

NO:

IN THE
SUPREME COURT OF THE UNITED STATES

MAURICIO ALVAREZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the Seaman's Manslaughter Statute, 18 U.S.C. Sec. 1115, which uses the terms "misconduct, negligence and inattention to his duties" does not provide a reliable way of determining what conduct violates the statute and *what conduct is innocent*: it invites the subjective opinion, of any person or persons reading or applying the statute, and is therefore, unconstitutionally vague in violation of the due process clause of the Fifth Amendment.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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PETITION FOR WRIT OF CERTIORARI

Mauricio Alvarez respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 18-15084 in that court on April 7, 2020, *United States v. Mauricio Alvarez*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on April 7, 2020. This petition is timely filed pursuant to SUP. CT. R. 13.1, as extended by Court's Order on March 30, 2020. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely upon the following Constitutional provisions, treaties, statutes, rules, ordinances and regulations:

The Fifth Amendment to the United States Constitution provides:

No person shall be deprived of life, liberty or property without due process of law.

Title 18 U.S.C. § 1115 provides:

Every captain, engineer, pilot or other person employed on any steamboat or vessel, by whose *misconduct, negligence, or inattention to*

his duties on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both. When the owner or charterer of any steamboat or vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct or violation of law, by which the life of a person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

STATEMENT OF THE CASE

The Eleventh Circuit erred when it found that the Seaman's Manslaughter Statute with a *mens rea* of negligence fell within the Constitutional authority of Congress and was not void for vagueness in violation of the Fifth Amendment to the United States Constitution.

I. Relevant Factual and Procedural Background.

Mr. Alvarez was the captain on a 90' charter vessel that was chartered in Miami, Florida, on April 1, 2018, by a group of friends who were celebrating the birthday of one of the group. The vessel left the marina and headed out to an island in Biscayne Bay with Mr. Alvarez as the captain. When Mr. Alvarez arrived at the island he did not drop anchor, but instead beached the boat. Two of the people who had chartered the vessel jumped into the water behind the boat.

Shortly thereafter, the two people in the water climbed back on board the vessel, and had a brief conversation with Mr. Alvarez. After that, Mr. Alvarez raised the dive ladder, and without advising anyone he was leaving the location, prepared to start the engines. The two people in the back, jumped back into the water, but Mr. Alvarez could not see them from his location at the helm.

Mr. Alvarez started the engines, and immediately placed the vessel in reverse. Mr. Alvarez and everyone else heard screaming behind the vessel, and he immediately shut off the engines, and jumped into the water which was full of blood to find the missing man. One of the two men in the water had been sucked into the propeller. The body of the missing man was not immediately located.

When law enforcement arrived, they interviewed the remaining persons on the vessel, and no one said they heard Mr. Alvarez advise that they were leaving, nor did he instruct his First Mate, his son, to go to the back of the vessel and check to see if there was anyone in the water. The victim's body was located by divers later that day, and his injuries were consistent with injuries inflicted by a boat's propeller. Mr. Alvarez did not have a valid Charter license, and he tested positive for the presence of cocaine the following day, April 2, 2018.

Mr. Alvarez filed a Motion to Dismiss the charge arguing that the *mens rea* of simple negligence was an unconstitutional violation of the due process clause. The court denied the motion to dismiss, and Mr. Alvarez entered a guilty plea to the one count of the indictment, preserving the right to appeal the denial of the Motion to Dismiss. The court sentenced Mr. Alvarez to thirty-three months incarceration.

The Eleventh Circuit held that Congress had the Constitutional authority to impose a *mens rea* of simple negligence, and upheld Mr. Alvarez' conviction.

REASONS FOR GRANTING THE WRIT

The Fifth Amendment provides that "[n]o person shall ... be deprived of life, liberty, or property *without due process of law.*" Title 18 U.S.C. § 1115 permits conviction on a finding of "misconduct, negligence and inattention to his duties," which constitutes simple negligence and is unconstitutionally vague. The decision of the Eleventh Circuit in this case that a *mens rea* of simple negligence is sufficient to sustain Mr. Alvarez' conviction of 18 U.S.C. § 1115, is in violation of the due process clause, as this Court has consistently stated, a basic principle from prior criminal mental state cases that criminal wrongdoing "must be conscious to be criminal." *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015).

I. The question presented is important.

The question presented is whether a criminal statute that uses the terms "negligence, misconduct and inattention to his duties" does not provide a reliable way of determining what conduct violates the Seaman's Manslaughter statute and *what conduct is innocent* and is therefore, unconstitutionally vague in violation of the due process clause of the Fifth Amendment.

The Seaman's Manslaughter Statute provides:

Every captain, engineer, pilot or other person employed on any steamboat or vessel, by whose *misconduct, negligence, or inattention to his duties* on such vessel the life of any person is destroyed, and every owner, charterer, inspector, or other public officer, through whose fraud, neglect, connivance, misconduct or violation of law the life of any person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both. When the owner or charterer of any steamboat or

vessel is a corporation, any executive officer of such corporation, for the time being actually charged with the control and management of the operation, equipment, or navigation of such steamboat or vessel, who has knowingly and willfully caused or allowed such fraud, neglect, connivance, misconduct or violation of law, by which the life of a person is destroyed, shall be fined under this title or imprisoned not more than ten years, or both.

Title 18 U.S.C. § 1115.

A. The statute is unconstitutional because it violates the void for vagueness doctrine embodied in the due process clause.

The Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” The void-for-vagueness doctrine rests on the “twin constitutional pillars” of due process and separation of powers. *United States v. Davis*, 139 S. Ct. 2319, 2325 (2019). The doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *See, e.g., Kolender v. Lawson*, 461 U.S. 352, 357-58 (1983). The government violates due process by taking life, liberty, or property under a criminal law that is void for vagueness. *Johnson v. United States*, 135 S. Ct. 2551, 2556 (2015).

The constitutional prohibition of vagueness in criminal statutes is “a well-recognized requirement, consonant alike with ordinary notions of fair play and settled rules of law.” *Johnson*, 135 S. Ct. at 2556-57 (quoting *Connally v. General*

Construction Co., 269 U.S. 385, 391 (1926)); *see also Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018). A statute that does not meet this requirement violates the “first essential of due process” that statutes must give people of common intelligence fair notice of what the law demands of them.” *See Davis*, 139 S. Ct. at 2325 (2019); *Johnson*, 135 S. Ct. at 2556.

The void-for-vagueness doctrine also guards against arbitrary or discriminatory law enforcement by insisting that a statute provide standards to govern the actions of police officers, prosecutors, juries and judges. *Dimaya*, 138 S. Ct. at 1212. This doctrine is related to separation of powers in that Congress, rather than the executive or judicial branch, should define what conduct is sanctionable and what is not. *Id.* “In our constitutional order, a vague law is no law at all.” *Davis*, 139 S. Ct. at 2323. A vague law “hands off” the legislature’s responsibility for defining criminal behavior to unelected prosecutors and judges, which leaves the people with no sure way to know what consequences will attach to their conduct. *Id.* When Congress passes a vague law, the role of the courts is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again. *Id.*

This statute was first enacted in 1838 to provide better security for vessels propelled in whole or part by steam. Although the statute has been amended to add the "owner" provision and the "executive officer" provision, the original language from 1838 remains largely unchanged. It was recodified in its current version in 1948.

See *United States v. Kaluza*, 780 F.3d 647 (5th Cir. 2015) at 665 (discussing history of the Seaman’s Manslaughter statute and upholding the dismissal of the indictment charging the Deep Water Horizon owners with violating the statute.). The current version of section 1115, however, is substantively identical to the 1905 version of the statute. *Id.* In essence, Congress has not revisited the substance of this statute since 1905. This statute was obviously passed in a different era of this Country’s history without the benefit of the Model Penal Code (completed in 1962), as well as modern-era *mens rea* and void-for-vagueness jurisprudence from the United States Supreme Court.

B. Modern Developments Regarding *Mens Rea*

In *United States v. Morissette*, 342 U.S. 246, 251 (1952), this Court observed that criminal liability is normally based upon the concurrence of two factors, “an evil-meaning mind [and] an evil-doing hand” The terms “misconduct” and “inattention to his duties” are not otherwise defined in 18 U.S.C. § 1115 or elsewhere in the United States Code. These terms are overly broad and subject to differing interpretations. How can one determine what conduct constitutes “misconduct” or “inattention to his duties?” In *Kolender v. Lawson*, 461 U.S. 352, 103 S.Ct. 1855 (1983), the Supreme Court interpreted a criminal statute that proscribed a failure to provide “credible and reliable” identification to law enforcement. 461 U.S. at 356-58. In striking down this statute on vagueness grounds, the Court observed that the statute contained no standard for determining what a suspect has to do in order to

provide the “credible and reliable” identification requirement and that the statute vests virtually complete discretion with the police in determining whether the suspect has complied with the law. *Id.* at 358.

This Court has continued to strike down federal criminal statutes on vagueness grounds where statutory terms cannot be readily capable of clear definition. In *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015), the Court struck down as impermissibly vague the residual clause of 18 U.S.C. § 924(e) that defined “violent felony” as any prior crime that “otherwise involves conduct that presents a serious potential risk of physical injury to another.” The Court observed that in determining whether this clause covers a crime, a court is required to picture the kind of conduct that the prior crime involves “in the ordinary case” and then to judge whether creation of risk is an element of that crime. *Id.* The Court held that “the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges.” *Id.*

In *Davis, supra*, the court analyzed the residual clause of 18 U.S.C. § 924(c) on vagueness grounds. This statute enhanced prison sentences if a firearm was used during a “crime of violence” which was defined, in part, as a felony “that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” See 18 U.S.C. § 924(c)(3)(B). The Court held that this provision of the statute was unconstitutionally

vague in that it provides no reliable way to determine which offenses qualify as crimes of violence under this definition. *Davis*, 139 S. Ct. at 2324, 2326.

Here, the terms “misconduct” and “inattention to his duties” do not provide a reliable way of determining what conduct violates the Seaman’s Manslaughter statute and *what conduct is innocent*. These terms do not provide fair notice to potential defendants. These terms also invite arbitrary enforcement of the statute by prosecutors, juries and judges. The terms are not defined in the United States Code. Congress has rarely used negligence in defining other criminal offenses. *See, e.g.*, 18 U.S.C. § 2196 (enacted in 1948, discusses willful breach of duty or “neglect” of duty by drunkenness in defining drunkenness or neglect of duty by seamen); 18 U.S.C. § 2192 (enacted in 1948, has provision related to neglect of proper duty on board a vessel); 18 U.S.C. § 793(f) (discussing gross negligence (which is criminal negligence) in defining espionage-related offense for gathering, transmitting or losing defense information); 33 U.S.C. § 1319(c)(1)(A) (creating a Clean Water act regulatory offense for “negligently” violating other provisions of the Clean Water Act or a permit condition or limitation—such crime, however, is a regulatory misdemeanor). 18 U.S.C. § 1115 is distinguishable from the Clean Water Act as section 1115 is a homicide-related felony statute with significant potential penalties of up to 10 years imprisonment per count, while the “negligent” Clean Water Act offense is a regulatory misdemeanor punishable by no more than 1 year in prison. Interestingly, a person must act “knowingly” to violate the felony provisions of the Clean Water Act. *See* 33

U.S.C. §1319(c)(2)(A) & (B). Accordingly, section 1115 and its use of the terms misconduct and inattention to duty creates an impermissibly vague law that cannot be rewritten by this court or the parties, or cured through jury instructions, to eliminate the vagueness problem. This vague statute violates Due Process and the void-for-vagueness doctrine.

C. Simple Negligence Violates Due Process

This Court has repeatedly held that a *mens rea* of simple negligence is not sufficient to sustain a criminal conviction. In *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015), the Court observed a basic principle from prior criminal mental state cases that criminal wrongdoing “must be conscious to be criminal.” The court stated as follows:

The “central thought” is that a defendant must be “blameworthy in mind” before he can be found guilty, a concept courts have expressed over time through various terms such as *mens rea*, scienter, malice aforethought, guilty knowledge, and the like.

Elonis, 135 S. Ct. at 2009.

In *Elonis*, the defendant was prosecuted for transmitting in interstate or foreign commerce a communication that contained a threat to injure another person in violation of 18 U.S.C. § 875(c). The district court instructed the jury that a statement is a threat when a defendant intentionally makes the statement that a reasonable person would view as a legitimate threat. *Id.* at 2007. The Court criticized this jury instruction (and the defendant’s conviction) as being premised solely on how

the communications would be understood by a “reasonable person.” *Id.* at 2011. The reasonable person standard “is a familiar feature of civil liability in tort law, but is inconsistent with ‘the conventional requirement for criminal conduct—awareness of some wrongdoing.’” *Id.* (citing *Staples v. United States*, 511 U.S. 600, 606-07 (1994)) (emphasis in original). This Court stated that having criminal liability turn on whether a reasonable person regards the communication as an actual threat (regardless of what the defendant thinks) reduces culpability on the all-important element of the crime to negligence. *Id.* The Court observed that it had been long reluctant to infer that a negligence standard was intended for criminal statutes. *Id.*; *see also Rogers v. United States*, 422 U.S. 35, 47 (1975) (Marshall, J., concurring). Justice Alito in his dissenting opinion in *Elonis* suggested that more than negligence should be required. *Elonis*, 135 S. Ct. at 2015 (“Whether negligence is morally culpable is an interesting philosophical question, but the answer is at least sufficiently debatable to justify the presumption that a serious offense against the person that lacks any clear common-law counterpart should be presumed to require more.”).

Similarly, the Seaman's manslaughter statute criminalizes simple negligence, and thus runs afoul of the very fundamentals of the due process clause. Therefore, this Court should accept certiorari to decide this very important question.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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September 4, 2020