

## **PETITION APPENDIX**

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## **APPENDIX A**

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 23-11693  
Non-Argument Calendar

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

CRISTIAN CHEVARRA MORENO,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 8:22-cr-00321-VMC-TGW-1

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Before GRANT, LAGOA, and KIDD, Circuit Judges.

PER CURIAM:

Cristian Chaverra Moreno<sup>1</sup> appeals his controlled substance convictions under the Maritime Drug Law Enforcement Act (“MDLEA”). On appeal, he argues that, because the government failed to establish the elements of MDLEA subject matter jurisdiction, the district court lacked authority to enter judgment in his case. After careful review, we affirm Chaverra Moreno’s convictions.

### I. BACKGROUND

In September 2022, U.S. Coast Guard officers aboard a Royal Netherlands Navy ship observed a go-fast boat traveling at a high rate of speed approximately 71 nautical miles north of Puerto Cabello, Venezuela. While in pursuit of the go-fast boat, which was taking on water and beginning to sink, the Coast Guard saw Chaverra Moreno and the boat’s other two crew members throw several packages overboard. The Coast Guard ultimately detained the crewmembers and recovered ten of the discarded packages, “which field-tested positive for cocaine, with a total at-sea weight of 326 kilograms.”

Chaverra Moreno and the go-fast boat’s other two crew members were indicted for: (1) conspiracy to possess with intent to distribute a controlled substance while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C.

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<sup>1</sup> The case captions, indictment, and judgment misspell the appellant’s name as “Chevarra” Moreno, but the parties acknowledge that the correct spelling is “Chaverra” Moreno.

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## Opinion of the Court

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§§ 70503(a), 70506(a), (b), and 21 U.S.C. § 960(b)(1)(B)(ii); and (2) possession with intent to distribute a controlled substance while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a), 70506(a), 18 U.S.C. § 2 and 21 U.S.C. § 960(b)(1)(B)(ii). Chaverra Moreno noticed his intent to plead guilty without a written plea agreement.

In anticipation of the change of plea hearing, the government filed a document laying out the maximum applicable penalties, elements of the charged offenses, and factual basis for Chaverra Moreno's charges. As relevant here, the factual proffer identified the go-fast boat as being in the "international waters of the Caribbean Sea," and explained that Chaverra Moreno "willingly agreed to transport five kilograms or more of cocaine" and "smuggle these drugs through international waters and distribute them to other persons." The proffer also identified the go-fast vessel as "stateless" and noted that, during questioning, none of the crewmembers identified themselves as being in charge or claimed nationality for the vessel.

At the change of plea hearing, a magistrate judge read the indictment, and explained that, if the case proceeded to trial, the government would have to prove that the charged offenses "occurred on the high seas onboard a vessel subject to the jurisdiction of the United States." With that understanding, Chaverra Moreno pleaded guilty to both counts. He did not dispute the government's proffered facts or the magistrate judge's characterization of the go-fast boat being found "out in the middle of the Caribbean Sea."

The district judge accepted the guilty plea, and Chaverra Moreno proceeded to sentencing, receiving a term of imprisonment. He now timely appeals his convictions.

## II. STANDARD OF REVIEW

We review de novo questions of a district court's subject matter jurisdiction even when raised for the first time on appeal. *United States v. Iguaran*, 821 F.3d 1335, 1336 (11th Cir. 2016).

## III. DISCUSSION

The Felonies Clause of the Constitution “empowers Congress to ‘define and punish Felonies committed on the high seas.’” *United States v. Canario-Vilomar*, 128 F.4th 1374, 1378 (11th Cir. 2025) (ellipses omitted) (quoting U.S. CONST. art. I, § 8, cl. 10), *petition for cert. filed* (U.S. Aug. 26, 2025) (No. 25-5506). “The high seas lie beyond any nation’s territorial seas and are ‘international waters not subject to the dominion of any single nation.’” *United States v. Davila-Mendoza*, 972 F.3d 1264, 1268 n.2 (11th Cir. 2020) (quoting *United States v. Louisiana*, 394 U.S. 11, 23 (1969)).

The MDLEA makes it a crime to “knowingly or intentionally . . . possess with intent to manufacture or distribute[] a controlled substance” on board “a [covered] vessel subject to the jurisdiction of the United States,” and to conspire to do the same. 46 U.S.C. §§ 70503(a)(1), (e)(1), 70506(b). The statute defines a “vessel subject to the jurisdiction of the United States” as including, in relevant part, “a vessel without nationality.” *Id.* § 70502(c)(1)(A). The MDLEA “applies even though the act is committed outside the territorial jurisdiction of the United States.” *Id.* § 70503(b).

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“The government bears the burden of establishing that the statutory requirements of MDLEA subject-matter jurisdiction are met.” *United States v. Cabezas-Montano*, 949 F.3d 567, 588 (11th Cir. 2020); *see United States v. De La Garza*, 516 F.3d 1266, 1271–72 (11th Cir. 2008); *see also United States v. Tinoco*, 304 F.3d 1088, 1114 n.25 (11th Cir. 2002) (leaving open the burden of proof the government must satisfy).

On appeal, Chaverra Moreno argues that the government failed to establish beyond a reasonable doubt that his boat was seized on the “high seas” and thus subject to the jurisdiction of the United States. In turn, the government asserts that Chaverra Moreno waived the ability to make this argument by pleading guilty and conceding facts that established his factual guilt. We disagree.

We have repeatedly held that parties may neither “stipulate jurisdiction” nor waive jurisdictional challenges. *Iguaran*, 821 F.3d at 1337; *see United States v. Betancourth*, 554 F.3d 1329, 1332 (11th Cir. 2009) (“[C]hallenges to the subject matter jurisdiction of the federal courts cannot be waived.”); *De La Garza*, 516 F.3d at 1271 (The appellant “did not waive his subject matter jurisdiction argument because it cannot be waived.”). Parties may, however, stipulate to facts bearing upon a jurisdictional inquiry, and it is the task of a court “to determine whether the stipulated facts give rise to jurisdiction.” *Iguaran*, 821 F.3d at 1337 (citation modified). Although we determine that Chaverra Moreno’s challenge on appeal is one that cannot be waived by a guilty plea, we nonetheless



conclude that his arguments are meritless, and the district court possessed subject matter jurisdiction over the charged offenses.

Chaverra Moreno asserts that the government only provided an approximation of the go-fast boat's location, and, by his calculation, it was not seized upon the "high seas," but rather, within the contiguous zone of either Bonaire or a Venezuelan island. We have held that a "contiguous zone [is] the functional equivalent of [a] border" so "the standard applied to searches in the [United States's] contiguous zone will be prescribed by border search standards." *United States v. Hidalgo-Gato*, 703 F.2d 1267, 1273 (11th Cir. 1983). In reaching this conclusion, we explained that a nation's "[t]erritorial waters . . . extend[] three miles from the coast." *Id.* at 1269 n.4. We further noted that the contiguous zone is "[t]he area between the present three-mile sea boundary and the twelve-mile customs waters limit," and that the "[h]igh seas . . . extend[] seaward from the territorial waters encompassing . . . the contiguous zone." *Id.* at 1269 n.4, 1271; *see also United States v. McPhee*, 336 F.3d 1269, 1273 (11th Cir. 2003) ("The United States generally recognizes the territorial seas of foreign nations up to twelve nautical miles adjacent to recognized foreign coasts.").

Our recent decisions in *United States v. Alfonso* and *United States v. Canario-Vilomar* are instructive in applying these principles to the issue presented in the instant case. In *Alfonso*, the defendants were convicted under the MDLEA after they were found aboard a go-fast vessel containing drugs in the Dominican Republic's exclusive economic zone ("EEZ"). 104 F.4th 815, 818–19 (11th Cir.

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2024), *cert. denied*, No. 24-6177 (May 19, 2025), and No. 24-6691 (May 19, 2025). On appeal, the defendants challenged the constitutionality of the MDLEA as applied to them under the Felonies Clause, arguing, in relevant part, that the district court lacked subject matter jurisdiction over their case because a country’s EEZ was not part of the “high seas.” *Id.* at 818–20. A country’s “EEZ sits just beyond a nation’s territorial waters but within 200 miles of the coastal baseline.” *Id.* at 821.

We rejected the defendants’ arguments, noting that “we repeatedly have upheld the MDLEA as a valid exercise of Congress’s power to define and punish Felonies on the high Seas.” *Id.* at 820 (citation modified). In analyzing whether a nation’s EEZ fell within the “high seas,” we looked to the meaning of the term at the time of the Constitution’s ratification. *Id.* at 821–23. At that time, the “cannon shot rule,” which corresponded to the roughly three-mile-range of a cannon shot, exemplified the United States’s sovereignty over territorial waters, as well as that of other nations. *Id.* at 822. We explained that the exact boundary of a cannon shot “may have been up for debate,” but “it was generally understood that the ‘high seas’ were the waters beyond a nation’s territorial sea and . . . were not subject to the sovereignty of any nation.” *Id.*

Based on this understanding, our Court concluded that, at the time of the Constitution’s ratification, “there were two divisions of the sea—territorial waters of nations and the ‘high seas,’ the latter of which fell outside of national sovereignty,” and “[s]pecial carveout zones, such as the EEZ, did not exist.” *Id.* at 823. We

explained that “international law does not limit the Felonies Clause” and “[n]othing about the modern EEZ as defined by customary international law disturbs in any way the Founding era concept of the term ‘high seas’ that informed the original meaning of the Felonies Clause.” *Id.* at 823, 826. We held that a nation’s EEZ is “part of the ‘high seas’ for purposes of the Felonies Clause,” and therefore “enforcement of the MDLEA in EEZs is proper.” *Id.* at 823, 827.

We reaffirmed this holding in *Canario-Vilomar*. Relying on *Alfonso*, we concluded that Congress was not constrained by international law in crafting the MDLEA and rejected the argument “that Congress could not reach [the appellant] merely because he chose to traffic drugs in Colombia’s EEZ rather than farther out into the open ocean.” *Canario-Vilomar*, 128 F.4th at 1381–82.

Here, the government’s proffered facts, to which Chaverra Moreno did not object, established that the go-fast boat was seized roughly 71 miles north of Puerto Cabello, Venezuela, and was generally “in international waters of the Caribbean Sea.” Even if we assume that this location implicated a contiguous zone of a Venezuelan island or Bonaire, this fact would not deprive the district court of jurisdiction, as a contiguous zone is not the same as a “territorial sea” and is thus a part of the “high seas” under our Court’s interpretation of the term.

Although Chaverra Moreno attempts to distinguish a contiguous zone from the EEZs addressed in *Alfonso* and *Canario-Vilomar*, the rationale of those cases still applies here, and we are

bound to follow this binding precedent. *See United States v. White*, 837 F.3d 1225, 1228 (11th Cir. 2016); *United States v. Lee*, 886 F.3d 1161, 1163 n.3 (11th Cir. 2018). In those cases, we explained that EEZs are part of the “high seas” because they extend outward from a nation’s territorial sea. *See Alfonso*, 104 F.4th at 823, 827; *Canario-Vilomar*, 128 F.4th at 1381–82. Similarly, a contiguous zone does not include a nation’s territorial sea, but, instead, extends outward from the country’s territorial waters. *See Hidalgo-Gato*, 703 F.2d at 1269 n.4, 1271.

Chaverra Moreno makes no contention that his go-fast boat was intercepted in the “territorial waters” of another nation. As such, we conclude that Chaverra Moreno’s go-fast boat, a vessel without nationality in another nation’s contiguous zone, was on the “high seas” and thus subject to the jurisdiction of the United States for purposes of the MDLEA.

#### IV. CONCLUSION

For the reasons stated above, we **AFFIRM** Chaverra Moreno’s convictions.

## **APPENDIX B**

46 USCS, Subtit. VII, Ch. 705

Current through Public Law 119-20, approved June 20, 2025.

Service		United States Code
		TITLE
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)	>	

CHAPTER 705. MARITIME DRUG LAW ENFORCEMENT

Section

- 70501. Findings and declarations
- 70502. Definitions
- 70503. Prohibited acts
- 70504. Jurisdiction and venue
- 70505. Failure to comply with international law as a defense
- 70506. Penalties
- 70507. Forfeitures
- 70508. Operation of submersible vessel or semi-submersible vessel without nationality

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46 USCS § 70501

Current through Public Law 119-20, approved June 20, 2025.

Service		United States Code
		TITLE
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)		

§ 70501. Findings and declarations

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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.

History

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HISTORY:

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

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# 46 USCS § 70502

Current through Public Law 119-20, approved June 20, 2025.

<i>Service</i>		<i>United States Code</i>
		<i>TITLE</i>
<b>46. SHIPPING (§§ 101 — 80509)</b>	>	
<b>Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)</b>	>	
<b>CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)</b>	>	

## § 70502. Definitions

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**(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 [46 USCS §§ 70501 et seq.].

**(b) Vessel of the United States.** In this chapter [46 USCS §§ 70501 et seq.], the term “vessel of the United States” means—

- (1)** a vessel documented under chapter 121 of this title [46 USCS §§ 12101 et seq.] or numbered as provided in chapter 123 of this title [46 USCS §§ 12301 et seq.];
- (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 [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—



## § 70502. Definitions

- (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).

(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 [46 USCS §§ 70501 et seq.]:

- (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.

## History

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### HISTORY:

## § 70502. Definitions

Oct. 6, 2006, P. L. 109-304, § 10(2), 120 Stat. 1685; Jan. 28, 2008, P. L. 110-181, Div C, Title XXXV, Subtitle C, § 3525(a)(6), 122 Stat. 601; Oct. 13, 2008, P. L. 110-407, Title II, § 203, 122 Stat. 4300; Dec. 23, 2022, P.L. 117-263, Div K, Title CXV, Subtitle C, § 11519, 136 Stat. 4142.

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## 46 USCS § 70503

Current through Public Law 119-20, approved June 20, 2025.

<i>Service</i>		<i>United States Code</i>
		<i>TITLE</i>
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)		

### § 70503. Prohibited acts

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**(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.

### History

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§ 70503. Prohibited acts

**HISTORY:**

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

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46 USCS § 70504

Current through Public Law 119-20, approved June 20, 2025.

Service		United States Code
		TITLE
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)		

§ 70504. Jurisdiction and venue

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- (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.
- (b) **Venue.** A person violating section 70503 or 70508 [46 USCS § 70503 or 70508]—
- (1) shall be tried in the district in which such offense was committed; or
  - (2) if the offense was begun or committed upon the high seas, or elsewhere outside the jurisdiction of any particular State or district, may be tried in any district.

History

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HISTORY:

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

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46 USCS § 70505

Current through Public Law 119-20, approved June 20, 2025.

Service		United States Code
		TITLE
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)		

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

A person charged with violating section 70503 of this title [46 USCS § 70503], or against whom a civil enforcement proceeding is brought under section 70508 [46 USCS § 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 [46 USCS §§ 70501 et seq.] 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 USCS §§ 70501 et seq.].

History

HISTORY:

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

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# 46 USCS § 70506

Current through Public Law 119-20, approved June 20, 2025.

<i>Service</i>		<i>United States Code</i>
		<i>TITLE</i>
<b>46. SHIPPING (§§ 101 — 80509)</b>	<b>&gt;</b>	
<b>Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)</b>	<b>&gt;</b>	
<b>CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)</b>		

## § 70506. Penalties

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**(a) Violations.** A person violating paragraph (1) of section 70503(a) of this title [46 USCS § 70503(a)] 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 [46 USCS § 70503] is subject to the same penalties as provided for violating section 70503 [46 USCS § 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) [46 USCS § 70503(a)] shall be fined in accordance with section 3571 of title 18 [18 USCS § 3571], imprisoned not more than 15 years, or both.

## History

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### HISTORY:

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





## 46 USCS § 70507

Current through Public Law 119-20, approved June 20, 2025.

<i>Service</i>		<i>United States Code</i>
		<i>TITLE</i>
<b>46. SHIPPING (§§ 101 — 80509)</b>	<b>&gt;</b>	
<b>Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)</b>	<b>&gt;</b>	
<b>CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)</b>		

### § 70507. Forfeitures

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**(a) In general.** Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 or 70508 of this title [46 USCS § 70503 or 70508] may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

**(b) Prima facie evidence of violation.** Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title [46 USCS § 70503], and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

- (1)** The construction or adaptation of the vessel in a manner that facilitates smuggling, including—
  - (A)** the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;
  - (B)** the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lock-box reasonably used for the storage of personal valuables;
  - (C)** the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel's smuggling capability;
  - (D)** the presence of engines that are excessively over-powered in relation to the design and size of the vessel;
  - (E)** the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;
  - (F)** the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or
  - (G)** the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.
- (2)** The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.
- (3)** The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel's stated purpose.

## § 70507. Forfeitures

- (4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.
- (5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.
- (6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.
- (7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.
- (8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.
- (9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.

## History

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### HISTORY:

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

United States Code Service  
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## 46 USCS § 70508

Current through Public Law 119-20, approved June 20, 2025.

<i>Service</i>		<i>United States Code</i>
		<i>TITLE</i>
<b>46. SHIPPING (§§ 101 — 80509)</b>	<b>&gt;</b>	
<b>Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)</b>	<b>&gt;</b>	
<b>CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)</b>		

### § 70508. Operation of submersible vessel or semi-submersible vessel without nationality

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**(a) In general.** An individual may not operate by any means or embark in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection.

**(b) Evidence of intent to evade detection.** In any civil enforcement proceeding for a violation of subsection (a), the presence of any of the indicia described in paragraph (1)(A), (E), (F), or (G), or in paragraph (4), (5), or (6), of section 70507(b) [46 USCS § 70507(b)] may be considered, in the totality of the circumstances, to be prima facie evidence of intent to evade detection.

**(c) Defenses.**

**(1)** In general. It is a defense in any civil enforcement proceeding for a violation of subsection (a) that the submersible vessel or semi-submersible vessel involved was, at the time of the violation—

- (A)** a vessel of the United States or lawfully registered in a foreign nation as claimed by the master or individual in charge of the vessel when requested to make a claim by an officer of the United States authorized to enforce applicable provisions of United States law;
- (B)** classed by and designed in accordance with the rules of a classification society;
- (C)** lawfully operated in government-regulated or licensed activity, including commerce, research, or exploration; or
- (D)** equipped with and using an operable automatic identification system, vessel monitoring system, or long range identification and tracking system.

**(2)** Production of documents. The defenses provided by this subsection are proved conclusively by the production of—

- (A)** government documents evidencing the vessel's nationality at the time of the offense, as provided in article 5 of the 1958 Convention on the High Seas;
- (B)** a certificate of classification issued by the vessel's classification society upon completion of relevant classification surveys and valid at the time of the offense; or
- (C)** government documents evidencing licensure, regulation, or registration for research or exploration.

**(d) Civil penalty.** A person violating this section shall be liable to the United States for a civil penalty of not more than \$1,000,000.

## History

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### HISTORY:

Added Oct. 13, 2008, P. L. 110-407, Title II, § 202(a), 122 Stat. 4299.

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