No.

In the Supreme Court of the United States

LUIS MARIN, LUIS CHAVEZ,

Petitioners,
v.

UNITED STATES OF AMERICA

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

The question presented is as follows:

I. Whether Congress' authority to "define and punish…Felonies committed on the high Seas," U.S. Const. art. I § 8, cl. 10 (the "Felonies Clause"), is limited by international principles?

II. Whether 46 U.S.C. § 70502(d)(1)(C), enacted under the Felonies Clause, conflicts with international law as to when a vessel may be treated as stateless?

PARTIES TO THE PROCEEDING

Petitioners are Luis Marin and Luis Chavez, who were Defendants-Appellants below.

Respondent is the United States of America, who was the Plaintiff-Appellee below.

STATEMENT OF RELATED PROCEEDINGS

- *United States v. Marin*, *Chavez*, Nos. 3:21-cr-01021-DMS, U.S. District Court for the Southern District of California. Judgment entered July 5, 2022.
- *United States v. Marin*, *Chavez,* Nos. 22-50154 and 22-50155, U.S. Court of Appeals for the Ninth Circuit. Judgment affirmed January 17, 2024.
- *United States v. Marin*, *Chavez,* Nos. 22-50154 and 22-50155, U.S Court of Appeals for the Ninth Circuit. Rehearing *en banc* denied Feb. 26, 2024.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Luis Marin and Luis Chavez (collectively "Petitioners") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

This Court's guidance is needed to resolve an issue and question of fundamental legal and constitutional significance: whether Congress' authority under U.S. Const. art. I, § 8, cl. 10 (the "Felonies Clause") is limited by principles of international law. The Court must intervene to correct the Ninth Circuit's departures from this Court's decisions, international and domestic law principles, constitutional rights, the rule of law, and its disregard for congressional intent by failing to recognize that the Framers intended international law to limit the Felonies Clause of the Constitution. This case presents an appropriate vehicle for the Court to provide much-needed guidance on Congress' authority under the Felonies Clause and the role of international law in enacting statutes such as the Maritime Drug Law Enforcement Act ("MDLEA") pursuant to such Constitutional provisions.

The central issue in this litigation is a recurring question of federal law: whether the definition of "vessel without nationality" under 46 U.S.C. § 70502(d)(1)(C) and jurisdiction under MDLEA is unconstitutional because it conflicts with international law principles. That is, where a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation does not affirmatively and unequivocally assert that the vessel is of its

nationality unconstitutionally extends U.S. jurisdiction as an exercise of Congress's authority under the Felonies Clause to foreigners on foreign vessels as individuals that aboard "a vessel without nationality." Pursuant to such provision, Congress has interfered with what the Constitution was supposed to limit them from doing, granting authority to U.S. authorities to prosecute foreigners on foreign vessels on grounds that directly conflict with international law.

OPINIONS BELOW

The Ninth Circuit's denial of the petition for a panel rehearing is found at Nos. 22-50154, 22-50155, D.C. No. 3:21-cr;01021-DMS (9th Cir. 2024), and reproduced at App. 1-2a respectively. The Ninth Circuit's judgment is found at Nos. 22-50154, No. 22-50155, D.C. No. 3:21-cr-01021-DMS, and reproduced at App. 3-19a, respectively.

JURISDICTION

Ninth Circuit entered judgment on January 17, 2024. App. 3-19a. On February 26, 2024, the Ninth Circuit entered an order denying Petitioner's timely petition for rehearing en banc. App. 1-2a. By order of this Court, the applications of both petitioners to extend the time to file a petition for a writ of certiorari was granted on May 15, 2024, for Chavez (Application 23A1009) and on May 16, 2024, for Marin (Application 23A1018), thereby extending time to file a petition for a writ of certiorari to July 25, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Article I, § 8 and Article III, § 2, cl. 1 of the U.S. Constitution are reproduced at App. 29a. The relevant provisions of the Maritime Drug Law Enforcement Act ("MDLEA"), 46 U.S.C. §§ 70501 et seq., are reproduced at App. 20-28a.

STATEMENT OF THE CASE

1. The charges against Petitioners stemmed from an interdiction and search of a small go-fast vessel on February 18, 2021. App. 7a. The encounter occurred about 655 nautical miles west of the Galapagos Islands, Ecuador. *Id.* Both Petitioners verbally claimed Ecuadorian nationality for the vessels, and the Ecuadorian authorities contacted by the Coast Guard officers confirmed the vessel's nationality. App. 7a. The Ecuadorian authorities, sometime after, provided a second response to the Coast Guard officers, stating that they neither "confirm nor deny nationality of the vessel." App. 7-8a.

As a result, the Coast Guard treated the vessel as stateless, a vessel "without nationality" under 46 U.S.C. § 70502(d)(1)(C), and thus subject to the jurisdiction of the United States. App. 8a. Accordingly, the Coast Guard arrested both Petitioners. App. 8a. The Petitioners were indicted federally in the United States District Court for the District of California with three counts of violating the MDLEA.

Pursuant to written plea agreements, Luis Chavez ("Chavez") entered guilty pleas to two counts of violating § 70503(a)(1) on September 29, 2021, and Luis Marin ("Marin") entered guilty pleas to the same charges on November 3, 2021. Before sentencing, on April 21, 2022, Petitioners filed a motion to withdraw their

guilty pleas on the grounds of an intervening decision decided on January 20, 2022. *United States v. Dávila-Reyes*, 23 F.4th 153 (1st Cir. 2022); App. 8a.

The District Court denied Petitioners' motion to withdraw their guilty pleas but invited Petitioners to renew the issue at sentencing through a motion to dismiss for lack of subject-matter jurisdiction. Marin then filed a motion to dismiss for lack of jurisdiction, raising the same arguments, and Chavez joined. App. 9a. The United States followed with a response in opposition. *Id.*

2. On May 6, 2022, the district court heard arguments and requested further briefing, characterizing the issue as one of whether there is "jurisdiction under the constitution." *See* 2-ER-64. On June 16, 2022, Marin filed a motion to dismiss the indictment for lack of jurisdiction, and Chavez joined. *See* 2-ER-69, CR 61. The Government responded again in opposition. *See* 2-ER-86, CR 63.[1]

On June 30, 2022, the District Court heard arguments on the motion and on the issue raised by *Dávila-Reyes* panel. The District Court observed that the First Circuit was "the first court that had addressed precisely that issue" but that, nonetheless, it would decline to adopt its reasoning. *See* 2-ER-102. After denying the motion, the district court proceeded with sentencing and imposed a sentence of 72 months.

3. Both Petitioners, Chavez and Marin, appealed, and the United States Court of Appeals consolidated their appeals for the Ninth Circuit. Petitioners argued that the provision under which jurisdiction was exercised is unconstitutional

[1] "ER" denoting Excerpts of Record filed in the Court of Appeals and "CR" denoting the District Court Clerk's Record.

because (1) Congress' authority to "define and punish…Felonies committed on the high Seas," U.S. Const. art. I, § 8, cl. 10 (the "Felonies Clause"), is limited by international law principles; and (2) § 70502(d)(1)(C), enacted under the Felonies Clause, conflicts with international law as to when a vessel may be treated as stateless.

In January 2024, a Ninth Circuit panel affirmed the Petitioners' judgment and conviction. App. 19a. Without deciding whether the Felonies Clause is constrained by international law, the panel held that the definition of "vessel without nationality" under § 70502(d)(1)(C) does not conflict with international law. App. 5a. The panel, therefore, affirmed the district court's denial of the Petitioner's motion to dismiss the indictment. App. 7a.

Following the January 2024 panel decision, Petitioners petitioned for rehearing *en banc*. Petition of Luis Marin and Luis Chavez for Rehearing *En Banc*, *United States v. Marin*, No. 22-50154, No. 22-50155, 90 F.4th 1235 (9th Cir. 2024). In support of their argument that the definition of statelessness in 46 U.S.C. § 70502(d)(1)(C) conflicts with international law, Petitioners argued that the provision exceeds the scope of Congress's power because its definition of statelessness, as applied in this case, is not coextensive with international law. *Id.* Petitioners explained that international law recognizes three instances of statelessness, none of which cover Petitioners' unconfirmed claim by Ecuador. *Id.* at 4. Petitioners contended that the panel's conclusion that § 70502(d)(1)(C) is not preempted by international law is unsound because it treats an oral claim of

nationality distinct from a claim by flying a flag when both forms of claiming nationality should be treated equally. *Id.* at 5.

On February 26, 2024, the Ninth Circuit denied the petition for panel rehearing. *See* Order of Court, *United States v. Marin*, No. 22-50154, No. 22-50155 (9th Cir. 2024). Judge Nguyen and Judge Forrest voted to deny the petition for rehearing en banc, with District Judge for the District of Maryland, Richard D. Bennett, sitting by designation, suggesting such a denial. While the full court was advised of the petition for rehearing en banc, no judge requested a vote on whether to rehear the matter en banc. Thus, the petition was denied. This petition follows.

REASONS FOR GRANTING THE PETITION

This Court's review is needed to clarify the MDLEA's jurisdictional requirements and to put an end to MDLEA's reach to foreign nationals located on a foreign-flagged ship. Courts should read MDLEA to limit prosecution to only individuals on the high seas, U.S. citizens, or persons in U.S. territories. 46 U.S.C. §70502(d)(1)(C) of the MDLEA allows for a determination of statelessness that is out of line with international law.

The issue arises in courts across the country with remarkable frequency and is important to all branches of the federal government, including but not limited to police, prosecutors, judicial actors, and Congress. This case presents a clean vehicle for resolving the question. Moreover, the decision below is wrong and should not be allowed to stand. The petition for a writ of certiorari should be granted.

I. The Ninth Circuit's Decision Raises Important Constitutional Issues That Must Be Resolved By This Court. The Question Whether Congress' Constitutional Power to "Define and punish…Felonies committed on the high Seas" is Limited By International Law Principles Remains Important.

The question presented is a compelling and frequently sufficient basis to grant certiorari in itself. *See, e.g., ACLU Petitions Supreme Court on Behalf of Wrongly Convicted Jamaican Fishermen,* ACLU (July 24, 2024), https://www.aclu.org/press-releases/aclu-petitions-supreme-court-behalf-wrongly-convicted-jamaican-fishermen (ACLU recently filed federal lawsuit against the United States and U.S. Coast Guard, involving the question of whether Congress has authority to criminalize conduct on the high seas by a foreign national on a foreign boat). But the case for certiorari here is further bolstered by the fact that the question presented is undeniably important – to international relations generally and all three branches of the federal government alike.[2] Whether Congress' authority to enact statutes like MDLEA, pursuant to the Felonies Clause, is limited by international law is an important question because, as recognized and

[2] By permitting the executive branch to manufacture federal jurisdiction over vessels in international waters, 46 U.S.C. § 70502(d)(2) violates the separation of powers, depriving the court of its ability and obligation to determine whether the MDLEA requirements have been met. *United States v. López-Hernández,* 864 F.3d 1292, 1304 (11th Cir. 2017) (noting that the MDLEA sets forth a "loud and clear instruction to not look behind these certifications," and how "any further jurisdictional complaint over that U.S. prosecution is to be handled by the executive branch"). MDLEA "unconstitutionally delegates the ability to determine jurisdiction, 'a traditional, if not vital, function of the Judiciary' to the Executive Branch. *United States v. Rojas,* 53 F.3d 1212, 1214 (CA11 1995) ("Thus, separation of powers would be implicated when the actions of another Branch threaten an Article III court's independence and impartiality in the execution of its decision-making function.").

interpreted in most courts, it undermines the Rule of Law, separation of powers, and adversary system.[3] Congress' revisions to and enactment of the MDLEA intrude on judicial authority, which is exemplified and seen clearly in light of previous Supreme Court decisions. *See Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 458 U.S. 50 (1982) (reaffirming that Congress cannot delegate deciding cases, including making factual findings, to an entity that is not an Article III court). *See also United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872) (same)). MDLEA delegates to the Executive Branch, in violation of the separation of powers, the power to manufacture federal jurisdiction over vessels in international waters, regardless of whether they are in fact stateless.

Ensuring the uniformity of federal law is always important, but it is fundamental to ensure and maintain the sovereignty of the executive, legislative and judicial powers, as well as the sovereignty of the nations in the international community and law of nations. The Constitution empowers Congress to define and punish piracies and felonies committed on the high seas, and offenses against the law of nations. U.S. CONST. ART. I, § 8, cl. 10. Here, the Ninth Circuit has deepened the desire of courts to avoid the constitutional issues resulting from the MDLEA, in particular, whether the Felonies Clause is limited by international law

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[3] The MDLEA undermines adversarial fact-finding crucial to felony convictions and violates the Constitution in several ways. It requires judges, not juries, to determine essential facts for a federal felony conviction, breaching the Sixth Amendment right to a jury trial. 46 U.S.C. 70504; *see Booker v. United States,* 543 U.S. 220, 244 (2005) (holding that any fact, other than a prior conviction, necessary to support the sentence is an element of the crime); *Blakely v. Washington*, 542 U.S. 296, 305–08 (2004) (rejecting legislative labels subjective test for identifying elements). Additionally, the MDLEA's provision that the Executive Branch's certification "conclusively" establishes jurisdiction (46 U.S.C. §§ 70502(c)(2) & (d)(2)) infringes on judicial fact-finding, violating Article III by shifting this core function to the Executive Branch.

principles. App. 3-19a; *Marin*, 90 F.4th at 1239-40 ("Without deciding whether the Felonies Clause is constrained by international law, we hold that the definition of "vessel without nationality" under 46 U.S.C. § 70502(d)(1)(C) does not conflict with international law."). If so, whether such proposition, in turn, supports the proposition that §70502(d)(1)(C) of the MDLEA is unconstitutional in that it expands "the definition of 'vessel without nationality' beyond the bounds of international law and thus unconstitutionality extends U.S. jurisdiction to foreigners on foreign vessel." *Dávila-Reyes*, 23 F.4th at 157.

The untenability of allowing this question to remain unanswered is underscored by the fact that this question occurs so frequently in the courts yet remains unresolved and subsequently creates circumstances that impact other Constitutional provisions and individual rights. *See, e.g., United States v. Tinoco*, 304 F.3d at 1111-12 (11th Cir. 2002) (reviewing the frequent argument made by defendants challenging their MDLEA violation that the Fifth Amendment requires they have some "nexus" or factual connection with the prosecuting forum); *United States v. Gonzalez*, 776 F.2d 931, 938, 940-41 (11th Cir. 1985) (holding the Fifth Amendment requires no nexus). *Cf. United States v. Perlaza*, 438 F.3d 1149, 1160-62 & n. 14 (9th Cir. 2006) ("The notion that Peterson's 'protective principle' can be applied to 'prohibiting foreigners on foreign ships 500 miles offshore from possessing drugs that…might be bound for Canada, South America, or Zanzibar' as suggested by the Government here has been repeatedly called into question by our Court and others"). The MDLEA's jurisdiction certification procedure has also faced

frequent Confrontation Clause challenges. *See United States v. Barona-Bravo*, 685 F. App'x 761 (11th Cir. 2017); *United States v. Campbell*, 743 F.3d 802 (11th Cir. 2014); *United States v. Mitchell-Hunter*, 663 F.3d 45 (1st Cir. 2011); *United States v. Martinez*, 640 F. App'x 18 (1st Cir. 2016); *United States v. Nueci-Pena*, 711 F.3d 191, (1st Cir. 2013); *United States v. Cardales-Luna*, 632 F.3d 731, 739 (1st Cir. 2011) ("the outcome that results from this case is one more step on the slippery slope down which we have been sliding for some time.") (citing *United States v. Azubike*, 564 F.3d 59 (1st Cir. 2009)). However, the court generally rejects them, with their decisions motivated by concerns regarding the role that the jurisdiction procedure plays in U.S. foreign affairs. *See generally United States v. Cruickshank*, 837 F.3d 1182 (11th Cir. 2016).

It recurs frequently in the courts throughout the country. Between 2010 and 2018, there were a total of 2,369 MDLEA cases.[4] These cases are highly concentrated in just a few circuits, with the First Circuit hearing 169 cases, the Second Circuit hearing 66 cases, and the Ninth Circuit hearing 74. Indeed, the Eleventh Circuit alone accounts for 85 percent of all MDLEA cases, hearing 2,010 cases between 2010 and 2018 alone.

And this case offers a clean vehicle in which to resolve the conflict. This is the first time the Constitutional question of whether international law principles limit

[4] For the purposes of this analysis, MDLEA cases are defined as any case where at least 1 of the possible 5 statutes of conviction include the following conviction codes: 46 U.S.C. §§ 70502, 70503, 70504, or 70506.

Congress's authority under the Felonies Clause has reached this Court,[5] as procedural issues often prevent cases from reaching this stage or the courts' frequent use of procedural issues to support their frequent avoidance of addressing such an issue.

II. The Decisions Below Are Wrong:

Finally, the case for certiorari is strengthened by the fact that the courts consistently err in their treatment of the relation between the Felonies Clause and Congress' authority to enact pursuant to such, and subsequently the MDLEA as well. Previous assertions that the MDLEA is a valid exercise of Congress's power "to define and punish…Felonies on the high Seas" is incorrect and error. *See, e.g., United States v. Alfonso*, 104 F.4th 815 (11th Cir. 2024) (citing *United States v. Estupinan*, 453 F.3d 1336, 1338-39 (11th Cir. 2006) (rejecting claim that Congress "exceeded its authority under the Piracies and Felonies Clause in enacting the MDLEA"); *United States v. Cabezas-Montano*, 949 F.3d 567, 587 (11th Cir. 2020) (holding that "the MDLEA is a valid exercise of Congress's power under the Felonies Clause as applied to drug trafficking crimes without a 'nexus' to the United States")). The legislative history of both the Felonies Clause and MDLEA weigh decisively against the conclusion that the power to enact statutes under the Felonies Clause is not limited by international law and that the definition of stateless vessel does not conflict with international law.

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[5] *United States v. Marin*, 90 F.4th 1235, 1240 (9th Cir. 2024) (previous upholding of MDLEA's constitutionality does not resolve the current issues which have not been previously addressed).

Most fundamentally, the Ninth Circuit's interpretation fails to give effect to the United States' commitment to the international legal order at the Founding. Edwin D. Dickinson, *The Law of Nations as Part of the National Law of the United States*, 101 U. PA. L. REV. 26, 55-56 (1952) ("[T]he Constitution was framed in firm reliance upon the premise, frequently articulated, that...the Law of Nations in all its aspects familiar to men of learning in the eighteenth century was accepted by the framers, expressly or implicitly, as a constituent part of the national law of the United States."). One of the primary goals of the Constitution's delegates was to improve the new nation's ability to meet its obligations to other countries under international law.[6] The Framers recognized the perceived inability of the Confederation to uphold American obligations under international law.[7] As a matter of fact, part of the reasoning behind holding the Constitutional Convention was to address this.[8] Recognizing the perceived inability but also the international legal significance of U.S. independence, the Founders felt bound as new members in the community of nations, both ethically and pragmatically, to inherit and abide by the law of nations. *See The Nereide*, 13 U.S. 388, 423 (1815) ("The court is bound by the law of nations, which is a part of the law of the land."); *Ware v. Hylton*, 3 U.S. (3 Dall.) 199, 281 (1796) ("When the United States declared their independence, they

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[6] Criticism of the Articles of Confederation largely stemmed from their failure to grant the federal government the power to punish states for violating international laws or treaties.

[7] *Dávila-Reyes*, 23 F.4th at 174-75 (analyzing the intent of the Framers in reaching its holding that international law limits Congress' power under the Felonies Clause).

[8] *See generally*, Jules Lobel, *The Limits of Constitutional Power: Conflicts Between Foreign Policy and International Law*, 71 VA. L. REV. 1071, 1084, 1130-53 (1985) (arguing that fundamental international law norms bind both Congress and the President); Stewart Jay, *The Status of the Law of Nations in Early American Law*, 42 VAND. L. REV. 819, 821-28 (1989).

were bound to receive the law of nations, in its modern state of purity and refinement."); *Chisholm v. Georgia*, 2 U.S. 419, 474, (1793) ("The United States had, by taking a place among the nations of the earth, become amenable to the laws of nations; and it was their interest, as well as their duty, to provide, that those laws should be respected and obeyed ...."). This disposition is reflected in both the text and structure of the Constitution.[9] *See generally*, Lobel, *supra* at 1084, 1130-53; Jay, *supra* at 821-28.

International law is part of our law and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. *Paquete Habana*, 175 U.S. 677, 700 (1900). For decades, federal courts have found that customary international law is part of federal common law, the body of unwritten rules of decision developed by federal courts in the absence of a direct constitutional or statutory provision. This view of customary international law as federal common law has been widely accepted. *See, e.g.,* Curtis A. Bradley & Jack L. Goldsmith, *Customary International Law as Federal Common Law: A Critique of the Modern Position*, 110 HARV. L. REV. 815, 817 (1997) ("The modern position…has the overwhelming approval of the academy."); *see also* Harry A. Blackmun, *The Supreme Court and the Law of Nations*, 104 YALE L.J. 39, 40 (1994) ("Although commentators continue to debate the extent of executive, legislative, or judicial

[9] *United States v. Dávila-Reyes*, 23 F.4th 153, 178-79 (1st Cir. 2022), vacated, review or reh'g granted en banc 38 F.4th 288, (1st Cir. 2022) (analyzing how the Framers must have meant two separate concepts for "Piracies" and "Felonies" that Congress could "define and punish.").

power to trump customary international law, the import of *The Paquete Habana* is clear: Customary international law informs the construction of domestic law, and, at least in the absence of any superseding positive law, is controlling."); *see, e.g.*, Memorandum for the United States as Amicus Curiae, *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (No. 79-6090), 19 I.L.M. 585, 606 n.49 (1980) ("Customary international law is federal law, to be enunciated authoritatively by federal courts. An action for tort under international law is therefore a case 'arising under … the laws of the United States' within Article III of the Constitution." (citing, *inter alia, The Paquete Habana*, 175 U.S. 677, 700 (1900))); RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES 102, 111, 115 (1987) (stating that international law, including customary international law, is federal law, supreme over state law and triggering federal court jurisdiction); Jeffrey M. Blum & Ralph G. Steinhardt, *Federal Jurisdiction over International Human Rights Claims: The Alien Tort Claims Act after Filartiga v. Pena-Irala*, 22 HARV. INT'L L.J. 53, 57, 98-102 (1981); Louis Henkin, *International Law as Law in the United States*, 82 MICH. L. REV. 1555, 1560-62 (1984); Harold Hongju Koh, *Transnational Public Law Litigation*, 100 YALE L.J. 2347, 2385-86 (1991); Kenneth C. Randall, *Federal Questions and the Human Rights Paradigm*, 73 MINN. L. REV. 349, 388-93 (1988).[10]

As the foregoing reveals, it is well established that the Framers believed that to be a "nation," the U.S. must honor the law of nations. *See, e.g.*, 1 U.S. Op. Atty.

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[10] Several federal circuit courts have affirmed that the law of nations is part of federal common law. *See, e.g., Filartiga v. Pena-Irala*, 630 F.2d 876, 885 (2d Cir. 1980); *In re Estate of Marcos*, 25 F.3d 1467, 1473-74 (9th Cir. 1994); *In re Estate of Marcos*, 97 F.2d 493, 502 (9th Cir. 1992) (citing *The Paquete Habana*)).

Gen. 26, 27 (1792) (Edmund Randolph) ("The Law of nations, although not specifically adopted by the constitution or any municipal act, is essentially a part of the law of the land. Its obligation commences and runs with the existence of a nation…"). In discussing the law of nations at the time of the founding, the Framers noted that compliance with international law would foster respect for a new country among the community of nations. The key figures in the framing of the Constitution repeatedly stated this as a self-evident truth. Alexander Hamilton wrote in his Pacificus papers of 1793 that the law of nations was included within "the laws of the land." A. Hamilton, Pacificus No. I (June 29, 1793), in 15 The Papers Of Alexander Hamilton 34 (H. Syrett ed. 1969).

However, through honoring the laws of its nation, particularly, the MDLEA, the United States has subsequently dishonored and disobeyed the Law of Nations. Accordingly, the MDLEA presents a broad jurisdictional step taken by the United States in the high seas. However, the statute's enactment must be credited to prior assertions of jurisdiction by the federal courts over stateless vessels. The prosecution of various drug smuggling activities on the high seas began with the Comprehensive Drug Abuse Prevention and Control Act of 1970. Comprehensive Drug Abuse Prevention Act of 1970, Pub. L. No. 91-513, 84 Stat. 1236 (1970). Regardless of whether the vessels were stateless, convictions of those aboard vessels apprehended on the high seas were difficult under the 1970 Act and its burden of proof. Ann Marie Brodarick, *High Seas, High Stakes: Jurisdiction over Stateless Vessels and an Excess of Congressional Power Under the Drug Trafficking Vessel*

Interdiction Act, 67 U. MIAMI L. REV. 255, 275 (2012). As a result, the Coast Guard's ability to combat drug smuggling to the territorial waters of the United States was limited. However, it didn't take long for the police, prosecutorial, and judicial discretion to become limitless. Following a dramatic increase in drug trafficking in the 1970s, Congress passed the MHSA in 1980,[11] what would later become MDLEA as part of legislation "to facilitate increased enforcement by the Coast Guard of laws relating to the importation of controlled substances." §§ 1–4, Pub. L. 96-350, 94 Stat. 1159. According to the Senate Report, the 1980 legislation was intended to "give the Justice Department the maximum prosecutorial authority permitted under international law" and "to address acts committee [sic] outside the territorial jurisdiction of the United States." *Id.* (MDLEA "would apply to prohibited acts even if such acts occurred outside the territorial jurisdiction of the United States"). The statute explicitly stated that it would apply extraterritorially because some courts declined to give statutes extraterritorial effect without an explicit statement from Congress. *Id.* Between the difficulties faced in enforcement and the new prevalence of cocaine, the MHSA became insufficient by the 1980s, resulting in the enactment of the MDLEA, expanding the jurisdictional reach significantly.

MDLEA's expanded jurisdiction while also lowering the government's burden in proving that the vessel is stateless. The MDLEA does not require the U.S. government to obtain proof of statelessness sufficient to withstand scrutiny in court,

[11] The first version of the statute was codified at 21 U.S.C. 955a et seq., and the earliest cases interpreting the statutory language of MDLEA—those from the early 1980s—cite to this statute. MDLEA itself was enacted as §§ 3201–02 of the Anti-Drug Abuse Act of 1986 and codified at 46 U.S.C. app. § 1901 et seq. *See* Pub. L. 99-570, 100 Stat. 3207.

which could take months. S. Rep. No. 99-530, at 15 (1986), as reprinted in 1986 U.S.C.C.A.N. 5986, 6000-02. Instead, it broadens the definition of statelessness to include vessels that do not provide evidence of registry upon request as well as those who asserted flag state does not "affirmatively and unequivocally" confirm their registration. 46 U.S.C. §70502(d)(1)(C). This definition of stateless vessels, and the definitions contained in the Act's successors, differs from that contained in United Nations Convention on the Law of the Sea (UNCLOS), which states the ships have the nationality of the country whose flag they are entitled to fly. UNCLOS, *supra*, art. 92, Dec. 10, 1982, 1833 U.N.T.S. 397.[12] Considering the Senate Report, which makes clear that obtaining any kind of registry confirmation from the foreign states is not only slow but also difficult and confusing. This provision would sweep in many genuinely foreign vessels, and so it did. Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction over Drug Crimes,* 93 MINN. L. REV. 1191, 1197 (2009).

To be enforceable and constitutional, MDLEA should be reviewed through the recent lens of the now-vacated First Circuit panel opinion in January 2022 to meet the guidelines and principles set down by both domestic and international law. *Dávila-Reyes*, 23 F.4th at 186; RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF

[12] Notably, although the U.S., amongst others, has not ratified UNCLOS, many of its provisions are treated as customary international law. *See e.g.,* UNCLOS, art. 92(1) (codifies customary international law). *See S.S. Lotus* (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 25 (Sept. 7) ("In virtue of the principle of the freedom of the seas ... no State may exercise any kind of jurisdiction over foreign vessels upon them."); Neil Brown, *Jurisdictional Problems Relating to Non-Flag State Boarding of Suspect Ships in International Waters: A Practitioner's Observations*, in SELECTED CONTEMPORARY ISSUES IN THE LAW OF THE SEA, 69, 70 (Clive R. Symmons ed., 2011). This exclusive jurisdiction is subject to several limitations, including the right of visit contained in UNCLOS art. 110.

THE UNITED STATES § 3 (1965) ("if a domestic law of the United States may be interpreted either in a manner consistent with international law or in a manner that is in conflict with international law, a court in the United States will interpret it in a manner that is consistent with international law."). As discussed above, the extension of criminal jurisdiction to "vessels without nationality" on the high seas is not proper under international law and domestic law and should not be upheld. Rather, the courts should follow the First Circuit's January 2022 panel decision and invalidate this provision since it could lead to more injustices in its application. In upholding the extension of criminal jurisdiction to "vessels without nationality," to remain consistent with both United States and international law, a court must also observe the limitations that international law traditionally places on a nation when applying their own laws extraterritorially. *See* S. Rep. No. 855, 96th Cong., 2d Sess. 2 (1980) (to go as far as "permitted under international law."). *See also United States v. Newball*, 535 F. Supp 715, 720 (E.D.N.Y. 1981). Striking down this provision that violates both international and domestic law will pave the way for the courts to properly apply the MDLEA. Without acknowledging the First Circuit's recent analysis and opinions and addressing the issues Petitioners' case now presented, tension with other Circuit's treatment of international law defenses as well as a recent consideration by this Court of the original meaning of the law of nations legislations is solidified.

III. This Case Is The Proper Vehicle to Decide This Recurring and Important Issue and Constitutional Question.

This case is an excellent vehicle to decide the question presented. The Ninth Circuit recognized the argument whether the Felonies Clause is constrained by international law but nevertheless concluded that the definition of "vessel without nationality" under 70502(d)(1)(C) does not conflict with international law. App. 12a. ("Although we have previously upheld the constitutionality of the MDLEA, those cases do not dictate the results here, as the government suggests, because we have not previously addressed the precise issues defendants raise."). Accordingly, this is a matter of first impression for the Federal Courts. *Id.* Moreover, the question is cleanly presented here. *Id.* ("no prior Ninth Circuit panel has addressed whether the MDLEA's definition of "stateless vessel" conflicts with international law in violation of the Constitution."). Proper interpretation of § 70502(d)(1)(C) is an important issue. Although countless attempts to present the pressing issues arising from the MDLEA to this Court have been made, Petitioners' case is the first one to reach this Court without a vehicle problem.

Throughout the Circuits, there is frequent avoidance of appellants' constitutional challenges to § 70502(d)(1)(C), usually justified by procedural grounds or default. Frequently, and most recently, the Eleventh Circuit only reached the § 70502(d)(1)(C) issue on plain error. *United States v. Alfonso*, 104 F.4th 815 (11th Cir. 2024). In a successful attempt to avoid the issues now presented to this Court, procedural error was also at play in the recent First Circuit

decision. *See United States v. Dávila-Reyes*, 84 F.4th 400, 428-29 (1st Cir. 2023). The use of procedural error was thoroughly discussed and criticized in its dissent opinion.

Moreover, the Petitioners present a question of law for the courts to decide whether Congress had the authority to legislate and confer jurisdiction over offenses allegedly committed on the high seas, and not any questions regarding indictment defects or factual disputes. There is a great necessity for this Court to hear and address the issues arising under § 70502(d)(1)(C) and Petitioners' case as a question of law. *Dávila-Reyes*, 84 F.4th at 428-29. As thoroughly discussed in the First Circuit dissent,[13] § 70502(d)(1)(C) allows for the courts to consistently use procedural grounds to avoid any constitutional challenge and also creates circumstances where the retroactive expansion of jurisdictional foundation for an appellants' guilty plea goes unnoticed and allowed.

§ 70502(d)(1)(C) of the MDLEA allowance of procedural grounds as a tool in constitutional avoidance creates circumstances where the government can switch jurisdictional theories. *Dávila-Reyes*, 84 F.4th at 435 (Montecalvo, J., dissenting). This last aspect and issue reveal why the Petitioners' case is an even better vehicle for resolving the lower courts' disagreement over how to read, understand, and enforce 70502(d)(1)(C).

[13] *United States v. Dávila-Reyes*, 84 F.4th 400, 428-29 (1st Cir. 2023) (Citations Omitted) (criticizing the retroactive change-of-course allowed through the MDLEA, the unfairness to appellants and harm to the plea-bargaining process).

CONCLUSION

The petition for a writ of certiorari should be granted.

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Respectfully submitted,

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