No. 24-

In the

Supreme Court of the United States

JOSE ROSARIO-ROJAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

CORRECTED PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Congress's Article 1, Section 8, Clause 10 power "[t]o define and punish . . . Felonies committed on the high Seas" authorizes the United States to enforce its criminal laws in a foreign nation's Exclusive Economic Zone.

PARTIES TO THE PROCEEDING

Pursuant to Sup. Ct. R. 14.1(b)(i), Mr. Rosario-Rojas certifies that there are no parties to the proceeding other than those named in the caption of the case. The parties to the proceeding in the Eleventh Circuit Court of Appeals were:

Alfonso, Jhonathan, Co-Appellant
Kohen, Jose Jorge, Co-Appellant
Rosario-Rojas, Jose Miguel, Appellant
The United States of America.

RELATED PROCEEDINGS

This case arises from the following proceedings: *United States v. Alfonso*, 104 F.4th 815 (11th Cir. 2024), *reh'g denied* (Oct. 8, 2024).

United States v. Alfonso et. al., Case No. 21-cr-20306-CMA-3 (S.D. Fla. Feb. 11, 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully seeks a Writ of Certiorari to review the Decision of the United States Court of Appeals for the Eleventh Circuit, rendered in Case 22-10589, in that court on June 14, 2024. *United States v. Alfonso*, 104 F. 4th 815 (11th Cir. 2024), *reh'g denied* Oct. 8, 2024.

OPINION BELOW

The Eleventh Circuit decision under review is reported at 104 F. 4th 815 (11th Cir. 2024) and is reproduced in the Appendix.

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 United States Court of Appeals for the Eleventh Circuit had jurisdiction over this cause pursuant to 28 U.S.C. § 1291. The Decision of the Court of Appeals was entered on June 14, 2024. The Court of Appeals granted Mr. Rosario-Rojas' Motion for an Extension of time to file a Petition for Rehearing En Banc, and Mr. Rosario-Rojas filed a petition within the time allotted. The Petition for Rehearing was denied on October 8, 2024. This Petition is timely filed pursuant to Sup. Ct. R. 13.1 and 13.3.

CONSTITUTIONAL, STATUTORY AND OTHER PROVISIONS INVOLVED

U.S. Const. art. I, § 8, cl. 10

The Congress shall have Power . . . To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.

46 U.S.C. § 70503

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

(1) Manufacture or distribute, or possess with intent to distribute, a controlled substance;

. . .

(b) Extension beyond territorial jurisdiction. Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.

(e) Covered vessel defined. In this section the term "covered vessel" means –

(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

(2) any other vessel if the individual is a citizen of the United States or a resident alien of the United States.

46 U.S.C. § 70504(b)

(b) Venue. A person violating section 70503 or 70508 –

(1) shall be tried in the district in which such offense was committed; or

(2) if the offense was begun upon the high seas, or elsewhere outside the jurisdiction of any particular State or district, may be tried in any district.

STATEMENT OF THE CASE

On May 1, 2021, United States law enforcement officers arrested Mr. Rosario-Rojas aboard "a vessel located in the Caribbean Sea approximately 69 nautical miles south of Santo Domingo, Dominican Republic." Order Den. Mtn. to Dismiss 1, ECF No. 47 ("Order"). This area is known as the Exclusive Economic Zone, 33 C.F.R. § 2.3(b) and is excluded from the definition of "high seas" under customary international law. 33 C.F.R. § 2.32(d).

"At the time of arrest, the Defendants claimed Colombian nationality for the vessel." Order at pp. 1-2. "Because the Colombian Government could neither confirm nor deny registry of the vessel, the vessel was treated as one without nationality and therefore subject to the jurisdiction of the United Sates. . . . A search of the vessel yielded 289 kilograms of cocaine." *Id*. at 2. (internal citation omitted). Mr. Rosario-Rojas and his codefendants were taken into the custody of the United States and detained at sea for eleven days, prior to being brought into port in San Juan, Puerto Rico on May 12, 2021. *See* Order at 2[1]. On May 13, 2021, a two-count Indictment was

[1] This eleven-day detention – throughout which Mr. Rosario-Rojas and others were chained to the exposed decks of various Navy and Coast Guard vessels –was consistent with the Coast Guard's standard operating procedure. *See* Order 10-11, ECF No. 47. Despite having "several opportunities to deliver Defendants to land between May 7 and May 12", the Coast Guard shuttled the defendants onto no fewer than four different U.S. ships, traversing the waters between Puerto Rico and the Dominican Republic, in order to keep them from arriving in port prior to the arrival of the DEA agents assigned to their case. *Id*.

returned in the Southern District of Florida, alleging that from an unknown date through May 1, 2022, "upon the high seas and elsewhere," Mr. Rosario-Rojas and two co-defendants conspired and possessed with intent to distribute five kilograms or more of cocaine while onboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70506(a) and 70503(a)(1), commonly referred to as the Maritime Drug Law Enforcement Act ("MDLEA"). *See* Indictment, ECF No. 2.

Mr. Alfonso, Mr. Rosario Rojas' codefendant moved the District Court to dismiss the Indictment. Mr. Rosario-Rojas filed a Motion to Adopt the Motion to Dismiss the Indictment. ECF No. 28. In Issue I, Mr. Rosario-Rojas argued that the United States lacked jurisdiction over his offense because Congress' power to enact the MDLEA stems solely from Congress' Art. I., § 8, cl. 10 power "[t]o define and punish Felonies committed on the high Seas" (the "Felonies Clause"),

and his offense did not take place on the high seas, within the meaning of the Felonies Clause. Mr. Rosario-Rojas argues that Congress lacked the authority to regulate his extraterritorial drug offense in the absence of a nexus to the United States, and that his prosecution violated due process. Finally, Mr. Rosario-Rojas asked the court to dismiss the Indictment as a sanction for the government's violations of Fed. R. Crim. P. 5(a) and (b), and outrageous government conduct, based on the government's delay in obtaining a criminal complaint and presenting him to a magistrate judge. Def. Mtn. to Adopt Mtn. to Dismiss 4, ECF No. 28.

In November 2021, the District Court conducted an evidentiary hearing on the Motion to Dismiss and subsequently entered a written order denying the motion. *See*

Order, ECF No. 47. The Court rejected Mr. Rosario-Rojas' statements about the constitutionally of the MDLEA as applied to the case. The Court did not find that the Coast Guard unnecessarily and intentionally delayed bringing Mr. Rosario-Rojas before a magistrate judge; however, the Court found that the proper remedy was suppression of the Defendant's statements and not dismissal of the Indictment. *Id.*

Mr. Rosario-Rojas pled guilty to Count One of the Indictment, which charged him with Conspiracy to Possess with Intent to Distribute five kilograms or more of cocaine while on board a vessel subject to the jurisdiction of the United States. The United States agreed to dismiss Count Two of the Indictment after sentencing. Plea Agreement 1, ECF No. 55.

Mr. Rosario-Rojas was sentenced by the District Court on February 11, 2022. The advisory Sentencing Guidelines range applicable to his offense was 121 to 151 months' imprisonment. Tr. of Sent'g Hr'g 7, ECF No. 105. After considering all of the 18 U.S.C. § 3553 factors, including the ones that led him to commit the offense, the District Court sentenced Mr. Rosario-Rojas to eighty-two months imprisonment. On appeal, Mr. Rosario-Rojas reasserted his claim that his offense did not occur on the "high Seas" within the meaning of the Define and Punish Clause. He also argued, for the first time, that 46 U.S.C. § 70502(d)(1)(C) exceeds Congress's authority under the Felonies Clause, by allowing the United States to exercise jurisdiction over persons on vessels that are not truly stateless, in violation of international law.

REASONS FOR GRANTING THE PETITION

A. Introduction

The MDLEA criminalizes drug trafficking aboard vessels "subject to the jurisdiction of the United States." 46 U.S.C. § 70502(c). The statute applies extraterritorially, 46 U.S.C. § 70503(b), and requires no connection between the offense, or the offender, and the United States. It is arguably the farthest-reaching exercise of Congressional power in the United States Code. Congress's authority to enact the MDLEA rests on its power to "define and punish . . . Felonies committed on the high Seas," under U.S. Const. art. I, § 8, cl. 10. The text, structure, and history of that clause show that Congress's powers to punish offenses on the high seas are limited by international law. The scope of the "high Seas" under the Felonies Clause must be similarly construed. And, under contemporary international law, the "high Seas" exclude the EEZ where Rosario-Rojas' offense occurred.

B. Text, precedent, and history review

As a whole, Article I, Section 8, Clause 10 of the United States Constitution grants Congress the power "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." The constitutional text, this Court's limited precedents, and the historical record all reveal that the scope of the "high Seas," within the meaning of the Clause, must be determined by reference to international law. Beginning with the text, four features reveal that the term "high Seas" must be interpreted according to international law. First, "the Define and Punish Clause, by using various terms of art drawn from customary international

law, requires an interpreter to consult that body of law to define those terms." Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction Over Drug Crimes*, 93 Minn. L. Rev. 1191, 1208-09 (April 2009). *See also* Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction,* 103 NW. U. L. Rev. 149, 151 (Winter 2009) ("the Constitution itself . . . incorporates international law by reference in Clause Ten"); *id.* at 157 ("By invoking terms of customary international law . . . the Constitution partially incorporates the associated bod[y] of law, but only insofar as [it is] relevant to understanding the terms in the Constitution.").

The Define and Punish Clause is comprised of concepts borrowed from international law; and their inclusion in the Clause is strong evidence that the Framers intended all three parts of the Clause to align with the international law understanding of those terms. Second, the canon of *noscitur a sociis* states that "[w]hen several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 195 (Thompson/West 2012). In *United States v. Smith*, 18 U.S. 153, 162 (1820), the Court explained that the offense of piracy is defined by international law.

Congress's power to define and punish Offences against the Law of Nations similarly depends upon international law. *Bellaizac-Hurtado*, 700 F.3d at 1250-1251 ("The insertion of the power to 'define' enabled Congress to provide

notice to the people through codification; it did not enable Congress to create offenses that were not recognized by the law of nations."). The Eleventh Circuit dismissed this argument, reasoning that because each grant in the Define and Punish Clause "has its own unique and distinct meaning," the canon of *noscitur a sociis* was "a poor fit." *Alfonso*, 104 F.4th at 824 n.11. But distinct as they are, the inclusion of all three grants in the same Clause indicates that they share some common feature. That commonality is that all three powers are limited by international law. This limitation is confirmed by the structure of our government as one of limited powers. "If Congress could define any conduct as a 'piracy' or a 'felony' or an "offence against the law of nations,' its power would be limitless and contrary to our constitutional structure." *Bellaizac-Hurtado*, 700 F.3d at 1250. There must be *some* limit to Congress' power to regulate felonies committed on the high seas. As with the surrounding powers in the Define and Punish Clause, the Felonies power finds its limit in international law. This is not to say, of course, that the Congress is limited in defining "Felonies" to include only those offenses that rise to the level of international law crimes. That would render the Offences Clause superfluous. Congress's Felonies power must, however, be exercised *consistently with* international law—which requires adhering to the commonly accepted definition of the "high seas."

The third relevant textual feature is that the "Piracies and Felonies" powers share a common geographic scope. The first phrase of the Define and Punish Clause grants Congress the power to "define and punish Piracies and Felonies committed on

the high Seas," in a single phrase, followed by a comma. U.S. Const. art. I, § 8, cl. 10. The placement of the comma after the "high Seas" indicates that the Framers intended the "high Seas" to mean the same thing for the Felonies power as it does for the Piracies power. The Eleventh Circuit has already held that the definition of piracy is provided by international law. *Smith*, 18 U.S. at 162. There is no basis to believe that the "high Seas" means anything different when interpreting Congress's powers to punish other felonies.

Finally, when the Define and Punish Clause is read without regard to international law, it "contains a striking double redundancy." Kontorovich, The "Define and Punish" Clause, supra, at 163. "'Piracies' refers to a particular crime. 'Felonies' in contrast, describes a broad category, as does 'Offenses against the Law of Nations.'" *Id*. "Piracy is a subspecies of felony, and one that necessarily occurs on the high seas. Moreover, piracy was an offense against the law of nations." *Id*. at 163. There would have been no need for the Framers to separately enumerate Piracies in the Define and Punish Clause, if the principles and definitions provided by international law are not inherent in its terms. During the Founding Era, "[p]iracy was jurisdictionally unique. . . . The offense was almost synonymous with universal jurisdiction." Kontorovich, The "Define and Punish" Clause, supra, at 165-66. *See also Smith*, 18 U.S. at 154 ("[P]irates being hostes humani generis, are punishable in the tribunals of all nations. All nations are engaged in a league against them for the mutual defense and safety of all."). "Other crimes that occurred on the high seas were dealt with under traditional jurisdictional principles." Kontorovich, The "Define and

Punish" Clause, supra, at 166. *See also id.* at 159 ("Piracy's unique status as a universal jurisdiction offense suggests its separate enumeration in Clause Ten specifically allows Congress to exercise universal jurisdiction over that offense—but not over high seas crimes or international law offenses."). The separation of Piracy from the other powers in the Define and Punish Clause reflects the Framers' understanding that the grants of power to regulate Piracies, Felonies committed on the high seas, and Offences against the Law of Nations incorporate the meanings and limitations accorded to those powers under international law. While the Court has had few occasions to interpret the Define and Punish Clause, a pair of cases issued in 1820 strongly suggests, if it does not definitively establish, that the grants of power under the Clause implicitly incorporate international law.

First, in *Smith*, the Court rejected a constitutional attack on a statute punishing piracy. The defendant argued that Congress had failed to fulfill its constitutional duty to "define" piracy in the statute, by referring only to "piracy, as defined by the law of nations." 18 U.S at 157. The Court rejected the challenge, "declaring[] that piracy, by the law of nations, is robbery upon the sea, and that it [was] sufficiently and constitutionally defined" by the statute. Smith, 18 U.S. at 167. The Court reasoned that "the general practice of all nations in punishing all persons, whether natives or foreigners, who have committed this offence against any persons whatsoever, . . . is a conclusive proof that the offense is supposed to depend, not upon the particular the provisions of any municipal code, but upon the law of nations, both for its definition and punishment." *Id.* at 162. *Smith* thus established that "Piracy,"

within the meaning of the Define and Punish Clause, is defined by international law. A week later, the Court gave international law a similar role in determining the breadth of Congress's powers under the Felonies Clause. *See United States v. Furlong*, 18 U.S. 184 (1820). Though *Furlong* was technically a statutory construction case, the Court first sought to determine the scope of Congress's powers under Define and Punish Clause, in order to determine the reach of the statute under review. Writing for the Court, Justice Johnson explained:

> To me it appears . . . that in construing [the statute] we should test each case by a reference to the punishing powers of the body that enacted it. The reasonable presumption is, that the legislature intended to legislate only on cases within the scope of that power; and general words made use of in that law, ought not, in my opinion, to be restricted so as to exclude any case within their natural meaning. As far as those powers extended, it is reasonable to conclude, that Congress intended to legislate, unless their express language shall preclude that conclusion. *Id*. at 196.

Hence, before analyzing the reach of the statute, the Court first had to determine the extent of Congress's power to regulate crimes committed on the high seas.

There was no debate that Congress had the power to punish piracies.

Following *Smith*, the Court held that "when embarked on a piratical cruise, every individual becomes equally punishable under the law . . . whatever may be his national character, or whatever may have been that of the vessel in which he sailed, or of the vessel attacked." *Furlong*, 18 U.S. at 193. But the same could not be said with respect to other felonies. Rather, the Court found that Congress did *not* have the power to punish a murder "committed by a foreigner upon a foreigner on a foreign

ship." *Id.* at 197. The sole basis for inferring this distinction in the reach of Congress's powers under the Define and Punish Clause was the application of international law. *See id.* at 197 ("Robbery on the seas is considered as an offence within the criminal jurisdiction of all nations. It is against all, and punished by all. . . . Not so with the crime of murder. . . . and hence, punishing it when committed within the jurisdiction, or, (what is the same thing,) in the vessel of another nation, has not been acknowledged as a right, much less an obligation.").

The Court further explained that Congress could not simply declare murder a "piracy" in order to bring it within the reach of the Define and Punish Clause, because doing so would unlawfully expand its own power: "Had Congress, in this instance, declared piracy to be murder, the absurdity would have been felt and acknowledged; yet, with a view to the exercise of jurisdiction, it would have been more defensible than the reverse, for, in one case it would restrict the acknowledged scope of its legitimate powers, in the other extend it." *Furlong*, 18 U.S. at 197. "Upon the whole," the Court was "satisfied that Congress neither intended to punish murder in cases with which they had no right to interfere, nor leave unpunished the crime of piracy in any cases in which they might punish it." *Id.*

Furlong thus establishes three propositions with respect to Congress's powers under the Define and Punish Clause. First, Congress's power to punish piracy on the high seas is broader than its power to prosecute other felonies. Second, there are felonies on the high seas with which Congress has "no right to interfere." And third, which those felonies are, with which Congress has "no right to interfere,"

depends upon the jurisdictional principles of international law. These decisions are consistent with historical evidence that the Framers believed Congress's powers under the Define and Punish Clause were implicitly limited by international law. "The theoretical underpinnings of the Constitution, its text, and the ratification debates all reflect the contemporary understanding that the law of nations, as part of the fundamental law of nature, implicitly limited the foreign affairs powers granted by the new constitution." Jules Lobel, *The Limits of Constitutional Power: Conflicts Between Foreign Policy and International Law,* 71 Va. L. Rev. 1071, 1084 (1985). The Constitution "reflected a fundamental transformation in American political thought from a view of a constitution as a compact between rulers and ruled to a view that sovereignty was located in the people, not the legislature." *Id.* at 1090 (footnote omitted). "The Constitution merely delegated a portion of the people's authority to a representative government. As a corollary to this principle, the American people could not delegate to the federal government the authority to breach natural law or the law of nations, which were not of the people's making." *Id.*

As a Congressman, John Marshall "argued that the idea that Congress's power to punish felonies on the high seas was unlimited would lead to consequences too absurd to accept." Kontorovich, *Beyond the Article I Horizon, supra*, at 1211-12. Because the people of the United States had "no jurisdiction over offences, committed on board a foreign ship, against a foreign nation," Marshall argued that, "in framing a government for themselves, they cannot have passed this jurisdiction to the government." *Id.* at 1212. In *The Jubilee of the Constitution*, John Quincy Adams

wrote that Congress's enumerated powers were "restricted on one side by the power of internal legislation within the separate States, and on the other, by the laws of nations." Kontorovich, *The "Define and Punish" Clause, supra*, at 158 (quoting John Quincy Adams, *The Jubilee of the Constitution*, 71 (New York, Samuel Colman 1839)). The laws of nations "are not subject to the legislative authority of any one nation, and they are, therefore, not included with the powers of Congress." *Id*. He continued:

> The powers of *declaring* war, or *regulating* commerce, of *defining* and *punishing* piracies and felonies committed on the high seas, and *offences* AGAINST THE LAW OF NATIONS, are among the special grants to Congress, but over that law itself, thus expressly recognized, and all-comprehensive as it is, Congress has no alterative power. Adams, *Jubilee* at 71.

These sources show that the Framers (and their near-contemporary, Adams), believed that when acting pursuant to its extraterritorial power under the Felonies Clause, Congress was bound by international law—and was not free to alter its terms. Thus, the Constitution's text, this Court's limited precedents, and the historical record all support the proposition that the scope of the "high Seas," within the meaning of the Felonies Clause, must be ascertained by reference to international law. And under contemporary international law, the "high Seas" exclude the EEZs.

C. Under international law, the EEZ's are not the high Seas and are not open to all states

Article I, Section 8, Clause 10 of the Constitution grants Congress three distinct powers: (1) the power to define and punish piracies (the Piracies Clause); (2) the power to define and punish felonies committed on the high seas (the Felonies

Clause); and (3) the power to define and punish offenses against the law of nations (the Offences Clause). *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1248 (11th Cir. 2012). The Maritime Drug Law Enforcement Act ("MDLEA") is a legitimate exercise of Congress's authority to define and punish felonies on the high seas. *United States v. Estupinan*, 453 F.3d 1336, 1338-39 (11th Cir. 2006). "High seas are international marine waters outside the jurisdiction of any country." (Legal Information Institute, high seas, Cornell Law School Legal Information Institute https://www.law.cornell.edu/wex/high_seas (last updated July 2024)). "The seas or oceans beyond the jurisdiction of any country." *High seas*, Black's Law Dictionary (7th ed. 1999). To ensure the principle of freedom of the seas, international law generally prohibits any country from asserting jurisdiction over foreign vessels on the high seas. *See The S.S. Lotus*, (1927) P.C.I.J. ser. A, No. 10 at 25; *see also* G. Mangone, supra at 163; A. Higgens & C. Colombos, *The International Law of the Sea* § 270 at 206 (1945). The Exclusive Economic Zone ("EEZ") is a 200 nautical mile zone extending from a coastal state's baseline, where the coastal state has priority access to living resources and exclusive rights to non-living resources". *United States v. Rioseco*, 845 F.2d 299, 300 n.1 (11th Cir. 1988).

The EEZ preserves the rights of nations over living and non-living resources. The Dominican Republic does recognize the EEZ as an exclusive zone to exercise certain rights. Other nations may access the Dominican Republic's EEZ, but the Dominican Republic maintains priority over various rights, which is contrary to the

definition of being open to all states. Part V of the UNCLOS is titled "Exclusive Economic Zone". Article 58 states:

> In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.

United Nations Convention on the Law of the Seas ("UNCLOS"), pt. V, art. 58, Dec. 10, 1982, 1833 U.N.T.S. 397. In accordance with the UNCLOS, states must consider the rights of the coastal state.

D. The Court did not previously classify the EEZ of a coastal state as the high Seas

The Panel's opinion conflicts with the reasoning applied in other decisions of this court, *United States v. Rioseco*, 845 F.2d 299, 300 n.1 (11th Cir. 1988). Here, the panel applied the Felonies Clause of the Constitution to charge the appellant with violating United States federal law in the high seas. However, the Court should have considered the law of the EEZ that the appellant occupied, as it did in *United States v. Rioseco*. In *Rioseco*, a Coast Guard officer was on routine patrol north of the Cay Sal Bank area of the Bahamas, an area that the United States acknowledges to be within the Bahamas' Exclusive Economic Zone. *United States v. Rioseco*, 845 F.2d 299, 300. The coast guard observed the fishing boat, the Jesuchristo, apparently engaged in fishing operations in the area. *Id*. In accordance with its duty to enforce various United States laws related to narcotics, fishing, and safety, the Coast Guard

stopped and boarded the fishing boat. *Id* at 301. Coast Guard officers informed the appellant that a Bahamian fishing license was required to fish in those waters. *Id*. During the initial boarding, American officials performed routine safety and administrative checks of the ship and issued a civil citation for violating the Lacey Act. *Id*. Several hours later, the Coast Guard made radio contact with the United States Attorney and the National Marine Fisheries Service in Miami, discovering that this was appellant's fourth violation of the Lacey Act. *Id*. It was decided that the appellant should face not only a civil citation but also criminal prosecution for his violations of the Lacey Act. *Id*.

In *Rioseco*, the United States Coast Guard officers enforced the requirement of a Bahamian fishing license in the Bahamian EEZ. This shows that the Court acknowledged that the Bahamian EEZ is an area where individuals are subject to Bahamian jurisdictional requirements. The Eleventh Circuit recognizes the enforcement of a coastal state's jurisdiction within its EEZ, conflicting with the notion that these waters are open to all states. The panel assessed this issue with the "cannon shot rule". The panel stated:

> Although the exact boundary of a cannon shot—be it one or three miles—may have been up for debate, it was generally understood that the "high seas" were the waters beyond a nation's territorial sea and that the "high seas" were not **subject to** the **sovereignty** of any nation.

See, e.g., 1 William Blackstone, Blackstone's Commentaries with Notes of Reference to the Constitution & Laws of the Federal Government of the United States; and of the Commonwealth of Virginia *111-12 (1803). The panel's opinion contradicts the

ruling in *Rioseco* because the appellant was **subject to** Bahamian **sovereignty** and the violation of Bahamian sovereignty was the key component for the United States to have jurisdiction over the appellant.

Here, Mr. Rosario-Rojas was brought to the United States and indicted on two counts for violation of 46 U.S.C. § 70506(b) and 46 U.S.C. § 70503(a)(1). The Indictment claimed that this conduct took place on the high seas. However, in *Rioseco*, the Court had jurisdiction over the appellant not because he was in the high seas, but because he was violating Bahamian law in the Bahamian EEZ which was a violation of the Lacey Act. The Court clearly recognized that the appellant was still required to follow the coastal state's laws and regulations. In this case, the Court does not have jurisdiction over Mr. Rosario-Rojas, a citizen of the Dominican Republic, because he was not on the high seas. He was in the Dominican Republic's EEZ which is **subject to** Dominican **sovereignty**. The Felonies Clause does not grant the Court jurisdiction to a location that is under the sovereignty of another nation.

There is an inconsistency within the Eleventh Circuit. *Rioseco* shows the enforcement of a coastal state's jurisdiction within its EEZ, which directly conflicts with the idea that these waters should be considered the high seas. This distinction emphasizes that although other nations may access an EEZ, the coastal state holds certain exclusive rights that must be respected under international law, particularly the UNCLOS. Therefore, the EEZ should not be conflated with the high seas, as it

involves specific rights and responsibilities that the United States recognizes as the Court displayed in *Rioseco*.

E. The Dominican Republic recognizes the EEZ as a distinct area separate from the high Seas

Jurisdiction under Section 955a may not exceed the bounds of international law. *United States v. Marino-Garcia*, 679 F.2d 1373, 1380; 21 USCS § 955a–955d. The Supreme Court has consistently stated that an act of Congress should never be interpreted to violate international law if there is any other possible way to interpret it. *See Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64, 117-18 (1804); *accord*, *Weinberger v. Rossi*, 456 U.S. 25 (1982). Under international law, all nations have an equal and **untrammeled** right to navigate on the high seas. *United States v. Marino-Garcia*, 679 F.2d 1373, 1380. James Madison in Federalist 63 states:

> An attention to the judgment of other nations is important to every government for two reasons: the one is, that, independently of the merits of any particular plan or measure, it is desirable, on various accounts, that it should appear to other nations as the offspring of a wise and honorable policy; the second is, that in doubtful cases, particularly where the national councils may be warped by some strong passion or momentary interest, the presumed or known opinion of the impartial world may be the best guide that can be followed.

The Federalist No. 63 (Madison), at 382 (Clinton Rossiter ed., 1961). Madison emphasizes the significance of considering the judgement of other nations. This underscores the intention that the Founding Fathers had towards international interests. Clearly, the Founding Fathers wanted the United States to recognize the ideas and agreements of other nations. Therefore, the United States should preserve

the intentions of the Founding Fathers and respect another nation's jurisdictional boundaries, especially when dealing with a citizen of that nation. The Dominican Republic signed UNCLOS, and this act is recognized by the National Congress. Following the framer's originalist interpretation the United States Government should respect the Dominican Republic's assessment of UNCLOS. Part VII of UNCLOS is titled "High Seas", and Article 86 of this part states:

> The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State. This article does not entail any abridgement of the freedoms enjoyed by all States in the exclusive economic zone in accordance with article 58.

UNCLOS art. 86. UNCLOS distinctly recognizes the separation between the EEZ of a nation and the high seas. The Dominican Republic recognizes this distinction, and certainly would apply these standards to Mr. Rosario-Rojas, a natural born citizen of the Dominican Republic. The UNCLOS provides guidelines for what is permissible amongst the high seas. Article 87 of Part VII ("High Seas") states:

> The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States: (a) freedom of navigation; (b) freedom of overflight; (c) freedom to lay submarine cables and pipelines, subject to Part VI; (d) freedom to construct artificial islands and other installations permitted under international law, subject to Part VI; (e) freedom of fishing, subject to the conditions laid down in section 2; (f) freedom of scientific research, subject to Parts VI and XIII.

UNCLOS art. 87 § 1.

Here, by definition, the EEZ cannot be considered the high seas. Mr. Rosario Rojas was sixty-nine nautical miles off the coast of the Dominican Republic, classifying this area as the Dominican EEZ. The United States cannot enter the EEZ of the Dominican Republic and have the freedom to lay submarine cables and pipelines, the freedom to construct artificial islands and installations, the freedom of fishing, and the freedom of scientific research.

The EEZ of a nation is not completely **open** to the United States. The panel noted that the United States extended the territorial sea from three to twelve nautical miles. This was achieved by means of a proclamation to conform with **current** international law. The EEZ is a creature of new technologies and resources. Many nations recognize the EEZ and have differentiated it from what is considered to be the high seas. Nations now have the ability to regulate these areas and enforce their own jurisdictional requirements.

Therefore, the Court should not consider the Dominican Republic's EEZ the high seas because the Dominican Republic recognizes this area as a part of their sovereignty. Jurisdiction under Section 955a must align with the limits of international law, as underscored in *United States v. Marino-Garcia.* The Supreme Court has consistently upheld that acts of Congress should be interpreted in a way that does not violate international law whenever possible. The Federalist Papers emphasize the importance of considering the judgment of other nations to ensure that policies are upheld, and jurisdictional reach is proper. The EEZ is a creature of technological innovation where nations have decided to enforce law. For these

reasons, the Dominican Republic's adherence to the articles of the UNCLOS should be recognized by the United States and the EEZ of the Dominican Republic should not be considered the high seas.

F. This case presents an unusually important question of constitutional law, warranting a review even in the absence of a circuit split

Over the past several decades, thousands of foreign nationals have been prosecuted under the MDLEA for crimes bearing no greater connection to the United States than Mr. Rosario-Rojas'. *See United States v. Valencia-Trujillo*, 573 F.3d 1171, 1173 (11th Cir. 2009) (noting "more than 1,200 convictions" in a seven year time span); Seth Freed Wessler, *The Coast Guard's 'Floating Guantánamos*', N.Y. TIMES, Nov. 20, 2017, https://www.nytimes.com/2017/11/20/magazine/the-coast-guards-floating-guantanamos.html (reflecting "more than 2,700" arrests in the preceding six years) (accessed Nov. 25, 2024). The United States has overreached its jurisdiction by making arrests inside foreign nations' EEZs. This now-routine assertion of the United States' extraterritorial power into foreign nations' EEZs represents an unprecedented extension of federal criminal jurisdiction. "At the very least," the Court "should 'pause to consider the implication of the Government's arguments' when confronted with such new conceptions of federal power." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2591 (2012) (quotation omitted). The fact that there is no split of authority should not deter the Court from granting review.

The MDLEA's venue provision, providing that cases may be tried in "any district," 46 U.S.C. § 70504(b)(2), allows the United States to avoid the development

of circuit splits. Most MDLEA prosecutions have taken place within the Eleventh Circuit, despite the lack of any obvious nexus between the offense and that jurisdiction. Kontorovich, *Beyond the Article I Horizon*, *supra*, at 1205. And, as one Coast Guard lawyer confessed to the New York Times, the government strategically chooses where to bring these cases. *See* Wessler, *Floating Guantánamos, supra*, at 6 ("We try not to bring these cases to the Ninth Circuit."). As the *Beyle* decision demonstrates, the question presented herein implicates criminal statutes beyond just the MDLEA. *United States v. Beyle*, 782 F.3d 159 (4th Cir. 2015). And, as with the venue provision in the MDLEA, 18 U.S.C. § 3238 allows the government to choose the venue of any offense that is alleged to take place on the "high seas, or elsewhere out of the jurisdiction of any particular state or district," by controlling where the defendant "is first brought" into the United States.

The government now has two circuits (the Fourth and the Eleventh) in which it can bring cases arising in foreign nations' EEZs without risking a viable constitutional challenge, there is now little reason to expect a split of authority to develop.

Additionally, the preliminary question of whether the Felonies Clause incorporates principles of international law presents an unanswered question of constitutional law, which implicates legal challenges to the MDLEA beyond the specific challenge raised here. *See generally United States v. Dávila-Reyes*, 23 F.4th 153, 179 (1st Cir. 2022) (holding 46 U.S.C. § 70502(d)(1)(C) facially unconstitutional because it allows the United States to exercise jurisdiction over vessels in violation of

jurisdictional principles of international law), *withdrawn*, 38 F.4th 288, *and vacated on reh'g on other grounds*, 84 F.4th 400 (1st Cir. 2023) (en banc). Thus, notwithstanding the absence of a circuit conflict, the "unusual importance" of this constitutional issue, along with the regularity by which the United States brings MDLEA prosecutions, should persuade the Court to grant review. *See Massachusetts v. Env't Prot. Agency* 549 U.S. 497, 505-06 (2007) ("Notwithstanding the serious character of that jurisdictional argument and the absence of any conflicting decisions . . . the unusual importance of the underlying issue persuaded us to grant the writ."). *See also*, *e.g.,* Petition for a Writ of Certiorari, *Vidal v. Elster*, No. 22-704, 2023 WL 1392051 at *10 (U.S. Jan. 27, 2023) ("The Court has repeatedly granted review of decisions holding federal statutes invalid on First Amendment grounds, even in the absence of a circuit conflict.") (collecting cases); Respondent's Brief in Opposition, *Apprendi v. New Jersey*, No. 99-478, 1999 WL 33611431 at*9 n.4 (U.S. Oct. 20, 1999) (noting the absence of a conflict "with any decision of any other state court of last resort or of a United States court of appeals").

Mr. Rosario-Rojas preserved his claim in the district court, and it was decided on the merits in a precedential decision by the Eleventh Circuit Court of Appeals. Moreover, the majority of MDLEA appeals are brought in the Eleventh Circuit, and that court has now conclusively decided this issue by denying rehearing en banc in Mr. Rosario-Rojas' case. Hence, this case presents the ideal channel through which to resolve this important and unanswered question of constitutional law.

CONCLUSION

For the reasons stated herein, Mr. Rosario-Rojas' respectfully asks this Court to grant his Petition and issue a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit.