

No. _____

In the
Supreme Court of the United States of America

MIGUEL MEJIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

Petition for Writ of Certiorari

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Question Presented

The parties to a case cannot manufacture federal subject-matter jurisdiction by stipulation. Nonetheless, the Maritime Drug Law Enforcement Act, 46 U.S.C. § 70501 *et seq.*, purports to give the Executive Branch the power to “conclusively” determine that federal jurisdiction exists over a prosecution based on assumed, rather than established, facts. Does the MDLEA violate Article III and the Sixth Amendment right to a jury trial by giving dispositive weight to the Executive Branch’s assertion that jurisdiction exists?

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

Miguel Mejia respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit in *United States v. Miguel Mejia*, No. 17-11542, which affirmed the judgment and commitment of the U.S. District Court for the Southern District of Florida.

Opinion Below

A copy of the decision of the U.S. Court of Appeals for the Eleventh Circuit is appended to this Petition.

Basis for Jurisdiction

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the Court of Appeals for the Eleventh Circuit was entered on May 22, 2018. This petition is timely filed pursuant to Supreme Court Rule 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291, which provides that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

Provisions of Law Involved

Article III of the United States Constitution provides:

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their

Services a Compensation which shall not be diminished during their Continuance in Office.

The Sixth Amendment to the United States Constitution provides:

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.

The Maritime Drug Law Enforcement Act provides in relevant part:

46 U.S.C. § 70501. Findings and declarations

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

46 U.S.C. § 70502. Definitions

(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.

46 U.S.C. § 70503. Prohibited acts

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

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

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

(3) conceal, or attempt or conspire to conceal, more than \$100,000 in currency or other monetary instruments on the person of such

individual or in any conveyance, article of luggage, merchandise, or other container, or compartment of or aboard the covered vessel if that vessel is outfitted for smuggling.

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

(c) Nonapplication. —

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

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

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

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

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

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

(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

(2) any other vessel if the individual is a citizen of the United States or a resident alien of the United States.

46 U.S.C. § 70504. Jurisdiction and venue

(a) Jurisdiction. — Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.

(b) Venue. — A person violating section 70503 or 70508 of this title shall be tried in the district court of the United States for —

(1) the district at which the person enters the United States; or

(2) the District of Columbia.

46 U.S.C. § 70505. Failure to comply with international law as a defense

A person charged with violating section 70503 of this title, or against whom a civil enforcement proceeding is brought under section 70508, does not have standing to raise a claim of failure to comply with international law as a basis

for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

46 U.S.C. § 70506. Penalties

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

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

(c) Simple possession. —

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

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

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

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

Statement of the Case

The United States Coast Guard arrested Miguel Mejia in international waters aboard a vessel laden with cocaine. One of the people on board the boat, Mervis Guilarte Ramos, “claimed Venezuelan nationality for himself and the vessel.” The Coast Guard “could neither confirm nor deny nationality for the vessel” and, pursuant to the Maritime Drug Law Enforcement Act, treated it as “without nationality and subject to the jurisdiction of the United States.”

Mr. Mejia was arrested, brought to the Southern District of Florida, and charged with “conspir[ing] ... to possess with intent to distribute a controlled substance” in violation of 46 U.S.C. §§ 70503(a) & 70506(b). He was also charged with a substantive count of “possess[ing] with intent to distribute a controlled substance” in violation of 46 U.S.C. § 70503(a)(1).

The district court conducted Mr. Mejia’s plea colloquy together with that of his co-defendant, Mr. Guilarte Ramos. The factual proffer did not establish that the boat was actually stateless. It stated: “Based on Guilarte Ramos’ verbal claim of Venezuelan nationality, the Government of Venezuela was contacted and responded that they could neither confirm nor deny nationality for the vessel. The [boat] was therefore treated as a vessel without nationality and subject to the jurisdiction of the United States.” Nothing in the record established whether the boat was actually registered in Venezuela or not. Nothing in the record established that Mr. Mejia or anyone else who was not in the Coast Guard had any personal knowledge of what, if anything, the Venezuelan government told the Coast Guard.

Mr. Mejia pled guilty to the conspiracy count, and the court adjudicated him guilty. The substantive charges were later dismissed. Mr. Mejia was sentenced to ten years in prison and five years of supervised release.

On appeal, he challenged the district court's subject-matter jurisdiction, arguing that the Maritime Drug Law Enforcement Act delegates to the Executive Branch, in violation of the constitutional separation of powers, the power to manufacture federal jurisdiction over vessels in international waters, regardless of whether they are in fact stateless. The Eleventh Circuit rejected that argument. It reasoned that "MDLEA statelessness does not turn on actual statelessness, but rather on the response of the foreign government." Appendix at A-6. The panel held that, because Mr. Mejia agreed during his guilty plea that the Venezuelan government had told the Coast Guard "that it could neither confirm nor deny the vessel's nationality," federal jurisdiction was conclusively established.

Reasons for Allowance of the Writ

The MDLEA, as revised in 1996, disables the adversary system by requiring courts to accept the Executive Branch's assertion that subject-matter jurisdiction exists, even in cases in which the record belies that determination. It thus requires courts to accept unquestioningly facts whose veracity is essential to the existence of an Article III case or controversy. It further provides that determination of such facts cannot be put to a jury.

The circuit courts of appeals are split as to whether this aspect of the MDLEA is constitutional. The question is important because the MDLEA, as interpreted in most circuits, undermines the Rule of Law and the adversary system. The *raison d'être* of any legitimate judiciary is to determine, as well as can be, what the true facts are in each case.

Only illegitimate courts exist to ratify and legitimate the lawless acts of a sovereign's executive department, regardless of what the true facts are. In this country, truth is discovered through adversarial testing: "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *United States v. Cronin*, 466 U.S. 648, 656 (1984) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)); see also *United States v. Singer*, 380 U.S. 24, 36 (1965) ("The constitution recognizes an adversary system as the proper method of determining guilt, and the Government, as a litigant, has a legitimate interest in seeing that cases in which it believes a conviction is warranted are tried before the tribunal which the Constitution regards as most likely to produce a fair result."). This Court has discharged this duty by repeatedly reaffirming the centrality and indispensability of adversarial methods to our criminal justice system and has resisted permitting the political branches to resort to more expedient, less reliable, and less fair inquisitorial methods. See, e.g., *Blakely v. Washington*, 542 U.S. 296, 311–12 (2004) (holding that a criminal sentence "based not on facts proved to [the defendant's] peers beyond a reasonable doubt, but on facts extracted after trial from a report compiled by a probation officer who the judge thinks more likely got it right than got it wrong" violates the Trial by Jury Clause); *Crawford v. Washington*, 541 U.S. 36, 61 (2004) (holding that the Sixth Amendment "commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination"); *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000) (holding that any fact, other than a prior conviction, that exposes a defendant to punishment "must be submitted to a jury, and proved beyond a reasonable

doubt”); *Miranda v. Arizona*, 384 U.S. 436, 469 (1966) (holding that police interrogation marks the “point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial systems recognized in some countries,” and that the Fifth Amendment requires that police “make the individual more acutely aware that he is faced with a phase of the adversary system”).

The MDLEA unequivocally makes proof that “a covered vessel” was used in the crime an element of the offense. Mr. Mejia was convicted of violating 46 U.S.C. § 70506(b), which makes it a crime to attempt or conspire to violate 46 U.S.C. § 70503. By its own terms, that statute applies only to a defendant who is “on board a covered vessel.” 46 U.S.C. § 70503(a). The statute defines a “covered vessel” as “(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or (2) any other vessel if the individual is a citizen of the United States or a resident alien of the United States.” 46 U.S.C. § 70503(e). In turn, § 70502(b) defines “vessel of the United States” and “vessel subject to the jurisdiction of the United States.” The latter term includes (1) a stateless vessel in international waters, (2) a flagged vessel whose nation consents to U.S. law enforcement, and (3) any vessel in another country’s waters if that country consents to U.S. law enforcement. *See* 46 U.S.C. § 70502(c)(1). Whether a given vessel is stateless or otherwise subject to U.S. jurisdiction “is proved conclusively by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. § 70502(c)(2) & (d)(2); *see, e.g., United States v. Campbell*, 743 F.3d 802, 809 (CA11 2014) (holding that certification of Coast Guard commander “provided conclusive proof that the vessel was within the jurisdiction of the United States under the Act.”).

The MDLEA abandons adversarial determination of facts essential to a felony conviction and violates the Constitution in two ways. First, it purports to require the judge rather than the jury to find facts essential to a federal felony conviction in violation of the Sixth Amendment right to a jury trial. 46 U.S.C. § 70504 (“Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.”); see *Booker v. United States*, 543 U.S. 220, 244 (2005) (holding that any fact, other than a prior conviction, necessary to support the sentence is an element of the crime); *Blakely v. Washington*, 542 U.S. 296, 305–08 (2004) (rejecting legislative labels subjective test for identifying elements). Second, it states, contrarily, that the Executive Branch’s certification of the necessary jurisdictional facts “conclusively” establishes jurisdiction. 46 U.S.C. §§ 70502(c)(2) & (d)(2). This takes away even the judge’s ability to find the facts, which violates Article III by invading the courts’ core fact-finding function and reassigning it to the Executive Branch. The State Department’s certification that proof of registry was not “affirmatively and unequivocally,” 46 U.S.C. § 70502(d)(1)(C), found at the time the vessel was seized at sea irrefutably establishes federal jurisdiction.

The constitutional defects in the statute were introduced in 1996 for the specific purpose of ending jurisdictional challenges to MDLEA prosecutions. See President Clinton’s Statement on Coast Guard Authorization Act of 1996, 1996 WL 600505 at *1 (“In particular, the Act makes clear that persons arrested in international waters will not be able to challenge the arrest on the ground that the vessel was of foreign registry unless such claim was affirmatively and unequivocally verified by the nation of registry when the vessel was

targeted for boarding.”). Before it was revised in 1996, the statute was phrased in permissive terms and did not infringe on the right to trial by jury. It provided: “The denial of such claim of registry by the claimed flag nation *may be proved* by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. app. § 1903(c)(2) (1995) (emphasis added). A companion provision relating to registered vessels or vessels found in another nation’s territorial waters was correspondingly phrased permissively: “Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States ... *may be proved* by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. app. § 1903(c)(1) (1995) (emphasis added).

The current MDLEA, in contrast, dictates the rule of decision for jurisdictional challenges by providing that a foreign nation’s response to a claim of registry or waiver of jurisdiction “is proved conclusively by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. § 70502(c)(2) & (d)(2). At the same time, Congress added the provision that jurisdiction “is not an element” of an MDLEA crime, but rather a “preliminary question of law to be determined solely by the trial judge,” whose decision is dictated by the Executive Branch. 46 U.S.C. § 70504.

Judge Torruella of the First Circuit recently identified a number of constitutional and other legal defects with the MDLEA’s authorizing “the United States to unilaterally [determine jurisdiction] in a conclusive manner with the scarcity of information available to it at the time of interception and arrest.” *United States v. Trinidad*, 839 F.3d 112, 122 (CA1 2016) (Torruella, J., dissenting). He noted that it often takes a foreign nation “up to five days to provide a definitive response” regarding a vessel’s registry. 839 F.3d at 124. Thus, the

MDLEA purports to allow the exercise of federal jurisdiction on the basis of supposed, rather than proven, facts.

I. The circuit courts of appeals are divided over whether proof that a vessel is a “covered vessel” under the MDLEA is an element of an MDLEA offense.

The MDLEA violates the Sixth Amendment right to a jury trial by labeling an element a “preliminary question.” There is a circuit split over whether a jury must determine that jurisdiction exists under the MDLEA. The Ninth Circuit has persuasively explained that MDLEA jurisdictional facts, such as where the subject vessel was interdicted and whether it was registered to any nation, must be decided by a jury. *United States v. Perlaza*, 439 F.3d 1149, 1166–67 (CA9 2006). The D.C. Circuit seems to agree with the Ninth Circuit; it affirmed an MDLEA conviction only after reviewing the defendants’ admitted facts and finding detailed admissions based on first-hand knowledge that established their vessels’ statelessness. *United States v. Miranda*, 780 F.3d 1185, 1197 (CADDC 2015). The Eleventh Circuit, on the other hand, reached the opposite holding. *United States v. Tinoco*, 304 F.3d 1088, 1108–09 (CA11 2002). The First Circuit follows *Tinoco*. See *United States v. Vilches-Navarrete*, 523 U.S. 1, 12 (CA1 2008). The Second Circuit heard oral argument on 13 August 2018 in *United States v. Van Der End*, No. 17-2926, which also asks whether proof of a “covered vessel” is an element of an MDLEA offense.

Tinoco is poorly reasoned and violates this Court’s precedents. It held that the MDLEA’s jurisdictional requirement “does not constitute a traditional element of an offense given that it has nothing to do with the ‘concurrence of an evil-meaning mind with an evil-doing hand’ as reflected in the common law.” 304 F.3d at 1108, 1109 (quoting *Morissette*

v. United States, 342 U.S. 246, 251 (1952)). This Court’s decision in *Apprendi*, of course, rejected that very rationale, holding “that it does not matter whether the required finding is characterized as one of intent or of motive, because labels do not afford an acceptable answer.” 530 U.S. at 494 (quotation marks and citation omitted). *Apprendi*’s progeny repeatedly reaffirmed that there is one test for determining which facts are elements of a crime: “Any fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.” *Booker*, 543 U.S. at 244. Proof that the defendant was aboard a “covered vessel” is a fact necessary to proving any MDLEA violation. Yet, the Eleventh Circuit maintains that no jury should ever decide whether that fact has been established.

Tinoco also purported to rely on the earlier case of *Ford v. United States*, 273 U.S. 593 (1927), which it claimed held that similar jurisdictional facts could be determined without a jury, and the United States relied on this before the Second Circuit. *See* Brief of the United States, *United States v. Van Der End*, 2018 WL 1995708, No. 17-2926 (CA2 19 Apr 2018). *Ford*, however, did not hold that juries do not decide jurisdictional facts and is entirely consistent with *Apprendi*. In *Ford*, the defendants were charged with violating the National Prohibition Act by importing liquor into San Francisco Bay. “There was a preliminary motion to exclude and suppress the evidence of the ship and cargo” on the ground that the ship was “not within the zone of the high seas” in which the NPA applied. 273 U.S. at 604–05. This Court held only that the judge could decide the *motion to suppress* without a jury: “*So far as the objection relates to the admission of evidence*, it has already been settled by this court

that the question is for the court and not for the jury.” 273 U.S. at 605 (citing, *inter alia*, *Steele v. United States*, 267 U.S. 505 (1925)) (emphasis added). *Ford* went on to discuss *personal*, as opposed to subject-matter, jurisdiction and held that any objection to personal jurisdiction had been waived. 273 U.S. at 606–07.

II. The MDLEA violates Article III by requiring the Judicial Branch to accept without question the Executive Branch’s finding that the defendant was aboard a “covered vessel.”

Immediately before the 1996 revision, the Eleventh Circuit had determined that the prior version of the MDLEA was constitutional only because it was phrased permissively. *United States v. Rojas*, 53 F.3d 1212, 1214 (CA11 1995). In *Rojas*, the Coast Guard boarded a Panamanian vessel laden with drugs, arrested the crew, and brought them to Miami for trial. 53 F.3d at 1213. The district court found that it had jurisdiction because the Secretary of State’s designee, a Coast Guard officer, certified that Panama consented to the United States’ jurisdiction over the boat. 53 F.3d at 1214. The appellants argued that the MDLEA violated the constitutional separation of powers because it “unconstitutionally delegates the ability to determine jurisdiction, ‘a traditional, if not vital, function of the Judiciary,’ to the Executive Branch.” 53 F.3d at 1214. Analyzing the appellants’ argument, the court held that, if the MDLEA did that, it would indeed be unconstitutional: “Thus, separation of powers would be implicated when the actions of another Branch threaten an Article III court’s independence and impartiality in the execution of its decisionmaking function.” 53 F.3d at 1214 (collecting authorities). Nonetheless, the Court of Appeals reasoned, the permissive phrasing of the statute left sufficient room for judicial decisionmaking:

Nothing in the certification procedure deprives the court of its ability and obligation to determine whether the requirements of the MDLEA have been met. The Act does not dictate the court’s jurisdictional decision. Under the MDLEA, courts are free to determine, and do decide, whether a proffered certificate is sufficient evidence of jurisdiction.

53 F.3d at 1214–15 (citing examples).

When the revised MDLEA was challenged in *United States v. Lopez Hernandez*, 864 F.3d 1291 (CA11 2017), the Eleventh Circuit held that the Secretary of State could manufacture jurisdiction and that the federal courts were impotent to do anything about that. The petitioner argued that he was not aboard “a vessel without nationality’ because the boat was properly registered in Guatemala” 864 F.3d at 1297. The Eleventh Circuit expressly acknowledged that, when the Coast Guard boarded the *Cristiano Ronaldo*, a member of the crew asserted that she “was registered in Guatemala — and claimed so truthfully as it turned out.” 864 F.3d at 1296. Even though the record showed that the *Cristiano Ronaldo* was not in fact a “covered vessel,” the appellate court nonetheless held that the district court had jurisdiction because the Executive Branch said so: “[T]he *Cristiano Ronaldo* fit within the MDLEA’s broad definition of a ‘vessel without nationality’ because a designee of the U.S. Secretary of State has certified, and thereby ‘proved conclusively,’ that Guatemala had not ‘affirmatively and unequivocally’ asserted that the *Cristiano Ronaldo* was of Guatemalan nationality.” 864 F.3d at 1297 (quoting 46 U.S.C. §§ 70502(d)(1)(C) & (d)(2)).

This Court’s decisions in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), and *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872)), which delineated the federal courts’ exclusive area of duty and authority, establish that Congress’ revision to the MDLEA intruded on judicial authority. In *Klein*, the plaintiff sued the United

States, as administrator of the estate of V.F. Wilson, for compensation for cotton seized from Wilson during the Civil War. Though he had aided the rebellion, Wilson availed himself of an amnesty by taking an oath of allegiance to the United States in 1864. He thereby received a presidential pardon. This Court had earlier ruled that the property of a pardoned rebel was purged of its owner's crimes. *See United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1870). Accordingly, the Court of Claims awarded Wilson's estate \$125,300. While the government's appeal was pending, Congress enacted a statute similar to the MDLEA. It provided (1) that no presidential pardon or amnesty was admissible in evidence against the United States in the Court of Claims, (2) that any such pardon or amnesty in fact constituted "conclusive evidence in the Court of Claims, and on appeal, that such person did take part in, and gave aid to the rebellion," and (3) that "on proof of such pardon ... the jurisdiction of the court shall cease, and the suit shall be forthwith dismissed." 80 U.S. at 143–44. This Court held that the statute exceeded Congress' authority because it stripped the courts of the ability to decide cases and dictated the effect they had to give certain evidence: "[T]he court is forbidden to give the effect to evidence which, in its own judgment, such evidence should have, and is directed to give it an effect precisely contrary. We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power." *Id.* at 147.

The MDLEA suffers from the identical defect as the statute in *Klein*. It, too, gives "conclusive[]" weight to a document created by the Executive Branch that, in turn, determines the jurisdiction of Article III courts. Congress lacks the power to take away the Judicial Branch's authority to decide cases and assign it to the Executive Branch.

Northern Pipeline reaffirmed that Congress cannot delegate deciding cases, including making factual findings, to an entity that is not an Article III court. That case held that the Bankruptcy Act of 1978 violated Article III by requiring certain lawsuits to be decided, even over objection, by bankruptcy courts rather than district courts. 458 U.S. at 87 (plurality), 91 (conurrence). The Court understood that, if Congress could assign the duty of deciding cases or controversies to a non-Article III entity, it could end impartial adjudication and, hence, the Rule of Law itself: “The Federal Judiciary was ... designed by the Framers to stand independent of the Executive and Legislature — to maintain the checks and balances of the constitutional structure, and also to guarantee that the process of adjudication itself remained impartial.” 458 U.S. at 58.

The MDLEA is a more egregious violation of Article III than the Bankruptcy Act of 1978. The Bankruptcy Act’s fatal defect was that it allowed judges who did “not enjoy the protections constitutionally afforded to Art. III judges” to decide cases. 458 U.S. at 60. The MDLEA assigns the power to find jurisdictional facts to *a party* in a criminal case. While the Bankrupt Act created a mere risk of partiality, the MDLEA guarantees it.

The MDLEA goes even further and requires federal courts to exercise jurisdiction even when there is proof that the boat in question is not a “covered vessel.” In *Lopez Hernandez*, the Eleventh Circuit affirmed the district court’s exercise of jurisdiction based on the Executive Branch’s certification of a falsehood: “MDLEA statelessness does not turn on actual statelessness, but rather on the response of the foreign government. Arguing actual registry against the certification therefore misses the mark.” 864 F.3d at 1299; *accord United*

States v. Cardales-Luna, 632 F.3d 731, 737 (CA1 2011). It cannot be constitutional for Congress to require the Judiciary to knowingly predicate holdings on fake facts.

This violates the well-established Article III corollary that the parties to a suit cannot create jurisdiction. *Insurance Corp. of Ireland Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (“[N]o action of the parties can confer subject-matter jurisdiction upon a federal court.”); *People’s Bank v. Calhoun*, 12 Otto (102 U.S.) 256, 260–61 (1880) (“[T]he mere consent of parties cannot confer upon a court of the United States the jurisdiction to hear and decide a case.”). It follows that, contrary to what the MDLEA purports to authorize, the Executive Branch cannot create jurisdiction with a certificate. The prosecution has the burden in every case of proving jurisdiction exists as a matter of true fact.

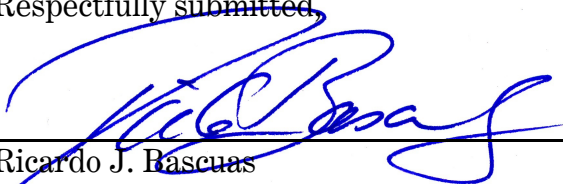
The holding below, moreover, has no limiting principle. Criminal proceedings exist to require prosecutors to prove the facts on which convictions depend using fair methods. Congress, it follows, cannot tell federal judges that they have to accept Executive Branch assertions as truths without impermissibly invading the Judicial Branch’s exclusive area of sovereign authority. If the revised MDLEA is constitutional, nothing stops Congress from passing a statute that says, “Jurisdiction is conclusively established in the federal courts whenever any federal prosecutor certifies that there is jurisdiction.”

The revised MDLEA impermissibly encroaches on the core judicial function of deciding cases. As *Rojas* acknowledged, “The Constitution ‘gives the Federal Judiciary the power, not merely to rule on cases but to decide them.’” 53 F.3d at 1214 (quoting *Plaut v. Spendthrift Farm*, 514 U.S. 211, 218–19 (1995)). This is a “fundamental principle” of the Constitution’s separation of powers. *Plaut*, 514 U.S. at 219.

The revised MDLEA is an unconstitutional usurpation of judicial power by the political branches. The judiciary's ability to function as a check on executive power is predicated on its ability to find the facts — the truth — in each case. By prescribing a rule of decision for MDLEA cases, the act subordinates the Judicial Branch to the political branches and is constitutionally intolerable.

WHEREFORE this Court should grant this petition for a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,



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