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“Subject to the Jurisdiction of the United States” Statutory Reach or Subject Matter Jurisdiction?: Analysis of United States v. Prado

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“SUBJECT TO THE JURISDICTION OF THE
UNITED STATES” STATUTORY REACH OR
SUBJECT MATTER JURISDICTION?: ANALYSIS OF
UNITED STATES V. PRADO

Ellex N. Loper

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*Ellex N. Loper**

This Note analyzes, in the context of United States v. Prado, whether under the Maritime Drug Law Enforcement Act, the phrase “subject to the jurisdiction of the United States” implicates subject matter jurisdiction. The Second Circuit in Prado held that subject to the jurisdiction of the United States does not implicate subject matter jurisdiction. The Fifth, Eleventh and D.C. Circuit have held otherwise. This Note ultimately concludes that clarification is needed to resolve this split and the clarification should align with the Second Circuit.

I. INTRODUCTION

In 1986, Congress enacted The Maritime Drug Law Enforcement Act (MDLEA).¹ Congress found that it was “necessary to facilitate enforcement by the Coast Guard of laws relating to the importation of illegal drugs.”² MDLEA “specifically relates to extraterritorial jurisdiction on the high seas and grants the Coast Guard authority to board foreign flagged vessels on the high seas in enumerated circumstances.”³ Additionally, MDLEA “supports the United States’ commitments under the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.”⁴

“United States counter-drug operations focus on three . . . areas: (1) Source Zone (supplier countries in South America); (2) Transit Zone (a 7 million square mile area between source countries in South America and

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1. Elania Aquila, *Courts Have Gone Overboard In Applying The Maritime Drug Law Enforcement Act*, 86 FORDHAM L. REV. 2965, 2975 (2018).

2. *Id.*

3. Mary B. Neumayr, *Maritime Drug Law Enforcement Act: An Analysis*, 11 HASTINGS INT’L & COMP. L. REV. 487, 487-488 (1988).

4. Justin Daniel, *Operational Diplomacy: Jurisdiction Certification and the Maritime Drug Law Enforcement Act*, 29 IND. INT’L & COMP. L. REV. 1,1 (2019).

Arrival Zone in North America); and (3) Arrival Zone (where narcotics arrive in United States and Canada).”⁵ “MDLEA provides the basis for Coast Guard drug interdiction efforts in the Caribbean and in the eastern Pacific off the coast of Central and South America.”⁶ The findings and declaration of MDLEA state “that trafficking in controlled substances aboard vessels is a serious international problem . . . and presents a specific threat to the security of the United States and operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem.”⁷ To pass MDLEA, Congress relied on Article 1, Section 8, Clause 10 of the Constitution, which states “Congress shall have power . . . To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations. . . .”⁸

Additionally, Congress relied on Article I, Section 8, Clause 18, of the Constitution, known as the “Necessary and Proper Clause,” which broadens Congress’s authority. This Clause allows Congress to “make all Laws [that] shall be necessary and proper for carrying into Execution” its enumerated powers.⁹ In other words, MDLEA was established pursuant to powers enumerated in the Constitution, and not only to serve United States’ interests, but to promote and align international interest against enforcing laws against illicit drugs. Turning to the language of MDLEA, “the term ‘vessel subject to the jurisdiction of the United States’ includes a vessel without nationality.”¹⁰ Under MDLEA, “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

5. Alexander D. Andruzzi, *Circuit Split on the Application of the "Safety Valve" Provision as Applied to the Maritime Drug Law Enforcement Act* - Alexander and Mosquera-Murillo, 24 *Ocean & Coastal L.J.* 250, 252 (2019). Available at: <https://digitalcommons.maine.gov/oclj/vol24/iss2/6> [https://perma.cc/N54B-P8RQ].

6. CHARLES DOYLE, CONG. RSCH. SERV., R7-5700, EXTRATERRITORIAL APPLICATION OF AMERICAN CRIMINAL LAW 18 (2016).

7. 46 U.S.C. § 70501 (2008).

8. U.S. Const. art. I, § 8, cl. 10; Aquila, *supra* note 1, at 2965.

9. U.S. Const. art. I, § 8, cl. 18; Aquila, *supra* note 1, at 2972.

10. 46 U.S.C. § 70502(c)(1)(A) (2008).

(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.¹¹

In order to claim nationality, MDLEA states that a claim of nationality or registry includes “(1) possession on board the vessel and production of documents evidencing the vessel’s nationality. . . ; (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.”¹²

MDLEA states that one of the prohibited acts “while on board a covered vessel, [is that] an individual may not knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance.”¹³ A covered vessel under MDLEA means “a vessel of the United States or a vessel subject to the jurisdiction of the United States.”¹⁴ In order to offer some clarification to MDLEA in 1996, Congress amended the Maritime Act. It did so by expanding the definition of what constitutes a stateless vessel, 46 U.S.C. app. § 1903(c)(2)(C), and by adding a provision reading in pertinent part as follows:

“Jurisdiction of the United States with respect to vessels subject to this chapter is not an element of any offense. All jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.”¹⁵

Combining these definitions together, the issue turns on whether a vessel without a nationality, engaging in a prohibited act under MDLEA is subject to the jurisdiction of the State.

This Note will analyze a decision from the Second Circuit¹⁶ concerning the phrase of the MDLEA that has prompted a circuit split; “subject to the jurisdiction of the United States.” The split focuses specifically on whether “subject to the jurisdiction of the United States” in MDLEA implicates subject matter jurisdiction. Furthermore, this Note will contend that the Second Circuit reached the correct decision in stating that “subject to the jurisdiction of the United States” does not implicate subject matter jurisdiction.

11. 46 U.S.C. § 70502(d)(1)(A-C) (2008).

12. 46 U.S.C. § 70502(e) (2008).

13. 46 U.S.C. § 70503(a)(1) (2008).

14. 46 U.S.C. § 70503(e)(1) (2008).

15. *United States v. Gonzalez*, 311 F.3d 440, 442-443 (1st Cir. 2002).

16. *United States v. Prado*, 933 F.3d 121 (2d Cir. 2019).

II. BACKGROUND

A. Prado Background

Officers of the United States Coast Guard received a tip that a drug cartel was sending a go-fast carrying cocaine from Colombia towards Costa Rica.¹⁷ A “go-fast” is a small, rapid speed boat, which, because of its speed and low profile, is often used in drug trafficking.¹⁸ “Go-fast boats are specially made vessels, typically made of fiberglass, designed to carry large quantities of drugs with a low surface profile, which helps them avoid visual or radar detection.”¹⁹

The Coast Guard spotted a small craft in international waters off the border between Nicaragua and Costa Rica.²⁰ The Coast Guard intercepted the boat after the Coast Guard fired on the vessel and disabled the vessel’s engines.²¹ The Coast Guard boarded the vessel and encountered the only three people on the vessel, the defendants, Joaquin Alarcon Prado, Hector Valencia Bautista, and Luis Armando Valencia Bautista, along with 680 kilograms of cocaine.

The government’s affidavit states that the vessel was not flying a flag, “nor did it have any signs of registry painted on the side of the vessel.”²² While the Government claims that there was no flag and the vessel was not under a nationality, the defendants claim that even though they were not flying a flag, they did have a large Ecuadorian flag painted on the side of their vessel.²³ The Coast Guard set fire to the vessel and sank it.²⁴ The defendants, after indictment, moved for various forms of relief and a hearing was conducted to determine if the vessel was stateless.²⁵ “The district court conducted a hearing . . . to determine whether the vessel on board which drugs were found was subject to the jurisdiction of the United States. The theory of the government was that the vessel was subject to the

17. *Id.* at 126.

18. *Id.* at 126.

19. Christopher Woody, *The US Coast Guard and Navy pulled a half-ton of cocaine from a burning go-fast boat in the Pacific* (Apr. 26, 2018, 12:42 PM), <https://www.businessinsider.com/coast-guard-navy-half-ton-cocaine-smuggling-2018-4>, [<https://perma.cc/A8PV-TUJH>].

20. *Prado*, 933 F.3d 121 at 126.

21. *Id.*

22. *Id.* at 127.

23. *Id.*

24. *Id.*

25. *Id.*

jurisdiction of the United States because it was without nationality.”²⁶ The court concluded that it was subject to the jurisdiction of the United States under 46 U.S.C. § 70502(c)(1)(A) and refused to dismiss the indictment.²⁷

The defendants pleaded guilty to the charges of “conspiracy to distribute cocaine, and of possession of cocaine with intent to distribute, while on board a stateless vessel subject to the jurisdiction of the United States in violation of . . . MDLEA.”²⁸ The defendants were sentenced to twenty-four months of imprisonment and three years of supervised release.²⁹ The main issue of the case, and the main contention by the defendants, was whether the vessel the defendants were on was subject to the jurisdiction of the United States.³⁰ A secondary issue, and the focus of this analysis, is if the failure by the government to establish that the vessel was without nationality (not subject to the jurisdiction of the United States) also meant that the court was without subject matter jurisdiction.³¹ The defendants claimed that the “government’s failure to show that the vessel was ‘subject to the jurisdiction of the United States’ is a defect as to the court’s subject matter jurisdiction.”³² In regards to whether subject to the jurisdiction of the United States implicates subject matter jurisdiction, the court found that “the MDLEA’s reference poses the question whether its prohibition on drug possession extends to the vessel in question — not whether a prosecution under the statute falls within the subject matter jurisdiction of the federal courts.”³³

In other words, the court held that being subject to the jurisdiction of the United States does not implicate subject matter jurisdiction and instead is a question of whether the vessel is covered under the statute or not. The *Prado* court ultimately held that § 70504(a) of the MDLEA requires a court to make a preliminary determination of jurisdictional issues, thus if the government fails to show that the vessel was subject to the jurisdiction of the United States, the court should dismiss the indictment.³⁴ The court

26. *Id.* at 126.

27. *Id.*

28. *Id.*

29. *Id.* at 127.

30. There is an additional circuit split on whether jurisdiction under MDLEA is a question for the judge or the jury to decide. *See* United States v. Perlaza, 439 F.3d 1149, 1166–67 (9th Cir. 2004) (jurisdiction facts are to be decided by a jury). *But see* United States v. Tinoco, 304 F. 3d 1088, 1108–09 (11th Cir. 2002); United States v. Vilches Navarrete, 523 U.S. 1, 12 (1st Cir. 2008) (The Eleventh and First Circuit have held that jurisdiction facts are to be decided by a judge).

31. *Prado*, 933 F.3d 121 at 132.

32. *Id.*

33. *Id.* at 133.

34. *Id.* at 153.

determined the Government did not demonstrate that the vessel was subject to the jurisdiction of the United States and dismissed the indictment and vacated the convictions for all the defendants.³⁵ The court reasoned that the Coast Guard did not affirmatively establish that the vessel was stateless and thus subject to the jurisdiction of the United States.³⁶

B. Circuit Split

The cases in this Note that highlight the circuit split all focus on similar facts. An agency of the United States government, usually the Coast Guard, intercepts a vessel in international waters and boards the vessel.³⁷ Sometimes the Coast Guard disables the vessel if it is trying to flee without first determining if the vessel is subject to the jurisdiction of the United States. The Coast Guard is the lead federal agency for “maritime drug interdiction;” to enforce MDLEA the Coast Guard employs a system involving ships, aircraft, boats and specialized forces.³⁸ Once the Coast Guard has intercepted the vessel the Coast Guard it then determines if the vessel is flying without a nationality and is subject to the jurisdiction of the United States.³⁹ The Coast Guard can determine that the vessel is subject to the jurisdiction of the United States through several methods: the master or individual in charge can make a claim of registry that is denied by the nation; the master or individual in charge fails on request to make a claim of nationality or registry of the vessel; or the master or individual in charge makes a claim of registry which the nation does not affirmatively agree with.⁴⁰ The cases involve varying drugs and amounts, but typically very large quantities.⁴¹ Some of the cases also included defendants who have pleaded guilty and are attempting to appeal their conviction.⁴²

35. *Id.*

36. *Id.* at 130.

37. *See generally, Tinoco*, 304 F.3d at 1092 (drugs seized by the Coast Guard in international waters); *United States v. Bustos-Useche*, 273 F.3d 622, 624 (5th Cir. 2001) (drugs seized in international waters by the Coast Guard); *United States v. Gonzalez*, 311 F.3d 440, 444 (1st Cir. 2002) (Coast Guard went to rescue the go-fast located on the high seas approximately eighteen nautical miles southwest of the British Virgin Islands).

38. Daniel, *supra* note 4, at 2-3.

39. *See Tinoco*, 304 F.3d 1088; *Bustos-Useche*, 273 F.3d 622; *Gonzalez*, 311 F.3d 440.

40. 46 U.S.C.S. § 70502(d) (2008).

41. *See Tinoco*, 304 F.3d 1088; *Bustos-Useche*, 273 F.3d 622; *Gonzalez*, 311 F.3d 440.

42. *Bustos-Useche*, 273 F.3d at 625; *Prado*, 933 F.3d 121, 125 (2d Cir. 2019).

The split in regard to whether “subject to the jurisdiction of the United States” implicates subject matter after the *Prado* decision is 3-2. The Fifth, Eleventh and D.C. Circuit have held in some form that “subject to the jurisdiction of the United States” is associated with subject matter jurisdiction.⁴³ In other words, the Fifth, Eleventh and D.C. Circuit have come to understand that “subject to the jurisdiction of the United States” is “a congressionally imposed limit on courts’ subject matter jurisdiction.”⁴⁴ The First Circuit and Second Circuit, as stated in the *Prado* case, have found that “subject to the jurisdiction of the United States” does not implicate subject matter jurisdiction and simply has to do with the scope of the statute.⁴⁵ The cases at issue on the split involve stateless vessels, thus the issue turns on whether statelessness goes towards subject matter jurisdiction or to something else, such as the scope of the statute or element of a crime.

1. Subject to the Jurisdiction of the United States Does Implicate Subject Matter Jurisdiction

The Eleventh Circuit case involved the United States Coast Guard in international waters near the Columbian/Ecuadorian border.⁴⁶ The Coast Guard intercepted a go-fast vessel with four individuals and the Coast Guard seized 1,807 kilograms of cocaine.⁴⁷ The Eleventh Circuit’s position is that, “the question of whether a vessel is subject to the jurisdiction of the United States should be treated purely as an issue of subject matter jurisdiction.”⁴⁸ The *Tinoco* court reasoned that “the 1996 Amendment to the MDLEA removes the statutory ambiguity. By adding to the MDLEA the jurisdiction and venue provision, 46 U.S.C. app. § 1903(f), Congress indicated that whether a vessel is subject to the jurisdiction of the United States is solely an issue of subject matter jurisdiction.”⁴⁹ The Eleventh Circuit has gone on to elaborate in a different case that, “we have interpreted the ‘on board a vessel subject to the jurisdiction of the United States’ portion of the MDLEA as a congressionally imposed limit on courts’ subject matter jurisdiction.”⁵⁰

43. *Tinoco*, 304 F.3d at 1112-16; *Bustos-Useche*, 273 F.3d at 626-28; *United States v. Munoz Miranda*, 780 F.3d 1185, 1192 (D.C. Cir. 2015).

44. *Aquila*, *supra* note 2, at 2985.

45. *Prado*, 933 F.3d at 133.

46. *Tinoco*, 304 F.3d at 1092.

47. *Id.* at 1093.

48. *Id.* at 1107.

49. *Id.* at 1105.

50. *U.S. v. De La Garza*, 516 F.3d 1266, 1271 (11th Cir. 2008).

The Fifth Circuit case involved slightly different facts than the *Prado* case analyzed in this Note. A freighter bound for Portugal was sailing through international waters and was suspected to be used for drug trafficking.⁵¹ The United States Coast Guard boarded the vessel after being given permission by the vessel's government and found four tons of cocaine.⁵² The Fifth Circuit aligns with the Eleventh Circuit; "we conclude that the district court's preliminary determination of whether a flag nation has consented or waived objection to the enforcement of United States law is a prerequisite to the court's jurisdiction."⁵³ Both the Eleventh and Fifth Circuits have stated that "subject to the jurisdiction of the United States" requirement "constituted a congressionally imposed limit on courts' subject matter jurisdiction, akin to the amount-in-controversy requirement contained in 28 U.S.C. § 1332."⁵⁴

The D.C. Circuit, in determination of the issue at hand, decided a case with similar facts to *Prado*, as it involved drug smuggling as well as the use of a go-fast to transport drugs from Colombia to other locations.⁵⁵ The D.C. Circuit stated that "we agree with the Fifth and Eleventh Circuits and conclude that, under § 70504(a), the question whether a vessel is 'subject to the jurisdiction of the United States' is a matter of subject-matter jurisdiction."⁵⁶ The court went on to reason that "Congress not only specified that the 'jurisdiction of the United States with respect to a vessel' is a threshold question determined by the court, but also that it is 'not an element of the offense,' . . . fortifying its jurisdictional character."⁵⁷

2. Subject to the Jurisdiction of the United States Does Not Implicate Subject Matter Jurisdiction

The First Circuit has taken the stance that "subject to the jurisdiction of the United States" "refers to the substantive reach of the statute—applying to some vessels but not others—and not to the subject matter jurisdiction of the court."⁵⁸ Subject to the jurisdiction of the United States applies to the power of the statute and not a preliminary question for the courts to determine, such as the amount-in-controversy. The First Circuit case determined if "subject to the jurisdiction of the United States"

51. *Bustos-Useche*, 273 F.3d 622, 624.

52. *Id.*

53. *Id.* at 626.

54. Daniel, *supra* note 4 at 37.

55. *U.S. v. Miranda*, 780 F.3d 1185 (2015).

56. *Id.* at 1192.

57. *Id.* at 1193.

58. *Gonzalez*, 311 F.3d 440, 443.

implicates subject matter jurisdiction. The facts are as follows: two individuals were rescued on the high seas of the coast of the British Virgin Islands; the United States Coast Guard responded and found bales of cocaine; the defendants “were indicted for possessing the cocaine, with intent to distribute it, aboard ‘a vessel without nationality’”.⁵⁹ The First Circuit went on to articulate the reasoning of their decision. The court stated that the legislative history did not suggest that Congress had in mind the court’s subject matter jurisdiction.⁶⁰ The court also went on to articulate why “subject to the jurisdiction of the United States” does not implicate subject matter jurisdiction. The court focused on the wording of the statute stating, “nothing in the wording of the statute suggests such an intention. The term ‘jurisdiction’ is notoriously malleable and is used in a variety of contexts that have nothing whatever to do with the court’s subject matter jurisdiction.”⁶¹ The court also cites Black’s Law Dictionary in determining the meaning of jurisdiction.⁶² Black’s Law Dictionary states that jurisdiction is “a government’s general power to exercise authority over all persons and things within its territory.”⁶³

The Second Circuit, in deciding *Prado*, cited and followed the *Gonzalez* decision that the First Circuit had made.⁶⁴ The *Prado* court said that the First Circuit illustrated a persuasive opinion that “demonstrates that the MDLEA’s reference poses the question whether its prohibition on drug possession extends to the vessel in question — not whether a prosecution under the statute falls within the subject matter jurisdiction of the federal courts.”⁶⁵ The *Prado* court describes multiple reasons why “subject to the jurisdiction of the United States” does not implicate subject matter jurisdiction.⁶⁶

C. Canons of Construction

The first step to determine which set of cases is decided properly is to look to the canons of construction and distill the meaning of the statute. Some of the typical rules of statutory interpretation include looking at the plain or natural meaning of the words, looking at the law as a whole,

59. *Id.* at 441.

60. *Id.* at 443.

61. *Id.*

62. *Id.*

63. *Jurisdiction* Black’s Law Dictionary (11th ed. 2019).

64. *Prado*, 933 F.3d 121 at 132.

65. *Id.*

66. *Id.* at 133-134.

looking to the purpose of the law, as well as examining the legislative history and intent.

When looking at the meaning of statutes, courts look at the plain meaning of the words. The definition of jurisdiction and subject matter jurisdiction are different. According to Black's Law Dictionary, subject matter jurisdiction is defined as "jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things."⁶⁷ In other words, subject matter jurisdiction determines in what court a family matter or bankruptcy case can be heard. Jurisdiction casts a much wider net and is defined as "a government."⁶⁸

Turning to the context of MDLEA, "[t]he normal rule of statutory construction assumes that 'identical words used in different parts of the same act are intended to have the same meaning.'"⁶⁹ In § 70506(c) and § 70503(a) of MDLEA, the same phrase ("a vessel subject to the jurisdiction of the United States") is used in the same context (prohibiting drug possession on board the vessel),⁷⁰ and § 70506(c) "applies in circumstances in which the federal courts will play no role whatsoever."⁷¹ Giving one section a different meaning than another section within the same act goes against the standard practice of statutory interpretation: giving identical words the same meaning. Additionally, in regard to subject matter jurisdiction, "the Supreme Court's guidance for interpreting ambiguous statutory requirements instructs that such a requirement does not go to subject matter jurisdiction absent a 'clear statement' to that effect."⁷²

Subject matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231, and furthermore, in criminal cases, 8 U.S.C. § 3231 is almost always the entire jurisdictional inquiry.⁷³ Specifically, since subject matter jurisdiction is already outlined in a statute, in regard to federal criminal prosecution, it would be redundant for MDLEA to state that courts would have subject matter jurisdiction. Regarding this method of interpretation, the *Prado* court stated that, "to conclude that the district court nonetheless lacked jurisdiction of this prosecution of an offense under the laws of the United States, we would need to conclude that the

67. *Subject Matter Jurisdiction*, Black's Law Dictionary (11th ed. 2019).

68. *Jurisdiction*, Black's Law Dictionary (11th ed. 2019).

69. *Sorenson v. Sec'y of Treasury*, 475 U.S. 851, 860 (1986) (quoting *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 87 (1934)).

70. *Prado*, 933 F.3d 121 at 143-144.

71. *Id.*

72. *Id.* at 135.

73. *McCoy v. United States*, 266 F.3d 1245, 1252 n.11 (11th Cir. 2001).

MDLEA somehow displaced, superseded, or limited § 3231's express grant of jurisdiction."⁷⁴

Overall, it is apparent, using the canons of construction, that "subject to the jurisdiction of the United States" does not implicate subject matter jurisdiction.

III. ANALYSIS

The *Prado* court came to the correct conclusion that "subject to the jurisdiction of the United States" does not implicate subject matter jurisdiction. Multiple courts have decided the issue of whether the language implicates subject matter jurisdiction.⁷⁵ The *Prado* court laid out persuasive reasoning why "subject to the jurisdiction of the United States" does not implicate subject matter jurisdiction. The *Prado* court laid out seven different reasons why "subject to the jurisdiction of the United States" cannot mean or implicate subject matter jurisdiction.⁷⁶ The seven reasons include: there is already currently a provision conferring subject matter; the Supreme Court recognizes different meanings for the word jurisdiction; the natural meaning of the words do not implicate subject matter jurisdiction; if interpreted to include subject matter jurisdiction, it would give the clause a highly expansive meaning; federal statutes conferring subject matter jurisdiction use many different formulations; the term "subject to the jurisdiction of the United States" is used in MDLEA to refer to the reach of United States laws; the decisions of other courts have not recognized that it could have another meaning or have not recognized that the same phrase is used incompatibly throughout title 46.⁷⁷

Many of the reasons laid out in the court's decision tie directly to interpretation of statutes and how the canons of construction are used. One of the most compelling of those seven reasons is that there is already a general provision in United States law that defines subject matter jurisdiction.⁷⁸ 18 U.S.C.S. § 3231 states that the district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.⁷⁹ Furthermore, "the terms 'subject to the jurisdiction of the United States' and 'vessel subject to the jurisdiction of the United States' appear repeatedly in the

74. *Prado*, 933 F.3d 121 at 135.

75. See *Tinoco*, 304 F.3d 1088; *Bustos-Useche*, 273 F.3d 622; *Gonzalez*, 311 F.3d 440.

76. *Prado*, 933 F.3d 211 at 134-145

77. *Id.*

78. *Id.*

79. 18 U.S.C.S. § 3231.

MDLEA . . . in contexts where those phrases refer unmistakably to the reach of United States laws (as exercises of legislative jurisdiction) and not to the jurisdiction of the courts.”⁸⁰ “That reach was limited by Congress to minimize conflict with foreign nations who might also assert rights to regulate.”⁸¹ Turning to one of the foundations of statutory interpretation, “[t]he natural meaning of the words of the statute . . . make clear that the term ‘vessel subject to the United States’ specifies the reach, or coverage, of the statute and does not in any way address the jurisdiction of the court.”⁸² Jurisdiction in this case is the fact that the statute applies to some vessels but not to others.

Turning to another canon of construction, the court goes on to analyze the legislative intent behind MDLEA. “The MDLEA was one of a series of steps Congress took in the 1980s and 1990s to extend the reach of the federal drug laws beyond the territory of the United States.”⁸³ In order to achieve this goal, Congress “specif[ied] the circumstances in which a nation’s laws apply extraterritorially typifies a legislature’s exercise of legislative jurisdiction by defining the statute’s reach.”⁸⁴ Legislative jurisdiction is known as jurisdiction to prescribe.⁸⁵ MDLEA creates laws that go beyond the borders of the United States, specifically into international waters. When creating laws of this nature there are often three legislative concerns: “(1) whether it is consistent with international law to so extend the reach of the nation’s laws; (2) whether doing so respects comity among nations, or would cause undesired friction with foreign nations; and, (3) finally, exactly how the extraterritorial reach of the statute is defined.”⁸⁶

When creating a statute that expands the reach of the United States beyond its borders, the United States does not want to create laws that interfere with the rights of other countries or infringe on international law. The language “subject to the jurisdiction of the United States” addresses the above three concerns of the legislature, by limiting the reach of the statute which in turn limits interference with international sovereignty and the sovereignty of other countries.⁸⁷ In support of the Second Circuit’s holding, the phrase “subject to the jurisdiction of the United States” is a limitation on the statute that “one of the fundament[al]s. . . of maritime

80. *Prado*, 933 F.3d 121 at 133-134.

81. *United States v. Matos-Luchi*, 627 F.3d 1, n.4 (1st Cir. 2010).

82. *Prado*, 933 F.3d 121 at 134.

83. *Matos-Luchi*, 627 F.3d at 10 (Lipez, J., dissenting).

84. *Prado*, 933 F.3d 121 at 136 (emphasis omitted).

85. *Id.* at 132-133.

86. *Id.* at 136-137

87. *Id.* at 136.

law is the principle of exclusive flag state jurisdiction, which means that a vessel on the high seas is not subject to boarding, search, seizure, or arrest by any nation other than its flag state.”⁸⁸ If “subject to the jurisdiction of the United States” is interpreted as a reach of the statute, the statute would then be a limit on the power of the United States and would not conflict with the fundamental principles of maritime law. Furthermore, it is an accepted international principle that “all states may also board and inspect vessels . . . that are ‘stateless,’ meaning they are not legitimately registered to any state.”⁸⁹ Reading “subject to the jurisdiction of the United States” with consideration of international principles it is clear that “subject to the jurisdiction of the United States” is a statutory limit.

MDLEA defines vessels as “subject to the jurisdiction of the United States” in similar terms as international principles. If the language “subject to the jurisdiction” implicated subject matter jurisdiction and was not considered a statutory limitation it would appear that MDLEA would not have a real limit on the statutory reach. Without a limit on the reach of MDLEA it is possible that the language of MDLEA could cause some conflict in the international community.

Additionally, subject matter jurisdiction is a preliminary question for the court to determine and “unlike venue and the other procedural . . . matters . . . a failure to prove that defendants’ conduct occurred on board a covered vessel amounts to a failure to prove that the defendants violated the MDLEA.”⁹⁰ The fact that a failure to prove that a defendant engaged in a prohibited act on a vessel subject to the United States suggests that the phrase “subject to the jurisdiction of the United States” is solely a statutory limitation and not affiliated with subject matter jurisdiction. To be prosecuted under MDLEA the vessel that is part of the crime has to be subject to the jurisdiction of the United States. For example, if a vessel was flying a Canadian flag and was registered with Canada, the vessel would not be subject to the jurisdiction of the United States. Conversely, if there was a ship in international waters, like many of the ships in the above cases, and the vessel was not flying a flag and was not registered in a country, then the ship would be subject to the United States. In the above two scenarios determining if a ship is or is not subject to the United States is all about what type of vessel the ship is, if it is flying a flag, or if it is

88. Aaron J. Casavant, *In Defense of the U.S. Maritime Drug Law Enforcement Act: A Justification for the Law's Extraterritorial Reach*, 8 HARV. NAT'L SEC. L. J. 191, 203 (2017).

89. James Kraska, *Broken Taillight at Sea: The Peacetime International Law of Visit, Board, Search, and Seizure*, 16 OCEANS & COASTAL L.J. 1, 26 (2010).

90. *Matos-Luchi*, 627 F.3d at 14 (Lipez, J., dissenting).

registered to a nationality. The above determination, and the determination that courts including the *Prado* court have made, is not a subject matter jurisdiction inquiry.

Overall, the reasoning and connection to statutory interpretation in the *Prado* case is extremely persuasive and holds true to the canons of construction. The plain meaning of the words “subject to the jurisdiction of the United States” read in context of MDLEA indicate that subject matter jurisdiction is not implicated. The layout and legislative history also make it clear that the only interpretation of “subject to the jurisdiction of the United States” is a statutory reach and does not implicate subject matter jurisdiction.

IV. CONCLUSION

The Circuit split is currently leading to a great deal of confusion. The confusion can lead to reversal of criminal defendants’ convictions depending on which circuit the defendant is convicted in. For example, if a defendant is prosecuted in a Circuit that interprets “subject to the jurisdiction of the United States” as implicating subject matter jurisdiction but not as a statutory reach, the defendant could be convicted. Conversely, if a Circuit interprets “subject to the jurisdiction of the United States” as a statutory limitation, the defendant’s conviction could be overturned if the elements of the statute are not met.⁹¹

In order to clear the confusion that the MDLEA has created, Congress could add an amendment to the act that clarifies whether “subject to the jurisdiction of the United States” does or does not implicate subject matter jurisdiction. The addition could be as simple as an additional line in the statute. If Congress decides not to make an amendment to MDLEA, a case would have to be brought before the Supreme Court in order for a ruling to be pronounced.

Overall, it is evident that some clarification is needed either by the Supreme Court or Congress in order to clarify the meaning of MDLEA so that defendants throughout the United States have comparable results. Congress or the Supreme Court should follow the well-articulated reasoning of the Second Circuit and deem that “subject to the jurisdiction of the United States” does not in fact implicate subject matter jurisdiction. To decide otherwise could possibly lead to more confusion because that would mean, within the criminal context and under MDLEA, there would be multiple definitions of subject matter jurisdiction.

91. See generally, *Prado*, 933 F.3d 121.

