UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 19-22901-CIV-UNGARO
(17-20877-CR-UNGARO)

PATRICK W. FERGUSON,

Movant,

vs.

UNITED STATES OF AMERICA,

Respondent.
_____ /

GOVERNMENT'S ANSWER AND MEMORANDUM OF LAW IN OPPOSITION TO THE MOVANT'S MOTION TO VACATE SENTENCE UNDER 28 U.S.C. § 2255

The United States of America, by and through the undersigned Assistant United States Attorney, hereby responds to the motion to vacate sentence made pursuant to 28 U.S.C. § 2255 filed by Patrick W. Ferguson ("Movant") (CVDE 1).[1] Movant pled guilty to a single-count information charging him with violating 18 U.S.C. § 2237(a)(2)(B) by providing materially false information to a Federal law enforcement officer during a boarding of a vessel subject to the jurisdiction of the United States regarding the vessel's destination (CRDE 43, 93). Movant argues that the Court should vacate his conviction because Section 2237(a)(2)(B) is an unconstitutional exercise of extraterritorial jurisdiction under the High Seas Clause of the Constitution. He also argues that his conviction violated the Due Process Clause of the Fifth Amendment because he did not have adequate notice that his conduct would place him in criminal jeopardy under United States

[1] Documents filed in this case will be referred to as CVDE followed by the appropriate docket entry number. Documents filed in Movant's criminal proceeding will be referred to as CRDE followed by the appropriate docket entry number.

law. For the reasons set forth below, these arguments are both untimely and without merit. Accordingly, the motion should be DISMISSED and/or DENIED.

I. STATEMENT OF THE CASE

On September 14, 2017, United States Coast Guard Cutter (USCGC) *Confidence* spotted the wake of a vessel, later identified as the *Jossette* WH 478, speeding towards Haiti from the direction of Jamaica (CRDE 1 and 61). USCGC *Confidence* dispatched an over the horizon (OTH) small boat to intercept, identify, and investigate the *Jossette* (CRDE 1). The OTH approached the *Jossette* and attempted to get it to stop, but the *Jossette* was not compliant and began to flee at a high rate of speed (*id.*). While in pursuit of the *Jossette*, Coast Guard personnel observed the crew of the vessel jettison approximately 20-25 bales of suspected contraband that had been on deck (*id.*). Ultimately, the *Jossette* stopped in international waters approximately 13 nautical miles off the coast of the Navassa Island, and the OTH was able to pull alongside the vessel (*id.*).

When the OTH pulled alongside the *Jossette*, United States Coast Guard (USCG) personnel observed five crewmembers, including Movant (*id.*). As part of the boarding process, USCG personnel asked a series of questions of the members of the crew (CRDE 61). One individual claimed that the vessel was Jamaican and that the vessel was registered in Jamaica (*id*). Jamaica was contacted (*id*). Jamaica confirmed the registration of the vessel but authorized the United States to board and search the vessel (*id*). Jamaica later waived jurisdiction over the vessel. Therefore, the vessel was subject to the jurisdiction of the United States (*id*).

When asked about the destination of the vessel, each of the members of the crew, including Movant, told the USCG boarding officers that the vessel's destination was the waters near the coast of Jamaica, where they intended to fish (*id*). This was not true (*id*). As the crewmembers,

including Movant, then and there well knew, the vessel's true destination was Haiti (*id*). The crewmembers were transferred to the OTH for their safety and were then transferred to the USCGC *Confidence* (CRDE 1). On October 16, 2017, Movant and his crewmates were brought from outside the United States to the Federal Detention Center in Miami, Florida (*id*).[2]

Movant and his co-defendants were originally charged by way of a criminal complaint with conspiring to possess with the intent to distribute 100 kilograms or more of marijuana, in violation of 46 U.S.C. §§ 70503(a)(1) and 70506 (*id*). Movant later waived indictment (CRDE 46) and was charged, along with his four co-defendants, by way of an information with knowingly providing a materially false statement to a Federal law enforcement officer during a boarding while on a vessel subject to the jurisdiction of the United States, in violation of 18 U.S.C. § 2237(a)(2)(B) (CRDE 43). On January 3, 2018, pursuant to a written plea agreement (CRDE 60) and factual proffer (CRDE 61), Movant pled guilty to the information (CRDE 93). That same day, in accordance with the joint recommendation of the parties (CRDE 60 ¶ 7), the Court sentenced Movant to a term of 10 months of imprisonment, to be followed by a term of one year of supervised release (CRDE 93:28). The judgment was docketed by the clerk of court on January 10, 2018 (CRDE 69).[3] Movant did not timely file a notice of appeal. Instead, he filed a *pro se* notice of appeal on March 27, 2018 (DE 80);[4] over two months after his judgment became final. This prompted his court-

[2] In the Section 2255 Motion, Movant makes various allegations, without citation, regarding the conditions of his confinement between September 14, 2017 and October 16, 2017 that are not supported by any record evidence.

[3] The Court issued a *sua sponte* order "to correct a scrivener's error in the final judgment" on March 5, 2018.

[4] The motion was docketed by the clerk of court on March 30, 2018. While the notice itself is undated, a stamp on the document indicates that it was received by prison officials on March 27, 2019.

appointed attorney to file a motion to withdraw (CRDE 81). The Court referred that motion to a Magistrate Judge (CRDE 82), who conducted a hearing on the motion on April 10, 2018 (CRDE 86). At that hearing, Movant advised that he wanted to withdraw his *pro se* notice of appeal (DE 87). On April 24, 2018, pursuant to Movant's motion for voluntary dismissal, the Eleventh Circuit Court of Appeals dismissed the appeal (CRDE 89).

On July 12, 2019, Movant filed the present motion (CVDE 1).

II. ARGUMENT

A. The Motion to Vacate is Untimely Under the AEDPA.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") imposes a one-year statute of limitations on federal prisoners filing Section 2255 motions. *See* 28 U.S.C. § 2255. The statute provides, in relevant part, that the one-year limitations period runs from "the date on which the judgment of conviction becomes final." 28 U.S.C. § 2255(f)(1).[5] In *Griffith v. Kentucky*, 479 U.S. 314, 321 (1987), the Supreme Court stated: "By 'final', we mean a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied." *See also Clay v. United States*, 537 U.S. 522 (2003); *Kaufmann v. United States*, 282 F.3d 1336 (11th Cir. 2002). "In most cases, a judgment of conviction becomes final when the time for filing a direct appeal expires. . . . For federal prisoners, the time for filing a direct appeal expires [fourteen] days after the written judgment of conviction is entered on the criminal docket." *Ramirez v. United States*, 146 Fed.Appx. 325, 326 (11th Cir. 2005). Movant's judgment entered on January 10, 2018 (CRDE 69). As Movant did not file a notice of appeal within 14 days, as required by Federal

[5] The other events potentially triggering the start of the one-year statute of limitations set forth at 28 U.S.C. § 2255(f)(2)-(4) do not apply in this case.

Rule of Appellate Procedure 4(b)(1), that judgment became final on January 24, 2018. Accordingly, the deadline for filing a Section 2255 motion was January 24, 2019. However, Movant filed the present motion nearly six months later, on July 12, 2019 (CVDE 1). Accordingly, the Section 2255 motion is untimely.

Movant attempts to circumvent this inevitable conclusion by arguing that his judgment did not become final until July 23, 2018 (CVDE 1:8). The basis of this argument is the fact that Movant filed a notice of appeal that the Eleventh Circuit Court of Appeals dismissed on April 28, 2018. Movant asserts that his judgment did not become final until his deadline for filing a petition for a writ of certiorari with the Supreme Court expired 90 days later. This argument is fundamentally flawed because Movant filed his notice of appeal over two months after the 14-day deadline for filing a timely notice of appeal expired. "A conviction becomes final when the time for direct appeal expires and no appeal has been filed, not when an untimely appeal is dismissed. If the one-year AEDPA statute of limitations could be extended by filing a late notice of appeal and getting that late appeal dismissed, there would not be much left to the statute of limitations." *Gillis v. United States*, 729 F.3d 641, 644 (6th Cir. 2013) (citing *Sanchez–Castellano v. United States,* 358 F.3d 424, 427 (6th Cir. 2004)); *see also United States v. Plascencia,* 537 F.3d 385, 387–90 (5th Cir. 2008) (judgment became final when the deadline for filing a timely notice of appeal expired rather than 90 days after the Court of Appeals dismissed an untimely-filed notice of appeal); *United States v. Terrones-Lopez*, 447 Fed.Appx. 882, 885 (10th Cir. 2011) ("Defendant's untimely notices of appeal did not delay the onset of the limitations period" under Section 2255(f)).

The fact that on March 5, 2018, the Court entered a *sua sponte* order "to correct a scrivener's error in the final judgment" in order to clarify that Movant should be given credit from

"the date of his apprehension at sea" rather than "the date of his arrest on September 14, 2017" (CRDE 76) did not restart the 14-day clock for filing a timely notice of appeal. In *United States v. Portillo,* 363 F.3d 1161, 1166 (11th Cir. 2004), the Eleventh Circuit held that where a district court corrected a clerical error in the restitution provision of a criminal judgment, the defendant's right to appeal did not begin anew. *See also United States v. Greer*, 79 Fed. Appx. 974, 974-75 (9th Cir. 2003) (amended judgment that merely corrected a clerical mistake in the original written judgment to clarify the terms of the sentence as orally pronounced at the sentencing hearing did not restart Section 2255's limitation period); *Pava v. United States,* 2011 WL 1337510, *2 n.2 (M.D. Fla. April 7, 2011)(correction of restitution amount from $325,235.25 to $352,235.25 due to a scrivener's error did not change date on which judgment became final); *Bowie–Myles v. United States,* 2006 WL 2092286, *5 (M.D.Fla. July 26, 2006) ("the Court's *sua sponte* amendment to the judgment, which did nothing more than correct a clerical or scrivener's error, did not restart Section 2255's one-year limitation period"). Even if the March 5, 2018 order could reset the one-year clock for filing a Section 2255 motion, the present motion would still be untimely. If the March 5, 2018 order constitutes the judgment, it became final 14-days later, on March 19, 2018, when no timely notice of appeal was filed. Movant filed his Section 2255 motion nearly 16 months later. Accordingly, whether the judgment in this case became final on January 24, 2018 or March 19, 2018, the Section 2255 motion filed on July 12, 2019 is untimely and must be dismissed.

B. Movant's Claims are Subject to Procedural Default, and Movant Cannot Overcome that Default with Respect to his Due Process Claim.

Movant did not raise any of the claims in his Section 2255 Motion with this Court as part of the underlying criminal case or on direct appeal. Accordingly, had Movant timely filed his Section 2255 motion, those claims would be subject to procedural default. *See Massaro v. United*

States, 538 U.S. 500, 504 (2003); *Murray v. Carrier*, 477 U.S. 478, 490-92 (1986). This is true even with respect to Movant's claims that the statute of which he was convicted is unconstitutional. *See Mills v. United States*, 36 F.3d 1052, 1056 (11th Cir. 1994). However, if Movant could establish that Section 2237(a)(2)(B) is unconstitutional, then the actual innocence exception to the procedural default rule would apply. *See id*. ("The appellants' first ground for relief, that Congress unconstitutionally delegated its duty to define 'waters of the United States' to the [Army] Corps [of Engineers], should have been asserted on direct appeal. The district court correctly concluded nevertheless that, if this delegation of authority rendered the statute void, the appellants' procedural default could be excused under the fundamental miscarriage of justice exception because a defendant is actually innocent of a crime where the underlying statute is without force or effect.").

The same is not true of Movant's Due Process claim. That claim does not involve an argument that the statute is unconstitutional or that Movant is actually innocent of the crime of conviction. Instead, Movant argues that he was not on sufficient notice that his actions would potentially place him in criminal jeopardy in the United States. Accordingly, Movant can only overcome his procedurally defaulted Due Process claim by demonstrating both cause for his failure to raise the claim earlier and actual prejudice from the alleged error. *See United States v. Frady*, 456 U.S. 152, 167-68 (1982). The "cause and prejudice" standard requires a movant to show not only that "some objective factor external to the defense impeded" his efforts to raise the issue earlier, *Coleman v. Thompson*, 501 U.S. 722, 753 (1991) (*quoting Murray*, 477 U.S. at 488), but also that the error he alleges "worked to his *actual* and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." *Frady*, 456 U.S. at 170 (emphasis in

original). Thus, "to obtain collateral relief a [movant] must clear a significantly higher hurdle than would exist on direct appeal" under the plain error standard of review. *Id.* at 166.

Movant has no cause to excuse his default. There was nothing preventing Movant from timely raising this Due Process challenge in the underlying criminal case or on direct appeal. Accordingly, had Movant timely filed a Section 2255 motion, he would be procedurally barred from raising his Due Process claim for the first time as part of that collateral proceeding.

C. Section 2237(a)(2)(B) is Constitutional, and Movant's Conviction for Violating that Statute is Valid.

Assuming *arguendo* that Movant had timely filed a Section 2255 motion, that motion would fail on the merits, as his constitutional challenges to 18 U.S.C. § 2237(a)(2)(B) are without merit. Section 2237(a)(2)(B) provides that "[i]t shall be unlawful for any person on board a vessel of the United States, or a vessel subject to the jurisdiction of the United States, to . . . provide materially false information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew." Section 2237(e)(3) provides that "the term 'vessel subject to the jurisdiction of the United States' has the meaning given the term in section 70502 of title 46." Section 70502, the definition section of the Maritime Drug Law Enforcement Act ("MDLEA"), defines "vessel subject to the jurisdiction of the United States" to include "a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States." 18 U.S.C. § 70502(c)(1)(C). Section 2237(a)(2)(B) criminalizes conduct, such as Movant's, that obstructs the USCG's ability to enforce the MDLEA and incorporates its assertion of extra-territorial jurisdiction.

Congress' authority to enact Section 2237(a)(2)(B) is derived from, among other sources, the Define and Punish Clause of the Constitution, which "empowers Congress '[t]o define and

punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.' U.S. Const. Art. I, § 8, cl. 10. The Supreme Court has interpreted that Clause to contain three distinct grants of power: to define and punish piracies, to define and punish felonies committed on the high seas, and to define and punish offenses against the law of nations." *United States v. Campbell*, 743 F.3d 802, 805 (11th Cir. 2014). In this case, it is the second grant of power, the Felonies Clause, that is at issue. Movant raises two claims as to why Section 2237(a)(2)(B) is not a valid exercise of Congressional authority under the Felonies Clause: (1) the United States' exercise of extraterritorial jurisdiction under the Felonies Clause must be supported by a principle of extraterritorial jurisdiction recognized by customary international law and (2) Congress' authority to define and punish felonies on the high seas is limited to instances where the conduct being punished has a nexus to the United States (CVDE 1:10). Movant's first claim fails because this exercise of extraterritorial jurisdiction is supported by principles of international law. His second claim is foreclosed by binding Eleventh Circuit precedent.

1. Section 2237(a)(2)(B) comports with principles of international law.

While the Felonies Clause empowers Congress to define and punish felonies committed on the high seas outside of the jurisdiction of the United States, "international law generally prohibits any country from asserting jurisdiction over foreign vessels on the high seas . . . subject to recognized exceptions" *United States v. Marino-Garcia*, 679 F.2d 1373, 1380 (11th Cir. 1982). The recognized exceptions focused on by Movant are: (1) the protective principle of jurisdiction, (2) the objective principle of jurisdiction, and (3) universal jurisdiction (CVDE 1:11-15). Movant fails to address, however, that here the United States exercised jurisdiction over the vessel and its

occupants with the consent of the flag nation, an action most directly justified under the territorial principle of jurisdiction

"It is clear, under international law's 'territorial principle,' that a 'state has jurisdiction to prescribe and enforce a rule of law in the territory of another state to the extent provided by international agreement with the other state.'" *Id*., at 4 (quoting *Restatement (Second) of Foreign Relations Law of the United States* § 25 (1965)). *See also*, *United States v. Ibarguen-Mosquera*, 634 F.3d 1370, 1379 n.6 (11th Cir. 2011); *United States v. Suerte*, 291 F.3d 366, 370-71 (5th Cir. 2002); *United States v. Cardales*, 168 F.3d 548, 553 (1st Cir. 1999). Such an international agreement does not require a treaty but rather can be reached "through informal, as well as formal, means." *Robinson*, 843 F.2d at 4 (citing *Restatement (Second)* § 115 & comment a). The definition of a "vessel subject to the jurisdiction of the United States" as "a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States" in Section 70502(c)(1)(C) of the MDLEA "codifies the . . . generally accepted principle of international law: a flag nation may consent to another's jurisdiction." *Suerte*, 291 F.3d at 375-76 (citing *Restatement (Third) of Foreign Relations Law of the United States* § 522 reporters note 8 and Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 3–12 n.41 (3d ed.2001))

Here, Movant stipulated that (1) the *Jossette* was a Jamaican-registered vessel, (2) that Jamaica authorized the United States to board and search the vessel, (3) that Jamaica waived jurisdiction over the vessel, and (4) that the vessel was subject to the jurisdiction of the United States (CRDE 61). This MDLEA enforcement process was conducted under the bilateral Agreement Between the Government of the United States of America and the Government of Jamaica Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking ("the Jamaica

Bilateral Agreement"), State Dept. No. 98-57, 1998 WL 190434. Jamaica has actively joined with the United States to "cooperate in combatting illicit maritime drug traffic to the fullest extent possible." Jamaica Bilateral Agreement, art. 1, 1998. *See United States v. Gonzalez*, 776 F.2d 931, 939 (11th Cir. 1985) ("Apparently, foreign nations such as Honduras recognize the reasonableness of current United States enforcement efforts, for consent has been given."). Accordingly, this was a valid exercise of United States jurisdiction under the territorial principle. *See Cardales*, 168 F.3d at 553 ("In this case, the Venezuelan government authorized the United States to apply United States law to the persons on board the CORSICA. Therefore, jurisdiction in this case is consistent with the territorial principle of international law."); *see also Robinson*, 843 F.2d at 4; *Suerte*, 291 F.3d at 375-76.

Further, Section 2237(a)(2)(B) is also supported by both the universal principle and the protective principle of jurisdiction. According to the universal principle, Congress may criminalize conduct, such as drug trafficking on the high seas, that is condemned universally by law-abiding nations. *See United States v. Saac*, 632 F.3d 1203, 1210 (11th Cir. 2011); *see also United States v. Estupinan*, 453 F.3d 1336, 1338-39) (11th Cir. 2006) (refusing to "embellish" MDLEA with nexus requirement on the basis of the universal principle).[6] According to the protective principle, a nation may assert jurisdiction over a person whose conduct outside that nation's territory threatens the nation's security. *See Saac*, 632 F.3d at 1211; *see also Campbell*,

[6] Movant confuses the related, but distinct, doctrine of universal jurisdiction with the universal principle of jurisdiction recognized in *Saac* and *Estupinan*. Universal jurisdiction is the power "to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism, *even where none of the bases of jurisdiction indicated in § 402 is present*." *Restatement (Third) of Foreign Relations* § 404 (1987) (emphasis added). It allows a nation to assert jurisdiction anywhere in the world, even within a foreign nation's territory without that nation's consent. That doctrine is not at issue in this case.

743 F.3d at 810 ("We also have recognized that the conduct proscribed by the [MDLEA] need not have a nexus to the United States because universal and protective principles support its extraterritorial reach."); *United States v. Rendon*, 354 F.3d 1320, 1324-25 (11th Cir. 2003) (upholding extraterritoriality of MDLEA and rejecting nexus requirement on basis of protective principle); *United States v. Tinoco*, 304 F.3d 1088, 1108 (11th Cir. 2002) (same).

In the MDLEA, Congress outlawed certain narcotics offenses on the high seas. In enacting the MDLEA, Congress expressly found "that . . . trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States." 46 U.S.C. § 70501. Accordingly, the Eleventh Circuit has held that the MDLEA, by which Congress outlawed certain narcotics offenses on the high seas, was a constitutional exercise of authority under both the universal principle and the protective principle. *See United States v. Estupinan*, 453 F.3d 1336, 1339 (11th Cir. 2006); *Campbell*, 743 F.3d at 810.

The Eleventh Circuit has also found that the universal principle and the protective principle not only justify the criminalization of high seas narcotics trafficking itself but also the criminalization of the means of effecting and concealing that trafficking. The Drug Trafficking Vessel Interdiction Act of 2008 ("DTVIA") provides that

> [w]hoever knowingly operates, or attempts or conspires to operate, by any means, or embarks in any submersible vessel or semi-submersible vessel that is without nationality and that is navigating or has navigated into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country, with the intent to evade detection, shall be fined under this title, imprisoned not more than 15 years, or both.

18 U.S.C. § 2285(a). In adopting the DTVIA, Congress found and declared

> that operating or embarking in a submersible vessel or semi-submersible vessel without nationality and on an international voyage is a serious international problem, facilitates transnational crime, including drug trafficking, and terrorism,

> and presents a specific threat to the safety of maritime navigation and the security of the United States.

Drug Trafficking Vessel Interdiction Act of 2008, Pub.L. No. 110–407, § 101, 122 Stat. 4296, 4296 (2008). "Congress's findings show that the DTVIA targets criminal conduct that facilitates drug trafficking, which is 'condemned universally by law-abiding nations.'" *United States v. Saac*, 632 F.3d 1203, 1211 (11th Cir. 2011) (quoting *Estupinan,* 453 F.3d at 1339). As a result, the Eleventh Circuit held that the DTVIA was also justified by both the universal principle and the protective principle. *Saac*, 632 F.3d at 1210-11. Similarly, the fact that Section 2237 cross-references the MDLEA demonstrates that it was targeting, at least in part, conduct that facilitates universally condemned drug trafficking crimes. Indeed, Movant acknowledges that the Coast Guard stopped and boarded the *Jossette* as part of an investigation into suspected narcotics trafficking activities (CVDE 1:5-6). Accordingly, Section 2237 is also justified by both the universal principle and the protective principle.

2. The High Seas Clause does not incorporate a nexus requirement.

Movant argues that the High Seas Clause only permits Congress to outlaw conduct on the high seas if that conduct has some nexus to the United States. That argument is foreclosed by binding Eleventh Circuit precedent. *See Saac*, 632 F.3d at 1211 ("We declined to embellish one statute passed under the High Seas Clause with a nexus requirement. We now decline defendants' invitation to rewrite the Constitution to create one."). Furthermore, even if the High Seas Clause had a nexus requirement, that requirement would be satisfied in this case under the territorial principle of jurisdiction. *See Suerte*, 291, F.3d at 371 ("'To the extent . . . international law requires a nexus to the United States, that nexus requirement . . . is satisfied by the foreign flag nation's authorization to apply U.S. law to the defendants [the territorial principle] and by the

congressional finding that drug trafficking aboard vessels threatens the security of the United States [the protective principle]" (quoting *Cardales*, 168 F.3d at 553 n.2)).

D. Movant's Conviction Did Not Violate the Due Process Clause.

Finally, Movant argues that his conviction violates the Due Process Clause of the Constitution because he "had no notice that he would be putting himself in jeopardy in the United States" when he provided materially false information to the United States Coast Guard regarding the destination of the *Jossette* while in international waters. "[D]ue process requires only that an exercise of extraterritorial jurisdiction not be arbitrary or fundamentally unfair." *United States v. Baston*, 818 F.3d 651, 669 (11th Cir. 2016). Although this is "a question of domestic law," "[c]ompliance with international law satisfies due process because it puts a defendant on notice that he could be subjected to the jurisdiction of the United States." *Id.* (internal quotation omitted).

Moreover, "[w]hen [a] foreign flag nation consents to the application of United States law, jurisdiction attaches under the statutory requirements of the MDLEA *without violation of due process* or the principles of international law because the flag nation's consent eliminates any concern that the application of United States law may be arbitrary or fundamentally unfair." *Cardales*, 168 F.3d at 554 (emphasis added). *See also United States v. Perez Oviedo*, 281 F.3d 400, 403 (3rd Cir. 2002) ("Perez–Oviedo's state of facts presents an even stronger case for concluding that no due process violation occurred. The Panamanian government expressly consented to the application of the MDLEA …. Such consent from the flag nation eliminates a concern that the application of the MDLEA may be arbitrary or fundamentally unfair.").

Furthermore, the text of the statute itself provides notice that the United States intends to enforce that law on vessels within its jurisdiction, including "a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the

United States." 18 U.S.C. § 70502(c)(1)(C). *See Rendon*, 356 F.3d at 1326 (rejecting a defendant's due process challenge where the "statute provided clear notice" that the United States would exercise jurisdiction over his extra-territorial offense against the laws of the United States).

III. CONCLUSION

Movant filed his Section 2255 motion nearly 18 months after his judgment became final. Accordingly, the motion is untimely under 28 U.S.C. § 2255(f). Even if Movant had timely filed his motion, the claims in the motion, to the extent not procedurally defaulted, are substantively without merit.

WHEREFORE, the motion should be DISMISSED as untimely or, in the alternative, DENIED on the merits.

Respectfully submitted,

ARIANA FAJARDO ORSHAN
UNITED STATES ATTORNEY

By: */s/ Sean Paul Cronin*

Sean Paul Cronin
Assistant United States Attorney
Court No. A5500940
99 N.E. 4th Street, Suite 400
Miami, FL 33132
Tel# (305) 961-9194
Fax: (305) 530-6168
Email: sean.p.cronin@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Sean Paul Cronin
Sean Paul Cronin
Assistant United States Attorney