

## **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NOT FOR PUBLICATION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. 24-10384  
Non-Argument Calendar

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UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

*versus*

JOSE DAVID PAYBA LACAYO,

*Defendant-Appellant.*

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Appeal from the United States District Court  
for the Middle District of Florida  
D.C. Docket No. 8:23-cr-00010-KKM-JSS-1

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Before KIDD, MARCUS, and WILSON, Circuit Judges.

PER CURIAM:

Jose David Payba Lacayo appeals his convictions under the Maritime Drug Law Enforcement Act (“MDLEA”) and sentence to 46 months’ imprisonment for conspiracy to possess with intent to

distribute marijuana while on board a vessel subject to the jurisdiction of the United States and possession with intent to distribute marijuana while on board a vessel subject to the jurisdiction of the United States. On appeal, Lacayo argues that the MDLEA is unconstitutional facially and as applied to his offense because: (1) the term “high Seas” under U.S. Const. art. I, § 8, cl. 10 must be defined consistently with international law, and, under international law, the high seas do not include the exclusive economic zones (“EEZs”) of foreign nations; and (2) Congress exceeded its authority under U.S. Const. art. I, § 8, cl. 10 in defining a “vessel without nationality” to include vessels that are not stateless under international law -- namely, those where a country states that it can neither confirm nor deny the claimed nationality or registry of the vessel. In response, the government moves for summary affirmance, arguing that Lacayo’s arguments are foreclosed by our decisions in *United States v. Alfonso*, 104 F.4th 815, 818 (11th Cir. 2024), *cert. denied*, 145 S. Ct. 2706 (2025), and *United States v. Canario-Vilomar*, 128 F.4th 1374, 1377 (11th Cir. 2025), *cert. denied*, No. 25-5506 (U.S. Oct. 6, 2025). Lacayo concedes that these decisions foreclose his arguments. After careful review, we grant the government’s motion for summary affirmance.

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the

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outcome of the case, or where . . . the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).<sup>1</sup>

When a motion to dismiss an indictment is based on subject-matter jurisdictional grounds, we review the district court’s denial of the motion *de novo*. *Alfonso*, 104 F.4th at 820. Similarly, “[w]e review *de novo* a district court’s interpretation of a statute and whether a statute is constitutional.” *United States v. Cabezas-Montano*, 949 F.3d 567, 586 n.10 (11th Cir. 2020). Under our prior-panel precedent rule, “a prior panel’s holding is binding on all subsequent panels unless and until it is overruled or undermined to the point of abrogation by the Supreme Court or by this [C]ourt sitting *en banc*.” *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008).

Under Article I, Section 8, Clause 10 of the Constitution, Congress has “three distinct grants of power: (1) the power to define and punish piracies (the Piracies Clause); (2) the power to define and punish felonies committed on the high Seas (the Felonies Clause); and (3) the power to define and punish offenses against the law of nations (the Offences Clause).” *Alfonso*, 104 F.4th at 820 (citation modified); U.S. Const. art. I, § 8, cl. 10.

The MDLEA makes it unlawful to “knowingly or intentionally . . . possess with intent to manufacture or distribute, a controlled substance” while on board “a covered vessel,” and to

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<sup>1</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

conspire to do the same. 46 U.S.C. §§ 70503(a)(1), 70506(b). The statute defines a “covered vessel” to include “a vessel subject to the jurisdiction of the United States.” *Id.* § 70503(e). A “vessel subject to the jurisdiction of the United States,” in turn, includes “a vessel without nationality.” *Id.* § 70502(c)(1)(A). A “vessel without nationality” is defined to include “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.” *Id.* § 70502(d)(1)(C).

In *Alfonso*, the defendants were stopped by the United States Coast Guard (“USCG”) in the Dominican Republic’s EEZ, and one of the defendants made a claim of Colombian nationality for the vessel. 104 F.4th at 819. After Colombia could neither confirm nor deny the registry of the vessel, the USCG treated it as stateless under the MDLEA and seized 12 bales of cocaine from it. *Id.* The defendants subsequently appealed their convictions under the MDLEA, arguing, in part, that the MDLEA was unconstitutional as applied to them because the definition of “high Seas” under the Felonies Clause was limited by international law, and, because the EEZ was not part of the high seas under international law, it fell outside of Congress’s authority. *Id.* at 819, 821. We rejected this challenge, reasoning that, based on the Founding-era concept of the “high Seas,” a nation’s EEZ is part of the “high Seas” under the Felonies Clause, and that “the Felonies Clause is not limited by customary international law.” *Id.* at 821–26. We concluded that the MDLEA could therefore be properly enforced in EEZs. *Id.* at 827.

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In *Canario-Vilomar*, the appellants, who were seized in vessels in EEZs of foreign nations and convicted under the MDLEA, argued that Congress exceeded its authority under the Felonies Clause by defining “a ‘vessel without nationality’” in the MDLEA “to include vessels that are not stateless under international law.” 128 F.4th at 1378. The appellants claimed that the Felonies Clause incorporated principles of international law and that, under international law, a stateless vessel did not include a vessel for which a nation can neither confirm nor deny a claim of national registry. *Id.* at 1378–79. We rejected this challenge, reaffirming *Alfonso*’s ruling that the Felonies Clause is not limited by customary international law and concluding that international law therefore could not limit Congress’s authority to define “stateless vessel” under the MDLEA. *Id.* at 1381. We also reaffirmed *Alfonso*’s ruling that the MDLEA could properly be enforced in EEZs. *Id.* at 1381–82.

Here, the government is clearly right as a matter of law that Lacayo’s challenges are foreclosed by our holdings in *Alfonso* and *Canario-Vilomar*. See *Groendyke*, 406 F.2d at 1162. As for Lacayo’s argument that the MDLEA is unconstitutional because Congress lacks the authority under the Felonies Clause to criminalize conduct occurring in other countries’ EEZs, we squarely rejected this argument in *Alfonso*, concluding that the MDLEA could properly be enforced in EEZs and that “the Felonies Clause is not limited by customary international law.” 104 F.4th at 826–27. As for Lacayo’s argument that the MDLEA is unconstitutional because Congress exceeded its authority under the Felonies Clause in defining a “vessel without nationality” to include vessels that are not stateless

under international law, we rejected this argument in *Canario-Vilomar* and reaffirmed our ruling in *Alfonso* that international law does not limit Congress’s authority to define “stateless vessel” under the MDLEA. 128 F.4th at 1381.

Accordingly, because the government’s position is clearly right as a matter of law, we **GRANT** the government’s motion for summary affirmance. See *Groendyke*, 406 F.2d at 1162.

## **APPENDIX B**

# 46 USCS, Subtit. VII, Ch. 705

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>	>	

## CHAPTER 705. MARITIME DRUG LAW ENFORCEMENT

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### 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.

<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>	>	

### **§ 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>
46. SHIPPING (§§ 101 — 80509)	>	
Subtitle VII. Security and Drug Enforcement (Chs. 700 — 705)	>	
CHAPTER 705. Maritime Drug Law Enforcement (§§ 70501 — 70508)	>	

### § 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.

<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>	>	

### § 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

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<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)	>	

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

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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**

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

## § 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.

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## 46 USCS § 70507

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)	>	

### § 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.

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

### § 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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