

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RAMNARINE PERSAUD, -- PETITIONER

vs.

UNITED STATES OF AMERICA, -- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE FIRST U.S. CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

**RAMNARINE PERSAUD
45853-069 H05-106L
MCRAE CORRECTIONAL FACILITY
P. O. DRAWER 55030
MCRAE HELENA, GA 31055**

QUESTIONS PRESENTED

- Is the Maritime Drug Law Enforcement Act (MDLEA) Constitutional under the “jurisdictional” component of Article I of the United States Constitution where Petitioner, the master of a Guyanese-flagged vessel, was intercepted by the United States Coast Guard while sailing in international waters enroute from Jamaica to Guyana and prosecuted in federal court for violating United States’ drug laws?
- Was Petitioner denied the effective assistance of counsel where, at no time during his visits with Petitioner did his attorney ever demonstrate to Petitioner that the United States government had actually contacted the government of Guyana and obtained permission to board and conduct a search Petitioner’s vessel?
- Were Petitioner’s Due Process rights violated under the MDLEA?

LIST OF PARTIES

**[X] 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:**

Bauza-Almonte, Esq., Mariana, AUSA

Besosa, Hon. Francisco A., U.S. District Judge

Persaud, Ramnarine, *pro se*

Rodriguez-Velez, Esq., Rosa Emilia, U.S. Attorney

Miranda-Corrada, Esq., Victor P.

Velez-Rive, Hon. Camille L., Magistrate Judge

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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 of the United States Court of Appeals for the First Circuit.

OPINIONS BELOW

The January 5, 2018 opinion of the First U.S. Circuit Court of Appeals denying a Certificate of Appealability is unpublished and attached as Appendix A.

JURISDICTION

The Court of Appeals entered its judgment on January 5, 2018. This court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves a federal criminal defendant's constitutional rights under the Fifth Amendment and Sixth Amendments which provide in relevant part:

“No person shall be held to answer for a capital, or otherwise infamous crime...nor be deprived of life, liberty, or property, without due process of law...”

"In all criminal prosecutions, the accused shall enjoy the right to ... the assistance of Counsel for his defence."

STATEMENT OF THE FACTS

On June 26, 2015, Petitioner departed Guyana as the master on board the M/V "CHRISTOPHE"- a fishing-type vessel with 12, 000 pounds of fish and a crew of four men, bound for Jamaica. The "CHRISTOPHE" was registered in Guyana and flying the Guyanese flag. Approximately 170 nautical miles south of the Dominican Republic, the "CHRISTOPHE" was stopped by the United States Coast Guard who asked about the vessel's registry. Petitioner confirmed that the vessel was registered in Guyana and was flying the flag of Guyana.

Several hours after the Coast Guard had allegedly contacted the government of Guyana, the U.S. Coast Guard requested permission to search the CHRISTOPHE. Members of the Coast Guard boarded the "CHRISTOPHE," conducted a search and eventually found a shipment of cocaine. Petitioner and his crew were arrested and taken to Puerto Rico.

Petitioner was never shown any documentation that the Coast Guard had ever contacted the government of Guyana or had received permission from the government of Guyana to board and conduct a search of the "CHRISTOPHE."

STATEMENT OF THE CASE

After Petitioner had been arrested and transferred to Guyanabo, Puerto Rico, he was advised by all of the other inmates there that all he should do is just plead guilty because, if he did not and went to trial, he would lose and get a very lengthy sentence. Therefore, whenever his attorney came to visit him, he just went along with whatever his attorney said and accepted whatever he told him. Petitioner did the very same thing in court.

However, after having arrived in prison, Petitioner is still not satisfied that he received the "due process" to which he is entitled because he never understood how it is that he, a national of Guyana, on a Guyanese-registered vessel, while sailing in international waters enroute from Jamaica to Guyana and flying the Guyanese flag, could have been stopped and searched by the United States Coast Guard, arrested, brought to the United States, convicted in a United States court and sentenced to a federal prison in the United States.

Petitioner instituted this appeal pursuant to Title 28 U.S.C. § 2255, not so much in an effort to vacate his conviction but to demonstrate to this honorable Court that it is Petitioner's belief that he did not benefit from the effective assistance of counsel to which he was entitled by law.

Specifically, as a foreign national with absolutely no knowledge whatsoever of the United States criminal justice system, Petitioner simply "went along to get along" with whatever was required of him. Having now been somewhat relieved of the extreme pressures involved in the ordeal of being arrested, prosecuted and sentenced to prison, and having now had the benefit of speaking with many other federal inmates, Petitioner, on reflection, now realizes

that he may not have been afforded all of the protections of the law to which he was entitled.

PETITIONER'S PERSONAL HISTORY AND THE RELEVANT FACTS

Petitioner is a national of the Cooperative Republic of Guyana, South America, who has very little formal education. Petitioner began working on fishing vessels at a very early age and alternated between primary school and his employment. Shortly after primary school, Petitioner became fully employed in the fishing industry and, after many years of experience, eventually became a captain of sea-going fishing vessels.

Petitioner, along with four others, was arrested on these federal charges after having been interdicted at sea, in international waters, aboard the M/V "CHRISTOPHE," of which he was the captain, on a voyage enroute in international waters from Guyana to Jamaica. Petitioner and his crew had no intention whatsoever of travelling to the United States or any of its territories.

In July of 2015, Petitioner was detained at the Federal Detention Center in Guyanabo, Puerto Rico, where he met with his attorney, Mr. Victor Miranda, Esq., on approximately eight occasions and to whom he related details of the events leading up to his arrest.

Petitioner eventually enquired of attorney Miranda as to what was the best course of action for Petitioner to take. Attorney Miranda recommended to Petitioner that it was in Petitioner's best interests to accept a plea.

Attorney Miranda eventually returned with a plea bargain for between seven to nine years. Attorney Miranda never discussed with Petitioner anything relating to federal law and the law concerning the United States Coast Guard

having asserted jurisdiction over his vessel, a foreign vessel flying the flag of Guyana, in international waters.

Throughout Petitioner's approximately seven months' pre-trial detention at the Federal Detention Center in Guyanabo, the common refrain among detainees was that Petitioner, as with all other persons charged, should simply take whatever plea that was offered to him. This was the usual practice because it was commonly understood that it would be a grave mistake to challenge the federal government, one which would certainly result in a conviction and a much lengthier sentence. Petitioner simply took their advice and accepted the plea.

It is Petitioner's contention that at the time of his arrest, his vessel was located in international waters, at approximately 170 nautical miles south of the Dominican Republic, not Mona Island, Puerto Rico, as stated by the government in its Response. Additionally, Petitioner has been informed by his family that an account of the interdiction of Petitioner's vessel was available in an article posted on the internet and the location that was reported was, indeed, 170 nautical miles south of the Dominican Republic as stated above. In any event, the actual location can be very easily verified by consulting the Global Positioning System (GPS) that was on board Petitioner's vessel.

ISSUE # 1

The Maritime Drug Law Enforcement Act (MDLEA) is unconstitutional under the "jurisdictional" component of Article I of the United States Constitution where Petitioner, the master of a Guyanese-flagged vessel, was intercepted by the United States Coast Guard while sailing in international

waters enroute from Jamaica to Guyana and prosecuted in federal court for violating United States' drug laws.

THE MARITIME DRUG LAW ENFORCEMENT ACT (MDLEA)

"The Maritime Drug Enforcement Act provides, in pertinent part, that:

...

(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 –

...

(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) (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."

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

...

(3) a verbal claim of nationality or registry by the master or individual in charge of the vessel." 46 U.S.C. § 70502(c)(1)(C), (d)(C) (e) (1)(2)(3).

"THE SWEEPING POWERS ASSERTED BY CONGRESS"

"I can no longer support the approach taken by this court and our sister circuits in embracing the sweeping powers asserted by Congress and the Executive under The Maritime Drug Enforcement Act (MDLEA), and I am of the view that the district court acted without jurisdiction over [Petitioner]. My concerns are of a fundamental nature and deal with the power of this court, or rather the lack of power of this court, to penalize [Petitioner] for the crimes which he allegedly committed against the United States. That is, first,

whether the United States has the power to arrest [Petitioner] under the circumstances of this case and involuntarily render him into the territory of the United States. Second, whether the United States has the power to retroactively apply to him the criminal laws of the United States for conduct which previous to his arrest and rendition was not subject to these laws, and which only comes into play by the actions of the United States in arresting [Petitioner] in international waters and rendering him into United States territory... The Maritime Drug Enforcement Act (MDLEA) codified as amended at 46 U.S.C. § 70501-08, has been used to expand United States criminal jurisdiction well beyond U.S. borders to include people and acts that have no connection whatsoever with the United States. This extraterritorial exercise is far in excess of any powers either permitted by international law or granted by Congress to the Executive branch.” United States v. Trinidad, 839 F.3d 112, 116- 120 (1st Cir. 2016) (TORRUELLA, Circuit Judge (Dissenting)).

The foregoing dissent by Judge Torruella essentially captures the first argument that Petitioner is attempting to make. Attorney Miranda did absolutely nothing to demonstrate to Petitioner, a person of humble origins and with little formal education, as to how it was that he could have been *arrested in international waters between Guyana and Jamaica, charged with a crime against the United States, turned over to American authorities, prosecuted in an American federal court and sentenced to serve time in an American prison.*

ISSUE # 2

Petitioner was denied the effective assistance of counsel where, at no time during his visits with Petitioner did his attorney ever demonstrate to Petitioner that the United States government had actually contacted the government

of Guyana and obtained permission to board and conduct a search Petitioner's vessel.

THE STANDARD FOR THE EFFECTIVE ASSISTANCE OF COUNSEL

"In all criminal prosecutions, the accused shall enjoy the right to ... the assistance of Counsel for his defence." U.S. Const. Amend. 6. To establish a claim of ineffective assistance of counsel, a Petitioner "must show that counsel's performance was deficient, "and that the deficiency prejudiced the Petitioner. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "This inquiry involves a two part test." Rosado v. Allen, 482 F.supp.2d 94, 101 (D. Mass 007). First, a defendant must show that, 'in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.'" Id. (quoting Strickland v. Washington, 466 U.S. at 690, 104 S.Ct. 2052.) "This evaluation of counsel's performance 'demands a fairly tolerant approach.'" Rosado v. Allen, 482 F.Supp.2d at 101 (quoting Scarpa v. Dubois, 38 F.3d 1, 8 (1st Cir. 1994). "The court must apply the performance standard 'not in hindsight, but based on what the lawyer knew, or should have known, at the time of his tactical choices were made and implemented.'" Rosado v. Allen, 482 F.Supp.2d at 101 (quoting United States v. Natanel, 938 F.2d 302, 309 (1st Cir. 1991). The test includes a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance," Smullen v. United States, 94 F.3d 20, 23 (1st Cir.1996) (quoting Strickland v. Washington, 466 U.S. at 68, 104 S.Ct. 2052). "Second, a defendant must establish 'that prejudice resulted 'in consequence of counsel's blunders" which entails 'a showing of a "reasonable probability that, but for counsel's unprofessional errors, the result

of the proceeding would have been different.” Rosado v. Allen, 482 F.Supp.2d at 101 (quoting Scarpa v. Dubois, 38 F.3d at 8) (quoting Strickland v. Washington, 466 U.S. at 694, 104 S.Ct. 2052; see Mattei-Albizu v. United States, 694 F.Supp.2d 404, 407 (D.P.R. 2010). However, “[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” Argencourt v. United States, 78 F.3d 14, 16 (1st Cir. 1996) (quoting Strickland v. Washington, 466 U.S. at 691, 104 S.Ct. 2052). Thus, “[c]ounsel’s actions are to be judged ‘in light of the whole record, including the facts of the case, the trial transcripts, the exhibits, and the applicable substantive law,’” Rosado v. Allen, 482 F.Supp.2d at 101 (quoting Scarpa v. Dubois, 38 F.3d. at 15. The defendant bears the burden of proof for both elements of the test. Cirilo-Munoz v. United States, 404 F.3d. 527, 530 (1st Cir. 2005) cert.denied, 525 U.S. 942, 119 S.Ct. 363, 142 L.ed.2d. 300 (2010) (citing Scarpa v. Dubois, 38 F.3d at 8-9.)” Berroa Santana v. United States, 939 F.Supp2d. 109, 116-117 (D.P.R.2013).

Petitioner respectfully submits that the facts and circumstances in his case, as previously related above, clearly satisfy the forgoing “two part test.”

PETITIONER’S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL

At no time during his visits with Petitioner did attorney Miranda ever demonstrate to Petitioner where the United States government had contacted the government of Guyana and obtained permission to search Petitioner’s vessel.

Petitioner is of the belief that attorney Miranda was not effective in his representation of Petitioner because attorney Miranda did not put the

government to its burden of proof as to whether the United States Coast Guard did indeed comply with the established protocol required for the United States government to assert jurisdiction over Petitioner's vessel in international waters.

Attorney Miranda did not sit down with Petitioner and show any documentation whatsoever to show that the United States Coast Guard had contacted officials of the government of Guyana or show any official communication with, and the approval by the government of Guyana, that authorized the United States government to assert federal jurisdiction over Petitioner's vessel.

If attorney Miranda had seen any discovery material relating to the foregoing, he certainly did not share them with Petitioner and, at the time, Petitioner certainly was not aware that he had a right to be informed of such. As Petitioner has previously stated, he just "went along with the program" in order to conclude the process as quickly as possible.

ISSUE # 3

Petitioner's Due Process rights were violated under the MDLEA.

POTENTIAL PREJUDICE TO PETITIONER

In United States v. Maynard, 888 F.2d 918 (1st Cir. 1989), this court reversed the defendant's convictions because it found that the defendant had standing to challenge the district court's finding of MDLEA jurisdiction based on the fact that the United States Coast Guard had failed to contact British Virgin Islands ("BVI")

authorities before seizing his vessel, even though he was flying a BVI flag and had likely made a verbal claim of BVI nationality.

In the instant matter, Petitioner has still not seen any documentation to confirm whether or not agents of the United States had actually communicated with Guyanese officials and had in fact received permission from them in order to assert United States' jurisdiction over Petitioner's vessel. If they never did so, as in Maynard, supra, the United States did not in fact have jurisdiction and the United States would not have been able to search, detain, prosecute or convict Petitioner. As such, the outcome of these proceedings would have been dramatically different, to possibly include the reversal of Petitioner's conviction or even a dismissal of the indictment.

REASONS FOR GRANTING THE PETITION

Petitioner's Due Process rights and his right to the effective assistance of counsel were violated where his vessels was stopped, boarded, searched and he was eventually arrested in international waters, by authorities of the United States, without having actually seen reliable proof that authorities of Guyana, his native country and whose flag he was flying, had indeed granted such permission. This issue is of great importance as it affects hundreds, if not thousands, of non-U.S. citizens every year who are intercepted in international waters, searched, arrested, brought to the United States and, in spite of having absolutely no nexus whatsoever to the United States, are indicted and prosecuted in federal courts and eventually sentenced to serve time in prisons all across the United States.

CONCLUSION

This petition presents a question that is significant and may be of a first impression in this Court. For all of the foregoing reasons, Petitioner respectfully submits that this court's review is warranted in order to address Congress's "sweeping powers ... under The Maritime Drug Law Enforcement Act (MDLEA)" where citizens from all across the world, navigating in international waters, are routinely arrested on the high seas, hauled into federal courts, prosecuted and convicted for criminal offenses which have absolutely no nexus whatsoever to the United States. The petition for writ of certiorari should be granted.

Respectfully Submitted,

Date: March 6, 2018

Ramnarine Persaud

Ramnarine Persaud

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McRae Correctional Facility

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