DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

UNITED STATES OF AMERICA

v.

ADEL MUNRO, ARIM BONIFACE DAVE COMPTON, KEVIN FRANCIS, and DARRYL POPE,

Defendants.

1:23-cr-00021-WAL-EAH

TO: Daniel H. Huston, Esq., AUSA
Adam F. Sleeper, Esq., AUSA
Gabriel J. Villegas, Esq., AFPD
Jose R. Olmo-Rodriguez, Esq.
Gabriela José Cintrón-Colón, Esq.
Anthony R. Kiture, Esq.

ORDER

THIS MATTER comes before the Court on the Motion to Compel the Government for Production of Information and Documents, filed on October 30, 2024, by Gabriela José Cintrón-Colón, Esq., attorney for Defendant Kevin Francis. Dkt. No. 222. Defendants Arim Boniface Dave Compton and Darryl Pope moved to join Mr. Francis's Motion to Compel, Dkt. Nos. 224, 226, which motions the Court granted, Dkt. No. 241. On December 16, 2024, the Court held a hearing on the Motion at which Mr. Francis, Mr. Compton, and Mr. Pope were present along with their attorneys, Attorney Cintrón-Colón, Attorney Jose Olmo-Rodriguez, and Attorney Anthony Kiture, respectively. Attorneys Daniel Huston and Adam Sleeper appeared on behalf of the Government. Following the hearing, the Court took the matter under advisement. For the following reasons, the Court will deny the Motion to Compel.

BACKGROUND

On November 20, 2023, the United States filed a criminal complaint against Defendants Adel Munro, Arim Boniface Dave Compton, Rodney Dennis De Roche, Kevin Francis, Darryl Pope, and Jose Reinoza. Dkt. No. 1. According to the Affidavit in Support of Probable Cause accompanying the Complaint, on November 14, 2023, in international waters, the United States Coast Guard observed the vessel 'Jackie Boy' in a known drug trafficking area, not fishing, with no visible indicia of nationality, and an incorrect maritime mobile service identification. Dkt. No. 1-1 at 3. As a Coast Guard vessel approached the Jackie Boy, it became "non-compliant" and jettisoned approximately 10 packages tied to sandbags. *Id*. The crew of the Jackie Boy was detained and one of the jettisoned sandbags was retrieved. *Id*. The contents of the sandbag tested positive for "presumptive cocaine." *Id*. at 4. It weighed approximately seventy kilograms, which is inconsistent with personal use amounts. *Id*. A search of the vessel resulted in the discovery of matching sandbags on board, and "one of four barrels on the deck test[ed] positive for cocaine." *Id*. Additionally, ion scans of the Jackie Boy detected heroin. *Id*. During the arrest, Mr. Reinoza initially claimed nationality from Grenada before claiming nationality from Venezuela. *Id*. All other Defendants claimed nationality from Grenada. *Id*. It was later determined that Mr. Pope is also a citizen of the United States. Dkt. No. 50 at 5.

On December 22, 2023, the Government filed a Criminal Information, accusing the defendants of violating the Maritime Drug Law Enforcement Act ("MDLEA") by conspiring to possess and substantively possessing a controlled substance with intent to distribute while on board a vessel subject to the jurisdiction of the United States. Dkt. No. 18; Maritime Drug Law Enforcement Act, Pub. L. No. 110-407, 122 Stat. 4299 (codified at

46 U.S.C. §§ 70501-08). The defendants were each charged as principals and as aiders and abettors. *Id.* After two of their codefendants pled guilty, Mr. Munro, Mr. Compton, Mr. Francis, and Mr. Pope were eventually indicted on the same charges. Dkt. No. 126.

Each of the remaining defendants have been detained pending trial. Dkt. Nos. 77, 78, 80, 81. Since their detention, the defendants have been requesting continuances and extensions as they investigate the viability of a jurisdictional motion to dismiss. *See, e.g.,* Dkt. Nos. 219, 230.

A. The Motion to Compel

The Defendants who filed and joined in this motion—Mr. Francis, Mr. Pope, and Mr. Compton (hereinafter "Defendants")—are investigating the viability of a motion to dismiss the indictment alleging that either the Government or the Court lacks jurisdiction to try or hear this case. Dkt. No. 222 at 1. They contend that jurisdiction to prosecute Defendants—Grenadian nationals sailing in a Grenadian-registered ship—may result only from a valid waiver of jurisdiction by Grenada. *Id*. While acknowledging that someone from Grenada waived jurisdiction, Defendants allege the waiver was invalid and unlawful. *Id*.

According to the prosecution, when the Jackie Boy was stopped and searched, an unnamed U.S. officer contacted someone in Grenada, who confirmed registration of the Jackie Boy as a Grenadian vessel. *Id.* at 2. Subsequent to that confirmation, a U.S. officer contacted Grenadian Assistant Commissioner of Police Vannie Curwen ("ACP Curwen") who verbally granted a waiver of jurisdiction over the defendants and then emailed an undisclosed individual regarding that waiver. *Id.* at 2-3. The Defendants state:

> Notably, there is no evidence in discovery pertaining to these alleged phone calls aside from two emails by unidentified USCG officers and one email from ACP Curwen stating that verbal communications allegedly took place with Grenadian authorities who (i) confirmed registration of the vessel,

> and then (ii) waived jurisdiction. And this in itself presents a problem that precludes the defense from properly developing and presenting arguments to the Court for its consideration and adjudication.

Id. at 3.

Now, to "properly develop" a motion to dismiss, Defendants have moved to compel the production of:

1. the "Agreement between the Government of the United States of America and the Government of Grenada Concerning Maritime Counter-Drug Operations," (the "Agreement");[1]
2. information about a conversation between "D7"[2] and a Grenadian official, including the name and title of the individual who called Grenada, the office or department contacted in Grenada, the phone number of the office called, and the date and time in which this communication took place; and
3. information about the communication between ACP Curwen and the unnamed U.S. officer who contacted him including the name and title of that officer, the telephone number that was called to communicate with ACP Curwen, the date and time when the phone call took place, and the name and position of the officer who received the email from ACP Curwen waiving jurisdiction.

Id. at 9.

Before filing the present motion, Attorney Cintrón-Colón requested this information in an October 10, 2024, discovery letter sent to the Government. *Id.* at 4. In response to her letter, the Government stated it would not provide information

[1] After the Motion to Compel was filed, the Government provided the Defendants with the Agreement, rendering this request moot.
[2] The motion does not explain who or what "D7" is except that D7 verbally contacted Grenada to confirm registry/nationality of the vessel.

concerning the second and third request "on the basis that it is not discoverable." *Id*. at 5 (quoting Dkt. No. 222-2 (email from Attorney Sleeper re discovery demand)). The Government contended that because it produced a waiver of jurisdiction certification from a designee of the Secretary of State,[3] *see* Dkt. No. 227-1 (the certification), Mr. Francis "is unable to challenge his vessel's status as a vessel subject to the jurisdiction of the United States on bases tied to the information [he] seek[s]." Dkt. No. 222 at 5 (quoting Dkt. No. 222-2).

But, according to Defendants, the certification constitutes only "a *prima facie* showing of the government's jurisdiction." *Id*. Because Defendants seek to raise their arguments as a preliminary challenge to the United States' jurisdiction, and not as a defense against their charges, the MDLEA does not preclude them from raising this claim. *Id*. at 7 ("Precisely because 'jurisdictional issues arising under [the MDLEA] are preliminary questions of law to be determined solely by the trial judge,' the information sought by the defense is necessary to present our jurisdictional issue for the Judge's consideration.") (quoting 46 U.S.C. § 70504(a)). The Defendants maintain that the Government "has the burden of showing . . . it obtained jurisdiction in a lawful manner and that [Grenada's] waiver [of jurisdiction] is valid." *Id*. at 8.

Defendants contend that the Government cannot make this showing. However, in order to demonstrate as much, they need more information. Thus, they filed the instant Motion, alleging they are entitled to the documents they have requested "even if [the

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[3] As will be discussed more below, the MDLEA provides that to demonstrate a foreign nation's waiver of jurisdiction over a vessel registered in that nation that was stopped in international waters, the Secretary of State or his designee may provide a certification of waiver of jurisdiction. Such certification "prove[s] conclusively" "consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States[.]" 46 U.S.C. § 70502(c).

request falls] outside the specific scope of Rule 16." *Id*. at 5, 10 ("there are materials under the government's possession, control, or care that should be disclosed to the defense, even if they will not be material to preparing [the] defense or preparing for trial.").

B. The Government's Response

As an initial response to the Defendants' requests, the Government notes that after the Motion to Compel was filed, it produced the Agreement.[4] Dkt. No. 227 at 5. Moreover, despite having "no obligation to do so," it also disclosed "all information relevant to the defendant's request that the U.S. Attorney's Office possesses—such as the emails referenced by the defendant in his motion." *Id.* Nevertheless, the Government argues, disclosure of the remaining requested documents should be denied because they fall outside the scope of Rule 16. *Id*. The relevant portion of Rule 16 states:

> (E) *Documents and Objects*. Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:
>
> (i) the item is material to preparing the defense;
>
> (ii) the government intends to use the item in its case-in-chief at trial[.]

Id. (citing Fed. R. Crim. P. 16(a)(1)(E)). The Government contends that neither of those provisions apply to the Defendant's request. *Id*.

The MDLEA prohibits possession with the intent to distribute a controlled substance while on board a 'covered vessel.' *Id*. at 3 (citing 46 U.S.C. § 70503(a)(1)). A covered vessel includes 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

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[4] The Agreement is available online at Agreement Between the Gov't of the United States of Am. & the Gov't of Grenada Concerning Mar. Counter-Drug Operations, T.I.A.S. No. 12648, 1995 WL 1146169 (May 16, 1995).

States." *Id*. (quoting 46 U.S.C § 70502(c)(1)(C)). The MDLEA also "permits the Government to conclusively establish a foreign nation's consent through a certification of the Secretary of States' designee." *Id.* at 4 (citing 46 U.S.C. § 70502(c)(2)).

Since the MDLEA certification proves conclusively that Grenada consented to or waived objection to the enforcement of U.S. jurisdiction against these Defendants—regardless of the means through which consent or waiver was obtained— the existence of the certification definitively proves jurisdiction is proper and the Defendants cannot claim otherwise. *Id*. at 5-6. Thus, the information is not material to their defense, and is therefore not discoverable under Rule 16(a)(1)(E)(i). *Id*. at 6. Similarly, because jurisdiction is a pretrial matter for the Court to determine, not a matter to be proved at trial, the Government will not present the requested material in its case-in-chief, and therefore the materials are not discoverable under Rule 16(a)(1)(E)(ii). *Id.*

Critically, the MDLEA certification is not merely *prima facie* evidence of jurisdiction. *Id.* Indeed, although a *prior* version of the MDLEA treated the Secretary of State's certification as rebuttable proof of jurisdiction, Congress amended the law in 1996 expressly to provide that the certification is conclusive proof of jurisdiction, not merely *prima facie* evidence of it. *Id*. (citing *United States v. Hernandez*, 864 F.3d 1292, 1300 (11th Cir. 2017) (discussing the history of the legislation)). Therefore, Defendants could not raise their proposed jurisdictional argument even were it true that the individual who waived jurisdiction on behalf of Grenada was not empowered by Grenada to do so. *Id*. at 7. Whether "phrased as the absence of a waiver, a waiver by a person not authorized to waive, or a waiver by a person who did not follow the appropriate procedures to waive, the defendant's contention is the same: there was no waiver by the foreign nation." *Id*. But this argument is foreclosed by the MDLEA, regardless of how the Defendants attempt

to frame it. *Id.* Only Grenada could raise the argument the Defendants apparently hope to make. *Id*. at 8 (citing *United States v. Cardales-Luna*, 632 F.3d 731, 737 (1st Cir. 2011); *United States v. Bustos-Useche*, 273 F.3d 622, 627 (5th Cir. 2001); and 46 U.S.C. § 70505)).

Additionally, the Government notes that MDLEA certifications need not contain any more information than what was provided in the certification issued in this case. Vague, undetailed, or even inconsistent certifications have been held sufficient under the conclusive-proof provision of the MDLEA to support a finding of jurisdiction in other circuits. *Id*. at 9-10 (citing *Cardales-Luna*, 632 F.3d at 736; *United States v. Campbell*, 743 F.3d 802, 809 (11th Cir. 2014)). Finally, the Government contends that the documents are not discoverable under any provision of law beyond Rule 16 and that Defendants cite no authority to suggest otherwise because no such authority exists. *Id.* at 10-11

C. The Motion Hearing

During oral argument on the Motion to Compel, Mr. Francis's lawyer, Attorney Cintrón-Colón, explained that she has been conducting an independent investigation into the waiver of jurisdiction by Grenada with the assistance of an expert Grenadian attorney. Based on her investigation, she determined that ACP Curwen was not authorized to waive jurisdiction over the defendants because the Agreement states that Grenada may only waive "its primary right to exercise jurisdiction" over Grenadian-registered ships in international waters "subject to its constitution and . . . laws." The Agreement, 1995 WL 1146169, at *3. Under Grenadian law, only the Ministry of Foreign Affairs, through signed and stamped documentation, may waive jurisdiction over individuals like Defendants. And although this issue seems to implicate only Grenadian law, Attorney Cintrón-Colón stated that a second bilateral agreement between the United States and Grenada exists, with the force and effect of U.S. law, that states that the United States will only seek a

waiver of Grenada's jurisdiction in accordance with Grenadian law. Attorney Cintrón-Colón had not reviewed the actual law that said as much, but understood it to exist based on her contacts in Grenada.

Attorney Cintrón-Colón also questioned why the Coast Guard sought a waiver from the Grenadian police—rather than the Ministry of Foreign Affairs—in the first instance. She warned of the implications apparently invited by the Government's interpretation of the MDLEA: If the Coast Guard could obtain jurisdiction over these Defendants without going through the appropriate channels, they could just as easily obtain a similar waiver over any other individual on a foreign vessel with nothing more than a call to any police officer off the street. This would implicate major due process and international relations issues. Attorney Olmo-Rodriguez added that the Agreement states that when the "the Government of Grenada" waives jurisdiction, U.S. officials "may detain the vessel and persons on board pending expeditious disposition instructions." This provision, he argued, indicates that the United States does not have authorization to detain Grenadian vessels and their occupants without these instructions, which would presumably be in the form of a written document from the Grenadian Government. No such documentation was recorded or provided to Defendants since their detention by the Coast Guard, further indicating that the waiver of jurisdiction was invalid.

The Government, through Attorney Sleeper, responded that this inquiry begins and ends at the provision of the MDLEA providing that the Secretary of State designee's certification is conclusive proof of jurisdiction to prosecute these and any similarly situated defendants. Even if the bilateral agreement that Attorney Cintrón-Colón referenced existed—which Attorney Sleeper did not believe to be the case—the MDLEA does not require compliance with that agreement outside of the compliance necessary to

obtain the Secretary of State certification. It is for the Secretary of State and his designees to determine whether a waiver of jurisdiction was valid and so long as the designee certifies that the United States has jurisdiction to prosecute, it is irrelevant whether the waiver was validly obtained (although the Government disputed Defendants' allegations that the waiver was obtained invalidly). The provisions in the MDLEA regarding a nation's consent or waiver to the United States' jurisdiction is a courtesy provided to foreign nations, not a promise of any extra rights or due process to defendants. This was definitively proven by the amendments Congress made to the MDLEA in 1996, when it changed the language of the Act to require courts to treat the Secretary of State's certification as conclusive proof of jurisdiction to prosecute. Because the MDLEA prohibits the Defendants from utilizing the requested documents in their defense, and because the documents requested are not going to be used in the Government's case-in-chief, they are not discoverable under Rule 16(a)(1)(E).

Attorney Cintrón-Colón responded by stating that other laws may require discovery of these documents, although she did not explicate which laws. She also argued that Rule 16 provides the minimum amount of discovery that the Government needs to produce to Defendants and that due process requires more. And, she urged, due process is seriously implicated by the Government's argument that nobody except a foreign nation can challenge when U.S. officials overstep and prosecute foreign nationals over whom they have not obtained proper jurisdiction, especially in cases where the foreign government is unaware that its nationals are being detained.[5]

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[5] On December 27, 2024, two weeks after the Court held oral arguments on the Motion to Compel, Defendants Darryl Pope and Kevin Francis, through their attorneys, filed a "Joint Supplement to Motion to Compel the Government for Production of Information and Documents." Dkt. No. 239. The supplement seeks an Order compelling the Government to provide "an outline or copy of the established guidelines/procedures between the United

DISCUSSION

In their briefs and at oral argument, the parties focused primarily on the application and interpretation of the MDLEA to the present case rather than the rules of discovery. Although the parties appeared to be foreshadowing their arguments for a motion to dismiss, the question before the Court is whether the documents Defendants requested could be considered "material" to their defense under Rule 16, despite the various MDLEA provisions precluding Defendants from raising arguments attacking the Government's jurisdiction over them. To understand why Rule 16 does not apply to the requested documents, it is first helpful to understand the full scope and context of the MDLEA. The Court will then analyze the scope and limits of Rule 16(a)(1)(E) before applying the MDLEA and Rule 16 to Defendants' requests.

A. The Maritime Drug Law Enforcement Act

The MDLEA states, *inter alia*, that "[w]hile on board a covered vessel, an individual may not knowingly or intentionally . . . manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance." 46 U.S.C. § 70503(a)(1). A "covered vessel" includes "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." 46 U.S.C. § 70502(c)(1)(C). A prior version of the MDLEA provided that "[c]onsent or waiver of objection by a foreign nation to the enforcement of United States law by the United States

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States and Grenada for the procurement of a waiver [of jurisdiction]." *Id.* The Government filed an opposition to the supplement on the same day. Dkt. No. 240.

Only a motion, a response, and a reply may be filed with the Court. "Any further response or reply," or 'supplement,' "may be made only by leave of Court obtained before filing." LRCi 7.1(a). Accordingly, the Court will not address the supplement any further in this Order. Additionally, the Court notes that the supplement, which was sparse on argument and detail, leaves the Court with numerous questions, which a separate and more fulsome motion might have helped address.

. . . *may be proved* by certification of the Secretary of State or the Secretary's designee." 46 U.S.C. app. § 1903(c)(1) (emphasis added). However, since the statute was amended in 1996, the MDLEA has mandated that "consent or waiver of objection by a foreign nation . . . (A) may be obtained by radio, telephone, or similar oral or electronic means; and (B) *is proved conclusively* by certification of the Secretary of State or the Secretary's designee." 46 U.S.C. § 70502(c)(2) (emphasis added).[6]

The MDLEA further states that "Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge." 46 U.S.C. § 70504(a). Moreover,

> A person charged with violating section 70503 of this title . . . does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

46 U.S.C. § 70505.

Although "international law" is not defined in the MDLEA, "what we . . . refer to as international law customarily concerns relations among sovereign states." *Federal Republic of Germany v. Philipp*, 592 U.S. 169, 176 (2021); *see also Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 422 (1964) ("The traditional view of international law is that it establishes substantive principles for determining whether one country has wronged another."). International law is comprised, in part, of "international agreements," which

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[6] In a pending motion to dismiss the indictment filed by Defendant Adel Munro (who did not join the instant motion), which was joined by Mr. Francis, Dkt. No. 166, Mr. Pope, Dkt. No. 168, and Mr. Compton, Dkt. No. 235, the Defendants challenge, among other things, the constitutionality of the certificate-as-conclusive-proof provision of the MDLEA. Dkt. No. 162 at 9-15.

include bilateral agreements. *See* Restatement (Third) of the Foreign Rels. L. of the U.S. §§ 102, 301 (Am. L. Inst. 1987) ("'international agreement' means an agreement between two or more states or international organizations that is intended to be legally binding and is governed by international law").

B. Rule 16(a)(1)(E)

Rule 16,[7] which governs discovery in criminal cases, provides in relevant part that the Government must produce to a defendant any document or object within the government's possession, custody, or control, that "is material to preparing the *defense*." Fed. R. Crim. P. 16(a)(1)(E)(i) (emphasis added).[8] The Supreme Court has held that the phrase "material to preparing the defense," as used in this context, "means material to the defendant's direct response to the government's case-in-chief." *United States v. Young*, No. 05-cr-56, 2007 WL 756729, at *2 (E.D. Pa. Mar. 7, 2007) (citing *United States v. Armstrong*, 517 U.S. 456, 462 (1996)). In other words, Rule 16 applies only to documents "which refute[] the government's arguments that the defendant committed the crime charged." *Id*. In *Armstrong*, a defendant expressly argued that "any claim that 'results in nonconviction' if successful is a 'defense' for the Rule's purposes." 517 U.S. at 462. But the Supreme Court rejected that expansive definition of defense and instead held that Rule 16 applies only to "shield" defenses, which are defenses that are responsive to the

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[7] Rule 16 "is intended to prescribe the minimum amount of discovery to which the parties are entitled. It is not intended to limit the judge's discretion to order broader discovery in appropriate cases." Fed. R. Crim. P. 16 advisory committee's note to 1974 amendment. However, the Defendants did not provide the Court with any authority describing when discovery beyond the scope of Rule 16 may be appropriate.

[8] At the hearing the parties agreed that Rule 16(a)(1)(E)(ii), which requires the Government to turn over any document it intends to use in its case-in-chief at trial, and Rule 16(a)(1)(E)(iii), which requires production of any item that was obtained from or belongs to the defendant, are not relevant to Defendants' Motion to Compel.

Government's case-in-chief, rather than "sword" defenses, which challenge the prosecution's conduct of the case.[9] *Id.*; *see also United States v. Hsu*, 155 F.3d 189, 203-04 (3d Cir. 1998). In *Hsu*, defendants sought documents from the Government that would help establish an impossibility defense to a charge of conspiracy to violate the Economic Espionage Act. *Id.* at 203. But the Third Circuit held that legal impossibility was not a defense to conspiracy. *Id*. That being the case, the Third Circuit determined that documents that would have facilitated defendants' impossibility defense were not "material" to the preparation of their defense because the documents could not have been used to attack any element of the charges against them. *Id*.

C. Application

The plain language of the MDLEA makes clear that a defendant cannot challenge the certification of the Secretary of State's designee, regardless of the certification's validity. This reading is bolstered by the amendments Congress made to the MDLEA since its adoption. The prior version of the statute, which read that a foreign nation's consent "may be proved" by certification, "left open the possibility that a defendant could look behind the State Department's certification to challenge its representations and factual underpinnings." *Cardales-Luna*, 632 F.3d at 737 (internal quotation marks omitted). But "Congress effectively foreclosed that possibility in 1996, when it amended the MDLEA[.]" *Id*. Now, the statute prohibits Defendants from "look[ing] behind the Secretary of State's certification . . . in order to contest the United States's assertion of jurisdiction." *Pinales*,

[9] The *Armstrong* Court was interpreting an earlier version of Rule 16(a)(1)(E), which at the time was Rule 16(a)(1)(C) and read that the government must produce documents "which are material to the preparation of the defendant's defense." The minor stylistic change to the rule since *Armstrong* does not alter the Supreme Court's interpretation. *See, e.g., United States v. Pinales*, No. 22-cr-004, 2024 WL 665914, at *3 (D.P.R. Feb. 16, 2024) (describing the modern version of Rule 16 as "identical in substance" to the version interpreted in *Armstrong*).

2024 WL 665914, at *4 (rejecting a similar motion to compel on reconsideration after granting the motion because "MDLEA's jurisdictional component is not an element of the offense, and as such, the requested documents and information are immaterial to the refutation of the government's case in chief.").

As numerous other circuits have held, any further inquiry into the legitimacy of the certification is futile and precluded by the terms of the MDLEA.[10] *See Cardales-Luna*, 632 F.3d at 737 (quoting *Bustos-Useche*, 273 F.3d at 627 & n.5) ("such a certification is 'conclusive' and any further question about its legitimacy is 'a question of international law that can be raised only by the foreign nation.'"); *Hernandez*, 864 F.3d at 1299 ("the certification's conclusive proof . . . forecloses any inquiry into its veracity in this case.").

Thus, the text of the MDLEA, especially when read considering *Armstrong*, make clear that the documents requested are not material to preparing the defense. *Cf*. Rule 16(a)(1)(E)(i). The requested documents' only plausible uses would be either to demonstrate that the Government violated an international agreement between the United States and Grenada,[11] or to demonstrate that there is no jurisdiction to prosecute Defendants. But, as the Government contended in its brief and at the hearing, such arguments are wholly foreclosed by statute. The MDLEA expressly states that "[a] person charged with violating section 70503 of this title . . . does not have standing to raise a claim of failure to comply with international law as a basis for a defense." 46 U.S.C. §

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[10] The Court recognizes that Defendants have challenged the constitutionality of the certificate-as-conclusive-proof provision of the MDLEA, but, at least until the District Judge rules on that motion, the statute must be read as it is written.

[11] To demonstrate that a U.S. law, and not international law, was violated, Defendants referenced an unknown bilateral agreement which requires the United States to comply with Grenadian law when arresting individuals claiming Grenadian nationality or sailing in a Grenadian vessel. But even if such a law exists, which the Government contests, that agreement, too, would constitute international law. *See* Restatement (Third) of the Foreign Rels. L. of the U.S. §§ 102, 301.

70505. Indeed, Congress has definitively endowed federal courts with jurisdiction under the MDLEA unless and until *a foreign nation* claims jurisdiction has not been properly established. *Id.* ("A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction. . . ."); *see also United States v. Greer*, 285 F.3d 158, 55-57 (2d Cir. 2000) ("the MDLEA requires the consent of foreign nations for purposes of international comity and diplomatic courtesy, not as a protection for defendants.").

Furthermore, "jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense." 46 U.S.C. 70504(a). Thus, even if the documents requested were not related to a claim of failure to comply with international law, they still would not be material to the Defendants' defense to the extent that Defendants seek not to use the documents as a "shield," responsive to the Government's case-in-chief, but as a "sword" to challenge the prosecutions' authority to bring this case in the first instance. *See Armstrong*, 517 U.S. at 642. As in *Hsu*, 155 F.3d at 204, the requested documents are relevant only to a defense that is immaterial to the elements of the crimes charged against Defendants. Accordingly, the documents cannot be said to be material under Rule 16(a)(1)(e)(i).

In an effort to avoid these statutory pitfalls, Defendants argued, without citation to authority, that the Court should look beyond Rule 16 to grant their request for production. At the hearing, Attorney Cintrón-Colón offered that due process might require the production of the requested material, although she did not elaborate on how due process was implicated by Defendants' requests. However, this is not an appropriate case in which to look beyond Rule 16, particularly given the fact that generally "the Due

Process Clause has little to say regarding the amount of discovery which the parties must be afforded." *Wardius v. Oregon*, 412 U.S. 470, 474 (1973).[12]

The premises considered, it is hereby **ORDERED** that Defendant Francis's Motion to Compel the Government for Production of Information and Documents, Dkt. No. 222, which Motion was joined by Defendants Compton and Pope, Dkt. Nos. 224, 226, is **DENIED.**

ENTER:

Dated: January 8, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE

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[12] To "preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before the jury" and "as a remedy designed to deter illegal conduct," "federal courts may, within limits, formulate procedural rules not specifically required by the Constitution or the Congress." *United States v. Hastings*, 461 U.S. 499, 505 (1983). In this way, Courts may require the Government to produce discovery beyond the floor set by the Federal Rules of Criminal Procedure. *See United States v. Catalan Roman*, 376 F. Supp. 2d 108, 114-15 (D.P.R. 2005) ("it is well-settled that district courts have inherent power to make and enforce reasonable rules of procedure, including disclosure rules."). However, ordering discovery beyond the limits of Rule 16 would be inappropriate here because no matter what the requested documents reveal, the Defendants' arguments regarding those documents are proscribed by the MDLEA.