

No. 23-7637 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
MAY 28 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ANDRES NIXON GONZALEZ-CATAGUA PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andres Nixon Gonzalez-Catagua, pro se
(Your Name)

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QUESTION(S) PRESENTED

WHETHER the jurisdictional limit contained in the Maritime Drug Law Enforcement Act relates to the legislative reach of the statute or whether it relates to the the subject matter jurisdiction of the courts.

WHETHER 46 USC §70504(a) is unconstitutional because it removes an element of the offence from jury consideration in violation of the Sixth Amendment.

WHETHER interdiction actions on the high seas pursuant to the Maritime Drug Law Enforcement Act are "custodial interrogations" requiring Miranda Warnings.

WHETHER US military personnel acting as law enforcement on the high seas must be required to inform those they interdict of their rights under US law if haled into a US court or if they must be required to inform those they interdict of the consequences of their silence under the Maritime Drug Law Enforcement Act.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Manuel Angel Velez-Acosta - Defendant/Appellant

Hernan David Gonzalez-Quiroz - Defendant/Appellant

Andres Nixon Gonzalez-Catagua - Defendant/Petitioner

Guillermo Cabrera Perez - Defendant/Appellant

versus

United States of America - Plaintiff/Respondent

RELATED CASES

US v. GONZALEZ-CATAGUA, et al, No. 22-13528, US Court of Appeals for the Eleventh Circuit. Judgment entered on February 27, 2024.

US v. GONZALEZ-CATAGUA et al, No. 8:21-CR-00047-SCB-JSS, US District Court for the Middle District of Florida. Conviction entered on July 14, 2022. Sentence entered on October 13, 2022.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 27, 2024.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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Full Text Follows

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§ 844. Penalties

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

§ 1201. Kidnapping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

§ 1951. Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

§ 3231. District courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

§ 70502. Definitions

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

(1) In general. In this chapter [46 USCS §§ 70501 et seq.], 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 [46 USCS §§ 70501 et seq.], 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).

§ 70503. Prohibited acts

(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;

§ 70504. Jurisdiction and venue

(a) Jurisdiction. Jurisdiction of the United States with respect to a vessel subject to this chapter [46 USCS §§ 70501 et seq.] is not an element of an offense. Jurisdictional issues arising under this chapter [46 USCS §§ 70501 et seq.] are preliminary questions of law to be determined solely by the trial judge.

Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

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 put 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.

Amendment 6 Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Cl 10. Offenses.

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

Statement of the Case

Somewhere on the high seas between the Galapagos Islands and Ecuador, the U.S. Coast Guard came upon a small open-topped vessel with four souls aboard. The Coast Guard intercepted that boat and with support from a helicopter full of soldiers armed with long-guns, engaged in a "right of visit" inspection. Four Coast Guard officers boarded the vessel without permission from any crewmember. Their guns were drawn. The four men were made to put their hands in the air and were held in the aft section of the boat while the Coast Guard members searched the vessel for nearly an hour.

What happened during the questioning of the crewmembers is somewhat unclear. One Coast Guard officer recorded on the "right-of-visit" form that the alleged master of the boat claimed Ecuadorian nationality for the vessel. Other Coast Guard officers testified at trial that none of the four individuals aboard made any comment when asked about nationality. More confusingly, the certification form submitted by the U.S. State Department stated that no one had made a claim of nationality and that the last port of call for the boat, Ecuador, was not able to confirm or deny nationality of the vessel. At no time did any U.S. sailor explain why they were asking about the ship's nationality. At no time did they explain that silence about nationality inquiries may subject them to U.S. laws or possible criminal liability thousands of miles from their current location.

Regardless, Coast Guard officers took the four men into custody after an IONSCAN showed positive results for the presence of Cocaine. No controlled substances were located on board nor were any recovered from the open water. Petitioner and his fellow crew-mates then spent the next 2 weeks aboard the Coast Guard ship alongside thirteen other foreign sailors plucked from the sea by this U.S. interdiction team. All of those people were brought through the

Panama Canal and were eventually brought involuntarily to the Middle District of Florida. Petitioner was indicted for allegedly violating the Maritime Drug Law Enforcement Act (MDLEA). He was found guilty at trial and the Eleventh Circuit Court of Appeals affirmed his conviction.

This petition for a writ of Certiorari was placed in the official Inmate Legal Mail system of FCI Fort Dix on or before May 23, 2024 and is, thus, timely.

Reason For Granting the Petition

A - The Question of Jurisdiction: There is a general understanding that the Constitution "requires] criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged." *U.S. v. Gaudin*, 515 U.S. 506, 509-10 (1995). "The prosecution bears the burden of proving all elements of the offense charged, and must persuade the factfinder beyond a reasonable doubt of the facts necessary to establish each of these elements." *Sullivan v. Louisiana*, 508 U.S. 275, 277-5 (1993). The initial inquiry here revolves around whether the "statelessness" of a vessel is an element of the offense defined by 46 U.S.C. §70503. There is currently a circuit split over whether the "jurisdictional limit" found in §70504(a) is a limit on the subject matter jurisdiction of the federal courts or a limit on the legislative jurisdiction of the statute. This split must be resolved.

To answer in brief, Petitioner believes the jurisdictional limit is one that relates only to the legislative reach of the statute, which, in turn, makes "statelessness" an essential element of the offense that must be submitted to the jury.

There is a clear split amongst the various courts of appeals over whether the limitation found in §70504(a) of the MDLEA relates to their subject matter jurisdiction of the courts or merely over the substantive reach of the statute itself. The First and Second Circuits have held that §70504(a) is a limitation of the statutory reach of the MDLEA. Noting that "the term 'jurisdiction' is notoriously maleable", the First Circuit held the use of the word 'jurisdiction' in the referenced statute referred only "to the substantive reach of the statute - applying to some vessels but not others -and not the subject matter of the court." *U.S. v. Gonzalez*, 311 F.3d 440, 443

(CA1, 2002). The Second Circuit held similarly, stating the context of the jurisdictional limitations created by the MDLEA "refer unmistakably to the reach of U.S. laws (as exercises of legislative jurisdiction) and not to the jurisdiction of the courts." U.S. v. Prado, 933 F.3d 121, 134 (CA2, 2019).

Several other circuits have held differently. The Eleventh Circuit has stated the MDLEA "provides that the question of whether a vessel is subject to the jurisdiction of the U.S. shall be treated purely as an issue of subject matter jurisdiction." U.S. v. Tinoco, 304 F.3d 1088, 1107 (CA11, 2002). The Fifth Circuit has held that although the jurisdiction of the U.S. to act over a vessel outside the territorial waters of the U.S. and the court's jurisdiction to act are "inextricably linked", the issue was ultimately one of subject matter jurisdiction because the MDLEA "meets the ... requirements of Article III of the U.S. Constitution and 18 U.S.C. §3231." U.S. v. Bustos-Useche, 273 F.3d 622, 628 N.6 (CA5, 2001). The Court of Appeals for the District of Columbia determined that the phrase "subject to the jurisdiction of the United States" represents a limit on subject matter jurisdiction rather than an element of the offense. U.S. v. Miranda, 780 F.3d 1185, 1191 (CA DC, 2019).

Petitioner believes the First and Second Circuits have correctly interpreted the jurisdictional limits of the MDLEA. Congress has unmistakably vested jurisdiction over all criminal matters in the federal courts. 18 U.S.C. §3231. The MDLEA itself is premised on the idea that the smuggling of narcotic drugs is universally recognized as a criminal offense. See e.g. U.S. v. Rendon, 354 F.3d 1320, 1325 (CA11, 2003) (asserting U.S. jurisdiction over vessels engaged in conduct "generally recognized as a crime by nations that have reasonably developed legal systems.") and U.S. v. Aybar-Ulloa, 987 F.3d 1, 9-10 (CA1, 2021) (discussing U.S. participation in UNCLOS and the UN Drug

Trafficking Convention). Thus, subject matter jurisdiction over this kind of offense exists absent Congressional action to the contrary.

Under the MDLEA, this confusion over jurisdiction arises from the use of the word "jurisdiction" in §70503(e)(1), and §70504(a). In §70503(e)(1), Congress defined a "covered vessel" to include "a vessel subject to the jurisdiction of the United States." It defined that vague term in pertinent part as "a vessel without nationality", see §70502(c) which includes one on which the master fails to make a claim of nationality or registry, Id at (d)(1)(A), & (B) or one on which the claimed nation cannot or does not unequivocally assert that vessel is of its nationality. Id at (d)(1)(C). But in §70504(a), Congress then states "Jurisdiction of the United States with respect to vessels subject to this chapter is not an element of the offense. All jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge."

This has created several problems. First, as described above, Congress has delineated the scope of this statute by effectively identifying which vessels it applies to and which vessels it does not. Although this supports the above analysis that this "jurisdictional limitation is over the reach of the statute and not the ability of the courts to hear cases about its violation, it also means Congress has (despite its attempts otherwise) created an inadvertent element to the offense. Indeed, the "jurisdictional" elements in the MDLEA function much the same way as in other criminal statutes such as arson (18 U.S.C. §844(I)), see U.S. v. Johnson, 194 F.3d 657 (CA5, 1999) (holding the interstate commerce requirement is an element of the offense), Hobbs Act robbery (18 U.S.C. §1951), see U.S. v. Gomez, 580 F.3d 94, 99-100 (CA2, 2009) (discussing the interstate commerce element of Hobbs Act Robbery), and even kidnapping (18 U.S.C. §1201(a)(1)), see U.S. v. Willis, 346 F.3d 476,

492 (CA4, 2003) (discussing the interstate commerce element of federal kidnapping). Because the interstate commerce elements function in those statutes as sort of "jurisdiction nexus" defining the reach of those statutes, so too does the "statelessness" inquiry found in the MDLEA. It serves to define the reach of the statute and is, thus, an element of the offense. This Court should so declare.

The practical application of such a holding would have a significant effect in this matter. During trial, the inconsistent (often contradictory) testimony of government witnesses left questions about whether the defendants' vessel was actually stateless. See Appendix A, p. 5. In other words, it is still unclear whether the conduct of which Appellant was accused fell within the scope (jurisdiction) of the MDLEA. Despite the lingering questions about the "statelessness" of the vessel, that question was never submitted to the jury. Indeed, §70504(a) explicitly removes that question from the purview of the jury. But if the "statelessness" inquiry is one that limits the reach of the statute and not the subject matter jurisdiction of the courts, then it is, in effect, an element of the offense. Removing that element from jury consideration violates a defendants Sixth Amendment rights and the command from this Court that there must be "a jury determination that the defendant is guilty of every element of the crime." Gaudin, 515 U.S. at 509.

These two interrelated questions require this Court's consideration and clarification. Whether the "jurisdictional limit" found in the MDLEA is one of legislative jurisdiction or subject matter jurisdiction is not merely academic. It has very real consequences. A vast majority of MDLEA prosecutions occur in the various U.S. District Courts of Florida, part of the Eleventh Circuit which believes the jurisdictional limits of the MDLEA to encompass subject matter jurisdiction. Such a belief essentially removes "statelessness"

as an element of the offense and deprives those defendants of important Sixth Amendment protections.

So too dies the continued application of §70504(a). Because the jurisdictional limit of the MDLEA is one of legislative jurisdiction, "statelessness" becomes an essential element of the crime itself. Because it is an element, that inquiry can not be taken away from the jury. Section 70504(a) is, therefore, unconstitutional because it does precisely that. Although that section was added to the MDLEA ostensibly to ease prosecution of international drug trafficking, see Gonzalez, 311 F.3d at 447 (Torruella, concurring), convenience must not trump constitutionality. Because it removes an essential element of the offence from jury consideration, §70504(a) is unconstitutional and must be struck down.

Petitioner, therefore, urges this Court to resolve the circuit split by clarifying the jurisdictional limit within the MDLEA is one of legislative jurisdiction, not subject matter jurisdiction. He further asks the Court to declare §70504(a) unconstitutional because it violates the Sixth Amendment.

B - The Need for Miranda Warnings: In the realm of the MDLEA, several other important questions remain unanswered. Chief among these is 1) when and to what degree pre-trial constitutional rights attach to defendants involuntarily brought to the United States exclusively for criminal prosecution, and 2) whether the inquiries answered in Part A above necessitate a command for the issuance of Miranda warnings during interdiction actions upon the high seas.

Petitioner's answers to these questions are 1) immediately, because interdiction actions by their very nature are custodial interrogations and 2) yes, because silence during questioning about the nationality of a vessel carries significant consequences per the terms of §70502(d)(1)(B)&(D).

The hallmark of determining whether Miranda warnings are required is a custodial detention. But that is not a mere binary consideration. It is an objective inquiry that considers both the circumstances surrounding the interrogation and whether "a reasonable person [would] have felt he or she was at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). Such circumstances include whether it was a "police dominated atmosphere", *Miranda v. Arizona*, 384 U.S. 436, 456 (1966), and whether a person's captors "appear to control [his] fate." *Illinois v. Perkins*, 496 U.S. 292, 297 (1990).

Given that standard, it is difficult to perceive the actions of U.S. military forces during interdiction actions, such as the one here, as anything other than a custodial setting. People in small vessels hundreds of miles into the ocean are suddenly stopped by heavily armed and armored warships. They are often supported by helicopters full of soldiers armed with long-guns. See e.g. *U.S. v. Dominguez-Caicedo*, 40 F.4th 938 (CA9, 2021). Their engines are sometimes shot at to disable them, preventing further movement. *Id.* Those armed U.S. soldiers then inhibit the boat's further progress, climb aboard without permission, and force the crew to stand by (often at gun-point) while the vessel is searched. Given the complete lack of anywhere else to go, a more "custodial" set of circumstances is nearly impossible to conceive.

Yet courts have long rationalized these tactics, calling them a "routine procedure in a usual boarding action." *U.S. v. Rioseco*, 845 F.2d 299, 302-303 (CA11, 1988). But they are more than that. During these "boarding actions", important questions are asked; questions which - as described above - have serious consequences. Information is collected and evidence gathered, sometimes from these foreign sailors themselves, sometimes (like here) in the

form of "hand swabs" searching for the presence of drugs. That necessarily raises questions about the voluntariness of this evidence gathering and the required implications of a person's Fifth Amendment rights.

This Court has previously held that persons aboard vessels at sea "cannot invoke the protections [of the Constitution] until brought within the actual territorial boundaries of the United States." *Ross v. McIntyre*, 140 U.S. 453, 464 (1891). But that holding dates from a time period vastly different from today and related to the punishment of an American in a consular tribunal. The MDLEA is wholly different. Foreign nationals are being haled into U.S. courts in U.S. territory from the decks of vessels found deep in international waters. If the intention of U.S. military personnel is to apprehend people on the high seas and bring them into U.S. territory for prosecution, (in other words, if they are acting in a law enforcement capacity) they should also be required to ensure those people they apprehend understand there is a proscription against self incrimination and that they understand the consequences of their silence. It is time for the Court to establish such a rule.

Through the MDLEA, thousands of people, almost none of whom planned or intended to enter the United States, are involuntarily dragged thousands of miles into U.S. territory and haled into U.S. courts. Almost none are U.S. citizens. We have grown accustomed to the protections of the Fifth Amendment because the traditional Miranda warnings have become "part of [our] national culture." *Dickerson v. U.S.*, 530 U.S. 428, 443 (2000). That is not true for the majority of the international population. If America insists on serving as the world's policemen, if we are content to subject foreign nationals to our legal system, then it is also incumbent upon us to at least share with them the broad outlines of our rules. On a fundamental level, fairness seems

to demand no less.

Petitioner admits and concedes the MDLEA is a valid exercise of Congress's authority under the Piracy and Felonies clause. U.S. Const., Art I, §8, cl.10. But it is long past time to clarify the rules surrounding the enforcement of that law. The cavalier way the U.S. has engaged in interdiction actions (firing upon unarmed vessels, boarding without permission but with their own weapons drawn, taking people involuntarily into custody and into U.S. territory) seem to have inadvertently made us the pirates. This court has long placed reasonable checks on how domestic law enforcement may discharge their duties while also protecting the rights of those they police. There is no reason those patrolling the high seas should not be subjected to the same.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

NIXON SONTALEZ

Date: May 22, 2024