

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

ROBERT DEXTER WEIR et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 19-1708 (TFH)

**DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 12(b)(1), Defendants respectfully move the Court to dismiss Plaintiffs' Complaint against them. Because granting this motion would be fully dispositive of this action, the duty to confer pursuant to Local Civil Rule 7(m) does not apply. Accompanying this motion, Defendants submit a supporting Memorandum of Points and Authorities, exhibits, and a proposed order.

Dated: September 26, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JESSIE K. LIU (D.C. Bar 472845)  
United States Attorney

By: /s/ Jill Rosa  
DOUGLAS M. HOTTLE  
JILL DAHLMANN ROSA (D.C. Bar 451578)  
Senior Trial Counsel  
THOMAS M. BROWN  
JUSTIN R. JOLLEY  
Trial Attorneys  
U.S. Department of Justice  
Civil Division, Torts Branch  
Aviation, Space & Admiralty Litigation  
P.O. Box 14271

Washington, DC 20044  
(202) 616-2973, Douglas.Hottle@usdoj.gov  
(847) 732-1141, Jill.Rosa@usdoj.gov  
(202) 616-4112, Thomas.M.Brown@usdoj.gov  
(202) 616-4035, Justin.R.Jolley@usdoj.gov  
Fax: (202) 616-4002  
Attorneys for the United States

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

ROBERT DEXTER WEIR et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 19-1708 (TFH)

**MEMORANDUM IN SUPPORT OF  
THE UNITED STATES' MOTION TO DISMISS**

JOSEPH H. HUNT  
Assistant Attorney General

JESSIE K. LIU (D.C. Bar 472845)  
United States Attorney

DOUGLAS M. HOTTLE  
JILL DAHLMANN ROSA (D.C. Bar 451578)  
Senior Trial Counsel  
THOMAS M. BROWN  
JUSTIN R. JOLLEY  
Trial Attorneys  
U.S. Department of Justice  
Civil Division, Torts Branch  
Aviation & Admiralty Litigation  
P.O. Box 14271  
Washington, DC 20044  
Tel: (202) 616-4100

TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... iii

TABLE OF ATTACHMENTS..... vii

MEMORANDUM OF POINTS AND AUTHORITIES ..... 1

INTRODUCTION ..... 1

BACKGROUND ..... 3

    A. International Framework ..... 3

        (1) 1988 Vienna Counter-Trafficking Convention..... 3

        (2) United States/Jamaica Bilateral Agreement..... 5

    B. Domestic Framework ..... 6

FACTS ..... 8

    A. Jamaica’s Waiver of Jurisdiction ..... 8

    B. The Criminal Action, S.D. Florida ..... 9

ARGUMENT ..... 12

I. THIS CASE IS NONJUSTICIABLE UNDER THE POLITICAL QUESTION  
DOCTRINE ..... 13

    A. The Challenged Acts ..... 14

    B. The Challenged Acts Were Committed to the Political Branches. .... 15

    C. Actions Taken Pursuant to 1988 Vienna Counter-Trafficking Convention and  
    Bilateral Agreement with Jamaica Are Not Subject to Judicial Review..... 21

    D. The Court Lacks Judicially Discoverable and Manageable Standards for  
    Resolving the Conflict..... 24

    E. Prudential Factors Apply Here. .... 28

    F. Plaintiffs’ Tort Allegations Are Not Extrinsic and Do Not Make this Case  
    Justiciable. .... 29

II. OTHER GROUNDS FOR DISMISSAL ..... 29

CONCLUSION..... 31

TABLE OF AUTHORITIES

**Cases**

*\*Aktepe v. United States*,  
105 F.3d 1400 (11th Cir. 1997)..... 18, 26

*Ali Jaber v. United States*,  
155 F. Supp. 3d 70 (D.D.C. 2016)..... 16

*\*Al-Tamimi v. Adelson*,  
916 F.3d 1 (D.C. Cir. 2019)..... 12, 14, 16, 28

*Am. Ins. Ass’n v. Garamendi*,  
539 U.S. 396 (2003) ..... 16

*\*Baker v. Carr*,  
369 U.S. 186 (1962) ..... 13, 24

*Bancoult v. McNamara*,  
445 F.3d 427 (D.C. Cir. 2006)..... 16

*Benvenuti v. Dep’t of Def.*,  
587 F. Supp. 348 (D.D.C. 1984)..... 31

*Chaser Shipping Corp. v. United States*,  
649 F. Supp. 736 (S.D.N.Y. 1986), *aff’d*, 819 F.2d 1129 (2d Cir. 1987)..... 27

*El-Shifa Pharm. Indus. Co. v. United States*,  
402 F. Supp. 2d 267 (D.D.C. 2005)..... 17

*El-Shifa Pharm. Indus., Co. v. United States*,  
559 F.3d 578 (D.C. Cir. 2009)..... 17

*\*El-Shifa Pharm. Indus., Co. v. United States*,  
607 F.3d 836 (D.C. Cir. 2010)..... 17

*Ferguson v. United States*,  
No. 19-cv-22901 (S.D. Fla. filed July 12, 2019)..... 12

*Fleming v. Cherokee Nation*,  
No. 19-cv-1397, 2019 WL 2327814 (D.D.C. May 31, 2019) ..... 13

*Harbury v. Hayden*,  
522 F.3d 413 (D.C. Cir. 2008)..... 18

*Japan Whaling Ass’n v. Am. Cetacean Soc.*,  
478 U.S. 221 (1986) ..... 13

*Jerome Stevens Pharm., Inc. v. Food & Drug Admin.*,  
402 F.3d 1249 (D.C. Cir. 2005)..... 13

*Klinghoffer v. S.N.C. Achille Lauro*,  
937 F.2d 44 (2d Cir. 1991) ..... 29

*Lin v. United States*,  
561 F.3d 502 (D.C. Cir. 2009)..... 14

*Rempfer v. Sharfstein*,  
583 F.3d 860 (D.C. Cir. 2009)..... 13

*\*Schneider v. Kissinger*,  
310 F. Supp. 2d 251 (D.D.C. 2004)..... 18

*\*Schneider v. Kissinger*,  
412 F.3d 190 (D.C. Cir. 2005)..... 18

*Shuler v. United States*,  
531 F.3d 930 (D.C. Cir. 2008)..... 31

*Sosa v. Alvarez-Machain*,  
542 U.S. 692 (2004) ..... 22

*Sparrow v. United Air Lines, Inc.*,  
216 F.3d 1111 (D.C. Cir. 2000)..... 12

*\*Tarros S.p.A. v. United States*,  
982 F. Supp. 2d 325 (S.D.N.Y. 2013) ..... 22, 26

*Trudeau v. Fed. Trade Comm’n*,  
456 F.3d 178 (D.C. Cir. 2006)..... 13

*United States v. Brant-Epigelio*,  
2010 WL 557283 (M.D. Fla. 2010)..... 23

*\*United States v. Carvajal*,  
924 F. Supp. 2d 219 (D.D.C. 2013)..... 6, 7

*United States v. Gaubert*,  
499 U.S. 315 (1991) ..... 30

*United States v. Hernandez*,  
864 F.3d 1292 (11th Cir. 2017) ..... 23, 28

*United States v. Miranda*,  
780 F.3d 1185 (D.C. Cir. 2015)..... 23

*United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*,  
467 U.S. 797 (1984) ..... 30

*United States v. Weir*,  
No. 17-cr-20877-UNGARO (S.D. Fla.) ..... 9

*Weir v. United States*,  
No. 19-cv-23420 (S.D. Fla. filed August 15, 2019) ..... 12

*\*Wu Tien Li-Shou v. United States*,  
777 F.3d 175 (4th Cir. 2015), *cert. denied* 136 S.Ct. 139 (2015) ..... 25, 29

*Zivotofsky v. Clinton*,  
566 U.S. 189 (2012) ..... 13

**Constitution**  
U.S. Const. art. I, § 8..... 17

**Statutes**  
18 U.S.C. § 2237..... 9, 24, 28

46 U.S.C. § 30903..... 18, 37

46 U.S.C. § 31102..... 37

46 U.S.C. § 31111..... 36

46 U.S.C. § 70501..... 8, 9, 24

46 U.S.C. § 70502..... 8, 24, 28, 34

46 U.S.C. § 70505..... 28

Maritime Drug Law Enforcement Act, Pub. L. No. 96-350, 94 Stat. 1159 (1986) ..... 9

**Federal Rules**  
Fed. R. Civ. P. 12(b)(1)..... 1, 38

Fed. R. Civ. P. 38(e) ..... 18

**Other Authorities**

\*Agreement Between the Gov’t of the United States of Am. & the Gov’t of Jamaica Concerning Cooperation in Suppressing Illicit Mar. Drug Trafficking, Feb. 6, 2004, T.I.A.S. No. 98-310, *available at* <https://www.state.gov/98-310>..... *passim*

Exec. Order No. 13773, *Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking*, 82 Fed. Reg. 10691, 2017 WL 568296 (Feb. 9, 2017) ..... 7, 8, 19

\*United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), Dec. 20, 1988, 1582 U.N.T.S. 95, 28 I.L.M. 493, *available at* [https://treaties.un.org/Pages/CTCTreaties.aspx?id=6&subid=A&clang=\\_en](https://treaties.un.org/Pages/CTCTreaties.aspx?id=6&subid=A&clang=_en)..... *passim*

**Secondary Sources**

Fern Kletter, 35 A.L.R. Fed. 3d Art. 6 (2018) ..... 3

*Political and Policy Aspects of the Jamaica/United States Shiprider Negotiations*, 43 Caribbean Quarterly 34 (Sept. 1997)..... 5

Restatement (Fourth) of Foreign Relations Law § 310 (Am. Law Inst. 2018)..... 4, 6, 22

TABLE OF ATTACHMENTS

- A: United States of America, Department of State, Certification for the Maritime Drug Law Enforcement Act Case Involving Go Fast Vessel JOSSETTE.WH.478 (Jamaica) Federal Drug Identification Number (FDIN) – 2017972888 (Nov. 3, 2017)
- B: U.S. District Court, S.D. Florida, Case No. 1:17-cr-20877-UU, ECF 1, Criminal Cover Sheet and Criminal Complaint, United States of America v. Robert Dexter Weir, Patrick W. Ferguson, David Roderick Williams, Luther Fian Paterson, and George Garee Thompson (October 18, 2017)
- C: U.S. District Court, S.D. Florida, Case No. 1:17-cr-20877-UU, ECF 58, Weir Plea Agreement (Jan. 4, 2018)
- D: U.S. District Court, S.D. Florida, Case No. 1:17-cr-20877-UU, ECF 59, Weir Factual Proffer (Jan. 4, 2018)
- E: U.S. District Court, S.D. Florida, Case No. 1:17-cr-20877-UU, ECF 93, Transcript of Plea Colloquy and Sentencing Proceedings Before the Honorable Ursula Ungaro, U.S. District Judge, January 3, 2018 (filed May 18, 2018)
- F: U.S. District Court, S.D. Florida, Case No. 1:17-cr-20877-UU, ECF 90, Unopposed Motion to Correct Supplemental Report for Bureau of Prisons (May 3, 2018); Attachment 90-2, Statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017 (Sept. 15, 2017)

## MEMORANDUM OF POINTS AND AUTHORITIES

Defendants (collectively, “United States”) submit this Memorandum of Points and Authorities in support of their motion to dismiss the Complaint. Fed. R. Civ. P. 12(b)(1).

### INTRODUCTION

The United States is a party to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988). The United States is also a party to a Bilateral Agreement with the Government of Jamaica, entered in 1997, in which both parties recognized the duty of each State to cooperate with its foreign partners in the suppression of illicit maritime trafficking. The parties to these treaties recognized that illicit trafficking and organized crime undermine legitimate economies and threaten the stability, security, and sovereignty of States.<sup>1</sup> They agreed that eradication of illicit trafficking is a collective responsibility of all States, and further agreed to cooperate and coordinate their actions to suppress illicit trafficking by sea.

Operating in international waters, the U.S. Coast Guard intercepted Plaintiffs’ vessel on suspicion of smuggling narcotics, at which time Plaintiffs claimed Jamaican citizenship and Jamaican nationality for the vessel. At that point, the United States engaged in the diplomatic practice of State-to-State communication pursuant to the treaties, which resulted in Jamaica’s confirming nationality for the vessel JOSSETTE and ultimately waiving its primary right to exercise jurisdiction so that the United States could enforce United States law. The U.S. Department of State later certified the result of this diplomacy. The Government of Jamaica took twenty-five days to make the significant decision to waive its primary right to jurisdiction, and

---

<sup>1</sup> Preamble, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), Dec. 20, 1988, 28 I.L.M. 493, 497.

thereafter allowed the United States to prosecute the case under U.S. law. After Jamaica waived jurisdiction, the Coast Guard delivered Plaintiffs from the Caribbean Sea to Miami in just seven days.

Plaintiffs pled guilty before the Honorable Ursula Ungaro, U.S. District Judge, Southern District of Florida, to knowingly providing materially false statements to a federal law enforcement officer during a boarding, while on board a vessel subject to the jurisdiction of the United States, 18 U.S.C. § 2237(a)(2)(B). In making their pleas, each Plaintiff was represented by counsel, and each agreed to the facts as stated in the proffer: they refused to stop their boat when hailed by the U.S. Coast Guard, and then lied to the Coast Guard officers about their intent to fish in the waters near the coast of Jamaica, when their true destination was Haiti.

Now after serving their sentences and being deported back to Jamaica, Plaintiffs bring this admiralty tort action against the United States, claiming their innocence and contradicting the factual proffer. They challenge the Coast Guard's actions in stopping them on the high seas and detaining them during the pendency of Jamaica's diplomatic deliberation. Plaintiffs invoke the Suits in Admiralty Act and the Public Vessels Act as the purported statutory waivers of the United States' sovereign immunity. They allege violations of maritime tort law and "customary international law."

The United States moves the Court to dismiss this action because it falls squarely within the political question doctrine. Under this doctrine, the case is nonjusticiable because the Constitution commits the decisions at issue to the political branches of government, particularly with respect to the conduct of foreign policy. The Complaint's unmistakable center of gravity is the allegation that Plaintiffs spent too much time at sea. Given the conclusive certification of the date Jamaica waived jurisdiction, it is not appropriate for the judiciary, via this maritime tort

lawsuit, to delve into matters of these States' diplomatic engagement. Obviously, conditions at sea differ from land, with limited confines on Coast Guard vessels. The necessities of adapting to the particular challenges aboard armed cutters at sea, holding suspects in close confines with the crew, while awaiting the results of diplomatic negotiations made pursuant to a treaty, are not justiciable matters for the Court. The non-justiciable nature of this suit is further demonstrated by language in the U.S.-Jamaica Bilateral Agreement indicating that disputes are to be handled diplomatically between the sovereign States. As a further sign that this is not a justiciable tort action, Plaintiffs go so far as to ask this Court to order the Coast Guard to implement alternative policies, practices, and procedures. The United States respectfully requests that the action be dismissed in its entirety.

## **BACKGROUND**

### **A. International Framework**

#### **(1) 1988 Vienna Counter-Trafficking Convention**

In 1990, the United States Senate ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), Dec. 20, 1988, 1582 U.N.T.S. 95, 28 I.L.M. 493, ("1988 Vienna Counter-Trafficking Convention"), *available at* <https://treaties.un.org/Pages/CTCTreaties.aspx?id=6&subid=A&clang=en>. This international treaty is one of the most widely signed in existence, with 191 states parties.<sup>2</sup> All thirteen Independent Caribbean Island countries have either ratified or acceded to Convention.

This agreement among States was enacted "due to the magnitude of international criminal trafficking in narcotics and psychotropic drugs, the link between this illicit trafficking and related

---

<sup>2</sup> United Nations Treaty Collection; list of signatories and parties available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=en#14](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=en#14).

organized criminal activities, and the adverse effect of this on the foundations of society and the security of the party states.” Fern Kletter, 35 A.L.R. Fed. 3d Art. 6 (2018); *see* 1988 Vienna Counter-Trafficking Convention, 28 I.L.M. 493, 497 (recognizing that illicit trafficking “threaten[s] the stability, security and sovereignty of States”). The State parties reached this agreement “to improve international co-operation in the suppression of illicit traffic by sea,” the eradication of which “*is a collective responsibility of all States . . .*” 28 I.L.M. at 498 (emphasis added). Absent such effort, the wealth of illicit trafficking “enabl[es] transnational criminal organizations to penetrate, contaminate and corrupt the structures of government . . . and society at all levels.” *Id.* Parties to the U.N. treaty agree to adopt measures against drug trafficking and to provide a means for international cooperation in criminal prosecution. The treaty specifically contemplates “investigations, prosecutions and judicial proceedings” in relation to criminal offences. *Id.*, art. 7.

Article 17 of the 1988 Vienna Counter-Trafficking Convention addresses international cooperation to suppress illicit trafficking by sea. The States agreed to a procedure by which one State may request authorization from another to board a vessel possessing its nationality, and then to search it, and “take appropriate action with respect to the vessel, persons and cargo on board.” *Id.*, art. 17. “The [vessel’s] flag State may, consistent with its obligations in paragraph 1 of this article, subject its authorization to conditions to be mutually agreed between it and the requesting Party, including conditions relating to responsibility.” *Id.*, art. 17, cl. 6. Under the treaty, parties are to consider entering bilateral or regional agreements to carry out the provisions of Article 17. *Id.*, art. 17, cl. 9. As explained below, Jamaica and the United States did just this.

The 1988 Vienna Counter-Trafficking Convention is not self-executing, so it provides no private cause of action or individual rights. *See generally* Restatement (Fourth) of Foreign

Relations Law § 310 (Am. Law Inst. 2018) (describing analysis to determine if a treaty provision is directly enforceable in U.S. courts). It does, however provide a means for settling disputes among State Parties via diplomacy. *Id.*, art. 32.

**(2) United States/Jamaica Bilateral Agreement**

The United States and Jamaica signed a Bilateral Agreement at Kingston, Jamaica, in 1997.<sup>3</sup> The agreement was updated in 2004. Agreement Between the Gov't of the United States of Am. & the Gov't of Jamaica Concerning Cooperation in Suppressing Illicit Mar. Drug Trafficking, Feb. 6, 2004, T.I.A.S. No. 98-310, (“Bilateral Agreement”), *available at* <https://www.state.gov/98-310>. This agreement was entered “recalling further that [the 1988 Vienna Counter-Trafficking Convention] requires the Parties to consider entering into bilateral arrangements to carry out, or to enhance the effectiveness of, the provisions of Article 17.” *Id.* That is, it was entered as a concrete step in implementing the 1988 Vienna Counter-Trafficking Convention as between Jamaica and the United States. The Bilateral Agreement was entered “on the basis of mutual respect for the sovereign equality and territorial integrity of States.” *Id.*

By its provisions, the two States give each other consent regarding specific shipboarding procedures. This consent includes the reciprocal rights of either State to board and search a vessel claiming to be registered in the other State, with the flag State’s approval.<sup>4</sup> The agreement

---

<sup>3</sup> Jamaican Ambassador Stephen Vasciannie described the negotiations between Jamaica and the United States as “particularly sharp,” and said that at various points “negotiations appeared to approach breaking-point.” Stephen Vasciannie, *Political and Policy Aspects of the Jamaica/United States Shiprider Negotiations*, 43 *Caribbean Quarterly* 34, 34 (Sept. 1997). Vasciannie wrote: “success at the negotiating table was not assured in advance. But, to their credit, the representatives of both sides were able eventually to disregard the rancour and posturing . . . .” *Id.* at 46.

<sup>4</sup> The agreement is truly reciprocal, giving Jamaican law enforcement officers the ability to embark on U.S. law enforcement vessels to enforce the laws of Jamaica, and vice versa. *Id.*, art. 7, 8. The reciprocal right to ride on each other’s ships has led to the Bilateral Agreement being called, colloquially, a “shiprider agreement.”

provides procedures for requesting authorization to board and search suspect vessels. *Id.*, art. 14. Where permission to board and search is granted and evidence is found of illicit traffic, the boarding State will give the flag State the results of the search, including the names and claimed nationality of persons on board. The flag State will give “directions as to the disposition of the vessel, cargo and persons on board.” *Id.*, art. 3, ¶ 2.

As Plaintiff’s own country and the United States agreed, “Pending receipt of such instructions, the vessel, cargo *and persons on board may be detained.*” *Id.* (emphasis added). The flag State, invested with the primary right to exercise jurisdiction over the vessel, its cargo, and persons on board, may waive this right, and “authorize the other Party to enforce its laws against the vessel, its cargo and persons on board.” *Id.*, art. 3, ¶ 5. The agreement provides no private cause of action to the citizens of one State over and against the other sovereign State. *Id.*; *see also* Restatement (Fourth) of Foreign Relations Law, §§ 310, 311 (Am. Law Inst. 2018). It does, however, provide a means for settling disputes between States. *Id.* art. 20. Under Article 20, a State is to request consultation between the parties if it believes there is a “loss or injury” for which it should be compensated.

## **B. Domestic Framework**

Article 3 of the Vienna Convention mandates that each State Party shall adopt measures to establish criminal offenses for illicit trafficking under its domestic law. 1988 Vienna Counter-Trafficking Convention, art. 3, 28 I.L.M. 493, 500-03. The United States has held to a longstanding policy of condemning and criminalizing illicit trafficking, including trafficking at sea, the history of which was explained in great detail by Judge Collyer in *United States v. Carvajal*, 924 F. Supp. 2d 219, 230-33 (D.D.C. 2013). In 1986, in anticipation of the 1988 Vienna Counter-Trafficking Convention, Congress enacted the Maritime Drug Law Enforcement

Act (MDLEA), 46 U.S.C. § 70501 *et seq.* The MDLEA contains a provision for determining when a vessel is “subject to the jurisdiction of the United States,” 46 U.S.C. § 70502(c).

In 2006, Congress added to the criminal code an offense that criminalized the failure of a “vessel subject to the jurisdiction of the United States” to knowingly fail to obey an order by an authorized federal law enforcement officer to heave-to, to resist boarding, or to provide materially false information to the law enforcement officer during a boarding regarding the vessel’s destination, origin, ownership, registration, nationality, cargo, or crew. 18 U.S.C. § 2237. Section 2237 incorporates the MDLEA, 46 U.S.C. § 70502, for the definition of “vessel subject to the jurisdiction of the United States,” 18 U.S.C. § 2237(e)(3).

The MDLEA enables law enforcement to foil the illicit operations of “international drug traffickers, who constantly refine their methods for transporting illegal narcotics from country to country.” *Carvajal*, 924 F. Supp. 2d at 224. Congress enacted the MDLEA “to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances.” Maritime Drug Law Enforcement Act, Pub. L. No. 96-350, §§ 1–4, 94 Stat. 1159 (1986). The MDLEA recognizes explicitly that “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.” 46 U.S.C. § 70501.

The President has reaffirmed the international policy goal of thwarting transnational criminal activity, including drug trafficking. Exec. Order No. 13773, *Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking*, 82 Fed. Reg. 10691, 2017 WL 568296 (Feb. 9, 2017). A significant component of this policy is to “enhance cooperation with foreign counterparts . . . through increased security sector

assistance to foreign partners by the Attorney General and the Secretary of Homeland Security.”  
*Id.*, § 2(d).<sup>5</sup>

## FACTS

According to the Complaint, the Coast Guard intercepted the four Plaintiffs (plus a fifth occupant of JOSSETTE, who has not brought suit) in international waters on September 14, 2017. ECF 1, Compl. ¶ 2. According to a Coast Guard witness statement, which Plaintiff Weir filed in the criminal action, the Coast Guard spotted the go-fast vessel JOSSETTE traveling at a high rate of speed in a known drug smuggling area, and chased it. Ex. F at 5. As the Coast Guard closed the distance between the two vessels, they spotted bales of possible contraband in JOSSETTE’s wake. *Id.* at 5. The vessel continued to flee, ignoring the Coast Guard’s siren, blue lights, and call-outs on the loud hailer. *Id.* at 6. After finally stopping, the owner of the vessel stated that they were fishing, but the Coast Guard saw little fishing gear, nowhere to store any catch, and no ice onboard. *Id.* at 7. The bales tested positive for marijuana. *Id.* at 7.

### A. Jamaica’s Waiver of Jurisdiction

The Secretary of State executed the Certification for the case involving JOSSETTE. Ex. A. Commander Francis DelRosso, U.S. Coast Guard, served as the Coast Guard Liaison Officer to the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs. Ex. A. at 1. Secretary of State Tillerson designated Commander DelRosso as the person authorized to make formal certifications under 46 U.S.C. § 70502(c)(2) (consent or waiver of objection by a foreign nation to the enforcement of U.S. law) and 18 U.S.C. § 2237(d).

---

<sup>5</sup> See also White House Strategy to Combat Transnational Organized Crime, Addressing Converging Threats to National Security (July 19, 2011), *available at* [https://obamawhitehouse.archives.gov/sites/default/files/Strategy\\_to\\_Combat\\_Transnational\\_Organized\\_Crime\\_July\\_2011.pdf](https://obamawhitehouse.archives.gov/sites/default/files/Strategy_to_Combat_Transnational_Organized_Crime_July_2011.pdf).

As the State Department designee, Commander DelRosso certified that the go-fast vessel JOSSETTE was stopped in international waters for suspected illicit drug trafficking. Ex. A at 1, ¶ 4(a). He certified that, on September 14, 2017, pursuant to Article 3 of the U.S.-Jamaica Bilateral Agreement, the United States asked the Government of Jamaica to confirm the registry or nationality of the suspect vessel, and if confirmed, to grant authorization to board and search the vessel. *Id.*, ¶ 4(b). The Government of Jamaica confirmed the vessel's registration and authorized the United States to board and search. *Id.*, ¶ 4(c). On September 18, 2017, again pursuant to Article 3 of the Bilateral Agreement, the United States requested that Jamaica waive jurisdiction over the vessel, its cargo, and crew to the extent necessary for the enforcement of United States law. *Id.*, ¶ 4(d). "On October 9, 2017, the Government of Jamaica consented to the exercise of jurisdiction by the United States." *Id.*, ¶ 4(e). The State Department thus determined that the vessel was subject to jurisdiction of the United States pursuant to 46 U.S.C. § 70502(c)(1)(C) and 18 U.S.C. § 2237(e)(3). *Id.*, ¶ 4(f). The certification further stated that approximately 613 pounds of marijuana were recovered. *Id.*, ¶ 4(g).

#### **B. The Criminal Action, S.D. Florida**

Following Jamaica's waiver of jurisdiction on October 9, 2017, the Coast Guard cutter on which Plaintiffs were then detained rendezvoused with another cutter which delivered them to Miami for prosecution. They arrived in Miami seven days after the waiver, on October 16, 2017. ECF 1 at 19–20.

In the criminal case, the five men each had separate criminal defense counsel. *United States v. Weir*, No. 17-cr-20877-UNGARO (S.D. Fla.). They appeared before Magistrate Judge Torres on October 17, 2017, the same day the criminal complaint was filed. Ex. B, S.D. Fla. No.

17-cr-20877, ECF 1. The criminal docket states that the “date of arrest or surrender” was October 16, 2017. S.D. Fla. No. 17-cr-20877, ECF 3-7.

The criminal complaint alleged a conspiracy to possess with the intent to distribute a controlled substance in violation of 46 U.S.C. §§ 70503(a)(1) and 70506(b), and included an affidavit of a special agent setting forth facts to establish probable cause to arrest the men. Ex. B. The agent stated that the Coast Guard recovered bales of marijuana in the surrounding waters that tested positive for marijuana and weighed 613 pounds.<sup>6</sup> Ex. B, ¶ 8.

On December 13, 2017, Magistrate Judge White presided over the arraignment, during which Plaintiffs waived indictment and the United States filed an Information charging them with knowingly and intentionally providing materially false information to a federal law enforcement officer during a boarding of a vessel in violation of 18 U.S.C. § 2237(a)(2)(B). Information, ECF 43, S.D. Fla. Case No. 17-cr-20877.

As part of the plea, each Plaintiff – then represented by counsel – signed a plea agreement and a factual proffer. *Id.*, ECF 58-66; *e.g.*, Ex. C, Weir Plea Agreement; Ex. D, Weir Factual Proffer. In the factual proffer, they agreed that, if the case had proceeded to trial, the United States would have proven beyond a reasonable doubt that on September 14, 2017, the Coast Guard cutter spotted the wake of their vessel speeding towards Haiti from Jamaica, and that “the vessel initially refused to stop.” Ex. D. Only after the Coast Guard crew drew their weapons did JOSSETTE stop. *Id.* The vessel was in international waters. *Id.* One person claimed the vessel was Jamaican, so the Coast Guard contacted Jamaica. *Id.* “Jamaica

---

<sup>6</sup> The United States provided discovery to the defendants, including the statement of Coast Guard Officer Tyler Barkley, now deceased, which is discussed above. Ex. F. Plaintiff Weir later filed Barkley’s statement in support of a motion asking the Bureau of Prisons to correct his date of apprehension at sea. Ex. F, S.D. Fla. No. 17-cr-20877, ECF 90.

confirmed the registration of the vessel, but authorized the United States to board and search the vessel. Jamaica also later waived jurisdiction over the vessel. Therefore, the vessel was subject to the jurisdiction of the United States.” *Id.* at 1. Plaintiffs further agreed that their true destination was Haiti, but that they had told the Coast Guard “that the vessel’s destination was the waters near the coast of Jamaica, where they intended to fish. *This was not true.* As the crew members, including the defendant, then and there well knew, the vessel’s true destination was Haiti.” *Id.* at 2 (emphasis added). Plaintiffs further agreed in the proffer that the falsehood was “material” to the Coast Guard because the destination of a vessel is an important part of the information gathered by the Coast Guard during a boarding, and can influence the United States’ decision-making process on what action to take during a boarding. *Id.* at 2.

District Judge Ungaro held the change of plea hearing and sentencing on January 3, 2018. Ex. E, Tr. of Plea Colloquy, ECF 93. During the change of plea hearing, Judge Ungaro questioned the four defendants who appeared, under oath (Defendant Patterson did not appear because he had a doctor’s appointment, *see* ECF 55). Ex. E, Tr. at 3–4. They stated that they were satisfied with their counsel, and that they had read and understood the charge and their cases. *Id.* at 6–9. They agreed that they were not threatened, coerced, or forced in any way to enter a plea of guilty. *Id.* at 12–13. They told Judge Ungaro that they had a full opportunity to review the factual proffer and discuss it with their lawyers before signing it. *Id.* at 19. They stated that they agreed with “each and every fact” in the proffer. *Id.* at 19–20. The attorney for the United States explained that the parties had been through “what I would call some of the best lawyering I’ve seen,” *id.* at 22, and he described how they agreed to the plea and a request for immediate sentencing because the sentence was a “proper solution” given the challenges of the criminal case, such as that hundreds of pounds of marijuana were found nearby, but not on

JOSSETTE. *Id.* at 22–23. The agreement of all counsel was to recommend an upward departure from the sentencing guidelines in exchange for a charge that was less severe than the controlled substance charge. The lawyers recommended a sentence of ten months for a charge where the guidelines were zero to six, as recognition that Plaintiffs faced the risk of being convicted of the drug charges, but the United States also faced the risk of not prevailing on the drug charges. *Id.* at 23–25. The Court agreed, and imposed sentence at that same hearing. *Id.* at 24–35.

Plaintiffs thus pled guilty to providing false information to a federal law enforcement official during a boarding of a vessel in violation of 18 U.S.C. § 2237(a)(2)(B). ECF 1, Compl. ¶¶ 17–20; Plea Agreement, S.D. Fla. # 17-cr-20877, ECF 58 (Weir), ECF 60 (Ferguson), ECF 62 (Williams), ECF 66 (Paterson). In addition to this civil suit, Plaintiffs also recently filed motions to vacate their convictions as unconstitutional. *See Ferguson v. United States*, No. 19-cv-22901 (S.D. Fla. filed July 12, 2019); *Weir v. United States*, No. 19-cv-23420 (S.D. Fla. filed August 15, 2019).

### ARGUMENT

The United States brings this motion to dismiss under Rule 12(b)(1). *See Al-Tamimi v. Adelson*, 916 F.3d 1, 7 (D.C. Cir. 2019) (ruling that the political question doctrine is jurisdictional). When evaluating a motion to dismiss for lack of subject-matter jurisdiction, the Court “treat[s] the complaint’s factual allegations as true . . . and must grant plaintiff ‘the benefit of all inferences that can be derived from the facts alleged.’” *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 (D.C. Cir. 2000) (citations omitted). Courts are not, however, “bound to accept as true a legal conclusion couched as a factual allegation . . . or to accept inferences drawn by plaintiffs if such inferences are unsupported by the facts set out in the complaint.” *Trudeau v. Fed. Trade Comm’n*, 456 F.3d 178, 193 (D.C. Cir. 2006) (internal quotations omitted). Because

Rule 12(b)(1) motions go to a court’s jurisdiction, the Court “may consider materials outside the pleadings in deciding whether to grant a motion to dismiss for lack of jurisdiction.” *Jerome Stevens Pharm., Inc. v. Food & Drug Admin.*, 402 F.3d 1249, 1253 (D.C. Cir. 2005). The plaintiff bears the burden of demonstrating subject-matter jurisdiction. *Rempfer v. Sharfstein*, 583 F.3d 860, 868 (D.C. Cir. 2009); *Fleming v. Cherokee Nation*, No. 19-cv-1397, 2019 WL 2327814, at \*2 (D.D.C. May 31, 2019).

**I. THIS CASE IS NONJUSTICIABLE UNDER THE POLITICAL QUESTION DOCTRINE**

The political question doctrine follows from constitutional separation of powers. It “excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n v. Am. Cetacean Soc.*, 478 U.S. 221, 230 (1986). In *Baker v. Carr*, the Supreme Court provided a non-exhaustive list of situations in which a nonjusticiable political question exists, including when there is “a textually demonstrable constitutional commitment of the issue to a coordinate political department.” *Baker v. Carr*, 369 U.S. 186, 217 (1962).<sup>7</sup> See also *Zivotofsky v. Clinton*, 566 U.S. 189, 202–03 (2012). Most, if not all, of the *Baker* characteristics are present in this lawsuit. Indeed it presents a paradigmatic case: courts may decline jurisdiction in the fields of “foreign policy and

---

<sup>7</sup> The *Baker v. Carr* list is as follows: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving it; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question. *Baker v. Carr*, 369 U.S. 186, 217 (1962).

national security” because decision-making in those fields “is textually committed to the political branches of government.” *Lin v. United States*, 561 F.3d 502, 505 (D.C. Cir. 2009) (quoting *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005)).

Courts follow a three-step process to determine whether the political question doctrine applies. First, the court identifies the issues raised by the plaintiff’s complaint. Next, it analyzes the six *Baker* factors to determine whether any issue presents a political question. Finally, the court decides whether a plaintiff’s claims can be resolved without considering any political question. *Al-Tamimi v. Adelson*, 916 F.3d 1, 8 (D.C. Cir. 2019).

#### **A. The Challenged Acts**

Plaintiffs’ Complaint, although styled as a maritime tort, fundamentally seeks to have this Court question and ultimately reengineer the political branches’ (and Jamaica’s) construct for counter-trafficking efforts at sea. *See, e.g.*, ECF 1, ¶ 101. Plaintiffs seek declaratory and injunctive remedies, going so far as to ask the Court to order the Executive, through its agencies the State Department and Coast Guard, to “implement alternative policies, practices, or procedures.” ECF 1, at 36. Plaintiffs challenge the process of enforcing the 1988 Vienna Counter-Trafficking Convention and the diplomatic negotiations between the United States and Jamaica about their detention. Plaintiffs further challenge conditions that are unique to detention at sea, apparently desiring that this Court direct Congress to appropriate, and the Coast Guard to construct and commission, cutters with interior cabins for use by detainees.

Plaintiffs’ Complaint contains seven counts for various maritime torts (*e.g.*, false imprisonment, battery, or conversion of the fighting cock “Jah Roos”), three counts for alleged violations of customary international law (*e.g.*, forced disappearance, prolonged arbitrary detention), and one count seeking declaratory and injunctive relief. To determine any of these

counts, the Court would need to resolve whether the United States acted wrongfully, which in this context would mean questioning whether the United States contravened two applicable international agreements with respect to the conditions or length of detention, or else second-guessing whether the Executive should have awaited Jamaica's decision.<sup>8</sup>

Especially given that the United States detained the Plaintiffs at Jamaica's direction pending the Government of Jamaica's jurisdictional determination, which lasted for the first 25 of 32 days, all counts of the Complaint challenge foreign relations and/or diplomatic matters. Until Jamaica completed its decision-making process, the detainees remained under Jamaica's jurisdiction, detained pursuant to Article 17 of the 1988 Vienna Counter-Trafficking Convention and the Bilateral Agreement between the U.S. and Jamaica. Diplomatic options potentially available during the detention are not properly before the Court, such as whether Jamaica could have attempted through diplomacy to specify the conditions of the detention, or could have taken over the detention itself. Under the terms of the treaties, diplomatic solutions are available to settle disputes, including disputes about "any loss or injury" and "any improper or unreasonable action" taken by a party pursuant to the Bilateral Agreement. Bilateral Agreement, art. 20 ("Settlement of Disputes"), <https://www.state.gov/98-310>. The challenged acts thus implicate the diplomatic relations between the United States and Jamaica.

**B. The Challenged Acts Were Committed to the Political Branches.**

Because the Constitution expressly commits the conduct of foreign affairs to the political branches, cases raising questions about the conduct of foreign affairs often present nonjusticiable political questions. *Al-Tamimi*, 916 F.3d at 10–11. The fields of foreign affairs and national

---

<sup>8</sup> Admiralty cases are tried to the Court, not a jury. Fed. R. Civ. P. 38(e); 46 U.S.C. § 30903(b).

security are “textually committed to the political branches of government.” *Ali Jaber v. United States*, 155 F. Supp. 3d 70, 79 (D.D.C. 2016); *see also Bancoult v. McNamara*, 445 F.3d 427, 435 (D.C. Cir. 2006). As part of the Executive power vested in Article II of the Constitution, the President bears the “vast share of responsibility for the conduct of our foreign relations” and accordingly holds “independent authority ‘in the areas of foreign policy and national security.’” *Am. Ins. Ass’n v. Garamendi*, 539 U.S. 396, 414, 429 (2003).

This Circuit recently addressed foreign relations in *Al-Tamimi*. In that case, Palestinian nationals and Palestinian Americans sued the defendants, pro-Israeli American individuals and entities, alleging conspiracy to expel non-Jewish people from the West Bank and Gaza Strip. Invoking the Alien Tort Statute, they alleged civil conspiracy, genocide, and trespass. 916 F.3d at 4. The district court dismissed the case under the political question doctrine, among other reasons. The appellate court reversed in part, ruling that the plaintiffs’ 200-page complaint boiled down to two questions: (1) who had sovereignty over the disputed territory, and (2) are Israeli settlers committing genocide. While the second question was extricable and was a justiciable legal issue under the Alien Tort Statute, the Court ruled that it lacked jurisdiction over the first question, because it “plainly implicates foreign policy and thus is reserved to the political branches.” *Id.* at 11. To answer whether the conduct was constitutionally committed to the political branches, the court cited U.S. Constitution Article I, § 8 (Congress’s power to “regulate Commerce with foreign Nations”), and Article II, § 2 (the President’s power to “make Treaties” and “appoint Ambassadors”). *Id.* at 10. Those sections of the Constitution apply here, as well. In addition, in the present case, the Constitution further vests in Congress the power to “define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.” U.S. Const. art. I, § 8.

The D.C. Circuit discussed the political nature of foreign relations in *El-Shifa Pharm. Indus., Co. v. United States*, 607 F.3d 836, 841 (D.C. Cir. 2010). In that case, the owners of a Sudanese pharmaceutical plant sued the United States for unjustifiably destroying the plant, failing to compensate them for its destruction, and defaming them. The district court dismissed the complaint under the political question doctrine, among other reasons. *El-Shifa Pharm. Indus. Co. v. United States*, 402 F. Supp. 2d 267 (D.D.C. 2005). The district court was not convinced by the tort language of the complaint: “[a]lthough plaintiffs have characterized their claims using traditional tort vocabulary, ‘their allegations implicate broader political questions that encompass U.S. foreign policy and military operations.’” *Id.* at 276, quoting *Industria Panificadora, S.A. v. United States*, 763 F. Supp. 1154, 1161 (D.D.C. 1991). On appeal, the plaintiffs abandoned their demand for monetary relief, but sought a declaration that the United States had violated international law, a declaration that the United States had defamed them, and an injunction requiring the United States to retract its statements about the plaintiffs. 607 F.3d at 840. A panel affirmed the district court, holding that the claims were barred by the political question doctrine. *El-Shifa Pharm. Indus., Co. v. United States*, 559 F.3d 578 (D.C. Cir. 2009). On rehearing *en banc*, the appellate court again affirmed the dismissal on political question grounds. 607 F.3d at 851. The court cited the rule that “courts cannot reconsider the wisdom of discretionary foreign policy decisions.” *Id.* at 844. The court declined “to mimic the constitutional role of the political branches” by guessing how they would have conducted foreign policy had they been better informed about the nature of the plaintiffs’ plant. *Id.* at 845. Similarly, in the present case, the allegations of the Complaint would require the Court to decide whether it would have conducted diplomatic relations with a foreign sovereign in a different way, or whether it would have read the two treaties to require the U.S. Coast Guard to detain the

Plaintiffs in different conditions, such as on a hypothetical cutter constructed with dedicated interior brig space for detainees, which does not exist. As in *El-Shifa*, the tort language in the Complaint does not remove this case from the realm of the political questions that encompass foreign relations.

The Court may also find guidance in *Schneider v. Kissinger*, 310 F. Supp. 2d 251 (D.D.C. 2004), *aff'd*, 412 F.3d 190 (D.C. Cir. 2005). In *Schneider*, the children of a Chilean Army General sued the United States, seeking to hold the United States liable for its involvement in supporting the attempted kidnapping of their father, which resulted in his death. 310 F. Supp. 2d at 254–57. The district court dismissed the action under the political question doctrine, and the appellate court affirmed. The appellate court first ruled that the fields of foreign policy and national security are textually committed to the political branches of the government. 412 F.3d at 194. The Constitution, it noted, gives the Judiciary “no authority for policymaking in the realm of foreign relations or provision of national security.” *Id.* at 195. The court further found a lack of judicially discoverable and manageable standards for resolving the Executive Branch’s involvement in supporting covert actions in Chile. *Id.* at 196. The appellate court agreed with the district court that “[r]esolving the present lawsuit would compel the court, at a minimum, to determine whether actions or omissions by an Executive Branch officer in the area of foreign relations and national security were ‘wrongful’ under tort law.” *Id.* Following the 11th Circuit’s decision in *Aktepe v. United States*, 105 F.3d 1400, 1404 (11th Cir. 1997), the court declined to recast foreign policy and national security questions in tort terms. *Id.* at 197; *accord Harbury v. Hayden*, 522 F.3d 413, 419–20 (D.C. Cir. 2008) (affirming dismissal of foreign-relations case under political question doctrine, and discussing *Schneider* and other applicable precedent).

Plaintiffs explicitly ask the Court to “Order the Coast Guard to implement alternative policies,” ECF 1 at 36, thus seeking to interject the judiciary into the United States’ foreign relations and national security policy decision-making. Plaintiffs may argue that their case does not involve national security, but it is the stated position of the Executive Branch that illegal drug smuggling presents a threat to “public safety” and “national security.” Exec. Order No. 13773, *Enforcing Fed. Law with Respect to Transnat’l Criminal Orgs. and Preventing Int’l Trafficking*, 82 Fed. Reg. 10691, 2017 WL 568296 (Feb. 9, 2017). Congress has also found that illicit maritime trafficking “is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States.” 46 U.S.C. § 70501.

They key fact in this case is that Plaintiffs were detained for the first 25 days while the Government of Jamaica undertook the significant decision about whether to waive jurisdiction over the prosecution of its citizens. Under United States law, this waiver of jurisdiction “is proved conclusively by certification of the Secretary of State or the Secretary’s designee.” 46 U.S.C. § 70502(c)(2)(B); *see also* 18 U.S.C. § 2237(d) (applying § 70502’s definition of “vessel subject to the jurisdiction of the United States”). “Congress effectively foreclosed a defendant’s ability to challenge the factual underpinnings of a State Department certification when it amended the MDLEA to provide explicitly that such a certification conclusively proves a foreign nation’s consent, waiver, or objection regarding a vessel’s national registry.” *United States v. Gil-Martinez*, 980 F. Supp. 2d 165, 169 (D.P.R. 2013) (citing *United States v. Cardales–Luna*, 632 F.3d 731, 737 (1st Cir. 2011)). “[A]ny further question about [the certification’s] legitimacy is ‘a question of international law that can be raised only by the foreign nation.’” *Gil-Martinez*, 980 F. Supp. at 169 (quoting *United States v. Bustos–Useche*, 273 F.3d 622, 627 & n.5 (5th Cir. 2001)). The Certification states that the United States alerted the Government of Jamaica

immediately upon stopping the go-fast vessel, that Jamaica authorized the boarding and search that day, and later waived its jurisdiction to prosecute. Ex. A, ¶ 4. This Certification conclusively establishes the timeline for the detention, as well as the diplomatic coordination of U.S. Executive agencies with the Government of Jamaica.

Plaintiffs complain about the conditions of detention, which even if accepting them as true, is also a matter of foreign affairs and national security committed to the political branches. Neither the Convention nor the Bilateral Agreement mandates specific details about the conditions of detention at sea. The limitations of life at sea are reflected in the Convention, however. Article 17 of the 1988 Vienna Counter-Trafficking Convention states that boarding, searching, and action with respect to persons on board “shall be carried out only by warships” or other ships “clearly marked and identifiable as being on government service and authorized to that effect.” 1988 Vienna Counter-Trafficking Convention, art. 17, cl. 10. The treaty states that parties taking such action “shall take due account of the need not to endanger the safety of life at sea.” *Id.*, art. 17, cl. 5. The conditions of detention on a warship at sea are, of course, constrained by the architecture of the vessel itself, the need to ensure safety and security of the crew, and other factors such as the vessel’s other missions and assignments.

The Bilateral Agreement with Jamaica has been in effect for over twenty years, during which time the two nations have worked together in support of the 1988 Convention, and during which time diplomatic channels have been open to discuss this cooperation and partnership. Article 7 of the Bilateral Agreement permits Jamaican law enforcement officials to embark on United States law enforcement vessels, at which point all activities, including “detentions” shall be “the responsibility of the Jamaican law enforcement officials and carried out by them.” Bilateral Agreement, art. 7, ¶ 2. This provides another way for Jamaica to know about and

participate in decisions about the conditions of detention at sea.<sup>9</sup>

To the extent Plaintiffs argue that the United States should have brought the detainees to a U.S. shore during the Jamaican government’s multi-week period of diplomatic deliberation, such inquiry by the Court would be an improper infringement into matters constitutionally committed to the political powers, especially as bringing the four Jamaicans into U.S. territory without the permission of Jamaica could have been a diplomatic offense to Jamaica. Plaintiffs’ Complaint might be suggesting that the Coast Guard should have returned them to Jamaica after some unspecified period, but absent a request from Jamaica for return, that could have resulted in further diplomatic issues, and been perceived as a violation of the 1988 Vienna Counter-Trafficking Convention or the Bilateral Agreement with Jamaica. More fundamentally, no “return” to Jamaica could be possible without entrance by a U.S. public vessel into Jamaican territory and without arranging for intergovernmental transfer of custody, both of which require diplomatic processes. The decision about what to do with persons detained on the high seas in accordance with these international agreements is exclusively one of foreign affairs.

**C. Actions Taken Pursuant to 1988 Vienna Counter-Trafficking Convention and Bilateral Agreement with Jamaica Are Not Subject to Judicial Review.**

The international law context of this case makes it particularly non-justiciable. The treaties at issue, the 1988 Vienna Counter-Trafficking Convention and the Bilateral Agreement

---

<sup>9</sup> In accordance with Article 9 of the 1988 Vienna Counter-Trafficking Convention (“Other Forms of Cooperation and Training”), the United States and Jamaica engage in joint training. *E.g.*, *Tradewinds 2014: A Joint Training Effort*, Coast Guard Compass (June 17, 2014), available at <https://coastguard.dodlive.mil/2014/06/tradewinds-2014-a-joint-training-effort/>. Top officials from Jamaica and the United States participated in the joint training in 2016. *Exercise Tradewinds 2016 Phase II Wraps Up*, U.S. Southern Command (June 29, 2016), available at <https://www.southcom.mil/MEDIA/NEWS-ARTICLES/Article/1041667/exercise-tradewinds-2016-phase-ii-wraps-up/>. Videos and articles about the June 2017 training are available at: <https://www.dvidshub.net/feature/Tradewinds2017>.

with Jamaica, are not self-executing, and thus accord no rights to an aggrieved individual. As explained in the Restatement, a treaty provision is directly enforceable in courts of the United States only if it is self-executing. Restatement (Fourth) of Foreign Relations Law § 310 (Am. Law Inst. 2018). Courts will evaluate the text and context of the treaty to determine whether the U.S. treaty-makers understood the provision at issue to be directly enforceable in courts in the United States. *Id.*

Neither the 1988 Vienna Counter-Trafficking Convention nor the Bilateral Agreement provide a private cause of action. Both do, however, provide a process for disputes to be resolved State-to-State. 1988 Vienna Counter-Trafficking Convention, art. 32; Bilateral Agreement, art. 20. No international or domestic law permits Plaintiffs to bring these allegations in a private tort lawsuit. In a similar case in the Southern District of New York, the court ruled that the Public Vessels Act and the Suits in Admiralty Act did not afford a private vessel a right to sue for property damages following what it alleged was a violation of international law and/or treaties. The court explained, “[n]or, of course, should the Court incorporate a rule of international law into domestic law—here, the PVA and the SIAA—when the political branches have not seen fit to do so themselves.” *Tarros S.p.A. v. United States*, 982 F. Supp. 2d 325, 343 (S.D.N.Y. 2013) (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 735–36 (2004)).

Through the underlying criminal statute, Congress sought to minimize any impingement upon foreign relations. The MDLEA was amended in 2006 to provide that the State Department’s certification “conclusively” proves the response of the foreign nation. 46 U.S.C. § 70502(c)(2)(B); *see also* 18 U.S.C. § 2237(d); *United States v. Hernandez*, 864 F.3d 1292, 1300–01 (11th Cir. 2017); *United States v. Brant-Epigelio*, 2010 WL 557283, at \*5 n.6 (M.D. Fla. 2010) (describing the amendments that made the certification conclusive). In a criminal

action where the United States obtains the consent of a foreign State to exercise jurisdiction over its flag vessel or citizens, the criminal defendants cannot delve into the diplomatic communications to attempt to find a flaw in the jurisdictional waiver. Congress further removed a criminal defendant's ability to use the "failure to comply with international law" as a defense. 46 U.S.C. § 70505. "A claim of failure to comply with international law in the enforcement of this chapter *may be made only by a foreign nation.*" 46 U.S.C. § 70505 (emphasis added). "With that text [§ 70505], Congress has instructed: any battle over the United States' compliance with international law in obtaining MDLEA jurisdiction should be resolved nation-to-nation in the international arena, not between criminal defendants and the United States in the U.S. criminal justice system." *Hernandez*, 864 F.3d at 1302; *see also United States v. Miranda*, 780 F.3d 1185, 1194–95 (D.C. Cir. 2015). The conclusive nature of the State Department's certification would be subverted if it could be challenged by an individual defendant in a later tort lawsuit.

In other words, it is not for the Court to decide how the nation-to-nation communications and decision-making should have happened in this case. Here, the United States notes the significance of Plaintiffs' allegation that "[a]bsent declaratory and injunctive relief, Plaintiffs will suffer irreparable injury. *They have no adequate remedy at law.*" ECF 1, ¶ 157 (emphasis added). Accepting *ex arguendo* these foreign nationals' allegations of violations of international law, their remedy would be pursued properly through the Government of Jamaica, which in turn could address any grievance against the United States through prescribed mechanisms of international diplomacy and law. They ask the Court to answer a nonjusticiable political question by alleging that they have no adequate remedy absent declaratory and injunctive relief against the United States. This conclusion necessarily requires the Court to ask whether they

have a remedy available through their own government's ability to obtain relief diplomatically, which question is inherently nonjusticiable.

One of Plaintiffs' complaints is that the United States did not contact their families or let them contact their families. Plaintiffs were not held in "secret" as alleged—through the State Department Certification, the Court can see that the United States informed the Jamaican Government of JOSSETTE and crew on September 14, 2017, when the Coast Guard detected the vessel and asked for Jamaica's permission to board and search, and again on September 18, 2017, when the United States made a formal request for waiver of jurisdiction to the extent necessary for the enforcement of United States law. Ex. A; *see also* Bilateral Agreement art. 3. Should this lawsuit require inquiry into why Plaintiffs' families claim they were not alerted to the detention, discovery would require questions about the practices of the foreign sovereign itself. Not only is the United States the wrong party for such allegation, but the political question doctrine prevents this type of intrusive inquiry against the sovereignty of a foreign nation.

**D. The Court Lacks Judicially Discoverable and Manageable Standards for Resolving the Conflict.**

This case exhibits a lack of judicially discoverable and manageable standards for resolving it. *Baker*, 369 U.S. at 217. The United States has already discussed above the problem of the Court needing to analyze the diplomatic communication with a foreign sovereign. Further, should this case proceed, the Court would need to find judicially manageable standards for analyzing the decisions of the Coast Guard about how to detain counter-trafficking suspects aboard a warship on the high seas, or even how the Coast Guard seeks appropriations from the Congress for larger cutters or cutters with interior brig space for detainees.

The Court may draw guidance from a number of cases involving questions of U.S. military vessels operating at sea, which questions are similarly political in nature. For example,

the Fourth Circuit found that the political question doctrine applied to a case where the U.S. Navy unintentionally killed a hostage during an engagement with Somali pirates. *Wu Tien Li-Shou v. United States*, 777 F.3d 175, 181 (4th Cir. 2015), *cert. denied* 136 S. Ct. 139 (2015). The hostage's family sued the United States under the Suits in Admiralty Act, Public Vessels Act, and the Death on the High Seas Act. The court ruled that, "[a]s judges, we are just not equipped to second-guess such small-bore tactical decisions. . . . We do not know the waters. We do not know the respective capabilities of individual pirate ships or naval frigates. We do not know the functionality and limitations of the counter-piracy task force's assets." *Id.* With respect to the Navy's intentional sinking of the hostage's boat as a hazard to navigation, which was also a part of the complaint, the court ruled that it lacked judicially manageable standards to judge the decision: "We do not know how a decision to tow and not to sink the JCT 68 would have affected the task force's mission by tying down valuable naval resources." *Id.* The court continued, "[w]hat we do know is that we are not naval commanders. These are questions not intended to be answered through the vehicle of a tort suit." *Id.* The court concluded that the complaint, in effect, asked the judiciary to act as the commander: "This request . . . encourages the courts to bull their way into the chain of command of a multinational operation. In fact, Wu would have us sit astride the top of the command pyramid and decree the proper counter-piracy strategies and tactics to the NATO and American commanders below." *Id.* Replacing "counter-piracy" with "counter-trafficking," and "Navy" with "Coast Guard," the Fourth Circuit's analysis could have been written of the *Weir* Complaint.

The Eleventh Circuit also found a lack of judicially discoverable and manageable standards when asked to resolve the lawsuit brought by approximately 300 Turkish Navy sailors after a United States warship inadvertently fired a live missile into the Turkish warship, which

was acting under the command of a Netherlands Admiral pursuant to NATO directions. *Aktepe v. United States*, 105 F.3d 1400 (11th Cir. 1997). The plaintiffs sued the United States under the Public Vessels Act and the Death on the High Seas Act. *Id.* at 1402. After analyzing the foreign-relations and military aspects of the tragic incident, the court further found that it lacked judicially discoverable and manageable standards to judge how the U.S. Navy conducted the missile firing drill on USS SARATOGA. “[C]ourts lack standards with which to assess whether reasonable care was taken to achieve military objectives while minimizing injury and loss of life.” *Id.* at 1404.

The same result was reached in the *Tarros* case, which also was brought under the Public Vessels Act and the Suits in Admiralty Act. The district court found it lacked judicially manageable and discoverable standards to resolve the case where a U.S. warship, in accordance with a U.N.-approved embargo to prevent arms trafficking, diverted an Italian cargo ship from calling in Tripoli, Libya. The plaintiff allegedly suffered injury to the vessel’s electronics, and business losses from not being able to discharge or load cargo. *Tarros S.p.A. v. United States*, 982 F. Supp. 2d 325 (S.D.N.Y. 2013). “While Plaintiff suggests that the common law of tort provides the relevant standard, it does not propose a specific standard to govern the conduct of a naval warship subject to military control in enforcing an international arms embargo . . . .”<sup>10</sup> *Id.* at 336.

The Southern District of New York reached the same conclusion in a case where the CIA allegedly mined a Nicaraguan harbor, causing damage to the plaintiffs’ cargo ship. *Chaser*

---

<sup>10</sup> The *Tarros* court distinguished the case of *Koohi v. United States*, 976 F.2d 1328 (9th Cir. 1992). In *Koohi*, the Ninth Circuit found justiciable a tort case against the United States arising from a U.S. warship’s accidental shooting of an Iranian civilian aircraft during the Iran-Iraq War. *Tarros*, 982 F. Supp. 2d 325, 337. The court found that the Ninth Circuit’s interpretation of case law was not persuasive and constituted a “departure from existing case law.” *Id.*

*Shipping Corp. v. United States*, 649 F. Supp. 736, 737 (S.D.N.Y. 1986), *aff'd*, 819 F.2d 1129 (2d Cir. 1987). In that case, brought under the Suits in Admiralty Act and the Federal Tort Claims Act, the court found a “clear lack” of judicially manageable standards. *Id.* at 738. “The Court simply does not agree with plaintiffs that an inquiry into the issues of tort liability raised by their complaint would be a manageable one.” *Id.* “The complaint reveals that this is an action by two foreign entities seeking damages for injuries suffered in foreign waters due to covert mining operations conducted there by the Executive Branch.” *Id.* “[T]he Court would be incapable of assessing the underlying military and diplomatic considerations which resulted in the decision to place the mines without warning to innocent third party vessels.” *Id.* at 739.

There is no clear-cut standard of care, as if in a tort context, for the decisions made by Executive Branch agencies while conducting diplomatic communications with a foreign State about the means of interdicting, identifying, or detaining drug-trafficking suspects on the high seas, or the conditions of detaining them aboard an armed cutter at sea. No tort standard of care can provide guidance for how long the United States should wait for a foreign State to make a jurisdictional determination, given the sensitive foreign policy relations involved. Similarly, no tort standard of care provides guidance on the exigencies of the conditions of being detained aboard a cutter at sea. This is especially so given the Commanding Officer’s need to keep the crew, guards, and detainees safe, balancing against the cutter’s other missions. Diplomatic concerns imbue the conditions of the detention, as well, removing it from the ordinary application of a tort standard of care, because during the 20 years these treaties have been in effect, the United States and Jamaica, acting as partners in operation and in training, have had ample opportunity to become aware of such conditions on each other’s vessels. The lack of

judicially manageable and discoverable standards places this case squarely within the political question doctrine.

**E. Prudential Factors Apply Here.**

The final four *Baker* factors have been called the “prudential factors.” *Al-Tamimi*, 916 F.3d at 12. These factors include the respect due coordinate branches of government and potential of embarrassment from multifarious pronouncements by various departments on one question. The D.C. Circuit has ruled that, in analyzing the prudential factors, “the official position of the Executive is highly relevant.” *Id.* at 13.

Prudential factors counsel against judicial pronouncements on the United States’ diplomacy with Jamaica, on any actions taken by Jamaica, and on the United States’ detention of Plaintiffs at Jamaica’s direction during its period of deliberation on the request to waive jurisdiction. The official Department of State Certificate is, by statute, “conclusive” proof of the foreign nation’s consent. Certificate, Ex. A; *see* 46 U.S.C. § 70502(c)(2)(B). Given that criminal defendants cannot look beyond the State Department Certification to challenge the jurisdiction of the prosecution, *see Hernandez*, 864 F.3d at 1299–1301, a judicial finding in a civil tort case that delves into the details of the diplomatic communications, procedures, and timeline would implicitly reopen the door that Congress closed in the MDLEA.

Respect for the sovereign rights of Jamaica lends further support for prudential hesitancy to conflict with the pronouncements of the other branches. The role of the United States was to communicate the identities of the detainees to the Government of Jamaica, at which point Jamaica exercised its rights as a sovereign, including any communication with the detainees’ families, any requests for particular treatment of the detainees (knowing they were being held at sea during hurricane season), and the decision about whether to waive jurisdiction for the

criminal prosecution. Any pronouncements on these subjects could be problematic to ongoing foreign relations matters.

**F. Plaintiffs' Tort Allegations Are Not Extrinsic and Do Not Make this Case Justiciable.**

The purported maritime tort analysis of this case is inseparable from the nonjusticiable analysis of the Coast Guard's actions in support of international coalitions and the Bilateral Agreement with Jamaica. The fact that Plaintiffs label several of their Counts as "intentional" torts supports the nonjusticiability of this action, as Plaintiffs challenge the authority and execution of intentional detention actions.

While the court is the proper place to bring an "ordinary tort lawsuit," *Klinghoffer v. S.N.C. Achille Lauro*, 937 F.2d 44, 49 (2d Cir. 1991), the present case is not an ordinary tort lawsuit, given the circumstances of the detention on the high seas and the key involvement of a foreign State. The cases discussed above, such as *Wu*, *Aktepe*, *Tarros*, and *Chaser*, demonstrate that the vehicle of maritime tort law cannot be used to bring an otherwise nonjusticiable action. Although the allegations in some of those cited cases were particularly tragic, such as the inadvertent killings in *Aktepe* and *Wu*, none of those courts saw fit to extricate portions of those cases from the political question analysis.<sup>11</sup> Likewise, this action presents no extricable questions for the Court to resolve.

**II. OTHER GROUNDS FOR DISMISSAL**

Other grounds exist for dismissing all or part of this action. Given the importance and threshold nature of the political question doctrine, the United States will not brief the other

---

<sup>11</sup> This includes the deliberate sinking of the plaintiff's vessel in *Wu*. "We do not know how a decision to tow and not to sink the JCT 68 would have affected the task force's mission by tying down valuable naval resources." *Wu*, 777 F.3d at 181.

grounds here, but will seek leave to file an additional memorandum of law supporting dismissal should the Court decline to apply the political question doctrine.

Briefly, the Public Vessels Act requires a plaintiff to plead reciprocity, *i.e.*, that a citizen of the United States could bring a reciprocal lawsuit for the same allegations in the foreign country against that sovereign. Plaintiffs fail to allege in their Complaint that a similarly situated United States citizen could bring a lawsuit, in Jamaica, against the Jamaican government, seeking the relief sought for the acts alleged here, including Plaintiffs' demands to order the government to implement alternative policies, practices, and procedures. 46 U.S.C. § 31111. Therefore, the Complaint is deficient.

Should the present motion be denied, the United States also would seek leave to brief the application of the discretionary function exception to the United States' waiver of sovereign immunity. The discretionary function exception shields the United States from tort lawsuits challenging discretionary, policy-based actions of federal agencies and their employees. *United States v. Gaubert*, 499 U.S. 315 (1991).<sup>12</sup> The purpose of the exception is to “prevent judicial ‘second-guessing’ of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort.” *United States v. S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines)*, 467 U.S. 797, 814 (1984). The Complaint, on its face, challenges discretionary acts and Coast Guard policies, asking the Court to “order the Coast Guard to implement alternative policies.” ECF 1 at 36. Plaintiffs explicitly allege that “the injuries they have suffered were pursuant to Defendants’ policy and practice.” ECF 1 at 4, ¶ 12.

---

<sup>12</sup> In a case challenging counter-trafficking actions taken by the U.S. Coast Guard against an Ecuadorian vessel in 2007, the Ninth Circuit held that the discretionary function exception barred the maritime tort claim (with the limited exception of whether the United States owed compensation to the vessel's owner for damage to the vessel under the terms of Ecuador's *ad hoc* authorization to board and search). *Tobar v. United States*, 731 F.3d 938, 946 (9th Cir. 2013).

This case falls squarely within *Shuler v. United States*, 531 F.3d 930, 936 (D.C. Cir. 2008), where the court ruled that the government’s failure to protect an informant was a discretionary, policy-based decision that fell within the discretionary function exception. Accordingly, and if necessary, the United States will address this issue in further detail.

Finally, should the Court need to reach the issue, the naming of Admiral Schultz as an individual defendant is improper, and he should be dismissed from this action. Under the Suits in Admiralty Act and the Public Vessels Act, the United States is the only proper defendant. 46 U.S.C. § 30903 (SIAA waiving sovereign immunity for suits “against the United States”); 46 U.S.C. § 31102 (PVA waiving sovereign immunity for suits “against the United States”). Neither the general grant of admiralty jurisdiction in 28 U.S.C. § 1333 nor the Declaratory Judgment Act, 28 U.S.C. § 2201, provide a waiver of sovereign immunity, so neither can be the basis for a suit against the United States or Admiral Schultz, standing alone. *Benvenuti v. Dep’t of Def.*, 587 F. Supp. 348, 352 (D.D.C. 1984).

### CONCLUSION

For the foregoing reasons, the United States respectfully requests that this case be dismissed. Fed. R. Civ. P. 12(b)(1).

DATED: September 26, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JESSIE K. LIU (D.C. Bar 472845)  
United States Attorney

By: /s/ Jill Rosa  
DOUGLAS M. HOTTLE  
JILL DAHLMANN ROSA (D.C. Bar 451578),  
Senior Trial Counsel  
THOMAS M. BROWN

JUSTIN R. JOLLEY  
Trial Attorneys  
U.S. Department of Justice  
Civil Division, Torts Branch  
Aviation, Space & Admiralty Litigation  
P.O. Box 14271  
Washington, DC 20044  
(202) 616-2973, Douglas.Hottle@usdoj.gov  
(847) 732-1141, Jill.Rosa@usdoj.gov  
(202) 616-4112, Thomas.M.Brown@usdoj.gov  
(202) 616-4035, Justin.R.Jolley@usdoj.gov  
Fax: (202) 616-4002  
Attorneys for the United States

# United States of America



## DEPARTMENT OF STATE

*To all to whom these presents shall come, Greetings:*

That Francis J. DelRosso, whose name is subscribed to the document hereunto annexed, at the time of subscribing the same Commander, U.S. Coast Guard Maritime Law Enforcement Center Liaison Officer to the Bureau of International Narcotics and Law Enforcement Affairs, Department of State, United States of America, and that full faith and credit are due to his acts as

*This certificate is not valid if it is removed or altered in any way whatsoever*



In testimony whereof, I, Rex W. Tillerson, Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Assistant Authentication Officer, of the said Department, at the city of Washington, in the District of Columbia, this second day of November, 2017.

Rex W. Tillerson  
Secretary of State

By [Signature]  
Assistant Authentication Officer,  
Department of State

Issued pursuant to CHXIV, Stat. 68-  
Sept. 15, 1904; USC 2657; 2651a; 5  
301; 28 USC et. seq.; 8  
1443(f); Rules Federal Ru  
Civil Proced



**United States Department of State**

*Washington, D.C. 20520*

**November 03, 2017**

**CERTIFICATION FOR THE MARITIME DRUG LAW ENFORCEMENT ACT  
CASE INVOLVING GO FAST VESSEL JOSSETTE.WH.478 (JAMAICA)  
FEDERAL DRUG IDENTIFICATION NUMBER (FDIN) – 2017972888**

I, Commander Francis J. DelRosso, USCG, declare as follows:

1. That I have been assigned as the Coast Guard Liaison Officer to the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State, since July 13, 2016.
2. That in my official capacity, I have been designated by the Secretary of State, through the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs, to make certifications under 46 U.S.C. §§ 70502(c)(2) & (d)(2) and 18 U.S.C. § 2237(d).
3. That I make the following statements based upon my personal knowledge and upon information furnished to me in the course of my official duties.
4. I certify the following:
  - a. On September 14, 2017, United States law enforcement personnel detected a go fast vessel in approximate position 18° 13' N, 075° 06' W, seaward of the territorial sea of any State. United States law enforcement personnel reasonably suspected the vessel of illicit drug trafficking. United States law enforcement officials conducted right-of-approach questioning, during which the master made a verbal claim of Jamaican nationality for the vessel. The vessel's name "JOSSETTE.WH.478" was painted on the hull.
  - b. On September 14, 2017, pursuant to Article 3 of Agreement Between the Government of the United States of America and the Government of Jamaica Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking (hereafter, "Agreement"), the Government of the United States requested that the Government of Jamaica confirm the registry or nationality of the suspect vessel, and if confirmed, grant authorization to board and search the vessel.
  - c. On September 14, 2017, the Government of Jamaica confirmed the vessel's registration and authorized United States law enforcement to board and search the vessel.
  - d. On September 18, 2017, pursuant to Article 3 of the Agreement, the Government of the United States requested that the Government of Jamaica waive its primary right to exercise

ation over the vessel, its cargo, and crew to the extent necessary for the enforcement of  
ed States law.

e. On October 9, 2017, the Government of Jamaica consented to the exercise of jurisdiction  
by the United States.

f. Accordingly, the Government of the United States determined the vessel is subject to the  
jurisdiction of the United States, pursuant to 46 U.S.C. § 70502(c)(1)(C) and 18 U.S.C. §  
2237(e)(3).

g. During the course of the law enforcement boarding, United States law enforcement  
officials recovered approximately 613 pounds of contraband, which tested positive as marijuana.

5. I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 03, 2017.



Francis J. DelRosso  
Commander, U. S. Coast Guard  
Maritime Law Enforcement Officer  
U. S. Coast Guard Liaison Officer to the Bureau of  
International Narcotics and Law Enforcement Affairs  
U. S. Department of State

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-MJ-03407-TORRES

UNITED STATES OF AMERICA

vs.

ROBERT DEXTER WEIR, PATRICK W. FERGUSON,  
DAVID RODERICK WILLIAMS, LUTHER FIAN PATERSON,  
and GEORGE GAREE THOMPSON,

Defendants.

\_\_\_\_\_ /

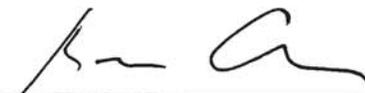
**CRIMINAL COVER SHEET**

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? \_\_\_\_\_ Yes  X  No
2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? \_\_\_\_\_ Yes  X  No

Respectfully submitted,

BENJAMIN G. GREENBERG  
ACTING UNITED STATES ATTORNEY

BY:



KEVIN S. QUENCER  
ASSISTANT UNITED STATES ATTORNEY  
Court ID No. A5501891  
99 N. E. 4th Street  
Miami, Florida 33132-2111  
TEL (305) 961-9268  
FAX (305) 530-7976

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America
v.
Robert Dexter Weir, Patrick W. Ferguson, David
Roderick Williams, Luther Fian Paterson, and
George Garee Thompson,

Case No. 17-MJ-03407-TORRES

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 24, 2017 in International Waters, the defendant(s) violated:

Code Section
46 U.S.C. 70503(a)(1) and 70506
(b)

Offense Description
On board a vessel subject to the jurisdiction of the United States, with the
Southern District of Florida being the district at which the defendants first
entered the United States, conspiracy to possess with intent to distribute a
controlled substance, that is, a mixture and substance containing 100
kilograms or more of marijuana.

This criminal complaint is based on these facts:
See attached affidavit.

Continued on the attached sheet.

Complainant's signature

Special Agent Jesus Pertierra HSI
Printed name and title

Sworn to before me and signed in my presence.

Date: 10/17/2017

Judge's signature

City and state: Miami, Florida

EDWIN G. TORRES, U.S. Magistrate Judge
Printed name and title

I, Jesus Pertierra, being duly sworn, hereby depose and state the following:

1. I am a Special Agent with U.S. Immigration and Customs Enforcement, Homeland Security Investigations (hereinafter HSI). I am presently assigned the Office of the Special Agent in Charge Miami, Florida, where I am responsible for conducting maritime narcotics smuggling investigations. As a special agent with HSI, I have participated in numerous narcotics investigations involving: physical and electronic surveillance; the control and administration of confidential sources; international drug importations; and domestic drug organizations. I have participated in the arrest and subsequent prosecution of numerous drug traffickers. I also have spoken on numerous occasions with informants, suspects, and other narcotics investigators concerning the manner, means, methods and practices that drug traffickers use to further the operation of their drug trafficking organizations and the most effective methods of investigating and dismantling drug trafficking organizations.

2. As a law enforcement officer within the meaning of Section 2510(7) of Title 18, United States Code, I am empowered by law to conduct investigations of and make arrests for, but not limited to, offenses enumerated in Titles 18, 19, 21, 31 and 46 of the United States Code.

3. The information contained in this affidavit is submitted for the sole purpose of establishing probable cause to arrest Robert Dexter WEIR, Patrick W. FERGUSON, David Roderick WILLIAMS, Luther Fian PATERSON and George Garee THOMPSON, for violating Title 46, United States Code, Sections 70503(a)(1) and 70506(b), conspiracy to possess with intent to distribute marijuana, while on board a vessel subject to the jurisdiction of the United States.

4. Because this affidavit is submitted for the limited purpose of establishing probable cause, it does not contain all of the information known to me and other law enforcement officers involved in this investigation. The facts and information contained in this affidavit are based on my personal knowledge and observations, as well as upon information received in my official capacity from other individuals, including other law enforcement officers and sources involved in this investigation as well as my review of records, documents, and other physical items obtained during the course of this investigation.

5. On or about September 24, 2017 while on a routine patrol in the eastern Caribbean Ocean, the U.S. Coast Guard Cutter (USCGC) *CONFIDENCE* observed a go-fast vessel (GFV) approximately 12 nautical miles southwest of Navassa Island. The USCGC *CONFIDENCE* launched an over the horizon (OTH) small boat to intercept, identify, and investigate the GFV. The Coast Guard OTH approached the GFV and attempted to get it to stop, but the GFV was not compliant and began to flee at a high rate of speed. While in pursuit of the GFV, Coast Guard personnel observed the crew of the GFV jettison approximately 20-25 bales of suspected contraband that had been on deck. Ultimately, the GFV stopped in international waters approximately 13 nautical miles off the coast of the Navassa island and the USCG was able to pull alongside the GFV.

6. When the Coast Guard OTH pulled up alongside the GFV, the USCG personnel observed five crewmembers (the defendants), large fuel drums, and the name "JOSSETTE.WH.478" painted on the stern of the hull. The USCG personnel spoke with the crew of the GFV to determine the vessel's nationality.

7. Robert Dexter WEIR claimed to be the captain of the boat, and told the USCG personnel that the boat had departed from St. Ann, Jamaica, that they were heading to Haiti, and that the vessel was fishing. Jamaica was contacted to determine the vessel's registry. Jamaica confirmed the registry of the vessel as one of their own and authorized the USCG to board and search the GFV. Jamaica also later waived jurisdiction over the vessel. The vessel was therefore deemed to be without nationality and subject to the jurisdiction of the United States.

8. After receiving permission from the Jamaican government, a USCG boarding team boarded the GFV and discovered seven (7) 20-gallon fuel drums, two (2) 55-gallon fuel drums. There was no fishing gear found on board the vessel. Furthermore, the USCG found approximately several jettisoned bales in the surrounding waters that matched the appearance and size of the bales seen thrown from the GFV, which tested positive for marijuana. The total weight of the marijuana discovered during this interdiction was at least 613 lbs.

9. The five crewmembers were transferred to the USCG small boat for safety. The USCG identified the five crewmembers on board the go-fast vessel as the defendants, WEIR, FERGUSON, WILLIAMS, PATTERSON and THOMPSON, all citizens and nationals of Jamaica. The crew was then transferred to the USCGC *CONFIDENCE* along with the suspected narcotics retrieved from near the go-fast vessel.

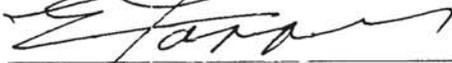
10. On October 16, 2017, the defendants were brought from outside the United States to the Southern District of Florida, and then brought to the Federal Detention Center in Miami, FL.

11. Based on the foregoing facts, I submit that probable cause exists to believe that, Robert Dexter WEIR, Patrick W. FERGUSON, David Roderick WILLIAMS, Luther Fian PATERSON and George Garee THOMPSON, while on board a vessel subject to jurisdiction of the United States, did conspire to possess with the intent to distribute a controlled substance in violation of Title 46, United States Code, Sections 70503(a)(1) and 70506(b).



JESUS PER TIERRA, SPECIAL AGENT  
HOMELAND SECURITY INVESTIGATIONS

Sworn to and subscribed before  
me this 17th day of October 2017.



EDWIN G. TORRES  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-MJ-03407-TORRES

UNITED STATES OF AMERICA

vs.

ROBERT DEXTER WEIR, PATRICK W. FERGUSON,  
DAVID RODERICK WILLIAMS, LUTHER FIAN PATERSON,  
and GEORGE GAREE THOMPSON,

Defendants.

\_\_\_\_\_ /

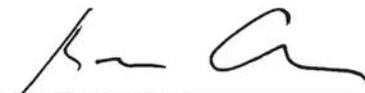
**CRIMINAL COVER SHEET**

1. Did this matter originate from a matter pending in the Northern Region of the United States Attorney's Office prior to October 14, 2003? \_\_\_\_\_ Yes  X  No
2. Did this matter originate from a matter pending in the Central Region of the United States Attorney's Office prior to September 1, 2007? \_\_\_\_\_ Yes  X  No

Respectfully submitted,

BENJAMIN G. GREENBERG  
ACTING UNITED STATES ATTORNEY

BY:



KEVIN S. QUENCER  
ASSISTANT UNITED STATES ATTORNEY  
Court ID No. A5501891  
99 N. E. 4th Street  
Miami, Florida 33132-2111  
TEL (305) 961-9268  
FAX (305) 530-7976

AO 91 (Rev. 08/09) Criminal Complaint

UNITED STATES DISTRICT COURT
for the
Southern District of Florida

United States of America
v.
Robert Dexter Weir, Patrick W. Ferguson, David
Roderick Williams, Luther Fian Paterson, and
George Garee Thompson,

Case No. 17-MJ-03407-TORRES

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of September 24, 2017 in International Waters, the defendant(s) violated:

Code Section
46 U.S.C. 70503(a)(1) and 70506
(b)

Offense Description
On board a vessel subject to the jurisdiction of the United States, with the
Southern District of Florida being the district at which the defendants first
entered the United States, conspiracy to possess with intent to distribute a
controlled substance, that is, a mixture and substance containing 100
kilograms or more of marijuana.

This criminal complaint is based on these facts:
See attached affidavit.

Continued on the attached sheet.

Complainant's signature

Special Agent Jesus Pertierra HSI
Printed name and title

Sworn to before me and signed in my presence.

Date: 10/17/2017

Judge's signature

City and state: Miami, Florida

EDWIN G. TORRES, U.S. Magistrate Judge
Printed name and title

I, Jesus Pertierra, being duly sworn, hereby depose and state the following:

1. I am a Special Agent with U.S. Immigration and Customs Enforcement, Homeland Security Investigations (hereinafter HSI). I am presently assigned the Office of the Special Agent in Charge Miami, Florida, where I am responsible for conducting maritime narcotics smuggling investigations. As a special agent with HSI, I have participated in numerous narcotics investigations involving: physical and electronic surveillance; the control and administration of confidential sources; international drug importations; and domestic drug organizations. I have participated in the arrest and subsequent prosecution of numerous drug traffickers. I also have spoken on numerous occasions with informants, suspects, and other narcotics investigators concerning the manner, means, methods and practices that drug traffickers use to further the operation of their drug trafficking organizations and the most effective methods of investigating and dismantling drug trafficking organizations.

2. As a law enforcement officer within the meaning of Section 2510(7) of Title 18, United States Code, I am empowered by law to conduct investigations of and make arrests for, but not limited to, offenses enumerated in Titles 18, 19, 21, 31 and 46 of the United States Code.

3. The information contained in this affidavit is submitted for the sole purpose of establishing probable cause to arrest Robert Dexter WEIR, Patrick W. FERGUSON, David Roderick WILLIAMS, Luther Fian PATERSON and George Garee THOMPSON, for violating Title 46, United States Code, Sections 70503(a)(1) and 70506(b), conspiracy to possess with intent to distribute marijuana, while on board a vessel subject to the jurisdiction of the United States.

4. Because this affidavit is submitted for the limited purpose of establishing probable cause, it does not contain all of the information known to me and other law enforcement officers involved in this investigation. The facts and information contained in this affidavit are based on my personal knowledge and observations, as well as upon information received in my official capacity from other individuals, including other law enforcement officers and sources involved in this investigation as well as my review of records, documents, and other physical items obtained during the course of this investigation.

5. On or about September 24, 2017 while on a routine patrol in the eastern Caribbean Ocean, the U.S. Coast Guard Cutter (USCGC) *CONFIDENCE* observed a go-fast vessel (GFV) approximately 12 nautical miles southwest of Navassa Island. The USCGC *CONFIDENCE* launched an over the horizon (OTH) small boat to intercept, identify, and investigate the GFV. The Coast Guard OTH approached the GFV and attempted to get it to stop, but the GFV was not compliant and began to flee at a high rate of speed. While in pursuit of the GFV, Coast Guard personnel observed the crew of the GFV jettison approximately 20-25 bales of suspected contraband that had been on deck. Ultimately, the GFV stopped in international waters approximately 13 nautical miles off the coast of the Navassa island and the USCG was able to pull alongside the GFV.

6. When the Coast Guard OTH pulled up alongside the GFV, the USCG personnel observed five crewmembers (the defendants), large fuel drums, and the name "JOSSETTE.WH.478" painted on the stern of the hull. The USCG personnel spoke with the crew of the GFV to determine the vessel's nationality.

7. Robert Dexter WEIR claimed to be the captain of the boat, and told the USCG personnel that the boat had departed from St. Ann, Jamaica, that they were heading to Haiti, and that the vessel was fishing. Jamaica was contacted to determine the vessel's registry. Jamaica confirmed the registry of the vessel as one of their own and authorized the USCG to board and search the GFV. Jamaica also later waived jurisdiction over the vessel. The vessel was therefore deemed to be without nationality and subject to the jurisdiction of the United States.

8. After receiving permission from the Jamaican government, a USCG boarding team boarded the GFV and discovered seven (7) 20-gallon fuel drums, two (2) 55-gallon fuel drums. There was no fishing gear found on board the vessel. Furthermore, the USCG found approximately several jettisoned bales in the surrounding waters that matched the appearance and size of the bales seen thrown from the GFV, which tested positive for marijuana. The total weight of the marijuana discovered during this interdiction was at least 613 lbs.

9. The five crewmembers were transferred to the USCG small boat for safety. The USCG identified the five crewmembers on board the go-fast vessel as the defendants, WEIR, FERGUSON, WILLIAMS, PATTERSON and THOMPSON, all citizens and nationals of Jamaica. The crew was then transferred to the USCGC *CONFIDENCE* along with the suspected narcotics retrieved from near the go-fast vessel.

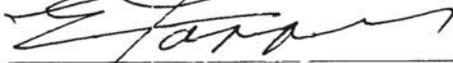
10. On October 16, 2017, the defendants were brought from outside the United States to the Southern District of Florida, and then brought to the Federal Detention Center in Miami, FL.

11. Based on the foregoing facts, I submit that probable cause exists to believe that, Robert Dexter WEIR, Patrick W. FERGUSON, David Roderick WILLIAMS, Luther Fian PATERSON and George Garee THOMPSON, while on board a vessel subject to jurisdiction of the United States, did conspire to possess with the intent to distribute a controlled substance in violation of Title 46, United States Code, Sections 70503(a)(1) and 70506(b).



JESUS PER TIERRA, SPECIAL AGENT  
HOMELAND SECURITY INVESTIGATIONS

Sworn to and subscribed before  
me this 17th day of October 2017.



EDWIN G. TORRES  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF FLORIDA

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 17-CR-20877-UNGARO**

**UNITED STATES OF AMERICA**

**vs.**

**ROBERT DEXTER WEIR,**

**Defendant.**

---

**PLEA AGREEMENT**

The United States Attorney's Office for the Southern District of Florida ("this Office") and **ROBERT DEXTER WEIR** (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to the sole count of the information, which charges the defendant with providing materially false information to a federal law enforcement officer during a boarding of a vessel subject to the jurisdiction of the United States, in violation of Title 18, United States Code, Section 2237(a)(2)(B).

2. The defendant is aware that the sentence will be imposed by the Court after considering the advisory Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a pre-sentence investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the

Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose a sentence within that advisory range; the Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory range. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense identified in paragraph 1 and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to 5 years, followed by a term of supervised release of up to 3 years. In addition to a term of imprisonment and supervised release, the Court may impose a fine of up to \$250,000.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing. If a defendant is financially unable to pay the special assessment, the defendant agrees to present evidence to this Office and the Court at the time of sentencing as to the reasons for the defendant's failure to pay.

5. This Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

6. The United States agrees that it will recommend at sentencing that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will file a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. The United States, however, will not be required to make this motion and these recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

7. This Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed:

a. That the sentence to be imposed should be 10 months of imprisonment.

8. The defendant is aware that Title 18, United States Code, Section 3742 and Title 28, United States Code, Section 1291 afford the defendant the right to appeal the sentence imposed in

this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Sections 3742 and 1291 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or an upward variance from the advisory guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b) and Title 28, United States Code, Section 1291. However, if the United States appeals the defendant's sentence pursuant to Sections 3742(b) and 1291, the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with the defendant's attorney

9. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the Court. The defendant understands further that any recommendation that the government makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph 3 above, that the defendant may not withdraw his plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

10. Defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including the defendant's attorney or the Court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. Defendant nevertheless affirms that the defendant wants to plead guilty regardless of any immigration consequences that the defendant's plea may entail, even if the consequence is the defendant's automatic removal from the United States.

11. The defendant also agrees to assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others to the defendant's knowledge have accumulated as a result of illegal activities. Such assistance will involve the defendant's agreement to the entry of an order enjoining the transfer or encumbrance of assets that may be identified as being subject to forfeiture. Additionally, the defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to this Office upon this Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

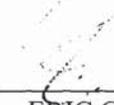
12. This is the entire agreement and understanding between this Office and the defendant. There are no other agreements, promises, representations, or understandings.

BENJAMIN G. GREENBERG  
ACTING UNITED STATES ATTORNEY

Date: 1/3/18

By:   
KEVIN QUENCER  
ASSISTANT UNITED STATES ATTORNEY

Date: 1/3/18

By:   
ERIC COHEN  
ATTORNEY FOR DEFENDANT

Date: 1/3/18

By: Robert WEIR  
ROBERT DEXTER WEIR  
DEFENDANT

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No. 17-CR-20877-UNGARO**

**UNITED STATES OF AMERICA**

**vs.**

**ROBERT DEXTER WEIR,**

**Defendant.**

---

**FACTUAL PROFFER**

If this matter proceeded to trial the Government would have proved beyond a reasonable doubt the following facts:

If this matter proceeded to trial the Government would have proved beyond a reasonable doubt the following facts:

On September 14, 2017, a United States Coast Guard cutter spotted the wake of a vessel speeding towards Haiti, from the direction of Jamaica. The Coast Guard cutter launched a small boat to investigate. When the USCG small boat closed the distance to the vessel down to several yards, the vessel initially refused to stop. After the USCG small boat crew drew their weapons and the crew of the vessel, the defendants, observed the drawn weapons, the vessel stopped.

After the vessel stopped, in international waters near Haiti, the Coast Guard crew asked a series of questions of the members of the crew as a part of the boarding process. One individual claimed that the vessel was Jamaican and that the vessel was registered in Jamaica. Jamaica was contacted. Jamaica confirmed the registration of the vessel, but authorized the United States to board and search the vessel. Jamaica also later waived jurisdiction over the vessel. Therefore, the vessel was subject to the jurisdiction of the United States.

When asked about the destination of the vessel, each of the members of the crew, including

the defendant, told the United States Coast Guard boarding officers that the vessel's destination was the waters near the coast of Jamaica, where they intended to fish. This was not true. As the crew members, including the defendant, then and there well knew, the vessel's true destination was Haiti.

This falsehood was material to the federal law enforcement officers, the United States Coast Guard officers, during their boarding of the vessel because the destination of a vessel is an important part of the information gathered by the Coast Guard officers during the boarding of a vessel and can influence the United States' decision-making process on what action to take next during such a boarding.

BENJAMIN G. GREENBERG  
ACTING UNITED STATES ATTORNEY

Date: 1/3/18

By:   
KEVIN QUENCER  
ASSISTANT UNITED STATES ATTORNEY

Date: 1/3/18

By:   
ERIC COHEN  
ATTORNEY FOR DEFENDANT

Date: 1/3/18

By: Robert WEIR  
ROBERT DEXTER WEIR  
DEFENDANT

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
Case No. 17-20877-Cr-UNGARO

UNITED STATES OF AMERICA, ) Pages 1-35  
) )  
Plaintiff, ) )  
) )  
-v- ) )  
) )  
ROBERT DEXTER WEIR, PATRICK W. ) )  
FERGUSON, DAVID RODERICK WILLIAMS and) )  
GEORGE GAREE THOMPSON, ) )  
) Miami, Florida  
Defendants. ) January 3, 2018  
-----) 11:11 a.m.

TRANSCRIPT OF PLEA COLLOQUY and SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE URSULA UNGARO  
U.S. DISTRICT JUDGE

APPEARANCES:

For the Government KEVIN QUENCER, AUSA  
99 Northeast 4th Street  
Miami, Florida 33132-2111

For Defendant Weir ERIC M. COHEN, AFPD  
150 West Flagler Street  
Miami, Florida 33130

For Defendant Ferguson MICHAEL S. TARRE, ESQ.  
201 S. Biscayne Blvd. - Suite 2200  
Miami, Florida 33131

For Defendant Williams JOAQUIN MENDEZ, JR., ESQ.  
201 Alhambra Circle - Suite 1200  
Coral Gables, Florida 33134

For Defendant Thompson TODD OMAR MALONE, ESQ.  
701 Brickell Avenue - Suite 1550  
Miami, Florida 33131

REPORTED BY: WILLIAM G. ROMANISHIN, RMR, FCRR, CRR  
(305) 523-5558 Official Court Reporter  
400 North Miami Avenue  
Miami, Florida 33128

1 (Call to order of the Court)

2 THE COURT: Good morning.

3 The case before the Court is the United States versus  
4 Robert Dexter Weir, Patrick Ferguson and David Roderick  
5 Williams, 17-20877-Criminal.

6 Who's here for the United States?

7 MR. QUENCER: Good morning, Your Honor. Kevin  
8 Quencer appearing on behalf of the United States.

9 THE COURT: Okay. Fine. You can have a seat.

10 Who's here for Mr. Weir?

11 MR. COHEN: Good morning, Your Honor. Eric Cohen,  
12 Assistant Federal Public Defender, on behalf of Mr. Weir, who  
13 is present.

14 THE COURT: And he's here for a change of plea?

15 MR. COHEN: He is.

16 THE COURT: Is your client illiterate?

17 MR. COHEN: He is not.

18 THE COURT: Who's here for Mr. Ferguson?

19 MR. TARRE: Michael Tarre, Your Honor, who is  
20 present.

21 THE COURT: For a change of plea?

22 MR. TARRE: Yes, ma'am.

23 THE COURT: Is he illiterate?

24 MR. TARRE: Yes, illiterate in the sense he's had a  
25 limited education. I had to read the plea agreements to him

1 rather than have him but --

2 THE COURT: Okay. Fine.

3 And who's here for David Roderick Williams?

4 MR. MENDEZ: Good morning, Your Honor. Joaquin  
5 Mendez on his behalf and he is by definition illiterate.

6 THE COURT: And his native language is?

7 MR. MENDEZ: English.

8 THE COURT: English.

9 And who's here for George Garee Thompson.

10 MR. MALONE: Good morning, Judge. Omar Malone on  
11 Mr. Thompson's behalf, and I do not believe he is illiterate.

12 THE COURT: Okay. Fine.

13 Let's swear the defendants, please.

14 THE COURTROOM DEPUTY: Would you all raise your right  
15 hand, please.

16 ROBERT WEIR, DEFENDANT, SWORN

17 PATRICK FERGUSON, DEFENDANT, SWORN

18 DAVID RODERICK WILLIAMS, DEFENDANT, SWORN

19 GEORGE GAREE THOMPSON, DEFENDANT, SWORN

20 THE COURTROOM DEPUTY: Will you all have a seat,  
21 please.

22 Mr. Weir, please state your name and your age.

23 DEFENDANT WEIR: Robert Weir, age 37. 1981, 29 of  
24 June.

25 THE COURT: And then Mr. Ferguson, your name and your

1 age.

2 DEFENDANT FERGUSON: Patrick Ferguson, 39.

3 THE COURT: Mr. Williams, name and age.

4 DEFENDANT WILLIAMS: David Roderick Williams, 1974,  
5 7th of April.

6 THE COURT: Well, how old are you?

7 DEFENDANT WILLIAMS: 44.

8 THE COURT: 47?

9 DEFENDANT WILLIAMS: 44.

10 THE COURT: 44.

11 THE COURTROOM DEPUTY: And Mr. Thompson, name and  
12 age.

13 DEFENDANT THOMPSON: George Garee Thompson, age 38.  
14 1979, 8th of July.

15 THE COURT: Okay. Thank you.

16 Mr. Quencer, are these plea agreements identical?

17 MR. QUENCER: They are. The plea agreements and the  
18 factual proffers are identical, Judge.

19 THE COURT: Okay. Fine.

20 So, gentlemen, you've been placed under oath and I'm  
21 going to ask you some questions, and it's important that you  
22 understand that if you answer my questions falsely, you could  
23 later be prosecuted for perjury or for making a false  
24 statement.

25 Do you understand that, Mr. Weir?

1 DEFENDANT WEIR: Yes, ma'am.

2 THE COURT: Mr. Ferguson?

3 DEFENDANT FERGUSON: Yes, ma'am.

4 THE COURT: Mr. Williams?

5 DEFENDANT WILLIAMS: Yes, Your Honor.

6 THE COURT: And Mr. Thompson?

7 DEFENDANT THOMPSON: Yes, ma'am.

8 THE COURT: Okay. By the way, I have in front of me  
9 the waiver of indictment of each of these defendants, right,  
10 Mr. Quencer? They've all gone before the magistrate judge and  
11 waived indictment?

12 MR. QUENCER: They have indeed, yes, Judge.

13 THE COURT: Okay. Fine.

14 Now, Mr. Weir, how far did you go in school?

15 DEFENDANT WEIR: I go to Bustamante High.

16 THE COURT: Pardon me?

17 DEFENDANT WEIR: Bustamante High School.

18 THE COURT: You finished high school?

19 DEFENDANT WEIR: Yeah.

20 THE COURT: Okay. Mr. Ferguson?

21 DEFENDANT FERGUSON: I attended Jamaica, um --

22 THE COURT: I don't need to know where you went to  
23 school. I want to know how far you went in school.

24 DEFENDANT FERGUSON: Seventh grade. Seventh grade.

25 THE COURT: Okay. Thank you.

1 And Mr. Williams?

2 DEFENDANT WILLIAMS: Second grade.

3 THE COURT: And Mr. Thompson?

4 DEFENDANT THOMPSON: 11th grade, Your Honor.

5 THE COURT: And have you ever been treated for a  
6 mental illness or for an addiction to narcotics or alcohol,  
7 Mr. Weir?

8 DEFENDANT WEIR: No, ma'am.

9 THE COURT: And Mr. Ferguson?

10 DEFENDANT FERGUSON: No, ma'am.

11 THE COURT: And Mr. Williams?

12 DEFENDANT WILLIAMS: No.

13 THE COURT: And Mr. Thompson?

14 DEFENDANT THOMPSON: No, Your Honor, please.

15 THE COURT: And are you currently under the influence  
16 of any drugs, alcohol or medication, Mr. Weir?

17 DEFENDANT WEIR: No, Your Honor.

18 THE COURT: Mr. Ferguson?

19 DEFENDANT FERGUSON: No, Your Honor.

20 THE COURT: Mr. Williams?

21 DEFENDANT WILLIAMS: No.

22 THE COURT: And Mr. Thompson?

23 DEFENDANT THOMPSON: No, Your Honor.

24 THE COURT: Now, have you received a copy of the  
25 information -- that's the document with the charge against you

1 in it -- and if you're unable to read, has it been read to you  
2 enough times that you understand what's in it, Mr. Weir?

3 DEFENDANT WEIR: Yes, Your Honor.

4 THE COURT: And Mr. Ferguson?

5 DEFENDANT FERGUSON: Yes, ma'am.

6 THE COURT: And Mr. Williams?

7 DEFENDANT WILLIAMS: Yes.

8 THE COURT: And Mr. Thompson?

9 DEFENDANT THOMPSON: Yes, Your Honor, please.

10 THE COURT: And have you had a full opportunity to  
11 discuss the charge and your case in general, including any  
12 defenses that you might have, with your lawyer, Mr. Weir?

13 DEFENDANT WEIR: Yes.

14 THE COURT: Mr. Ferguson?

15 Do you want me to ask the question again,  
16 Mr. Ferguson?

17 You don't need to interpret for me, Mr. Tarre.

18 MR. TARRE: I was just repeating the question.

19 THE COURT: Well, why don't you let me since I'm the  
20 one who has to communicate with the defendant and we need to  
21 be able to be sure that he understands me.

22 So let me ask you again, Mr. Ferguson. Have you had  
23 a full opportunity to discuss the charge and your case in  
24 general, including any defenses that you might have, with your  
25 attorney, Mr. Tarre?

1 DEFENDANT FERGUSON: Yes, ma'am.

2 THE COURT: Okay. And how about you, Mr. Williams,  
3 with your lawyer, Mr. Mendez?

4 DEFENDANT WILLIAMS: Yes, ma'am.

5 THE COURT: And what about you, Mr. Thompson, with  
6 your lawyer, Mr. Malone?

7 DEFENDANT THOMPSON: Yes, Your Honor.

8 THE COURT: And are you fully satisfied with the  
9 counsel, representation and advice that you've received from  
10 your lawyer in this case, Mr. Weir?

11 DEFENDANT WEIR: Yes, Your Honor.

12 THE COURT: Mr. Ferguson?

13 DEFENDANT FERGUSON: Yes, ma'am.

14 THE COURT: Mr. Williams?

15 DEFENDANT WILLIAMS: Yes, ma'am.

16 THE COURT: And Mr. Thompson?

17 DEFENDANT THOMPSON: Yes, Your Honor, please.

18 THE COURT: Now, I have in front of me a written plea  
19 agreement that appears to have been signed by you.

20 Did you sign your plea agreement, Mr. Weir?

21 DEFENDANT WEIR: Yes, Your Honor.

22 THE COURT: And Mr. Ferguson?

23 DEFENDANT FERGUSON: Yes, Your Honor.

24 THE COURT: And Mr. Williams?

25 DEFENDANT WILLIAMS: Yes, Your Honor.

1 THE COURT: And Mr. Thompson?

2 DEFENDANT THOMPSON: Yes, Your Honor.

3 THE COURT: And have you had a full opportunity to  
4 review the plea agreement and to discuss it with your lawyer,  
5 Mr. Weir?

6 DEFENDANT WEIR: Yes, Your Honor.

7 THE COURT: Mr. Ferguson?

8 DEFENDANT FERGUSON: Yes, Your Honor.

9 THE COURT: And Mr. Williams?

10 DEFENDANT WILLIAMS: Yes, Your Honor.

11 THE COURT: And Mr. Thompson?

12 DEFENDANT THOMPSON: Yes, Your Honor, ma'am.

13 THE COURT: And do you understand each and every term  
14 of your plea agreement, Mr. Weir?

15 DEFENDANT WEIR: Yes, Your Honor.

16 THE COURT: And Mr. Ferguson?

17 DEFENDANT FERGUSON: Yes, ma'am.

18 THE COURT: And Mr. Williams?

19 DEFENDANT WILLIAMS: Yes, Your Honor.

20 THE COURT: And Mr. Thompson?

21 DEFENDANT THOMPSON: Yes, Your Honor, ma'am.

22 THE COURT: So, then, in the interest of time I'm not  
23 going to go over every term of your plea agreement with you,  
24 but I do want to go over some of the more important terms.

25 So under the plea agreement you've each agreed to

1 plead guilty to the sole count of the information charging you  
2 with providing materially false information to a federal law  
3 enforcement officer during a boarding of a vessel subject to  
4 the jurisdiction of the United States, in violation of Title  
5 18, United States Code, Section 2237(a)(2)(B).

6 The agreement then says that you understand that your  
7 sentence will be imposed after I have the opportunity to  
8 consider the advisory Federal Sentencing Guidelines as they  
9 apply to your case.

10 The agreement also says that by pleading guilty, you  
11 are agreeing that I have the jurisdiction and the authority to  
12 impose any sentence up to the maximum permitted by law for the  
13 offense to which you are pleading guilty.

14 The agreement also states that at sentencing the  
15 United States will recommend that I reduce by at least two  
16 levels, and possibly three levels, the Sentencing Guideline  
17 level applicable to the offense to which you're pleading  
18 guilty based upon such considerations as your timely  
19 acceptance of personal responsibility, provided you make full,  
20 accurate and complete disclosure to the probation office of  
21 the circumstances surrounding your criminal conduct in  
22 connection with its preparation of the presentence report;  
23 provided you haven't misrepresented anything to the Government  
24 prior to entering into the plea agreement; and provided you  
25 don't commit any misconduct after entering into the plea

1 agreement.

2           Additionally, the agreement says that you and the  
3 United States will jointly recommend to me that you be  
4 sentenced to ten months in prison. However, that  
5 understanding is not binding on me or the probation office.

6           The agreement also contains a partial waiver of your  
7 appeal rights. Under the agreement you are giving up your  
8 right to appeal any sentence or to appeal the manner in which  
9 the sentence was imposed unless the sentence exceeds the  
10 maximum permitted by statute or is the result of an upward  
11 departure or upward variance from the advisory guideline range  
12 established at your sentencing.

13           However, if the United States were to appeal your  
14 sentence, then under the agreement you would be able to appeal  
15 on any basis.

16           Additionally, by signing the agreement, you've  
17 acknowledged that you've discussed the appeal waiver set forth  
18 in the agreement with your lawyer.

19           The agreement also says that you understand that by  
20 pleading guilty you could cover adverse immigration  
21 consequences and be removed or deported from the United  
22 States; and the agreement states that you agree to assist the  
23 United States in connection with any forfeiture proceedings.

24           Is there a forfeiture count? No.

25           Okay. Well, in any event, is there anything about

1 those terms and conditions or any other term and condition of  
2 the plea agreement that you do not understand, Mr. Weir?

3 DEFENDANT WEIR: I understand everything, Your Honor.

4 THE COURT: Okay. That's good.

5 Mr. Ferguson?

6 DEFENDANT FERGUSON: I understand, ma'am.

7 THE COURT: Okay. Thank you.

8 Mr. Williams?

9 DEFENDANT WILLIAMS: Yes, I understand.

10 THE COURT: And Mr. Thompson?

11 DEFENDANT THOMPSON: Thank you very much, Your Honor.

12 I understand correctly.

13 THE COURT: All right. And has anybody offered you  
14 anything, promised you anything or assured you of anything  
15 other than what's in the plea agreement in order to induce you  
16 to enter a plea of guilty to the charge, Mr. Weir?

17 DEFENDANT WEIR: No, Your Honor.

18 THE COURT: Mr. Ferguson?

19 DEFENDANT FERGUSON: No, Your Honor.

20 THE COURT: Mr. Williams?

21 DEFENDANT WILLIAMS: No, Your Honor.

22 THE COURT: And Mr. Thompson?

23 DEFENDANT THOMPSON: No, Your Honor, please.

24 THE COURT: And has anybody threatened you, coerced  
25 you or forced you in any way to enter a plea of guilty to the

1 charge, Mr. Weir?

2 DEFENDANT WEIR: No, Your Honor.

3 THE COURT: Mr. Ferguson?

4 DEFENDANT FERGUSON: No, Your Honor.

5 THE COURT: Mr. Williams?

6 DEFENDANT WILLIAMS: No, Your Honor.

7 THE COURT: And Mr. Thompson?

8 DEFENDANT THOMPSON: No, Your Honor.

9 THE COURT: And do you understand that the offense to  
10 which you are pleading guilty is a felony and that if your  
11 plea is accepted by the Court you will be adjudged guilty of a  
12 felony, and as a result you will lose valuable civil rights,  
13 such as the right to possess a firearm; if you are a United  
14 States citizen: The right to vote, the right to hold public  
15 office and the right to serve on a jury; and if you are not a  
16 United States citizen you will in all likelihood be deported  
17 or removed from the United States?

18 Do you understand all of that, Mr. Weir?

19 DEFENDANT WEIR: Yes, Your Honor.

20 THE COURT: Mr. Ferguson?

21 DEFENDANT FERGUSON: Yes, ma'am.

22 THE COURT: Mr. Williams?

23 DEFENDANT WILLIAMS: Yes, Your Honor.

24 THE COURT: And Mr. Thompson?

25 DEFENDANT THOMPSON: Yes, Your Honor, please.

1 THE COURT: Okay. Now, as the agreement states, the  
2 maximum possible penalty provided by law for the offense to  
3 which you're pleading guilty is five years in prison. Any  
4 term of imprisonment would have to be followed by a term of  
5 supervised release not exceeding three years. The Court could  
6 impose a fine of up to \$250,000 against you; and a \$100  
7 assessment will be imposed against you.

8 Do you understand that those are the maximum  
9 consequences that could result from your entering a plea of  
10 guilty in this case, Mr. Weir?

11 DEFENDANT WEIR: Yes, Your Honor.

12 THE COURT: Mr. Ferguson?

13 DEFENDANT FERGUSON: Yes, Your Honor.

14 THE COURT: Mr. Williams?

15 DEFENDANT WILLIAMS: Yes, Your Honor.

16 THE COURT: And Mr. Thompson?

17 DEFENDANT THOMPSON: Yes, Your Honor.

18 THE COURT: Now, have you and your lawyer talked  
19 about how the advisory Federal Sentencing Commission  
20 Guidelines might apply in your case, Mr. Weir?

21 DEFENDANT WEIR: Yes, Your Honor.

22 THE COURT: Mr. Ferguson?

23 DEFENDANT FERGUSON: Yes, Your Honor.

24 THE COURT: Mr. Williams?

25 DEFENDANT WILLIAMS: Yes, Your Honor.

1 THE COURT: And Mr. Thompson?

2 DEFENDANT THOMPSON: Yes, Your Honor.

3 THE COURT: And do you understand that I will not be  
4 able to determine the guideline sentence for your case until  
5 after a presentence report has been prepared by the probation  
6 office, and you and the Government have had the opportunity to  
7 challenge the facts reported by the probation office and the  
8 application of the guidelines recommended by the probation  
9 office, Mr. Weir?

10 DEFENDANT WEIR: Yes. I understand.

11 THE COURT: Mr. Ferguson?

12 DEFENDANT FERGUSON: Yes, ma'am. I understand.

13 THE COURT: Mr. Williams?

14 DEFENDANT WILLIAMS: Yes, ma'am.

15 THE COURT: And Mr. Thompson?

16 DEFENDANT THOMPSON: Yes, ma'am.

17 THE COURT: And do you understand that the sentence  
18 ultimately imposed could be different from any estimate that  
19 your lawyer or anyone else may have given you, and that if  
20 your sentence is more severe than you expect, you will still  
21 be bound by your guilty plea and you will not be able to  
22 withdraw it, Mr. Weir?

23 DEFENDANT WEIR: Yes, Your Honor.

24 THE COURT: Mr. Ferguson?

25 DEFENDANT FERGUSON: Yes, Your Honor.

1 THE COURT: Mr. Williams?

2 DEFENDANT WILLIAMS: Yes, Your Honor.

3 THE COURT: And Mr. Thompson?

4 DEFENDANT THOMPSON: Yes, Your Honor.

5 THE COURT: And do you understand that I have the  
6 authority in some circumstances to impose a sentence that is  
7 more severe or less severe than the sentence called for by the  
8 guidelines, Mr. Weir?

9 DEFENDANT WEIR: Yes, Your Honor.

10 THE COURT: Mr. Ferguson?

11 DEFENDANT FERGUSON: Yes, Your Honor.

12 THE COURT: Mr. Williams?

13 DEFENDANT WILLIAMS: Yes, Your Honor.

14 THE COURT: And Mr. Thompson?

15 DEFENDANT THOMPSON: Yes, Your Honor.

16 THE COURT: And do you understand that parole has  
17 been abolished and that if you are sentenced to prison you  
18 will not be released early on parole, Mr. Weir?

19 DEFENDANT WEIR: Yes, Your Honor.

20 THE COURT: Mr. Ferguson?

21 DEFENDANT FERGUSON: Yes, Your Honor.

22 THE COURT: Mr. Williams?

23 DEFENDANT WILLIAMS: Yes, Your Honor.

24 THE COURT: And Mr. Thompson?

25 DEFENDANT THOMPSON: Yes, Your Honor.

1 THE COURT: All right. Now, the law requires that we  
2 go over the rights you would have had had you gone to trial to  
3 make sure you understand those rights and that you are  
4 voluntarily giving them up.

5 Do you understand that you have the right to plead  
6 not guilty to any charge against you and to persist in that  
7 plea and that then you would have the right to a trial by  
8 jury, Mr. Weir?

9 DEFENDANT WEIR: Yes. I understand.

10 THE COURT: Mr. Ferguson?

11 DEFENDANT FERGUSON: Yes, Your Honor.

12 THE COURT: Mr. Williams?

13 DEFENDANT WILLIAMS: Yes, Your Honor.

14 THE COURT: And Mr. Thompson?

15 DEFENDANT THOMPSON: Yes, Your Honor.

16 THE COURT: And do you understand that at such a  
17 trial you would be presumed to be innocent and the United  
18 States would be required to prove your guilt beyond a  
19 reasonable doubt, Mr. Weir?

20 DEFENDANT WEIR: Yes, Your Honor.

21 THE COURT: Mr. Ferguson?

22 DEFENDANT FERGUSON: Yes, Your Honor.

23 THE COURT: Mr. Williams?

24 DEFENDANT WILLIAMS: Yes, Your Honor.

25 THE COURT: And Mr. Thompson?

1 DEFENDANT THOMPSON: Yes, Your Honor.

2 THE COURT: And do you further understand that at  
3 such a trial you would have the right to the assistance of  
4 counsel for your defense; you would have the right to see and  
5 hear all of the witnesses and have them cross-examined on your  
6 behalf; you would have the right on your own part not to  
7 testify unless you voluntarily elected to do so in your own  
8 defense; and you would have the right to the issuance of  
9 subpoenas or compulsory process to compel the attendance of  
10 witnesses to testify on your behalf, Mr. Weir?

11 DEFENDANT WEIR: Yes. I understand.

12 THE COURT: Mr. Ferguson?

13 DEFENDANT FERGUSON: Yes, Your Honor.

14 THE COURT: Mr. Williams?

15 DEFENDANT WILLIAMS: Yes, Your Honor.

16 THE COURT: And Mr. Thompson?

17 DEFENDANT THOMPSON: Yes, Your Honor. I understand.

18 THE COURT: And do you further understand that by  
19 entering a plea of guilty to the charge, you are giving up  
20 your right to a trial as well as those other rights associated  
21 with a trial that I've just described to you, Mr. Weir?

22 DEFENDANT WEIR: Yes, Your Honor. I understand.

23 THE COURT: Mr. Ferguson?

24 DEFENDANT FERGUSON: Yes, Your Honor.

25 THE COURT: Mr. Williams?

1 DEFENDANT WILLIAMS: Yes, Your Honor.

2 THE COURT: And Mr. Thompson?

3 DEFENDANT THOMPSON: Yes, Your Honor. I understand.

4 THE COURT: Okay. Now, I also have in front of me a  
5 document called a Factual Proffer which appears to have been  
6 signed by you.

7 Did you sign your proffer, Mr. Weir?

8 DEFENDANT WEIR: Yes, Your Honor.

9 THE COURT: Mr. Ferguson, did you sign yours?

10 DEFENDANT FERGUSON: Yes, Your Honor.

11 THE COURT: And did you sign yours, Mr. Williams?

12 DEFENDANT WILLIAMS: Yes, Your Honor.

13 THE COURT: And Mr. Thompson, did you sign yours?

14 DEFENDANT THOMPSON: Yes, Your Honor, I did.

15 THE COURT: Okay. And before you signed your  
16 proffer, did you have a full opportunity to review it and to  
17 discuss it with your lawyer, Mr. Weir?

18 DEFENDANT WEIR: Yes, Your Honor.

19 THE COURT: Mr. Ferguson?

20 DEFENDANT FERGUSON: Yes, Your Honor.

21 THE COURT: Mr. Williams?

22 DEFENDANT WILLIAMS: Yes, Your Honor.

23 THE COURT: And Mr. Thompson?

24 DEFENDANT THOMPSON: Yes, Your Honor.

25 THE COURT: And do you agree with each and every fact

1 contained in your proffer, Mr. Weir?

2 DEFENDANT WEIR: Yes, Your Honor.

3 THE COURT: Mr. Ferguson?

4 DEFENDANT FERGUSON: Yes, Your Honor.

5 THE COURT: Mr. Williams?

6 DEFENDANT WILLIAMS: Yes, Your Honor.

7 THE COURT: And Mr. Thompson?

8 DEFENDANT THOMPSON: Yes, Your Honor.

9 THE COURT: And now, how do you plead to the charge,  
10 guilty or not guilty, Mr. Weir?

11 DEFENDANT WEIR: Guilty.

12 THE COURT: Mr. Ferguson?

13 DEFENDANT FERGUSON: Guilty.

14 THE COURT: Mr. Williams?

15 DEFENDANT WILLIAMS: Guilty.

16 THE COURT: And Mr. Thompson?

17 DEFENDANT THOMPSON: Guilty, Your Honor.

18 THE COURT: Then it's the finding of the Court in the  
19 case of the United States versus Robert Dexter Weir, Patrick  
20 W. Ferguson, David Roderick Williams and George Garee Thompson  
21 and in case number 17-20877-Criminal that each defendant is  
22 fully competent and capable of entering an informed plea; that  
23 each defendant is aware of the nature of the charge and the  
24 consequences of his plea; that each defendant's plea of guilty  
25 is a knowing and voluntary plea supported by an independent

1 basis in fact containing each of the essential elements of the  
2 offense. The Court therefore accepts the guilty plea of each  
3 of the defendants and each defendant is now adjudged guilty of  
4 the charge.

5 Sentencing is scheduled for March 15, 2018, at 1:30  
6 p.m.

7 Now, gentlemen, between now and the time of your  
8 sentencing you need to keep in mind that the probation office  
9 will be preparing the presentence report for my consideration.

10 Is there a problem, Mr. Malone?

11 MR. MALONE: Not a problem, Judge; a request.

12 THE COURT: Yes.

13 MR. MALONE: And I think my colleagues would join in.

14 We would ask that the Court consider, in light of the  
15 guideline range --

16 THE COURT: How long have they been in?

17 MR. MALONE: They've been in four months. On a  
18 ten-month sentence, you know, they have immigration  
19 consequences, et cetera, et cetera.

20 So we would ask that the Court either -- and I  
21 understand the Court has a scheduling --

22 THE COURT: We're going to leave it at March 15, 2018  
23 right now. But Kathryn will try to expedite it and try to  
24 move it up. Is that what you want?

25 MR. MALONE: Yes.

1 THE COURT: You want to expedite it?

2 MR. MALONE: Absolutely, Judge.

3 THE COURT: Okay. Well, sometimes we can and  
4 sometimes we can't. It just depends on the workload in the  
5 probation office.

6 MR. MALONE: Okay. Is it possible for us to waive  
7 the PSI as well, Judge?

8 THE COURT: I don't know anything about these  
9 defendants. So get me information and I'll consider it. I'm  
10 not going to just agree to that right now.

11 What is your position? Do you want to sentence them  
12 today, Mr. Quencer?

13 MR. QUENCER: Judge, I have no objection to  
14 sentencing them today because there's a joint recommendation  
15 from both parties.

16 The parties have been through what I would call some  
17 of the best lawyering I've seen, even though the sentence is  
18 low and the charge is not the most serious, and then we were  
19 able to find a proper solution that merited the appropriate  
20 sentence given the facts of this case, the certain challenges  
21 that the Government had in this case, and also considering the  
22 fact that these defendants were carrying marijuana, not  
23 cocaine, in the waters off of Jamaica and headed towards  
24 Haiti.

25 So I don't as a matter of practice agree to waive a

1 PSI. But if the Court were willing to sentence these  
2 defendants on a short time frame, I know that they're willing  
3 to waive it for them. The Court is not going to find much  
4 more information than is contained in the factual proffer and  
5 the PSI about these defendants.

6 So in this case we would not object to the waiving of  
7 the PSI, Judge.

8 THE COURT: So what was on the ship or the boat?

9 MR. QUENCER: Well, nothing is the short answer. The  
10 longer answer is we found stuff nearby. But the Government  
11 was not convinced it could prevail at a trial to prove that  
12 those items, marijuana, was in fact connected to this boat.

13 THE COURT: And so how much did you find nearby?

14 MR. QUENCER: I don't recall. It was in the low  
15 hundreds of pounds of marijuana.

16 But quite honestly, Judge, I'm not sure that we would  
17 have prevailed at a trial beyond a reasonable doubt and I'm  
18 not even prepared --

19 THE COURT: How far away was it?

20 MR. QUENCER: A mile.

21 THE COURT: A mile.

22 MR. QUENCER: A mile.

23 But there were also ion scans -- so the Court is  
24 aware -- there were ion scans that were actually  
25 contradictory. So the ion scans of the vessel -- if the Court

1 is aware of an ion scan -- it tests for illicit substances  
2 onboard a vessel. There was no ion scan that showed that  
3 there was marijuana onboard the vessel. In fact, the ion scan  
4 said there was something else. So trying to prove that that  
5 marijuana was on that boat without a witness would have  
6 required a miracle that I could not have pulled off, I don't  
7 think, in front of a jury, Judge.

8 THE COURT: Okay. Just give me one second.

9 Okay. Fine. Let's sentence them.

10 So, Mr. Cohen, I think I know the Government's  
11 recommendation.

12 MR. COHEN: Your Honor, we'd request, pursuant to the  
13 plea agreement, a joint recommendation of ten months and that  
14 is what we'll be asking for.

15 THE COURT: Okay. Mr. Weir, do you want to say  
16 anything before the Court imposes sentence?

17 DEFENDANT WEIR: No, Your Honor. No, ma'am.

18 THE COURT: Okay. Fine. If you and Mr. Cohen will  
19 stand, Court is going to impose sentence.

20 Having considered the statements of the parties, the  
21 Court finds the information in the record is sufficient for  
22 the Court to meaningfully exercise its sentencing authority  
23 without a presentence investigation report.

24 The Court has considered the statements of the  
25 parties, the advisory guidelines and the statutory factors. I

1 guess I have.

2 What do you say the guidelines are, Mr. Quencer?

3 MR. QUENCER: Judge, I believe the guidelines are  
4 zero to six.

5 THE COURT: Are you in agreement with that?

6 MR. COHEN: Yes, ma'am.

7 THE COURT: Okay. Fine.

8 It is the finding of the Court that the defendant is  
9 not able to pay a fine.

10 Do you agree with that, Mr. Quencer?

11 MR. QUENCER: I agree that he's unable, Judge.

12 THE COURT: Okay. It is the judgment of the Court  
13 that the defendant, Robert Dexter Weir, is hereby sentenced to  
14 a term of ten months as to the sole charge of the information.

15 Upon release from imprisonment the defendant shall be  
16 placed on supervised release for a term of one year. Within  
17 72 hours of release the defendant shall report in person to  
18 the probation office in the district where released.

19 While on supervised release the defendant shall not  
20 commit any crimes; he shall be prohibited from possessing a  
21 firearm or other dangerous device; shall not possess a  
22 controlled substance and shall comply with the standard  
23 conditions of supervised release including the following  
24 special condition:

25 At the completion of the defendant's term of

1 imprisonment the defendant shall be surrendered to the custody  
2 of the United States Immigration and Customs Enforcement for  
3 removal proceedings consistent with the Immigration and  
4 Nationality Act.

5 If removed, the defendant shall not reenter the  
6 United States without the prior written permission of the  
7 appropriate Government official, who I understand to be the  
8 undersecretary for Border and Transportation Security.

9 The term of supervised release shall be nonreporting  
10 so long as the defendant remains outside the United States.  
11 If the defendant reenters the United States within the term of  
12 supervised release, the defendant is to report to the nearest  
13 United States probation office within 72 hours of the  
14 defendant's arrival.

15 I guess I need to advise him that he has a right to  
16 appeal.

17 MR. QUENCER: Judge, he's waived it in the plea  
18 agreement.

19 THE COURT: Okay. But just in case you have some  
20 rights to appeal.

21 Well, first of all, now that sentence has been  
22 imposed, does the defendant or his counsel object to the  
23 Court's findings of fact or to the manner in which sentence  
24 was pronounced?

25 MR. COHEN: No, Your Honor.

1 THE COURT: Okay. Fine.

2 So, now, Mr. Weir, you may have some rights to take  
3 an appeal from the sentence. If you want to take an appeal,  
4 the notice of appeal has to be filed within 14 days of entry  
5 of the judgment of conviction.

6 And if you wish to take an appeal and you cannot  
7 afford a lawyer to represent you on appeal, the Court will  
8 waive the costs and appoint a lawyer upon the filing of a  
9 proper motion.

10 Okay. Thank you.

11 MR. COHEN: Your Honor, if I may.

12 THE COURT: Yes.

13 MR. COHEN: Just one request. Could the judgment  
14 reflect the date of arrest as September 14th, which was when  
15 they were actually detained by the Coast Guard?

16 THE COURT: Any objection, Mr. Quencer?

17 MR. QUENCER: No. That's the correct date.

18 THE COURT: Okay. Fine.

19 Okay. Mr. Tarre, do you wish to say anything on  
20 behalf of Mr. Ferguson before the Court imposes sentence?

21 MR. TARRE: No, ma'am.

22 THE COURT: Mr. Ferguson, do you wish to say anything  
23 before the Court imposes sentence?

24 DEFENDANT FERGUSON: No, ma'am.

25 THE COURT: Okay. Then, if the two of you will

1 stand, the Court will impose sentence now.

2 Having considered the statements of the parties, the  
3 Court finds the information in the record is sufficient for  
4 the to Court to meaningfully exercise its sentencing authority  
5 without a presentence report.

6 The Court has considered the statements of the  
7 parties, the advisory guidelines, which apparently are zero to  
8 six months, and the statutory factors. It is the finding of  
9 the Court that the defendant is not able to pay a fine.

10 It is the judgment of the Court that the defendant,  
11 Patrick W. Ferguson, is hereby sentenced to a term of ten  
12 months in the Bureau of Prisons as to the sole charge in the  
13 information.

14 Upon release from imprisonment the defendant shall be  
15 placed on supervised release for a term of one year. Within  
16 72 hours of release the defendant shall report in person to  
17 the probation office in the district where released.

18 While on supervised release the defendant shall not  
19 commit any crimes; he shall be prohibited from possessing a  
20 firearm or other dangerous device; shall not possess a  
21 controlled substance and shall comply with the standard  
22 conditions of supervised release, including the following  
23 special condition:

24 At the completion of the defendant's term of  
25 imprisonment the defendant shall be surrendered to the custody

1 of the United States Immigration and Customs Enforcement for  
2 removal proceedings consistent with the Immigration and  
3 Nationality Act.

4 If removed, the defendant shall not reenter the  
5 United States without the prior written permission of the  
6 undersecretary of Border and Transportation Security.

7 The term of supervised release shall be nonreporting  
8 so long as the defendant remains outside the United States.  
9 If the defendant reenters the United States within the term of  
10 supervised release, the defendant is to report to the nearest  
11 United States probation office within 72 hours of his arrival.

12 The defendant shall immediately pay to the United  
13 States an assessment of \$100.

14 By the way, I forgot to say that, I think, as to  
15 Mr. Weir.

16 Any objection to the Court's imposition of the  
17 assessment, Mr. Cohen?

18 MR. COHEN: No, Your Honor.

19 THE COURT: So, again, the defendant shall  
20 immediately pay to the United States an assessment of \$100 as  
21 to the charge.

22 So the total sentence is ten months in prison, one  
23 year supervised release, and a \$100 assessment.

24 And now that sentence has been imposed, does the  
25 defendant or his counsel object to the Court's findings of

1 fact or to the manner in which sentence was pronounced?

2 MR. TARRE: No.

3 THE COURT: So, Mr. Ferguson, you may have some  
4 rights to take an appeal from the sentence I just imposed. If  
5 you want to take an appeal, the notice of appeal has to be  
6 filed within 14 days of entry of the judgment of conviction.

7 Also, if you wish to take an appeal and you cannot  
8 afford a lawyer to represent you on appeal, the Court will  
9 waive the costs upon the filing of a proper motion.

10 Okay. Thank you.

11 Now, let's turn to Mr. Williams.

12 Anything you want to say, Mr. Mendez?

13 MR. MENDEZ: No, ma'am.

14 THE COURT: How about you, Mr. Williams, do you want  
15 to say anything before the Court imposes sentence?

16 DEFENDANT WILLIAMS: No, Miss.

17 THE COURT: Okay. Fine.

18 So, having considered the statements of the parties,  
19 the Court finds the information in the record is sufficient  
20 for the Court to meaningfully exercise its sentencing  
21 authority without a presentence report.

22 The Court has considered the statements of the  
23 parties, the advisory guidelines, which everyone is in  
24 agreement is zero to six months, and the statutory factors.

25 It is the finding of the Court that the defendant is

1 not able to pay a fine.

2 It is the judgment of the Court that the defendant,  
3 David Roderick Williams, is hereby sentenced to a term of ten  
4 months in the Bureau of Prisons on the sole count of the  
5 information.

6 Upon release from imprisonment the defendant shall be  
7 placed on supervised release for a term of one year. Within  
8 72 hours of release the defendant shall report in person to  
9 the probation office in the district where released.

10 While on supervised release the defendant shall not  
11 commit any crimes; he shall be prohibited from possessing a  
12 firearm or other dangerous device; shall not possess a  
13 controlled substance and shall comply with the standard  
14 conditions of supervised release, including the following  
15 special condition:

16 At the completion of the defendant's term of  
17 imprisonment the defendant shall be surrendered to the custody  
18 of the United States Immigration and Customs Enforcement for  
19 removal proceedings consistent with the Immigration and  
20 Nationality Act.

21 If removed, the defendant shall not reenter the  
22 United States without the prior written permission of the  
23 undersecretary for Border and Transportation Security.

24 The term of supervised release shall be nonreporting  
25 so long as the defendant is residing outside the United

1 States. If the defendant reenters the United States within  
2 the term of supervised release, the defendant is to report to  
3 the nearest United States probation office within 72 hours of  
4 the defendant's arrival.

5 The defendant also shall immediately pay to the  
6 United States an assessment of \$100.

7 So the total sentence is ten months' Bureau of  
8 Prisons, one year supervised release, and a \$100 assessment.

9 And now that sentence has been imposed, does the  
10 defendant or his counsel object to the Court's findings of  
11 fact or to the manner in which sentence was pronounced?

12 MR. MENDEZ: No, ma'am.

13 THE COURT: Okay. So, Mr. Williams, you may have  
14 some rights to take an appeal from this sentence. If you want  
15 to take an appeal, the notice of appeal has to be filed within  
16 14 days of entry of the judgment of conviction.

17 Also, if you wish to take an appeal and you cannot  
18 afford a lawyer to represent you on appeal or cannot afford  
19 the costs of the appeal, the Court will waive the costs and  
20 appoint a lawyer upon the filing of a proper motion.

21 Okay. And Mr. Malone as to Mr. Thompson, do you want  
22 to say anything on behalf of Mr. Thompson, Mr. Malone?

23 MR. MALONE: No, ma'am.

24 THE COURT: How about you, Mr. Thompson, do you wish  
25 to say anything?

1 DEFENDANT THOMPSON: No, Your Honor.

2 THE COURT: Okay. Fine. Then Court is going to  
3 proceed to sentencing.

4 Having considered the statements of the parties, the  
5 Court finds the information in the record is sufficient for  
6 the Court to meaningfully exercise its sentencing authority  
7 without a presentence report.

8 The Court has considered the statements of the  
9 parties and the advisory guidelines, which all agree are zero  
10 to six months, and the statutory factors.

11 It is the finding of the Court that the defendant is  
12 not able to pay a fine.

13 It is the judgment of the Court that George Garee  
14 Thompson is hereby sentenced to a term of ten months in the  
15 Bureau of Prisons.

16 Upon release from imprisonment the defendant shall be  
17 placed on supervised release for a term of one year. Within  
18 72 hours of release the defendant shall report in person to  
19 the probation office in the district where released.

20 While on supervised release the defendant shall not  
21 commit any crimes; he shall be prohibited from possessing a  
22 firearm or other dangerous device; shall not possess a  
23 controlled substance and shall comply with the standard  
24 conditions of supervised release, including the following  
25 special condition:

1           At the completion of the defendant's term of  
2 imprisonment the defendant shall be surrendered to the custody  
3 of the United States Immigration and Customs Enforcement for  
4 removal proceedings consistent with the Immigration and  
5 Nationality Act.

6           If removed, the defendant shall not reenter the  
7 United States without the prior written permission of the  
8 undersecretary for Border and Transportation Security.

9           The term of supervised release shall be nonreporting  
10 so long as the defendant resides outside the United States.  
11 If the defendant reenters the United States within the term of  
12 supervised release, the defendant is to report to the nearest  
13 United States probation office within 72 hours of the  
14 defendant's arrival.

15           The defendant shall also immediately pay to the  
16 United States an assessment of \$100.

17           So the total sentence is ten months in prison, one  
18 year supervised release, and a \$100 assessment.

19           And now that sentence has been imposed, does the  
20 defendant or his counsel object to the Court's findings of  
21 fact or to the manner in which sentence was pronounced?

22           MR. MALONE: No, Judge.

23           THE COURT: Okay. So, Mr. Thompson, you may have  
24 some rights to take an appeal from this sentence. If you want  
25 to take an appeal, the notice of appeal has to be filed within

1 14 days of entry of the judgment of conviction.

2 Also, if you wish to take an appeal and you cannot  
3 afford a lawyer to represent you on appeal, the Court will  
4 waive the costs and appoint a lawyer upon the filing of a  
5 proper motion.

6 Anything else for the Court on this matter at this  
7 time?

8 MR. QUENCER: Not from the United States, Your Honor.

9 THE COURT: Okay. Fine. Thank you.

10 MR. MALONE: Thank you, Judge.

11 THE COURT: Thank you.

12 \* \* \* \* \*

13 C E R T I F I C A T E

14  
15 I certify that the foregoing is a correct transcript  
16 from the record of proceedings in the above-entitled matter.

17 **William G. Romanishin**

Digitally signed by William G. Romanishin  
DN: cn=William G. Romanishin, o=US District Court, ou=US Clerk's Office,  
email=Bill\_Romanishin@flsd.uscourts.gov, c=US  
Date: 2018.05.18 09:46:29 -0400

18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20877-CR-UNGARO/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT DEXTER WEIR,

Defendant.

**UNOPPOSED MOTION TO CORRECT  
SUPPLEMENTAL REPORT FOR BUREAU OF PRISONS**

The Defendant, Robert Weir, through undersigned counsel, moves this Court to direct the Probation Office to correct its Supplemental Report for Bureau of Prisons (“Supplemental Report”), and states that:

On January 3, 2018, this Court sentenced Mr. Weir to serve a term of ten (10) months imprisonment. (DE 68) The Court subsequently entered an Order – consistent with the agreement of the parties – providing that the Defendant “receive credit from ‘the date of his apprehension at sea’”. (DE 76)

After sentencing, the Probation Office prepared its Supplemental Report to assist the Bureau of Prisons (BOP) in administering the sentence imposed. (DE 72) The Supplemental Report reflects that Mr. Weir was “[d]etained by [the] U.S. Coast Guard” on September 24, 2017. *Id.* at p. 2. The BOP has apparently relied on that information in calculating the Defendant’s release date to be July 24, 2018.<sup>1</sup> But

---

<sup>1</sup> See Exhibit A.

Mr. Weir and his codefendants were actually detained on September 14, 2017.<sup>2,3</sup> The Supplemental Report should therefore be amended to clarify the correct date of the Defendant's "apprehension at sea".

Assistant United States Attorney Kevin Quencer has advised the undersigned that he does not oppose the requested relief.

WHEREFORE, the Defendant requests that the Supplemental Report be corrected to reflect that he was detained by the Coast Guard on September 14, 2017.

Respectfully submitted,

MICHAEL CARUSO  
FEDERAL PUBLIC DEFENDER

BY: s/ Eric M. Cohen  
Eric M. Cohen  
Assistant Federal Public Defender  
Florida Bar No. 328065  
150 West Flagler Street, Suite 1700  
Miami, Florida 33130-1556  
Tel: 305-530-7000/Fax: 305-536-4559  
E-Mail Address: [Eric.Cohen@fd.org](mailto:Eric.Cohen@fd.org)

---

<sup>2</sup> The Probation Office likely relied on the Complaint in this matter which reflects that the boat occupied by the Defendants was stopped on September 24, 2017 (DE 1) Discovery provided by the government, however, confirms a seizure date of September 14, 2017. See Exhibit B.

<sup>3</sup> The Judgment here reflects the date of arrest as September 14, 2017. That provision was later amended by the Order referenced above.

**CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2018, undersigned electronically filed the foregoing document with the Clerk of the Court using CM/ECF and has served same via U.S. Mail to those counsel(s) who are not authorized to receive electronically Notice of Electronic Filing.

s/ Eric M. Cohen  
Eric M. Cohen

Search bop.gov

- Home
- About Us
- Inmates
- Locations
- Jobs
- Business
- Resources
- Contact Us

# Find an inmate.

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present.

Find By Number

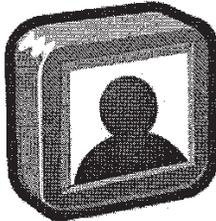
Find By Name

First	Middle	Last	Race	Age	Sex
robert		weir	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

1 Result for search **robert weir**, Num: **15046-104**

Clear Form

Search



## ROBERT DEXTER WEIR

Register Number: 15046-104

Age: 36  
Race: Black  
Sex: Male

Located at: McRae CI

Release Date: 07/24/2018

### Related Links

- Facility Information
- Call or email
- Send mail/package
- Send money
- Visit
- Voice a concern

About the inmate locator & record availability

#### About Us

- About Our Agency
- About Our Facilities
- Historical Information
- Statistics

#### Inmates

- Find an Inmate
- Communications
- Custody & Care
- Visiting
- Voice a Concern

#### Locations

- List of our Facilities
- Map of our Locations
- Search for a Facility

#### Jobs

- Life at the BOP
- Explore Opportunities
- Current Openings
- Our Hiring Process

#### Business

- Acquisitions
- Solicitations & Awards
- Reentry Contracting

#### Resources

- Policy & Forms
- News Articles
- Publications
- Research & Reports

#### Resources For ...

- Vicims & Witnesses
- Employees
- Former Inmates
- Media Reps

**The following is a statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017**

On a routine patrol on 14SEP2017 USCGC CONFIDENCE (CON) came across a profile Go-Fast vessel (GFV) traveling at a high rate of speed in a known drug smuggling area. CON set the Go-Fast Bill and deployed the Pursuit team to stop the vessel and verify nationality. I was the Pursuit Mission Commander (PMC) and Boarding Officer (BO) on the Cutter Small Boat (CON1). The boat crew consisted of myself, Officer Ingersoll as the Pursuit Coxswain, Officer Mead as the Pursuit Gunner and Engineer, and Officer Baker as the Assistant Boarding Officer (ABO). The weather was as follows: Scattered clouds, 2-3 foot seas, and visibility was up to 10 Nautical Miles (NM).

After Launching CON1 there was a causality of the throttle cables which caused CON1 to be Dead in the Water (DIW). CON then launched the other Cutter Small Boat (CON2) to switch boat crews so the pursuit team could continue after the GFV. Once CON2 was on scene the boat crews swapped out and the above boat crew was enroute to intercept the GFV. CON maintained visual of the GFV and vectored in CON2 by relaying bearing and ranges. While heading towards the GFV I saw land off of our port side which was Navassa Island a US territory. Soon I had a visual and we continued after the GFV in a stern chase. After initial detection by CON2 the boat crew and I maintained a visual of the GFV until it was later stopped. It appeared that the GFV was still traveling at a high rate of speed and there were no other vessels visible to me in the area. Not long after initial detection CON2 started to close the distance on the GFV and when approximately 2,000 yards behind the GFV I heard Officer Baker say that he saw bales of possible contraband in the water close off of CON2's starboard side. A few moments later I saw more bales in the water a little further up from the first one. CON2 slowed speed a little bit and I handed Officer Mead Paper plates and dye markers to mark the

**The following is a statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017**

position of the bales. I also heard Officer Baker say that he marked the position on the navigation system and passed all information to CON. Once the position was marked CON2 picked up speed and continued pursuing the GFV. Once CON2 was right off of the stern of the GFV I energized the siren while Officer Ingersoll energized the blue lights and I started making call out on the loud hailer telling the GFV to stop their vessel this is the United States Coast Guard.

The GFV was green in color with two outboard engines traveling at a speed of approximately 20 knots. I also saw Jossette WH.478 on the bow of the vessel. I saw that there were 5 people on board and the driver of the GFV was wearing a grey sweatshirt who was later determined to be Mr. Robert Weir. I also saw that the people on board kept looking back at CON2 and then look away as if acting like they didn't see us. After several call outs and no response CON2 requested permission to use warning shots, disabling fire, and a boarding of the vessel. Once requested I grabbed the M16 rifle to prepare it and to also use as cover fire. Once the long guns were pulled out the people on board looked back and once they saw they stopped the vessel. The other Officers on board CON2 and I all told the people onboard the GFV to show us there hands and to walk to the front of the boat. After saying this a couple times the people on board complied and showed their hands and moved to the front of the GFV. I then started asking Right of Approach (ROA) questions to establish nationality. All people onboard the GFV claimed Jamaican nationality and when asked who the master of the vessel was, no one responded initially. After being asked again Mr. Robert Weir said that he was the Master of the Vessel and shortly after Mr. Patrick Ferguson claimed to be the owner of the vessel. They also said that they had identification onboard and the vessel's registration. Officer Ingersoll pulled up to the GFV so that Officer Baker and I could embark and confirm the claim of nationality.

**The following is a statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017**

Once onboard Officer Baker and I ensured the vessel was safe to be on and also frisk searched all 5 people onboard to ensure they had no weapons on them for the safety of the boarding team and them. Once the frisk search was complete I looked at all identification cards and the vessel registration and passed all documentation to CON2 for CON2 to pass the information to CON. The Owner of the vessel claimed that they had been out fishing for Marlin and I saw little fishing gear that looked like it had not been used for awhile. I also noticed that they had nowhere to store any catch and there was no ice onboard. The owner claimed that they had been lost and did not stop because they had thought we were pirates. Mr. Patrick Ferguson said that they were just trying to get to the nearest point of land to ask for directions even though upon initial detection of the GFV the island of Navassa was in sight and Haiti was not. They had gone by that island and off in the direction of Haiti and once stopped were approximately 13 NM away from shore. On the vessel I also saw four 55 gallon fuel drums. Two of them were empty, one was half full which is what they were using as there fuel source, and the fourth was full. I also saw they had seven 15 gallon fuel canisters all of which were full. The owner claimed that they only meant to fish off of Jamaica. They had left St. Ann and wished to return to St. Ann the same day after fishing. I asked why they had so much fuel onboard for that type of trip and the owner explained that sometimes they trade fuel to other boats for bait even though I saw no transfer pumps onboard. The rest of the boat's outfit consisted of water and food aft near the engines and a few buckets of personal belongings up forward with a large empty enclosed compartment at the bow of the vessel. While waiting for permission to commence a boarding of the GFV I heard over the radio that CON had recovered several Bales of the contraband that was marked by CON2 and that those bales had tested positive for Marijuana. A little while later CON

**The following is a statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017**

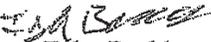
passed to me to commence a boarding of the GFV Jossette. Officer Baker and I started the At Sea Space Accountability (ASSA) to account for all spaces onboard the GFV. After about 50% completion I passed to CON that I wished to wait to finish the other 50% of the ASSA for Safety reasons with the whole crew still being onboard the GFV and all around the bow of the vessel. While waiting for a response from CON the owner started asking me what I was doing and why. I explained to him that I was accounting for the spaces onboard his vessel. CON then passed to me to detain all person onboard the GFV and transfer them to CON2 to be taken back to CON for suspicion of smuggling narcotics. I then informed the crew of the GFV what was happening and that they were being detained and transferred off of their vessel. Initially, they started to argue with why but immediately stopped and complied. I observed Officer Baker then go onboard CON2 with the Detainees to be transferred back to CON and I stayed onboard the GFV to complete the ASSA. Once Officer Baker had returned we completed the final measurement of the vessel and then started ION Scan swipes of the vessel. Once the ION swipes were completed Officer Baker and I started going through items on the vessel to gather evidence. I came across a bucket that was full of baby supplies. The Supplies consisted of diapers, baby wipes, lotions, and shoes for a child. I passed all information to CON including that there was a chicken onboard the vessel. CON later gave me permission to humanely euthanize the chicken which I did. I then passed to CON that the boarding was complete and was told to standby for permission to destroy the vessel due to a hazard of navigation.

After permission was granted to destroy the GFV Jossette due to a hazard of navigation Officer Baker and I went back onboard to empty the fuel drums. I then got back onboard CON2 with Officer Baker and with a MK-124 flare I ignited the fuel to cause the GFV to catch on fire.

**The following is a statement of Officer Tyler Barkley regarding the Boarding of Go Fast Vessel Jossette on 14SEP2017**

After waiting a little while the wind was preventing the port side of the vessel to burn down to the water line so it was requested to use rounds of ammunition to put holes near the water line to help sink the vessel. After that I observed Officer Ingersoll use the wake of CON2 to put water over the side of the GFV which eventually caused it to sink. The position was passed to CON and CON2 was granted permission to disembark.

This statement is true to the best of my knowledge

  
Officer Tyler Barkley, U. S. C. G.

15SEP2017