

High Seas Vessel Forfeitures Face Constitutional Headwinds

By **Evan Barr and Alice Colarossi** (June 3, 2026)

Over the past few months, the Trump administration has seized multiple tankers based on their links to trade violations. The most recent such action occurred on May 18 when U.S. naval forces in the Indian Ocean boarded and seized the *Skywave*, a vessel that had been previously sanctioned for its role in transporting Iranian oil. In some cases, the government has sought to civilly forfeit seized vessels and their contents in federal court.

In April, the Windward Shipmanagement Corp., owner of one such seized vessel, the motor tanker *Skipper*, filed a motion in the U.S. District Court for the District of Columbia seeking to dismiss the government's forfeiture action asserting lack of jurisdiction.

Because these ships were detained in international waters, with no nexus to the U.S., the U.S. Department of Justice has relied on an obscure statutory provision that apparently enables the government to assert subject matter jurisdiction over purely extraterritorial seizures. But this convenient legal fiction may soon face significant constitutional headwinds.

Seizure on the High Seas

Seizure and forfeiture of ships and cargo involved in customs offenses, piracy and slave trafficking dates to the earliest years of the republic. In recent years, the DOJ has exercised that power on vessels trading internationally in connection with alleged violations of U.S. trade sanctions.

When those ships were located beyond U.S. borders, typically in foreign ports, the DOJ — until recently — would closely coordinate with other governments around the globe to facilitate the seizure of such vessels.

In December 2025, however, as part of the campaign to force former Venezuelan President Nicolás Maduro out of office, the U.S. Navy and U.S. Coast Guard started unilaterally seizing vessels in international waters on the grounds that they were carrying Iranian or Venezuelan oil. That scenario has required the authorities to invoke creative jurisdictional theories.

The Motor Tanker *Skipper*

In February the DOJ filed an in rem civil complaint in the U.S. District Court for the District of Columbia seeking to forfeit the motor tanker *Skipper*, a crude oil tanker seized by U.S. forces on the high seas in December 2025 — along with approximately 1.8 million barrels of crude oil the ship was carrying purportedly supplied by the Venezuelan state-owned petroleum company.[1]

According to the complaint, the *Skipper* participated in a long-running scheme to facilitate the shipment and sale of petroleum products for the benefit of the Islamic Revolutionary Guard Corps in Iran.



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Specifically, the complaint alleged, the Skipper moved crude oil from Iran to Venezuela and, through ship-to-ship transfers, delivered it to various locations around the world, including to other rogue regimes. The Skipper disguised its illicit activities by spoofing its locations, flying false flags and employing other tactics to obfuscate its routes and conceal its evasion of sanctions.

Importantly, the complaint did not allege that the ship or its contents had any physical or legal nexus to the U.S. or that any relevant act took place in the District of Columbia.[2] In April, the ship's owner, Windward Shipmanagement Corp., filed a motion to dismiss the complaint on jurisdictional grounds. That motion has now been fully briefed and awaits a decision by the court.

The Jurisdictional Hooks

In a civil forfeiture, the court must have *in rem* — as opposed to *in personam* — jurisdiction, meaning dominion over the actual physical property at issue. Physical seizure or constructive control suffices. In the context of vessels, courts have historically held that maritime jurisdiction was complete when the vessel was seized by the order of the court and brought within its control.

When it comes to assets located overseas, forfeiture statutes had long permitted issuance of seizure warrants for transmission to the central authority of the relevant foreign state for service in accordance with a treaty or other international agreement. Under that process, constructive control arose from cooperation rendered by another country.

This formula proved inadequate, however, in addressing the problem of international money launderers rapidly moving tainted assets offshore. Accordingly, Congress in 1992 amended the forfeiture statute to allow for *in rem* authority over assets located in a foreign country purportedly without regard to whether foreign authorities had assisted in the seizure.

Specifically, the amended law, Title 28 of the U.S. Code, Section 1355(b)(2), provides, in relevant part, that when

property subject to forfeiture under the laws of the U.S. is located in a foreign country, or has been detained or seized pursuant to legal process or competent authority of a foreign government, an action or proceeding for forfeiture may be brought [in a district court where the acts or omissions giving rise to the forfeiture occurred] or in the U.S. District court for the District of Columbia.

The DOJ filed against the Skipper in Washington, D.C., citing Section 1355 (b)(2) to confer jurisdiction and venue.[3] But does that theory hold water when, as here, the vessel was not seized in a foreign country and no foreign authority participated in seizing it? Is the statute sufficient to establish jurisdiction here?

The answer in the past has turned on whether Congress intended to override traditional requirements of actual or constructive control. On that issue, the circuits diverge.

Circuit Split

In *U.S. v. All Funds on Deposit (Meza)*, the government sought to forfeit drug proceeds located in London bank accounts previously frozen by the British authorities. Claimant Meza challenged the forfeiture on jurisdictional grounds.

The government asserted Section 1355(b)(2) had obviated the need for the court to exercise actual or constructive control over the property, and prevailed in the U.S. District Court for the Eastern District of New York.

On appeal, the U.S. Court of Appeals for the Second Circuit affirmed the overall outcome in the district court, but offered a different analysis of the correct test for jurisdiction in civil forfeiture of overseas property.

The Second Circuit held that in passing Section 1355(b)(2) Congress did not intend "to fundamentally alter well-settled law regarding in rem jurisdiction," and that the property at issue still must be within the actual or constructive control of the court. The court found that in this instance the government had satisfied that standard by virtue of the demonstrated cooperation of the British government, acting pursuant to a mutual legal assistance treaty between the U.S. and the United Kingdom.[4]

By contrast, the D.C. Circuit, faced with a similar situation in *U.S. v. All Funds (Banco Espanol de Credito)*, held in 2002 that Congress intended the district court "to have jurisdiction to order the forfeiture of property located in foreign countries," and that the cooperation or lack thereof by a foreign government (here, Spain) "determines only the effectiveness of the forfeiture orders of the district courts, not their jurisdiction to issue those orders." [5]

Due Process Considerations

Assuming the broader interpretation prevails — doing away with the need for actual or constructive control — the resulting global reach of Section 1355(b)(2) will raise important questions about the limits, if any, that apply to federal forfeiture of assets outside the U.S.

After all, regardless of the congressional intent behind Section 1355, the statute still must pass muster under, among other things, the Fifth Amendment's due process clause.[6]

Every first year law student knows the minimum contacts test announced in the U.S. Supreme Court's 1945 decision in *International Shoe Co. v. Washington*. The Supreme Court's 1997 decision in *Shaffer v. Heitner*, a case involving stock sequestered in a Delaware state proceeding, extended *International Shoe's* minimum contacts test to in rem actions — albeit not in the context of overseas forfeiture.

As Courtney J. Linn noted in 2004, the *Shaffer* Court did not contemplate a statute like Section 1355(b)(2), in which in rem jurisdiction would cover property outside not only the forum state, but outside the U.S. — or, to go one step further as pertains to the *Skipper*, in international waters that are outside any country at all.[7]

Thus, the *Skipper* case may force the courts to grapple with the constitutional ramifications of both Section 1355(b)(2) and the administration's decision to seize ships on the high seas without the collaboration or assistance of a friendly foreign government.

It could take some time before these issues are resolved, and it is determined whether the U.S. Marshals Service may auction off the forfeited vessels. Parties interested in buying them will need to be patient.

The government, for its part, will need to convince the courts that exercising jurisdiction over vessels that operate and were seized far from American shores comports with basic

notions of due process and fair notice. On that issue, however, we are still in uncharted legal waters.

Meanwhile, lawyers acting on behalf of shipowners and other third-party claimants in such cases face challenges. To begin with, the government need only demonstrate probable cause to effectuate the seizure — a very low bar. Standing requirements also present a threshold barrier.

Counsel for a claimant must be prepared to demonstrate a clear basis for ownership of — or other cognizable interest in — the ship. This, along with litigating the merits, including whether the ship is in fact forfeitable under the trade sanction statutes, will likely prove difficult to the extent a vessel operated as part of the so-called dark fleet, without proper registrations or a paper trail.

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[1] U.S. v. Motor Tanker Skipper Bearing International Maritime Number 9304667, and the Oil Cargo Laden Thereon, Case No. 1:26-cv-00697 (D.D.C).

[2] The Complaint alleged that although the M/T Skipper was flying the flag of Guyana, it was not properly registered there and thus considered "stateless," a status which arguably might authorize the boarding of such a vessel on the high seas, but not necessarily an in rem arrest warrant or civil forfeiture.

[3] Interestingly DOJ has not argued that the court can assert subject matter jurisdiction based on the ship's current location, anchored off the coast of Texas. In any event that would not address how the U.S. seized the ship in the first place.

[4] See also U.S. v. Certain Funds, 96 F.3d 20 (2d Cir. 1996) (approving the use of Section 1355(b)(2) to forfeit drug proceeds on deposit in a Hong Kong bank seized with the assistance of the Hong Kong Royal Police).

[5] The Third Circuit, in U.S. v. Contents of Account Number 03001288 (Jalal), 344 F. 3d 399 (3d Cir. 2003), rejected Meza and followed the reasoning of the D.C. Circuit in Banco Espanol.

[6] In U.S. v. Nasri, 119 F.4th 1172 (9th Cir. 2024), op. withdrawn, reh'g denied en banc, 159 F.4th 1159 (9th Cir. 2025), the court held that the district court's exercise of in rem jurisdiction under Section 1355(b)(2) over property belonging to an overseas fugitive, and over which it apparently had no connection, possession or control, violated due process.

[7] See Courtney J. Linn, International Asset Forfeiture and the Constitution: The Limits of

Forfeiture Jurisdiction over Foreign Assets Under 28 U.S.C. § 1355(b)(2), 31 Am. J. Crim. L. 251, 297-98 (2004).