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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 YEISON RENTERIA-VALENCIA,  
15 Defendant.

Case No.: 17-cr-03399-DMS

**ORDER DENYING DEFENDANT’S  
MOTION TO VACATE, SET ASIDE  
OR CORRECT SENTENCE UNDER  
28 U.S.C. § 2255**

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17 This case is before the court on Defendant Yeison Renteria-Valencia’s (“Defendant”  
18 or “Renteria-Valencia”) motion to vacate, set aside, or correct his sentence for ineffective  
19 assistance of counsel under 28 U.S.C. § 2255. After reviewing the parties’ briefs, the  
20 record, and the relevant legal authority, the Court **DENIES** Defendant’s motion.

21 **I.**

22 **BACKGROUND**

23 On October 2, 2017, the United States Coast Guard (USCG) was alerted to a  
24 suspicious vessel approximately 195 nautical miles southwest of the Nicaragua/Costa  
25 Rica border. (Pre-Sentence Report (“PSR”), ECF No. 57, at ¶ 5.) Personnel aboard the  
26 Cutter “Active” located a low profile vessel with four outboard engines and at least two  
27 persons on board. (*Id.*) The USCG sent a crew to make contact with the vessel, and  
28 located four individuals aboard, including Renteria-Valencia. (*Id.* at ¶ 6.) When the crew



1 of a federal prisoner on “the ground that the sentence was imposed in violation of the  
2 Constitution or laws of the United States, or that the court was without jurisdiction to  
3 impose such sentence, or that the sentence was in excess of the maximum authorized by  
4 law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). To warrant relief  
5 under § 2255, a prisoner must allege a constitutional or jurisdictional error, or a  
6 “fundamental defect which inherently results in a complete miscarriage of justice [or] an  
7 omission inconsistent with the rudimentary demands of fair procedure.” *United States v.*  
8 *Timmreck*, 441 U.S. 780, 783 (1979) (quoting *Hill v. United States*, 368 U.S. 424, 428  
9 (1962)). Unless “the motion and the files and records of the case conclusively show that  
10 the prisoner is entitled to no relief,” the court must “grant a prompt hearing” on a § 2255  
11 motion. 28 U.S.C. § 2255(b). However, “if the record refutes the applicant's factual  
12 allegations or otherwise precludes habeas relief, a district court is not required to hold an  
13 evidentiary hearing.” *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007).

#### 14 A. Waiver

15 As a preliminary matter, the Government contends Defendant’s motion is barred  
16 because Defendant knowingly and voluntarily waived his right to appeal and collateral  
17 attack pursuant to his plea agreement. (Opp’n at 10.) Accordingly, the Government  
18 contends this waiver “forecloses [Defendant] from seeking any relief under 28 U.S.C. §  
19 2255, with limited exceptions.” (*Id.*) To that end, the Government cites *United States v.*  
20 *Abarca*, where the Ninth Circuit held a waiver of appeal cannot be circumvented by filing  
21 a motion under § 2255. (*Id.*) (citing 985 F.2d 1012, 1014). In *Abarca*, the defendant filed  
22 a consolidated appeal challenging his sentence and the district court’s denial of his § 2255  
23 motion for modification of his sentence. 985 F.2d at 1013. There, the defendant waived  
24 the right to appeal “any pretrial issues or sentencing issues” on condition that he received  
25 a sentence that did not exceed the applicable guideline range. *Id.* at 1013. Because the  
26 defendant’s motion was based on newly discovered exculpatory evidence related to his  
27 involvement in the crimes, the Ninth Circuit concluded it was a “sentencing issue” barred  
28 by the defendant’s waiver. *Id.* However, the court noted they did “not hold that

1 [defendant’s] waiver categorically forecloses him from bringing any section 2255  
2 proceeding, such as a claim of ineffective assistance of counsel or involuntariness of  
3 waiver.” *Id.* at 1014.

4 Here, Defendant’s § 2255 motion is based on a claim of ineffective assistance of  
5 counsel—an issue “not clearly contemplated by, and subject to, his plea agreement  
6 waiver.” *See id.* Accordingly, Defendant’s motion is not barred and the Court can address  
7 the merits of his claim.

#### 8 B. Ineffective Assistance of Counsel

9 The Sixth Amendment guarantees criminal defendants the right to effective  
10 assistance of counsel. *United States v. Span*, 75 F.3d 1383, 1386 (9th Cir. 1996) (citing  
11 *Strickland v. Washington*, 466 U.S. 668 (1984)). Prisoners may raise Sixth Amendment  
12 ineffective assistance of counsel claims on a Section 2255 motion. *Id.* (citing *United States*  
13 *v. Schaflander*, 743 F.2d 714, 717 (9th Cir. 1984)). Because “the purpose of the effective  
14 assistance guarantee . . . is simply to ensure that criminal defendants receive a fair trial,”  
15 review of the effectiveness of defense counsel is “highly deferential.” *Strickland*, 466 U.S.  
16 at 689; *see Span*, 75 F.3d at 1387 (citing *United States v. Cochrane*, 985 F.2d 1027, 1030  
17 (9th Cir.1993)).

18 A prisoner asserting an ineffective assistance claim must specifically identify the  
19 elements of counsel’s conduct he believes to be deficient. The Court must then determine  
20 whether such conduct was “outside the wide range of professionally competent assistance”  
21 expected of defense counsel. *Strickland*, 466 U.S. at 690. The defendant bears the burden  
22 of overcoming a strong presumption that counsel “rendered adequate assistance.” *Id.* Even  
23 if counsel’s actions are professionally unreasonable, an error by counsel does not warrant  
24 relief unless it is prejudicial. *See id.* at 691. An error is prejudicial if there is “a reasonable  
25 probability” that the error altered the result of the proceeding. *Id.* at 694; *see also Lockhart*  
26 *v. Fretwell*, 506 U.S. 364, 372 (1993) (“Unreliability or unfairness does not result if the  
27 ineffectiveness of counsel does not deprive the defendant of any substantive or procedural  
28 right to which the law entitles him.”). “A reasonable probability is a probability sufficient

1 to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

2 Defendant alleges his counsel did not conduct an adequate pretrial/presentence  
3 investigation, which resulted in counsel unreasonably failing to object to United States  
4 jurisdiction under the Maritime Drug Law Enforcement Act (“MDLEA”), 46 U.S.C.  
5 § 70502. (Mot. at 4.) Specifically, Defendant alleges his lawyer failed to object to the  
6 Government’s assertion that the vessel at issue was a “vessel without nationality.” Such  
7 vessels are subject to United States jurisdiction under 46 U.S.C. § 70502(c)(1)(A). (*Id.*)  
8 Section 70502(d)(1)(C) defines a vessel without nationality as “a vessel aboard which the  
9 master or individual in charge makes a claim of registry and for which the claimed nation  
10 of registry does not affirmatively and unequivocally assert that the vessel is of its  
11 nationality.” Under 46 U.S.C. § 70502(e)(3), a claim of nationality includes “a verbal  
12 claim of nationality or registry by the master or individual in charge.”

13 Defendant argues counsel’s failure to make this objection was prejudicial because  
14 he believes the jurisdictional challenge would have been successful. (Mot. at 4-5.) He  
15 contends that the United States lacked jurisdiction over the vessel because the Coast Guard  
16 boarding team failed to ask each individual aboard the boat for a claim of nationality after  
17 the master verbally claimed Colombian nationality. (*Id.*) In support, Defendant cites  
18 *United States v. Guerro*, 789 F. App’x 742 (11th Cir. 2019). In *Guerro*, the Eleventh  
19 Circuit vacated a sentence in a similar case because “the Coast Guard never asked for the  
20 individual in charge and never requested the defendants to make a claim of nationality or  
21 registry for the vessel.” 789 F. App’x at 784. The circuit court found this was insufficient  
22 to meet the jurisdictional requirements of 46 U.S.C. §§ 70502(d) and (e), since no one  
23 aboard the vessel was afforded the opportunity to claim nationality.

24 The Government contends the instant case differs from *Guerro* because the Coast  
25 Guard officer (through an interpreter) asked the men aboard the vessel, “Who is the  
26 master?” and Quinones-Vivas raised his hand. (Opp’n at 11, 14.) The officer then asked  
27 Quinones-Vivas, “Where is your vessel from?” to which Quinones-Vivas replied  
28 “Colombia.” (*Id.* at 12.) The officer also indicated that the vessel did not have a

1 registration number. (*Id.*) After Quinones-Vivas verbally claimed Colombian nationality  
2 for the vessel, *see* 46 U.S.C. § 70502(e)(3), the United States Department of State contacted  
3 Colombia to confirm the claim. However, the Colombian government “could neither  
4 confirm nor refute the vessel’s registry or nationality.” (Opp’n at 11-12.) Thus, the instant  
5 case is distinguishable from *Guerro*. Based on the aforementioned facts, the Coast Guard  
6 appropriately deemed Defendant’s vessel a “vessel without a nationality” pursuant to 46  
7 U.S.C. §§ 70502(c)(1)(A), (d)(1)(C).


8 **III.**

9 **CONCLUSION**

10 Once the master of the vessel asserted Colombian nationality and the Colombian  
11 government did not “affirmatively and unequivocally” confirm his claim, the vessel was  
12 deemed stateless pursuant to 46 U.S.C. § 70502(d)(1)(C). Under 46 U.S.C. §  
13 70502(c)(1)(A), stateless vessels are subject to United States jurisdiction. Because any  
14 objection to United States jurisdiction under 46 U.S.C. § 70502 could not have succeeded  
15 even if raised, Defendant cannot meet his burden of showing that his attorney’s decision  
16 not to raise the objection “undermine[s] confidence in the outcome.” *Strickland*, 466 U.S.  
17 at 694. Accordingly, Defendant has not suffered any prejudice because of his counsel’s  
18 decision.<sup>1</sup> Defendant’s motion to vacate, set aside, or correct his sentence under 28 U.S.C.  
19 § 2255 is therefore **DENIED**.

20 **IT IS SO ORDERED.**

21 Dated: August 13, 2020

22   
23 \_\_\_\_\_  
24 Hon. Dana M. Sabraw  
25 United States District Judge

26 \_\_\_\_\_  
27 <sup>1</sup> The Court “need not determine whether counsel's performance was deficient . . . [i]f it is  
28 easier to dispose of [the] ineffectiveness claim on the ground of lack of sufficient  
prejudice.” *Strickland*, 466 U.S. at 697.