

No. \_\_\_\_\_

**In The  
Supreme Court of the United States**

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RAFAEL ESPINAL-MIESES,

*Petitioner,*

v.

UNITED STATES

*Respondent.*

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**On Petition For A Writ Of Certiorari To The United  
States Court of Appeals for the First Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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November 9, 2023

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### **QUESTION PRESENTED**

The First Circuit affirmed the denial of Mr. Espinal-Mieses's motion for safety-valve relief under the former version of 18 U.S.C. § 3553(f), which did not explicitly include violations of the Maritime Drug Law Enforcement Act ("MDLEA") amongst the enumerated safety-valve eligible crimes. Six months after Mr. Espinal-Mieses's sentencing, Congress amended 18 U.S.C. § 3553(f) to expressly include MDLEA offenses as safety-valve eligible.

Mr. Espinal-Mieses argued to the district court and the First Circuit that although MDLEA violations were not specifically mentioned in the previous version of § 3553(f), the MDLEA incorporates 21 U.S.C. § 960(b), and specifically instructs that MDLEA violations are punishable pursuant to § 960. And because § 960 was one of the offenses enumerated in the pre-amendment version of § 3553(f), Mr. Espinal-Mieses argued safety-valve relief was available. (A.10-29).

Did the First Circuit correctly interpret the pre-amendment version of 18 U.S.C. § 3553(f) as excluding MDLEA offenses from safety-valve relief?

### **PARTIES TO THE PROCEEDING**

Petitioner, Rafael Espinal-Mieses, was the appellant in the United States Court of Appeals for the First Circuit. Respondent, the United States, was the appellee.

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner, Rafeal Espinal-Mieses, respectfully petitions this Court for a writ of certiorari to review the opinion of the First Circuit Court of Appeals.

### **DECISIONS BELOW**

Mr. Espinal-Mieses pleaded guilty to:

1. Conspiracy to possess with the intent to distribute a controlled substance on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. § 70503;
2. Conspiracy to import a controlled substance, in violation of 21 U.S.C. §§ 952(a), 960(a)(1) and (b)(1)(B), and 963;
3. Conspiracy to destroy property subject to forfeiture, in violation of 46 U.S.C. § 70503(a)(2); and
4. Aiding and abetting a failure to heave, in violation of 18 U.S.C. § 2237.

(A.3).

On July 31, 2018, the district court sentenced Mr. Espinal-Mieses to 188 months on counts one and two, 180 months on count three, and 60 months on count four, all to be served concurrently. (A.3-4). On May 30, 2018, the district court denied Mr. Espinal-Mieses's motion for safety-valve relief pursuant to 18 U.S.C. § 3553(f). (A.10-29). The district court entered judgment on July 31, 2018. (A.3). Mr. Espinal-Mieses appealed and the First Circuit issued a written summary affirmance on June 26, 2023. (A.1-2).

### **BASIS FOR JURISDICTION**

On June 26, 2023, the First Circuit issued a written summary affirmance of the district court's judgment. (A1-2). On September 20, 2023, this Court granted

Mr. Espinal-Mieses's request to extend the time to file this petition through November 9, 2023. (App. No. 23A253). This timely petition follows. Jurisdiction lies in this Honorable Court. *See* 28 U.S.C. § 1254(1).

### **PROVISIONS INVOLVED**

1. 46 U.S.C. § 70503:

(a) Prohibitions. While on board a covered vessel, an individual may not knowingly or intentionally --

...

(1) destroy (including jettisoning any item or scuttling, burning, or hastily cleaning a vessel), or attempt or conspire to destroy, property that is subject to forfeiture under section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)); or.

...

2. 18 U.S.C. § 3553(f) (2018):

Notwithstanding any other provision of law, in the case of an offense under [21 U.S.C. §§ 841, 844, or 846] or [21 U.S.C. §§ 960 or 963], the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission ... without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that [the defendant satisfies five criteria]..

3. 21 U.S.C. § 960(b)(1) (2018):

If a drug violation involves “5 kilograms or more of a mixture or substance containing a detectable amount of [cocaine] ... the person committing such violation shall be sentenced to a term of imprisonment of not less than 10 years” if there was no death or serious bodily injury resulting from the use of the controlled substance and the person has no prior conviction for a felony drug offense.



## STATEMENT OF THE CASE

At the change-of-plea hearing, the Government explained the factual basis for Mr. Espinal-Mieses's crimes as follows:

On June 26, 2017, around 11:00 p.m., the United States Coast Guard service on a vessel detected a blue yawl, 20 feet long, with one 40-horsepower engine outboard, with three male persons, individuals, inside the yawl, and with packs or sacks inside the yawl.

The yawl showed no signs of navigational lights, seemed to be sea unworthy, and had no signs of nationality.

They were located 24 nautical miles north of Loiza, Puerto Rico, and they were navigating towards the southeastern part of Puerto Rico, that is, getting closer to shore to the area of Loiza, Puerto Rico.

The United States Coast Guard service, from their vessel, asked the Defendants to stop the yawl. They used a loudhailer, screaming in Spanish as well as in English, ordering, commanding the Defendant to stop the yawl.

They activated pretty potent sirens, blue lights, and the Defendants still, after knowing and listening to the command of the United States Coast Guard service, escaped, fled, disregarded the commands.

They increased the speed of the boat. And while doing that, the Defendants started dumping, tossing over the ocean evidence in this case, that is, sacks, bales containing cocaine and heroin. Eventually, the Government was able to weigh the cocaine. And this case involved 151.6 kilograms of cocaine and 740.3 grams of heroin.

The Defendants continued to flee the area. The Coast Guard officers were able to recover from the ocean five bales of cocaine and the heroin.

And approximately at 6 nautical miles north of Loiza, that is, after 18 nautical miles have been navigated, the Defendants' yawl stopped because it was then in water, and the three Defendants charged in this case were rescued by the United States Coast Guard service.

(Doc. 193 at 26-27).

Mr. Espinal-Mieses pleaded guilty to the four counts described above, in violation of the MDLEA and the Controlled Substances Act. There was no plea agreement.

Prior to sentencing, Mr. Espinal-Mieses filed a motion requesting safety-valve relief under the former version of 18 U.S.C. § 3553(f), which did not include MDLEA offenses amongst the enumerated safety-valve eligible crimes. Mr. Espinal-Mieses argued that although MDLEA violations were not specifically mentioned in § 3553(f), the MDLEA incorporates 21 U.S.C. § 960(b), and specifically instructs that MDLEA violations are punishable pursuant to § 960. And because § 960 was one of the offenses enumerated in § 3553(f), Mr. Espinal-Mieses argued safety-valve relief was available. (A.10-29).

The district court denied Mr. Espinal-Mieses's request for safety-valve relief as a matter of law without considering the 5 requirements identified in 18 U.S.C. § 3553(f). Instead, the district court ruled safety-valve relief was unavailable as a matter of law because MDLEA offenses were not included amongst the specifically enumerated offenses listed in § 3553(f). (A.10-29).

According to the district court, whether safety-valve relief was available for MDLEA offenses was an open question in the First Circuit. (A.10-29). In the absence of binding authority, the district court relied on decisions from the Ninth Circuit, *United States v. Gamboa-Cardenas*, 508 F.3d 491 (9th Cir. 2007), and the Eleventh Circuit, *United States v. Pertuz-Pertuz*, 679 F.3d 1327, 1329 (11th Cir. 2012), holding that safety-valve relief is not available for MDLEA crimes, despite

the MDLEA's incorporation of § 960. (A.10-29). The court also relied on a district court decision, *United States v. Mosquera-Murillo*, 172 F. Supp. 3d 24 (D.D.C. 2016), that adopted the position taken by the Ninth and Eleventh Circuits. (A.24 n.8).

Mr. Espinal-Mieses appealed to the First Circuit. He explained in his brief that while his appeal was pending, the D.C. Circuit reversed in *United States v. Mosquera-Murillo*, and expressly disagreed with the conclusion reached by the Ninth Circuit and the Eleventh Circuit that MDLEA violations are not safety-valve eligible. To wit, in *Mosquera-Murillo*, 902 F.3d 285 (D.C. Cir. 2018), the D.C. Circuit concluded that MDLEA offenses qualify as “offense[s] under” 21 U.S.C. § 960, and are thus subject to safety-valve relief. The Court noted that “§ 960 supplies the offense elements of drug-type and drug-quantity—5 or more kilograms of cocaine ... —[that] bear on the degree of culpability and determine the statutory sentencing range.” *Id.* at 293 (citing 21 U.S.C. § 960(b)(1)(B)). Consequently, the D.C. Circuit held, “the defendants’ crime [wa]s ‘an offense under’ both the MDLEA and § 960, drawing offense elements from each.” *Id.*

The *Mosquera-Murillo* Court also discussed why the decisions from Eleventh and Ninth Circuits that the district court relied on in this case got it wrong. According to the D.C. Circuit, neither decision “expressly assesses whether the drug-type and drug-quantity facts supplied by § 960(b) constitute offense elements, such that an MDLEA offender penalized under § 960(b) should be considered someone who has violated both the MDLEA and § 960.” *Id.* at 295-96. Because

“[t]hat consideration” was “pivotal to [its] conclusion,” the D.C. Circuit rejected the contrary holdings in *Gamboa–Cardenas* and *Pertuz–Pertuz*. Mr. Espinal-Mieses argued that the First Circuit should follow the lead of the D.C. Circuit in *Mosquera–Murillo* and hold that MDLEA offenses are, in fact, subject to safety valve relief.

In addition, Mr. Espinal-Mieses argued the First Circuit should reverse because 6 months after Mr. Espinal-Mieses’s sentencing, Congress amended § 3553(f) for the specific purpose of adding MDLEA offenses to the list of enumerated offenses for which safety valve relief is available. *See* First Step Act of 2018, Pub. L. No. 115-391, § 402(a)(1)(A)(ii), 132 Stat. 5194, 5221 (adding 46 U.S.C. §§ 70503 and 70506 to 18 U.S.C. § 3553(f)). Mr. Espinal-Mieses contended that although Congress made the amendment applicable to convictions entered only on and after the date of enactment, *id.* § 402(b), the amendment revealed that the Ninth and Eleventh Circuits interpreted the statutory language incorrectly, and that the amendment clarified the legislature’s intent for MDLEA offenses to be safety-valve eligible.

The First Circuit affirmed based on its decision in *United States v. De La Cruz*, 998 F.3d 508 (1st Cir. 2021), which was decided while Mr. Espinal-Mieses’s appeal was pending. In *De La Cruz*, the First Circuit agreed with the interpretation of the Eleventh and Ninth Circuits, and disagreed with the approach taken by the D.C. Circuit. *Id.*

## REASON FOR GRANTING THE WRIT

### **II. This Court should grant the writ and review this case to address important questions regarding statutory interpretation.**

Although the statute at issue in this case has been amended, this Court should grant the writ and review this case to resolve important questions of statutory interpretation.

First, what does it mean for a statute to be ambiguous? According to the Eleventh Circuit, the First Circuit, and the majority of the Ninth Circuit panel that decided *Gamboa-Cardenas*, the pre-amendment version of 18 U.S.C. § 3553(f) unambiguously excluded MDLEA offenses from safety-valve eligibility. But the D.C. Circuit found the statute ambiguous in *Mosquera-Murillo*. And so did Judge Fisher in his dissent from the majority's decision in *Gamboa-Cardenas*. *Gamboa-Cardenas*, 508 F.3d at 506 (Fisher, J., dissenting). Taken as a whole, the disagreement of so many judges regarding the same statutory language suggests clarity is needed from this Court on the issue of what, exactly, renders statutory language ambiguous.

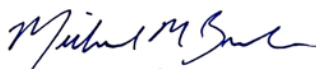
In addition, this Court should address the impact of a statutory amendment that resolves a circuit split on cases to which the prior version of the statute applies. At the time of the 2018 amendment to 18 U.S.C. § 3553(f), there was a circuit split on the question of whether the previous version of 18 U.S.C. § 3553(f) included MDLEA offenses. In *De La Cruz*, the First Circuit interpreted the 2018 amendment to 18 U.S.C. § 3553(f), which explicitly made MDLEA offenses safety-valve eligible, as support for its conclusion that the prior version of the statute unambiguously

excluded MDLEA offenses as safety-valve eligible. This Court should review the First Circuit's rationale and clarify the impact, if any, of a statutory amendment that resolves a circuit split, to cases requiring application of the pre-amendment version of the statute.

### **CONCLUSION**

For the foregoing reasons, this Court should grant Mr. Espinal-Mieses's petition and reverse the First Circuit's opinion.

Respectfully submitted on this 9th day of November, 2023.



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