

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12868
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LUIS ALFONSO NUNEZ,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20079-FAM-3

No. 22-13023
Non-Argument Calendar

UNITED STATES OF AMERICA,

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Plaintiff-Appellee,

versus

MARIO TOVAR,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20079-FAM-1

No. 22-13662
Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

GERALDO RODRIGUEZ,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cr-20079-FAM-2

Before ROSENBAUM, GRANT, and LUCK, Circuit Judges.

PER CURIAM:

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After a bench trial, defendants Luis Alfonso Nunez, Mario Tovar, and Geraldo Rodriguez were found guilty of possessing with intent to distribute, and conspiring to possess with intent to distribute, five or more kilograms of cocaine on a vessel subject to the jurisdiction of the United States. On appeal, they raise constitutional challenges to their convictions. Rodriguez also appeals his sentence. After careful consideration, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from the arrest of the defendants aboard a vessel carrying approximately 800 kilograms of cocaine off the coast of Colombia. One of the defendants claimed Colombian nationality for the vessel, which bore no indicia of nationality, but when the Coast Guard contacted the Colombian government, it could neither confirm nor deny the vessel's registration. Based on Colombia's response, the Coast Guard treated the vessel as without nationality and subject to the jurisdiction of the United States.

The defendants were indicted under the Maritime Drug Law Enforcement Act on one count of conspiracy to possess with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. section 70506(b), and one count of possession with intent to distribute five kilograms or more of cocaine while aboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. section 70503(a)(1). Before trial, the defendants moved to dismiss the indictment.

They argued that the Act was unconstitutional facially and as applied to their case, because: (1) Congress exceeded its authority under the Felonies Clause when enacting 46 U.S.C. section 70502(d)(1)(C), which defines a “vessel without nationality,” since Congress could exercise jurisdiction only over vessels considered “stateless” under international law; and (2) the offense fell outside of Congress’s jurisdiction because their vessel was stopped in Colombia’s exclusive economic zone, not on the “high [s]eas.” The district court denied the motion to dismiss because binding circuit precedent foreclosed both arguments. After a bench trial, the defendants were convicted on both counts.

Rodriguez’s presentence report prepared by the United States Probation Office calculated his criminal history category as VI after it applied a career-offender enhancement based on two prior convictions for conspiracy to possess with intent to distribute cocaine. At the sentencing hearing, the district court applied the enhancement over Rodriguez’s objection. The district court thus calculated Rodriguez’s guideline range as 292 to 365 months’ imprisonment. The district court considered Rodriguez’s age and “health issues” in conjunction with the fact that he committed the offense “for the money” despite being in his sixties and that he was a “repeat offender.” Determining that a downward variance was appropriate, the district court imposed a sentence of 240 months’ imprisonment. The district court explained that, “[e]ven if [Rodriguez] were not a career offender, that would be the sentence . . . because that’s the sentence I would give under any circumstance in this case.”

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STANDARD OF REVIEW

We review de novo the constitutionality of a criminal statute, but we review for plain error when a defendant raises the issue for the first time on appeal. *United States v. Hill*, 119 F.4th 862, 866 (11th Cir. 2024). We review de novo the interpretation and application of the guidelines. *United States v. Dupree*, 57 F.4th 1269, 1272 (11th Cir. 2023) (en banc). And “[w]e review the substantive reasonableness of a sentence under a deferential abuse-of-discretion standard.” *United States v. Fox*, 926 F.3d 1275, 1278 (11th Cir. 2019).

DISCUSSION

We begin by addressing Nunez, Tovar, and Rodriguez’s challenges to their convictions. Then, we consider Rodriguez’s sentencing issue.

Nunez, Tovar, and Rodriguez’s Challenge to Their Convictions

The Act makes it a crime to conspire to or to “knowingly or intentionally . . . possess with intent to . . . distribute . . . a controlled substance” on board “a vessel subject to the jurisdiction of the United States.” 46 U.S.C. §§ 70503(a)(1), (e)(1); *id.* § 70506(b). The Act defines a “vessel subject to the jurisdiction of the United States” to include “a vessel without nationality.” *Id.* § 70502(c)(1)(A). A “vessel without nationality,” in turn, includes “a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.” *Id.* § 70502(d)(1)(C). The Act’s prohibitions apply

even when the criminal conduct is “committed outside the territorial jurisdiction of the United States.” *Id.* § 70503(b).

Nunez, Tovar, and Rodriguez raise three constitutional challenges to their convictions. Each challenge is based, in whole or in part, on the Felonies Clause, which authorizes Congress to punish certain offenses committed on the high seas. *See* U.S. Const. art. I, § 8, cl. 10 (granting Congress the authority “[t]o define and punish [p]iracies and [f]elonies committed on the high [s]eas”). Each challenge is squarely foreclosed by our precedent.

First, Nunez, Tovar, and Rodriguez argue that the Felonies Clause did not authorize their prosecutions because the waters where they were arrested are part of Colombia’s exclusive economic zone.¹ Relying on customary international law, they assert that waters within another nation’s exclusive economic zone are not the high seas and thus Congress did not have the power to extend the Act to their vessel.

We have held, however, that other countries’ exclusive economic zones are “part of the ‘high seas’ for purposes of the Felonies Clause” and thus “enforcement of the [Act] in [exclusive economic zones] is proper.” *United States v. Alfonso*, 104 F.4th 815, 823, 827 (11th Cir. 2024). In reaching this conclusion, we rejected the same

¹ A nation’s exclusive economic zone sits just beyond its territorial waters but within 200 nautical miles of the coastal baseline. *United States v. Alfonso*, 104 F.4th 815, 821 (11th Cir. 2024).

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argument Nunez, Tovar, and Rodriguez make here: that “Congress’s authority under the Felonies Clause to define and punish felonies committed on the ‘high seas’ is limited by customary international law.” *See id.* at 825.

Nunez, Tovar, and Rodriguez’s second challenge focuses on the Act’s definition of a “vessel without nationality,” which includes a vessel in which the master made a claim of nationality but the claimed nation did not affirmatively and unequivocally verify its nationality. *See* 46 U.S.C. § 70502(d)(1)(C). They argue that the power granted to Congress under the Felonies Clause is subject to customary international law, which does not permit a nation to deem a vessel stateless (and subject to its jurisdiction) when a claim of nationality is made but the claimed nation neither confirms nor denies the vessel’s nationality.

But we’ve held that Congress did not exceed its authority under the Felonies Clause when it defined “vessel without nationality” in the Act to include vessels in which a claimed nation neither confirmed nor denied registration, as here. *See United States v. Canario-Vilomar*, 128 F.4th 1374, 1379–81 (11th Cir. 2025). “[I]nternational law,” we’ve said, does not “limit Congress’s authority to define ‘stateless vessel’ for purposes of the [Act].” *Id.*

Third, Nunez, Tovar, and Rodriguez argue, for the first time on appeal, that their prosecutions violated the Fifth Amendment’s Due Process Clause and exceeded Congress’s power under the Felonies Clause because their offenses had no connection or nexus to the United States. Since they raise this argument for the first time

on appeal, we review for plain error. *See Hill*, 119 F.4th at 866. But they’ve shown no error—plain or otherwise—because the argument is also foreclosed by binding precedent.

We have rejected a constitutional challenge to the Act when a defendant asserted that his vessel lacked a sufficient nexus to the United States. *See United States v. Campbell*, 743 F.3d 802, 810–12 (11th Cir. 2014). And “we have long upheld the authority of Congress to extend the criminal jurisdiction of this country to any stateless vessel in international waters engaged in the distribution of controlled substances.” *Id.* at 810 (citation modified). The prosecution of a noncitizen “captured on the high seas while drug trafficking” does not offend due process because the Act “provides clear notice that all nations prohibit and condemn drug trafficking aboard stateless vessels on the high seas.” *Id.* at 812; *see also Canario-Vilomar*, 128 F.4th at 1382–83 (holding that nexus challenge was foreclosed by precedent). Accordingly, we affirm Nunez, Tovar, and Rodriguez’s convictions.

Rodriguez’s Challenge to His Sentence

That leaves us with Rodriguez’s challenge to the career-offender enhancement he received at sentencing for two prior convictions for conspiracy to possess with intent to distribute cocaine. Rodriguez contends, and the government concedes, that the district court erred in imposing the career-offender enhancement after *Dupree*.

Rodriguez’s designation as a career offender was based on his prior two cocaine conspiracy convictions. That was error under

Dupree, which held that inchoate offenses, including conspiracy, were not “controlled substance offenses” under the career-offender enhancement. *See id.* at 1277–79. Still, we will not vacate a sentence when “the district court would have reached the same result even if it had decided the guideline[] issue the other way” and the resulting sentence is substantively reasonable even if the guideline issue had been decided in the defendant’s favor. *United States v. Keene*, 470 F.3d 1347, 1349–50 (11th Cir. 2006).

To determine whether a sentence is substantively unreasonable, we must evaluate whether it fails to achieve the purposes of sentencing as stated in 18 U.S.C. section 3553(a). *United States v. Martin*, 455 F.3d 1227, 1237 (11th Cir. 2006). These include the need to impose a sentence that reflects the seriousness of the offense, promotes respect for the law, provides just punishment, affords adequate deterrence, and protects the public from the defendant’s further crimes. 18 U.S.C. § 3553(a). “The district court must also consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable guideline[] range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims.” *United States v. Croteau*, 819 F.3d 1293, 1309 (11th Cir. 2016).

The weight given to any specific factor is committed to the sound discretion of the district court. *Id.* We will vacate a defend-

ant's sentence as substantively unreasonable "if, but only if," on review, we are "left with the definite and firm conviction that the district court committed a clear error of judgment in weighing the [section] 3553(a) factors by arriving at a sentence that lies outside the range of reasonable sentences dictated by the facts of the case." *United States v. Irej*, 612 F.3d 1160, 1190 (11th Cir. 2010) (en banc) (citation modified).

If the district court explains, as it did here, that its sentence would not have changed with a different guideline calculation, we assume there was an error, calculate the correct guideline range, and see whether the sentence would be substantively reasonable under the correct range. *Keene*, 470 F.3d at 1349–50. We "ordinarily □ expect" that sentences within the guideline range are reasonable, especially when a sentence "well below the statutory maximum" is imposed. See *United States v. Stanley*, 739 F.3d 633, 656 (11th Cir. 2014) (citation modified).

Assuming error, Rodriguez's criminal history category would have been IV. With a total offense level of thirty-five, his guideline range would have been 235 to 293 months. The district court's 240-month sentence was on the low end of Rodriguez's guideline range even without the career-offender enhancement, and it was well below the statutory maximum sentence of life, both of which are indicators of a substantively reasonable sentence. See *Stanley*, 739 F.3d at 656.

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Also, as the district court explained, the sentence reflected the seriousness of the offense, promoted respect for the law, provided just punishment, and afforded adequate deterrence. *See Martin*, 455 F.3d at 1237. In addition to this case, where Rodriguez tried to import 800 kilograms of cocaine into the country, he had six prior convictions spanning twenty years, including for: unlawful transportation of a firearm; receipt of stolen property; illegal reentry (two times); conspiracy to import two kilograms of cocaine; and conspiracy to possess with intent to distribute at least three and a half kilograms but less than five kilograms.

Because “the district court would have reached the same result even if it had decided the guideline[] issue the other way,” and the resulting sentence is substantively reasonable even if the guideline issue had been decided in Rodriguez’s favor, remand for resentencing is not warranted. *See Keene*, 470 F.3d at 1349–50.

CONCLUSION

For those reasons, we affirm Nunez, Tovar, and Rodriguez’s convictions. We also affirm Rodriguez’s sentence.

AFFIRMED.