

United States v. McClain, 551 F.2d 52, (5th Cir. 1977), 545 F.2d 988 (5th Cir. 1977), [593 F.2d 658 \(5th Cir. 1979\)](#), *cert. denied*, 44 U.S. 918 (1979).

Location: Pre-Columbian artifacts smuggled from Mexico into the United States

Applicable Laws: [National Stolen Property Act](#) (NSPA) ([18 U.S.C. §§ 2314 et seq.](#))

Where Laws Apply: *National Stolen Property Act*: Applies to “goods, wares, merchandise, securities, or money” valued at \$5,000 or more, which have been “stolen, converted or taken by fraud” then ***transported, transmitted, or transferred in interstate or foreign commerce***. (*Emphasis added*) (jurisdiction is over the trafficking in the United States – property may be stolen in the United States or abroad).

Holding: The NSPA protects foreign ownership derived from foreign legislative pronouncements, even though the owned objects have never been reduced to possession by the foreign government. This landmark decision resulted in the *McClain* Doctrine holding that violations of the law of a foreign nation protecting its patrimony may be enforced by the United States under the NSPA as well as ownership claims under the common law of property. If a foreign nation has a colorable claim of title or ownership, the United States has authority to confiscate the property to determine ownership.

General Facts:

Defendants Patty McClain, Mike Bradshaw, Ada Simpson, and William Simpson were accused of having received, concealed, and/or sold stolen goods in interstate or foreign commerce and for conspiracy to do the same. The goods in question were pre-Columbian artifacts exported from Mexico. The defendants were involved a scheme to sell the pre-Columbian artifacts within Mexico and the United States. The artifacts were covertly smuggled across the U.S.-Mexico border and then defendants assisted in finding buyers for the artifacts. The defendants made sure their actions were done covertly because they believed they were violating Mexico’s patrimony laws. In 1972 Mexico enacted a law which clearly gave the Mexican government control of all pre-Columbian artifacts. The U.S. Federal Bureau of Investigation was alerted to the situation and began an undercover investigation which resulted in the defendants’ arrests.

Procedural Posture:

Regarding their dealings in the pre-Columbian artifacts, the defendants were convicted in the U.S. District Court of the Western District of Texas for violating the NSPA by having received, concealed, and/or stolen goods. The defendants subsequently appealed their convictions to the Court of Appeals for the 5th Circuit.

Holding and Reasoning:

Defendants argued on appeal that their due process was violated by imposing criminal penalties through reference to Mexican laws that are vague and inaccessible except to a handful of experts employed by the Mexican government. It was not precisely clear when and which Mexican law declared the government owner of all pre-Columbian artifacts. There had been an 1897 Act which declared Mexico the owner of all immovable monuments and moveable artifacts found on, and possibly in, the immovable objects, and a 1972 Declaration of ownership of all pre-Columbian artifacts not already in private ownership and located in Mexico. The Court of Appeals decided that since the criminal conviction might have been predicated on a conclusion that the 1897 Act declared Mexico the owner of all pre-Columbian artifacts when it was not clear that the 1897 Act did so, the due process challenge had not yet been decided.

After testimony from several experts witnesses, the Court of Appeals found that while the majority of witnesses believed that Mexico had declared itself to be the owner of all pre-Columbian artifacts for at least 100 years, Mexico did not express that view with sufficient clarity to survive translation into terms understandable by and binding upon American citizens prior to the unequivocal 1972 Declaration. Because the expert testimony in the original trial allowed the jury to consider that the Mexican government had long declared ownership over all pre-Columbian artifacts and thus avoid determining when the artifacts were actually exported from Mexico, the Court of Appeals found that due process and notice precluded the artifacts from being characterized as “stolen.” The court held that the NSPA “cannot properly be applied to items deemed stolen only on the basis of unclear pronouncements by foreign governments.”

The Court of Appeals therefore reversed the holding on the substantive count of violation of the NSPA. The court did, however, confirm the defendants’ conspiracy conviction. The Court held that the defendants’ actions, if completed, would have been dealing in stolen property under any view of Mexican law, thereby enabling the jury to determine the Mexican law constituted a harmless error.