Nos. 24-6177 and 24-6691

IN THE SUPREME COURT OF THE UNITED STATES

JHONATHAN ALFONSO, PETITIONER

v.

UNITED STATES OF AMERICA

JOSE MIGUEL ROSARIO-ROJAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Felonies Clause -- which empowers Congress to "define and punish Piracies and Felonies committed on the high Seas," U.S. Const. Art. I, § 8, Cl. 10 -- authorizes Congress to punish drug trafficking on stateless vessels in "exclusive economic zones," where foreign states enjoy certain economic privileges.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A13)[1] is reported at 104 F.4th 815.

[1] This brief uses "Pet." and "Pet. App." to refer to the petition for a writ of certiorari and appendix in No. 24-6177 and "Rosario-Rojas Pet." to refer to the petition in No. 24-6691.

JURISDICTION

The judgment of the court of appeals was entered on June 14, 2024. Petitions for rehearing en banc were denied on September 18, 2024 (Pet. App. B1-B3). The petitions for writs of certiorari were filed on December 17, 2024, in No. 24-6177 and January 6, 2025, in No. 24-6691. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following guilty pleas in the United States District Court for the Southern District of Florida, petitioners Jhonathan Alfonso and Jose Miguel Rosario-Rojas were each convicted on one count of conspiring to possess with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1), 70504(b)(1), 70506(b). Alfonso Judgment 1; Rosario-Rojas Judgment 1. The court sentenced Alfonso to 75 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court sentenced Rosario-Rojas to 82 months of imprisonment, to be followed by five years of supervised release. Rosario-Rojas Judgment 2-3. The court of appeals affirmed. Pet. App. A1-A13.

1. At the time of the Founding, "there was no settled international custom" about sovereignty over the seas. United States v. California, 332 U.S. 19, 32 (1947). But early American courts recognized that each nation had sovereignty over its

territorial sea -- i.e., "the waters within range of cannon shot," or three nautical miles, "from its shore." United States v. Alaska, 422 U.S. 184, 191 n.11 (1975); see California, 332 U.S. at 33-34. That rule prevailed until the 1980s, when the United States -- consistent with international convention -- began to "recognize a territorial sea of 12 nautical miles." Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 441 n.8 (1989).

Since the 1980s, the United States has also generally recognized that a coastal nation may establish an exclusive economic zone -- an area extending up to 200 nautical miles from the coast. See R.M.S. Titanic, Inc. v. Haver, 171 F.3d 943, 965 n.3 (4th Cir.), cert. denied, 528 U.S. 825 (1999). Within such a zone, the coastal nation enjoys certain economic rights relating to matters such as "fishing, the seabed, and the subsoil." Ibid. But the United States "has made clear" that the zone "'is not the same as the concept of the territorial sea, and it is beyond the territorial jurisdiction of any coastal state.'" Pet. App. A7 (brackets and citation omitted).

2. In the Maritime Drug Law Enforcement Act (MDLEA or Act), 46 U.S.C. 70501 et seq., Congress found that "trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States." 46 U.S.C. 70501. The Act accordingly makes it unlawful for any person "on board a covered vessel" to possess a controlled substance with

intent to distribute it, or to conspire to do so. See 46 U.S.C. 70503(a), 70506(b). The Act defines "covered vessel" to include any "vessel subject to the jurisdiction of the United States," 46 U.S.C. 70503(e)(1), which is defined to include "a vessel without nationality," 46 U.S.C. 70502(c)(1)(A), which in turn is defined to include a vessel "for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality," 46 U.S.C. 70502(d)(1)(C) (Supp. IV 2022).

The MDLEA applies to drug-trafficking activity aboard covered vessels "even though the act is committed outside the territorial jurisdiction of the United States." 46 U.S.C. 70503(b). The Act specifies that a defendant "does not have standing to raise a claim of failure to comply with international law," which "may be made only by a foreign nation," and that "[a] failure to comply with international law does not divest a court of jurisdiction and is not a defense." 46 U.S.C. 70505. If a violation of the MDLEA "was begun or committed upon the high seas," the defendant "may be tried in any district." 46 U.S.C. 70504(b)(2).

3. In May 2021, the U.S. Coast Guard intercepted a vessel approximately 69 nautical miles from the Dominican Republic, within that nation's exclusive economic zone. See Pet. App. A4. Coast Guard officers found Alfonso (a Colombian national), Rosario-Rojas (a Dominican national), and another individual on board. Alfonso Presentence Investigation Report ¶ 12. Alfonso claimed Colombian nationality for the vessel, but the Colombian

government neither confirmed nor denied registry, rendering the vessel stateless and subject to U.S. jurisdiction under the MDLEA. See Pet. App. A4. A search of the vessel uncovered 12 bales of cocaine. See ibid.

A grand jury in the Southern District of Florida indicted each petitioner on one count of conspiring to possess with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. 70503(a)(1) and 70506(a) and (b); and one count of possessing with intent to distribute five kilograms or more of cocaine on board a vessel subject to the jurisdiction of the United States, in violation of 21 U.S.C. 960(b)(1)(B), 46 U.S.C. 70503(a)(1), 70506(a), and 18 U.S.C. 2. Indictment 1-2.

Petitioners moved to dismiss the indictment, arguing that the MDLEA exceeded Congress's enumerated powers as applied to him because the offense conduct alleged by the grand jury occurred within the Dominican Republic's exclusive economic zone. See Pet. App. A4. The district court denied the motion, explaining that the MDLEA rests on "Congress' power 'to define and punish Piracies and Felonies committed on the high Seas'" and that it could find "no case where a court has held the Exclusive Economic Zone does not constitute the high seas." D. Ct. Doc. 47, at 4, 6 (Nov. 22, 2021) (brackets and citation omitted).

Each petitioner then entered into a plea agreement, under which he pleaded guilty to the conspiracy count in exchange for

the dismissal of the possession count. See Pet. App. A4. The district court sentenced Alfonso to 75 months of imprisonment, to be followed by five years of supervised release. Alfonso Judgment 2-3. The court sentenced Rosario-Rojas to 82 months of imprisonment, to be followed by five years of supervised release. Rosario-Rojas Judgment 2-3.

4. The court of appeals affirmed. See Pet. App. A1-A13.

The court of appeals rejected petitioners' contention that the MDLEA exceeds Congress's enumerated powers as applied to offenses within another country's exclusive economic zone. Pet. App. A5-A9. The court explained that, at the Founding, the term "'high seas'" included "the waters beyond a nation's territorial sea." Id. at A6. The court observed that "[s]pecial carveout zones, such as the [exclusive economic zone], did not exist." Id. at A7. And the court reasoned that because such zones are "'beyond the territorial jurisdiction of any coastal state,'" they fall within "the Founding era concept of the term 'high seas.'" Ibid. (citation omitted).

ARGUMENT

Petitioners renews their contention (Pet. 8-26; Rosario-Rojas Pet. 6-24) that Congress lacks the power under the Felonies Clause to punish maritime drug trafficking within a foreign state's exclusive economic zone. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. This Court

has repeatedly denied petitions for writs of certiorari asserting that the MDLEA exceeds Congress's Article I powers.[2] It should follow the same course here.

1. The Constitution empowers Congress to "define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." U.S. Const. Art. I, § 8, Cl. 10. The plain text of the Felonies Clause, which gives Congress authority to punish "Felonies committed on the high Seas," expressly permits Congress at least to punish offenses on open water outside foreign territorial waters, committed aboard stateless vessels.

As Justice Story noted in 1833, "the meaning of 'high seas' within the intent of this clause does not seem to admit of any serious doubt." 3 Joseph Story, Commentaries on the Constitution of the United States § 1159, at 56 (1833). "The phrase," Justice Story explained, "embraces not only the waters of the ocean," but also "the waters on the sea coast" "within the territorial boundaries of a foreign nation." Ibid.; see United States v. Ross, 27 F. Cas. 899, 900 (1813) (C.C.D.R.I. 1813) (No. 16,196) (Story,

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[2] See, e.g., Marin v. United States, 145 S. Ct. 318 (2024) (No. 24-5159); Antonius v. United States, 144 S. Ct. 1374 (2024) (No. 23-6971); Rodriguez v. United States, 144 S. Ct. 602 (2024) (No. 23-6044); Vasquez-Rijo v. United States, 143 S. Ct. 2599 (2023) (No. 22-7442); Aybar-Ulloa v. United States, 141 S. Ct. 2714 (2021) (No. 20-7910); Vargas v. United States, 140 S. Ct. 895 (2020) (No. 19-6039); Valois v. United States, 140 S. Ct. 263 (2019) (No. 19-5166); Cruickshank v. United States, 586 U.S. 837 (2018) (No. 17-8953); Alexander v. United States, 585 U.S. 1006 (2018) (No. 17-7879).

J.) ("[T]he words, 'high seas,' mean any waters on the sea coast, * * * although such waters may be * * * within the jurisdictional limits of a foreign government. Such is the meaning attached to the phrase by the common law; and supported by the authority of the admiralty.").

This Court's decisions accordingly reflect an expansive understanding of the phrase. In United States v. Furlong, 5 Wheat. 184 (1820), for example, the Court sustained convictions for offenses on a stateless pirate ship "within a marine league" (i.e., three nautical miles) of a foreign shore, explaining that a vessel can be "upon the high seas" even if it is "within the jurisdictional limits of a foreign State." Id. at 189, 200. Similarly, in United States v. Rodgers, 150 U.S. 249 (1893), the Court found that the "high seas," as referenced in a criminal statute, encompassed an assault on an American vessel in the Canadian sector of the Great Lakes. Id. at 253-266. The Court found the authority to punish "unaffected" by the "boundary line between the two countries." Id. at 265.

A vessel's status as stateless, rather than American, likewise renders it subject to United States law. See United States v. Victoria, 876 F.2d 1009, 1010 (1st Cir. 1989) (Breyer, J.) (noting that the United States has the "authority to treat stateless vessels as if they were its own") (citation omitted). In United States v. Klintock, 5 Wheat. 144 (1820), for example, Chief Justice Marshall explained on behalf of the Court that

"piracy, or murder, or robbery," committed aboard a vessel "in possession of a crew acting in defiance of all law, and acknowledging obedience to no government whatever," "is punishable in the [c]ourts of the United States." Id. at 152. "Persons of this description are proper objects for the penal code of all nations." Ibid. Similarly, in Furlong, the Court found it "immaterial" whether the offense was committed on an "American" ship or a stateless "pirate ship." 5 Wheat. at 194;

Petitioners' conduct thus falls squarely within Congress's power under the Felonies Clause. Petitioners' vessel was found 69 nautical miles south of the Dominican Republic -- outside that nation's twelve-mile territorial sea recognized today and well outside the three-mile territorial sea recognized at the Founding. See Pet. App. A4. And petitioners' vessel was stateless -- an "international paria[h]" that Congress may properly regulate. Id. at A9 (citation omitted).

2. Petitioners contend (Pet. 9-19; Rosario-Rojas Pet. 6-14) that Congress must abide by international-law limits on the United States' regulatory jurisdiction when exercising its authority under the Felonies Clause, and that the prosecution here exceeds those limits. That argument lacks merit.

The Constitution does not forbid Congress from enacting extraterritorial statutes. See Morrison v. National Australia Bank Ltd., 561 U.S. 247, 255 (2010). Nor does it require federal statutes to comport with international law. See Head Money Cases,

112 U.S. 580, 598-599 (1884). As a matter of statutory interpretation, courts ordinarily presume that Congress legislates with domestic concerns in mind, see Morrison, 561 U.S. at 255, and that it seeks to abide by the law of nations, see Murray v. Schooner Charming Betsy, 2 Cranch 64, 118 (1804). But the MDLEA overcomes any presumption by expressly criminalizing drug trafficking on covered vessels "outside the territorial jurisdiction of the United States," 46 U.S.C. 70503(b), and specifying that a "failure to comply with international law * * * is not a defense," 46 U.S.C. 70505. And nothing in the Felonies Clause prohibits Congress from punishing that crime on the "high seas."

In any event, this prosecution complies with international law. Under modern international law, an exclusive economic zone is a maritime area in which a nation has "special economic rights," such as "rights to natural resources." United States v. Beyle, 782 F.3d 159, 167 (4th Cir.), cert. denied, 577 U.S. 880 (2015). It is not an area in which a nation has "exclusive authority * * * to define and punish criminal violations." Ibid. In addition, "the United States, as a matter of international law, may prosecute drug offenders on stateless ships." Victoria, 876 F.2d at 1010. "[I]nternational law is law among sovereigns"; it "protects the ships of one sovereign from the jurisdiction of others." Id. at 1011. A stateless vessel "does not have these rights and protections" and "may be subjected to the jurisdiction of any nation." Ibid. (citations omitted).

3. Petitioners correctly acknowledge (Pet. 24; Rosario-Rojas Pet. 22) "no split of authority" on the question presented.[3] As they observe, the Fourth Circuit, like the Eleventh Circuit in this case, has determined that the Felonies Clause permits Congress to define and punish offenses committed within the exclusive economic zones of foreign nations. See Beyle, 782 F.3d at 167. Relatedly, the First and Second Circuits have both upheld the application of the MDLEA to stateless vessels within 200 nautical miles of foreign shores. See United States v. Aybar-Ulloa, 987 F.3d 1, 3 & n.1 (1st Cir.) (en banc), cert. denied, 141 S. Ct. 2714 (2021); United States v. Alarcon Sanchez, 972 F.3d 156, 170 (2d Cir. 2020).

Petitioners urge (Pet. 24; Rosario-Rojas Pet. 23) this Court to grant review despite the absence of a circuit conflict because the "government now has two circuits (the Fourth and the Eleventh) in which it can bring cases arising in foreign nations' [exclusive economic zones] without risking a viable constitutional challenge." But for the reasons explained above, a constitutional challenge would not be "viable" in any circuit. Regardless, petitioners' argument is misplaced, as courts of appeals beyond the Fourth and Eleventh Circuits continue to hear MDLEA cases. See, e.g., United States v. Dávila-Reyes, 84 F.4th 400 (1st Cir.

[3] Rosario-Rojas's assertion (Rosario-Rojas Pet. 16-19) of "inconsistency" between decisions of the Eleventh Circuit does not provide a sound basis for this Court's review. See Sup. C. R. 10; Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam).

2023), cert. denied, 144 S. Ct. 2634 (2024); United States v. Antonius, 73 F.4th 82 (2d Cir. 2023), cert. denied, 144 S. Ct. 1374 (2024); United States v. Mendoza, No. 21-1087, 2022 WL 683638 (3d Cir. Mar. 8, 2022); United States v. Posligua, No. 22-40393, 2023 WL 4044438 (5th Cir. June 15, 2023); United States v. Marin, 90 F.4th 1235 (9th Cir.), cert. denied, 145 S. Ct. 318 (2024).

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted.

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