

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, \*

Plaintiff, \*

vs. \* CRIMINAL NO. 00-000

DEFENDANT \*

Defendant. \*

\* \* \* \* \*

**MOTION TO DISMISS FOR LACK OF JURISDICTION**

TO THE HONORABLE HECTOR LAFFITTE  
UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF PUERTO RICO

COMES NOW defendant, represented by the Federal Public Defender, and hereby PLEADS  
and ALLEGES:

1. On March 17, 2000, a one count Indictment was filed against Mr. Defendant, alleging possession with intent to distribute cocaine.. The defense moves to dismiss the Indictment since the United States lacked jurisdiction to enforce it laws in this case over a foreign vessel in international waters.

2. Title 46 United States Code, Section 1903(a) provides that:

“It is unlawful for any person on board a vessel of the United States, or on board a vessel subject to the jurisdiction of the United States, or who is a citizen of the United States or a resident alien of the United States on board of any vessel, to knowingly or intentionally manufacture or distribute, or to possess with intent to manufacture or distribute, a controlled substance.”

3. Title 46 United States Code, Section 1903(c)(1) provides that a “vessel subject to the jurisdiction of the United States” includes:

- a) a vessel without nationality;
- b) a vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas;
- c) a vessel registered in a foreign nation where the flag nation has consented or waived objection to the enforcement of United States law by the United States;
- d) a vessel located within the customs waters of the United States; and
- e) a vessel located in the territorial waters of another nation, where the nation consents to the enforcement of United States law by the United States.

4. In the Indictment the Government admits that the vessel on which Mr. Defendant was arrested and the narcotics were sized is a foreign vessel, registered in Saint Martin, N.A.

5. In order to claim the jurisdiction of this Court, the Government alleged in the Indictment that the flag nation either consented or waived objection to the enforcement of United States law.

6. Notwithstanding it's jurisdictional allegation, no evidence beyond this has been provided. Specifically, no documentary evidence as to the process of the request of the consent, the documentation produced during such request, nor documentation attesting the granting of the consent or waiver has been provided to the defense. Indeed the Government does not even specify if the flag nation "waived" or "consented".

7. The first paragraph of the Statement of Facts, which accompanied the Complaint filed before the Indictment, states that the vessel was observed approximately 100 miles due South of Ponce, Puerto Rico.

8. The territorial waters of the United States are limited to twelve miles from the U.S. coast, Proclamation No. 5928, 54 Fed. Reg. 777 (1989). As the First Circuit has stated, "[w]aters twelve miles beyond... the main island of Puerto Rico are 'international' in the sense that vessels of other nations have a right of free navigation through them." *U.S. v. Ramirez-Ferrer*, 82 F.3d 1131, 1136 n.4 (1st Cir. 1996).

9. Paragraph seven of the Statement of Facts states that the Coast Guard received consent to board the boat. However no identification is given as to who requested the consent, thru what channels, who is the issuing authority as to that consent or any other pertinent information.

10. However, a critical reading of the Statement of Facts shows it to be contradictory in itself, since it states that the U.S. Coast Guard boarded the vessel as a “right of visit” interception, following the instructions of a U.S. Customs aircraft which had observed the boat.

11. Since the moment of his arrest the defendants has claimed Colombian citizenship, and the intercepted vessel is registered to Saint Martin, N.A. Therefore, the jurisdictional requirement to enforce the laws of the United States upon them is only satisfied if they were on board of a vessel subject to the jurisdiction of the United States under 46 U.S.C.1903(c)(1). The Unites States has not proved that this jurisdictional requirement has been met.

12. The Coast Guard and the Customs plane had ample opportunity to read at the hull of the vessel markings. From the evidence discovered , and the affidavit which is very detailed concerning other areas, no attempt was ever made to learn to what nation the registration number that appear in the hull of the vessel was of. The government never attempted to obtain a statement of no objection, since they never made any attempt to learn what was the nationality of the vessel evidenced by the registration number that appeared in the hull of the vessel.

13. The courts have consistently held that the question of whether the vessel is subject to the jurisdiction of the United States is a jurisdictional requirement of the statute which violation has been charged in this case by defendants. Whether the vessel is a vessel without nationality is an essential element of the offense charged in this case. *United States v. Potes*, 880 F.2d 1475, 1477 (1st

Cir. 1989). In order to enforce the laws of the United States upon the defendants in this case, it was essential that the United States inquire about the nationality of the vessel, more so when a registration number to the vessel visibly appeared in the hull of the vessel and they acknowledge that it was not from Puerto Rico or the United States. Their failure to do so, renders the seizure of the drug and the arrest of the defendants illegal and without jurisdiction.

WHEREFORE, co- defendant Defendant prays this Honorable court to set the motion for pretrial evidentiary hearing, and based upon the results of the same Dismiss the Indictment for lack of jurisdiction..

RESPECTFULLY SUBMITTED.

In San Juan Puerto Rico, this April 20, 2000.

I CERTIFY that on September 13, 2001, I served a copy of the foregoing motion on counsel for the government, U.S. Attorney Guillermo Gil Bonar (att: Assistant U.S. Attorney David Rivera) by delivering it to his office at Federico Degetau Federal Building, Room 452, Criminal Division, 150 Carlos Chardón Avenue, San Juan, PR 00918.

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