it is "subject to the jurisdiction of the United States." *Id.* § 70503(e)(1). As relevant here, a vessel is "subject to the jurisdiction of the United States" if it is "a vessel without nationality." *Id.* § 70502(c)(1)(A).

Under the MDLEA, one definition of "a vessel without nationality" is "a vessel **[*1290]** aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel." *Id.* § 70502(d)(1)(B).

HN2 The government bears the burden of establishing that the statutory requirements of MDLEA jurisdiction are met. *United States v. Cabezas-Montano*, 949 F.3d 567, 588 (11th Cir. 2020).

B. Standard of Review

HN3 We review de novo a district court's subject matter jurisdiction even when it is raised for the first time on appeal. *United States v. Iguaran*, 821 F.3d 1335, 1336 (11th Cir. 2016); see also *Cabezas-Montano*, 949 F.3d at 587 (explaining that "the MDLEA's jurisdictional requirement goes to the subject-matter jurisdiction of the courts"). We review for clear error the district court's factual findings relevant to jurisdiction. *Iguaran*, 821 F.3d at 1336. While parties may not stipulate to jurisdiction, they may "stipulate to facts that bear on [this Court's] jurisdictional inquiry." *Id.* at 1337 (emphasis and quotation marks omitted). "A court's task is to determine whether the stipulated facts give rise to jurisdiction." *Id.* (quotation marks omitted).

C. The District Court Had Jurisdiction under the MDLEA

Here, Gruezo stipulated that the vessel had "no indicia of nationality visible" and that when the master of the vessel was asked "do you claim a nationality for the vessel and does this vessel have a nationality," the master "made no claim of nationality for the [vessel]." (Quotation marks omitted.) That alone is sufficient for this Court to affirm the determination that the vessel was subject **[**11]** to the jurisdiction of the United States. 46 U.S.C. § 70502(c)(1)(A), (d)(1)(B).

In any event, we address Gruezo's three arguments about jurisdiction, all of which are unpersuasive.

First, Gruezo argues that the magistrate judge erred when it relied on his and Caicedo's silence as evidence

that the vessel lacked nationality. That argument evinces a misunderstanding of the magistrate judge's R&R. In its "evidence presented" section, the magistrate judge wrote: "[Gruero] and Caicedo were also present during the questioning and did not say anything nor did they dispute Estupinan's claim that the vessel did not have nationality." In its analysis, however, the magistrate judge did not mention, rely on, or assign weight to Gruero's and Caicedo's silence in finding that the vessel was one without nationality. Instead, the magistrate judge focused entirely on Estupinan's actions, and the discrepancy between the Alpha Report and the Victor Report. Accordingly, the magistrate judge did not err in this respect.

Second, Gruero argues that Rivera could not resolve the conflicts between the Alpha Report and the Victor Report because his testimony was "rambling and rife with uncertainties." HN4 But the district court found that Rivera's **12 testimony was credible, and this Court "accord[s] great deference to a district court's credibility determinations." United States v. Cavallo, 790 F.3d 1202, 1227 (11th Cir. 2015). "[W]e will not reverse a district court's factual finding concerning credibility unless the finding is contrary to the laws of nature, or is so inconsistent or improbable on its face that no reasonable factfinder could accept it." *Id.* (quotation marks omitted). Rivera gave a reasonable explanation for the discrepancy between the two Reports, and his testimony was not so improbable that no **1291 reasonable factfinder could credit and accept it.

Third, Gruero argues that the magistrate judge erred in concluding that § 70502(d)(1)(B) did not require the Coast Guard to ask the master to make a claim of *both* nationality and registry for the vessel. We are unpersuaded.

HN5 The plain text of § 70502(d)(1)(B) uses the word "or" to connect "nationality" and "registry," 46 U.S.C. § 70502(d)(1)(B), and "or" is "almost always disjunctive." United States v. Woods, 571 U.S. 31, 45, 134 S. Ct. 557, 567, 187 L. Ed. 2d 472 (2013). Of course, "statutory context can overcome the ordinary, disjunctive meaning of 'or.'" Encino Motorcars, LLC v. Navarro, U.S. , 138 S. Ct. 1134, 1141, 200 L. Ed. 2d 433 (2018). But, here, context favors the ordinary disjunctive meaning of "or."

To begin with, the MDLEA treats the terms "nationality" and "registry" as interchangeable throughout § 70502. For example, § 70502(e) jointly defines "[a] claim of nationality **13 or registry" to "include[] 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.

46 U.S.C. § 70502(e). The interchangeability and equivalency of these two terms in the MDLEA is further evidenced by § 70502(d)(1)(C), where the rejection of a master's claim of *registry* is premised on the named country's failure to confirm *nationality*. See *id.* § 70502(d)(1)(C).

In addition, this Court previously has read the terms to be disjunctive. In Iguaran, for example, this Court noted that "the term vessel without nationality includes a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a *claim of nationality or registry* for that vessel." 821 F.3d at 1337 (emphasis added) (quotation marks omitted). Immediately after setting forth that definition, this Court explained that, under that definition, if the defendants "failed, on request of the United States officials who apprehended them, to make **14 a *claim of nationality*, their vessel was *without nationality* and subject to the jurisdiction of the United States." *Id.* (emphases added) (quotation marks omitted). In other words, the master's failure to claim nationality was sufficient for the vessel to be subject to the jurisdiction of the United States under the MDLEA.

Accordingly, Estupinan's failure to claim nationality when asked by the Coast Guard is sufficient to show the vessel was without nationality and subject to the jurisdiction of the United States. 46 U.S.C. § 70502(d)(1)(B).

III. CONSTITUTIONALITY OF THE MDLEA

Next, Gruero argues the MDLEA is unconstitutional for three reasons: (1) it is overly vague; (2) it violates his *Miranda*¹ rights because it does not require law enforcement to inform the master of the vessel of the consequences of failing to make a claim of nationality or registry; and (3) due process prohibits the prosecution

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

of foreign nationals who (i) do not have "minimum contacts" with the United [*1292] States and (ii) committed offenses that do not have a "nexus" to the United States.

HN6[] We review de novo the constitutionality of a criminal statute. United States v. Wright, 607 F.3d 708, 715 (11th Cir. 2010).

A. Vagueness

Gruezo argues that the MDLEA is overly vague and ambiguous because it does not require [**15] the Coast Guard to explain what it means to "make a claim of nationality or registry for the vessel."

HN7[] This challenge is unpersuasive, as the text of § 70502(d)(1)(B) is sufficiently clear to give ordinary people notice that, without a claim of nationality or registry for the vessel upon request, the vessel will be considered stateless for purposes of jurisdiction under the MDLEA. 46 U.S.C. § 70502(d)(1)(B).

In addition, this Court repeatedly has rejected constitutional vagueness challenges to the jurisdictional provisions in the MDLEA's predecessors. See, e.g., United States v. Mena, 863 F.2d 1522, 1527 (11th Cir. 1989) (rejecting a vagueness challenge to a jurisdictional provision of the MDLEA's predecessor statute because "[t]hose embarking on voyages with holds laden with illicit narcotics, conduct which is contrary to the laws of all reasonably developed legal systems, do so with the awareness of the risk that their government may consent to enforcement of the United States' laws against the vessel" (quotation marks omitted)); United States v. Marino-Garcia, 679 F.2d 1373, 1384 (11th Cir. 1982) (rejecting a vagueness challenge to a jurisdictional provision of the MDLEA's predecessor statute and explaining that even though the phrase "vessel without nationality" was undefined in the statute, it "obviously encompassed vessels not operating under [**16] the flag and authority of any sovereign nation").

B. *Miranda*

Gruezo contends that the MDLEA violates his *Miranda* rights because it does not require law enforcement to inform the master of the vessel of the consequences of failing to make a claim of nationality or registry.

HN8[] To the extent Gruezo asserts that §

70502(d)(1)(B) is unconstitutional as applied to the facts of his case, his claim is waived by his guilty plea. See United States v. Castillo, 899 F.3d 1208, 1214 (11th Cir. 2018) ("A valid guilty plea renders irrelevant—and thereby prevents a defendant from appealing—the constitutionality of case-related government conduct that takes place before the plea is entered." (cleaned up)).

To the extent Gruezo asserts that § 70502(d)(1)(B) is facially unconstitutional, our prior precedent forecloses his facial challenge. **HN9[]** "This [C]ircuit has long recognized that the Coast Guard's routine stop, boarding[,] and inspection of an American vessel on the high seas does not normally rise to the level of custodial detention thus requiring *Miranda* warnings." United States v. Rioseco, 845 F.2d 299, 302-03 (11th Cir. 1988). This Court in Rioseco, for example, concluded that the defendant was not in custody for *Miranda* purposes when five Coast Guard officers, having probable cause, boarded the vessel and ordered the crew members to remain in a particular area of the vessel. *Id.* at 303 [**17]. It determined that an ordinary man would not believe that he was in custody because (1) the officers did not tell the defendant he was in custody or under arrest and (2) the officers' conduct "was simply routine procedure in a usual boarding action." *Id.*

C. Due Process Clause

HN10[] Gruezo also challenges the constitutionality of the MDLEA under the Due Process Clause. [*1293] "The Due Process Clause prohibits the exercise of extraterritorial jurisdiction over a defendant when it would be arbitrary or fundamentally unfair." United States v. Baston, 818 F.3d 651, 669 (11th Cir. 2016) (quotation marks omitted). A defendant challenging the facial validity of a statute must show that "no set of circumstances exists under which the [statute] would be valid." United States v. Salerno, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100, 95 L. Ed. 2d 697 (1987).

HN11[] Congress enacted the MDLEA to define and punish felonies committed on the high seas. United States v. Campbell, 743 F.3d 802, 805 (11th Cir. 2014). This Court in Campbell held that "the conduct proscribed by the [MDLEA] need not have a nexus to the United States because universal and protective principles support its extraterritorial reach." *Id.* at 810. We explained that, given that trafficking drugs is "condemned universally by law-abiding nations," it is not

"fundamentally unfair" to punish those who traffic drugs on the high seas. *Id.* (quotation marks omitted). We further determined that the prosecution of a foreign national for "drug [**18] trafficking aboard [a] stateless vessel[] on the high seas" is not prohibited by the Due Process Clause, as the MDLEA "provides clear notice that all nations prohibit" such conduct. *Id. at 812*; see also *Cabezas-Montano*, 949 F.3d at 587 ("[T]his Court has held that the Fifth Amendment's Due Process Clause does not prohibit the trial and conviction of aliens captured on the high seas while drug trafficking because the MDLEA provides clear notice that all nations prohibit and condemn drug trafficking aboard stateless vessels on the high seas.").

Here, Gruero fails to show that the absence of a "minimum contacts" or "nexus" requirement in the MDLEA violates the Due Process Clause. He points to no precedent from this Court or the Supreme Court applying the "minimum contacts" standard to the MDLEA, and his "nexus" argument is foreclosed by our precedent. Therefore, Gruero's MDLEA convictions do not violate the Due Process Clause.

IV. MINOR-ROLE REDUCTION

Lastly, Gruero argues that the district court erred by declining to reduce his offense level by two levels under U.S.S.G. § 3B1.2 because he was only a minor participant in the criminal activity.

HN12 [↑] We review for clear error a district court's determination of a defendant's role. *De Varon*, 175 F.3d at 937. The 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 [**19] district "court's decision is supported by the record and does not involve a misapplication of the law," the "choice between two permissible views of the evidence as to the defendant's role in the offense will rarely constitute clear error." *United States v. Cruickshank*, 837 F.3d 1182, 1192 (11th Cir. 2016) (quotation marks omitted).

HN13 [↑] Section 3B1.2 of the Sentencing Guidelines 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." U.S.S.G. § 3B1.2. 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.* cmt. 5. The defendant "bears the burden of proving a

mitigation role in the offense by a preponderance of the evidence." *De Varon*, 175 F.3d at 939.

Here, Gruero argues that he was entitled to a minor-role reduction because Estupinan and several uncharged individuals [*1294] were directly involved in the planning and execution of the drug scheme, while he worked only as a crewman for a brief period. Gruero criticizes the district court for (1) focusing on a hypothetical "sub-conspiracy" that included only the crew members of the vessel and (2) never acknowledging the existence of other participants in the conspiracy.

Gruero's argument is directly [**20] foreclosed by our binding precedent. **HN14** [↑] In *De Varon*, we "unambiguously held that a defendant's role in the offense may not be determined on the basis of criminal conduct for which the defendant was not held accountable at sentencing." 175 F.3d at 941. Gruero was charged in an indictment that involved two other people and did not involve some larger, unspecified conspiracy. *United States v. Martin*, 803 F.3d 581, 591 (11th Cir. 2015) ("Only those participants who were involved in the relevant conduct attributed to the defendant may be considered." (quotation marks omitted)). Gruero may not prove he is entitled to a minor-role reduction by pointing to a broader criminal scheme in which he was a minor participant but for which he was not charged.

Further, as to Estupinan, Gruero has not shown that the district court clearly erred in denying him a minor-role reduction. Gruero's involvement—as a crewmember of a vessel that was smuggling a large quantity of drugs—was still serious and important enough to warrant the denial of a minor-role reduction under § 3B1.2. Gruero knowingly participated in the illegal transportation of a large quantity of cocaine, he and his transportation role were important to that scheme, and he was held accountable for that conduct only. *Cabezas-Montano*, 949 F.3d at 607 (considering [**21] these same factors in affirming the denial of a minor-role reduction); see also *United States v. Valois*, 915 F.3d 717, 732 (11th Cir. 2019) (same).

We conclude that the district court did not err, clearly or otherwise, in finding that Gruero did not qualify for a minor-role reduction.

V. CONCLUSION

For all these reasons, we affirm Gruezo's convictions and sentence.

AFFIRMED.

End of Document

A-2

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

UNITED STATES OF AMERICA

v.

LIVER GRUEZO

§ JUDGMENT IN A CRIMINAL CASE

§

§

§

Case Number: **1:21-CR-20327-KMM(3)**

§ USM Number: **01686-506**

§

§ Counsel for Defendant: **Martin Alan Feigenbaum**

§ Counsel for United States: **Frederic Shadley**

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to Counts One and Two of the Indictment.	
<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:

Title & Section / Nature of Offense

46 U.S.C. § 70506(b) - Conspiracy to possess with intent to distribute cocaine while on board a vessel subject to the jurisdiction of the United States

Offense Ended **05/05/2021** **Count** **1**

46 U.S.C. § 70506(a) - Possession with the intent to distribute cocaine while on board a vessel subject to the jurisdiction of the United States

05/05/2021 **2**

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) 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.

April 20, 2022

Date of Imposition of Judgment



Signature of Judge

**K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

April 20, 2022

Date

AO 245B (Rev. FLSD 2/20) Judgment in a Criminal Case

DEFENDANT: LIVER GRUEZO
CASE NUMBER: 1:21-CR-20327-KMM(3)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
135 months. This term consists of 135 months as to each of Counts One and Two, to be served concurrently.

The court makes the following recommendations to the Bureau of Prisons:
Designation to a facility in South Florida or as close as possible, to be near family.

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: LIVER GRUEZO
CASE NUMBER: 1:21-CR-20327-KMM(3)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **Two (2) years. This term consists of two (2) years as to each of Counts One and Two, to be served concurrently.**

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: LIVER GRUEZO
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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.

Defendant's Signature _____

Date _____

DEFENDANT: LIVER GRUEZO
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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 Secretary of Homeland 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: LIVER GRUEZO
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CRIMINAL MONETARY PENALTIES

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

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	\$200.00	\$0.00	\$0.00		

The determination of restitution is deferred until after such determination.
 The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

An Amended Judgment in a Criminal Case (AO245C) will be entered

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: LIVER GRUEZO
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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 \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 1 and 2 , 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.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
21-20327-CR-MOORE/LOUIS
CASE NO.

46 U.S.C. § 70506(b)
46 U.S.C. § 70503(a)(1)
46 U.S.C. § 70507

Jun 1, 2021

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

UNITED STATES OF AMERICA

vs.

**WILMAR ESTUPINAN PADILLA,
YIMINSON CAICEDO VALLECILLA, and
LIVER GRUEZO,**

Defendants.

INDICTMENT

The Grand Jury charges that:

COUNT 1

Beginning on an unknown date and continuing through on or about May 5, 2021, upon the high seas and elsewhere outside the jurisdiction of any particular State or district, the defendants,

**WILMAR ESTUPINAN PADILLA,
YIMINSON CAICEDO VALLECILLA, and
LIVER GRUEZO,**

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

With respect to all defendants, the controlled substance involved in the conspiracy attributable to them as a result of their own conduct, and the conduct of other conspirators reasonably

foreseeable to them, is five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine, in violation of Title 46, United States Code, Section 70506(a) and Title 21, United States Code, Section 960(b)(1)(B).

COUNT 2

On or about May 5, 2021, upon the high seas and elsewhere outside the jurisdiction of any particular State or district, the defendants,

**WILMAR ESTUPINAN PADILLA,
YIMINSON CAICEDO VALLECILLA, and
LIVER GRUEZO,**

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

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

FORFEITURE ALLEGATIONS

1. The allegations of Counts 1 and 2 of this Indictment are re-alleged and incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of property in which one or more of the defendants, **WILMAR ESTUPINAN PADILLA, YIMINSON CAICEDO VALLECILLA, and LIVER GRUEZO**, have an interest.

2. Upon conviction of a violation of, or a conspiracy to violate, Title 46, United States Code, Section 70503, as alleged in Counts 1 and 2 of this Indictment, each defendant shall forfeit to the United States all property described in Title 21, United States Code, Section 881(a) that is used

or intended for use to commit, or facilitate the commission of, such violation.

3. Upon conviction of a violation of, or a conspiracy to violate, Title 46, United States Code, Section 70503, as alleged in Counts 1 and 2 of this Indictment, each defendant shall forfeit to the United States, all property, real or personal, which constitutes or is derived from proceeds traceable to the violation.

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

A TRUE BILL

FOREPERSON

J.A.G.
JUAN ANTONIO GONZALEZ
ACTING UNITED STATES ATTORNEY

F.C.S.
FREDERIC C. SHADLEY
ASSISTANT UNITED STATES ATTORNEY

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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: October 13, 2008

Currentness

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

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

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

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

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

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

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

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

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

(A) a vessel without nationality;

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

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

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

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

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

(i) is entering the United States;

(ii) has departed the United States; or

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

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

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

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

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

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

(A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;

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

(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

(2) Response to claim of registry.--The response of a foreign nation to a claim of registry under paragraph (1)(A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is proved conclusively by certification of the Secretary of State or the Secretary's designee.

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

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

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

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

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

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

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

CREDIT(S)

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

Notes of Decisions (72)

46 U.S.C.A. § 70502, 46 USCA § 70502

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

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United States Constitution Amendment Five

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