No. 25-_____

Supreme Court of the United States

MARIO MAXIMO MEDINA-QUIJIJE

***Petitioner*,**

vs.

UNITED STATES OF AMERICA,

***Respondent*.**

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

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Petition for a Writ of Certiorari

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QUESTIONS PRESENTED

Petitioner's case presents the following important constitutional questions:

1. Whether the Maritime Drug Law Enforcement Act (MDLEA) exceeds Congress's Article I powers, particularly where the MDLEA is extended to the prosecution of a foreign citizen whose offense had no nexus to the United States?
2. Whether Congress exceeded its authority under the Felonies Clause by defining a "vessel without nationality" to include vessels that are not stateless under international law?
3. Whether the prosecution under the MDLEA of a foreign citizen whose offense had no nexus to the United States, violates the Due Process Clause of the Fifth Amendment?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Mario Maximo Medina-Quijije respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The Eleventh Circuit decision under review is reported at United States v. Medina-Quijije, No. 23-10534, 2025 WL 927072 (11th Cir., March 26, 2025), and is reproduced in the Appendix. *See* Pet. App. A.

STATEMENT OF JURISDICTION

The Eleventh Circuit issued its opinion and judgment on March 26, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

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 Offences against the Law of Nations.

U.S. CONST. amend. V

The Fifth Amendment to the U.S. Constitution provides, in relevant part: No person shall . . . be deprived of life, liberty, or property, without due process of law.

46 U.S.C. § 70502

(c) Vessel Subject to the Jurisdiction of the United States.—

(1)IN GENERAL.—In this chapter, the term "vessel subject to the jurisdiction of the United States" includes—

(A) a vessel without nationality;

(d) Vessel Without Nationality.—

(1)IN GENERAL.—In this chapter, the term "vessel without nationality" includes—

(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality;

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;

46 U.S.C. § 70504

(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 or about June 16, 2022, a United States Coast Guard helicopter, which had taken off from the United States Coast Guard Cutter *Escanaba,* located a suspected go-fast vessel in the eastern Pacific Ocean, approximately 140 nautical miles east of *Isla San Cristóbal*, the Galapagos Islands, Ecuador. (Doc. 101, ¶ 6– ¶ 7).

According to the U.S. Coast Guard, the go-fast vessel was operating in a known drug trafficking area without exhibiting navigational lights. (Doc. 46-1).

To stop the go-fast vessel, the helicopter utilized warning shots, which were ineffective, and then disabling fire, which was effective. (Doc. 101, ¶ 7).

The *Escanaba* launched a small boat with a boarding team to intercept the go-fast vessel. An Ecuadorian Coast Guard vessel had also arrived in the area and requested to participate in boarding the go-fast vessel. However, the U.S. Coast Guard refused the Ecuadorian Coast Guard's request. The U.S. Coast Guard would only permit the Ecuadorian Coast Guard to observe the boarding of the go-fast vessel. (Doc. 101, ¶8). *See also*, Doc. 51, footnote 12, Exhibit #7).

The U.S. Coast Guard boarding team made contact with the go-fast vessel's three crewmembers, and all three crewmembers claimed Ecuadorian nationality. The go-fast vessel had an Ecuadorian flag painted on its hull. Mr. Medina-Quijije, who was the master of the vessel, claimed Ecuadorian registry for the vessel. (Doc. 101, ¶9). (Doc. 46-1).

That same day, the Government of the United States requested that the Government of the Republic of Ecuador confirm or deny the vessel's registry, and if

confirmed, grant authorization to board, and search the vessel. The Government of the Republic of Ecuador replied that it could neither confirm nor deny the vessel's registry or nationality. (Doc. 46-1).

The United States Government determined that the vessel [and by extension its crew] were subject to United States jurisdiction pursuant to 46 U.S.C. § 70502 (c)(1) and 18 U.S.C. §2237(e)(3). (Doc. 46-1).

During a search of the go-fast vessel, the U. S. Coast Guard located 706 kilograms of cocaine, which was stored in a hidden compartment built into the vessel. (Doc. 101, ¶10).

On June 28, 2022, Mr. Medina-Quijije and two other defendants were named in a two-count indictment in the United States Federal Court, Middle District of Florida, Tampa Division. (Doc. 6).

In Count One, the Grand Jury charged that beginning on an unknown date and continuing through on or about June 16, 2022, while aboard a vessel subject to the jurisdiction of the United States, the Defendants, did knowingly and willfully combine, conspire, and agree with each other and with other persons unknown to the Grand Jury, to possess with the intent to distribute and to distribute five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance. All in violation of Title 46, United States Code, Sections 70503(a) and (b), and Title 21, United States Code, Section 960 (b)(1)(B)(ii). (Doc. #6) *See* Pet. App. B.

In Count #2, the Grand Jury charged that beginning on an unknown date and continuing through on or about June 16, 2022, while aboard a vessel subject to the jurisdiction of the United States, the Defendants, did knowingly and intentionally, while aiding and abetting each other and other persons unknown to the Grand Jury, possess with the intent to distribute five (5) kilograms or more of a substance containing a detectable amount of cocaine, a Schedule II controlled substance. All in violation of Title 46, United States Code, Sections 70503(a) and 70506(a), Title 18, United States Code, Section 2, and Title 21, United States Code, Section 960(b)(1)(B)(ii). (Doc. #6). *See* Pet. App. B.

On August 2, 2022, Mr. Medina-Quijije's Defense Counsel entered pleas of not guilty to the charges in the indictment (Doc. #31).

On September 13, 2022, the Government filed a United States Department of State *Certification for The Maritime Drug Law Enforcement Act Case Involving Unknown Go-Fast Vessel*. (Doc. 46-1). *See* Pet. App. C.

On October 15, 2022, Defense Counsel for Mr. Medina-Quijije filed a Motion to Dismiss Indictment Based on Lack of Jurisdiction. (Doc. #51).

On October 17, 2022, the Government filed a written response to Defense Counsel's Motion to Dismiss Indictment Based on Lack of Jurisdiction. (Doc. #52).

On November 9, 2022, the Government filed its *Notice of Maximum Penalties, Elements of Offense, Personalization of Elements and Factual Basis*. (Doc. #65).

On November 14, 2022, the District Court issued an endorsed order denying Counsel's Motion to Dismiss Indictment Based on Lack of Jurisdiction. (Doc. #67).

On November 22, 2022, Mr. Medina-Quijije pleaded guilty to counts one and two of the indictment. (Doc. 73). On that same date, the Magistrate Judge issued a report and recommendation that the pleas of guilty be accepted and that Mr. Medina-Quijije be adjudged guilty and have sentence imposed accordingly. (Doc. 75). On November 23, 2022, the District Court accepted the Defendant's plea and adjudicated him guilty. (Doc. 76).

On February 15, 2023, the District Court held a sentencing hearing. The District Court sentenced Mr. Medina-Quijije to 108 months of imprisonment on counts one and two, both terms to run concurrently, to be followed by 60-month term of supervised release. (Doc. 105). The District Court entered the judgment on February 16, 2023. (Doc. 108). *See* Pet. App. D.

On February 18, 2023, Mr. Medina-Quijije appealed to the Eleventh Circuit Court of Appeals. (Doc. 110).

On appeal, Mr. Medina-Quijije challenged his convictions. The Eleventh Circuit affirmed the convictions based upon binding circuit precedent. *See* Pet. App. A.

Specifically, the court of appeals rejected Petitioner's argument that the MDLEA is unconstitutional because its definition of a stateless vessel conflicts with international law. Relying on its decisions in United States v. Alfonso, 104 F.4th 815 (11th Cir. 2024) and United States v. Canario-Vilomar, 128 F.4th 1374 (11th Cir. 2025), the court of appeals reiterated its view that international law cannot limit

Congress's authority to define 'stateless vessel' for purposes of the MDLEA. *See* Pet. App. A.

The court of appeals also rejected Petitioner's argument that the Felonies Clause does not establish a basis for his prosecution because there was no nexus between the go-fast vessel and the United States. Relying on its decisions in United States v. Cabezas-Montano, 949 F.3d 567 (11th Cir. 2020) and United States v. Campbell, 743 F.3d 802 (11th Cir. 2014), the court of appeals reiterated its view that the MDLEA is a valid exercise of Congress's power under the Felonies Clause as applied to drug trafficking crimes with no nexus to the United States. *See* Pet. App. A.

Last, the court of appeals rejected Petitioner's argument that the prosecution violated his due process rights because his offense lacked a nexus to the United States. Relying on its decisions in Campbell, the court of appeals reiterated its view that the Due Process Clause of the Fifth Amendment does not prohibit the conviction of an alien captured on the high seas while drug trafficking, because the MDLEA provides clear notice that all nations prohibit and condemn drug trafficking aboard stateless vessels on the high seas. *See* Pet. App. A.

REASONS FOR GRANTING THE WRIT

A U.S. Coast Guard helicopter located a suspected go-fast vessel in the eastern Pacific Ocean, in the exclusive economic zone of the Republic of Ecuador, approximately 140 nautical miles off the coast of the Galapagos Islands, Ecuador.

The U.S. Coast Guard helicopter used gun fire to disable the go-fast vessel, so that U.S. Coast Guard personnel could stop the vessel and board it. All three crewmembers aboard the go-fast vessel, including the Petitioner, informed the U.S. Coast Guard that they were Ecuadorian nationals. The go-fast vessel had an Ecuadorian flag painted on its hull. The Petitioner, who was the master of the vessel, claimed Ecuadorian registry for the vessel.

Shortly after the U.S. Coast Guard stopped the go-fast vessel, the Ecuadorian Coast Guard arrived on scene, and the Ecuadorian Coast Guard requested to participate in the boarding of the go-fast vessel. However, the U.S. Coast Guard refused the Ecuadorian Coast Guard's request. The U.S. Coast Guard then proceeded to board and search the go-fast vessel. The U.S. Coast Guard discovered 706 kilograms of cocaine in a hidden compartment on the go-fast vessel. The U.S. Coast Guard then arrested the three Ecuadorian mariners.

The United States Government transported the three Ecuadorian mariners, including the Petitioner, to Tampa, Florida, where it prosecuted the Petitioner under the Maritime Drug Law Enforcement Act (MDLEA). The Petitioner was convicted of violating the MDLEA, and the District Court sentenced him to 108 months of imprisonment, to be followed by 60-month term of supervised release.

In United States v. Rahimi, 602 U.S. 680, 716 (2023) (Kavanaugh, B., concurring), Justice Kavanaugh noted that though some provisions of the Constitution, read literally, seem to be absolute, these provisions are in fact not absolute, as there are exceptions to these provisions' broadly worded text.

The Felonies Clause is one such constitutional provision – it is not absolute, but rather, it is subject to an exception. Specifically, pre-constitutional ratification history, post-constitutional ratification history, and precedent all demonstrate that the founders intended that for Congress to enact legislation pursuant to the felonies clause, the felony in question must have some nexus to the United States.

However, in the case at bar, there is no evidence to suggest any nexus between the Petitioner's conduct and the United States.

This Court's intervention is needed to address important constitutional questions concerning Congress's authority, under Article I, to reach criminal conduct that has no nexus to the United States.

Further, this Court's intervention is needed to address whether Congress exceeded its authority under the Felonies Clause by defining a "vessel without nationality" to include vessels that are not stateless under international law.

Last, this Court's intervention is needed to address whether, in MDLEA prosecutions, the Fifth Amendment's Due Process Clause requires a nexus between the offense conduct and the United States.

These issues have not been, but should be, settled by this Court.

I. As Applied in the Case at Bar, the MDLEA is Unconstitutional Because Congress Does Not Have the Power to Extend the Criminal Jurisdiction of the United States to the Crimes Charged in the Indictment

A. The Pertinent Sections of the MDLEA

The Petitioner was charged pursuant to the Maritime Drug Law Enforcement Act (MDLEA). 46 U.S.C. §70501, *et seq*.

In part, the MDLEA states that while onboard "a vessel subject to the jurisdiction of the United States," "an individual may not knowingly or intentionally manufacture or distribute, or possess with the intent to manufacture or distribute, a controlled substance." 46 U.S.C. §§70503(a)(1) and (e)(1).

The MDLEA definition of a vessel subject to the jurisdiction of the United States includes a vessel without nationality. 46 U.S.C. §70502(c)(1)(A).

The MDLEA definition of a vessel without nationality includes a vessel aboard which the master or individual in charge makes a claim of registry and 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).

Congress derived its authority to enact the MDLEA from the Article I, §8, cl. 10 of the United States Constitution. See United States v. Estupinan, 453 F.3d 1336 1338-39 (11th Cir. 2006) (citing United States v. Ledesma-Cuesta, 347 F.3d 527, 531-32 (3d Cir. 2003)).

B. The Define and Punish Clause

Art. I, § 8, cl. 10 of the Constitution empowers Congress "[t]o define and punish Piracies and Felonies committed on the high seas, and Offences against the Law of

Nations." The Supreme Court has interpreted that clause to contain three distinct grants of power: to define and punish piracies, to define and punish felonies committed on the high seas, and to define and punish offences against the law of nations. See United States v. Smith, 18 U.S. 153, 158-159 (1820).

The United States recognizes a territorial sea of 12 nautical miles. See Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 441 n.8 (1989). Outside the territorial sea are the high seas, which are international waters not subject to the dominion of any single nation. See United States v. Louisiana, 394 U.S. 11, 23 (1969).

C. Neither the Piracy Clause nor the Offenses Against the Laws of Nations Clause Provides a Constitutional Basis for this MDLEA prosecution

The Piracy Clause in Article I, § 8, cl. 10 of the United States Constitution does not provide Congress with the constitutional basis for this MDLEA prosecution. Piracy is, by definition, robbery on the high seas. See Smith, 18 U.S. at 161-62. In the case at bar, there is no allegation that the mariners aboard the go-fast vessel committed any sort of robbery.

Further, the Offences Against the Laws of Nations Clause in Article I, § 8, cl. 10 of the United States Constitution does not provide Congress with the constitutional basis for this MDLEA prosecution. Counts one and two of the indictment in this matter charged the Petitioner with drug trafficking; however, drug trafficking is not an "offence against the law of nations." See United States v. Bellaizac-Hurtado, 700 F.3d 1245, 1247 (11th Cir. 2012) (concluding that drug trafficking is not an "offense

against the law of nations" and that Congress cannot constitutionally proscribe drug trafficking under the Offences Clause).

D. Congress's Power to Define and Punish Felonies on the High Seas is Limited by the Powers Granted to It by the Constitution

Congress's power to define and punish felonies on the high seas is limited by the powers granted to it by the Constitution. See United States v. Lopez, 514 U.S. 549, 566 (1995) (noting the principle that Congress may only legislate within the ambit of its specifically enumerated powers).

E. The Felonies Clause Does Not Provide a Constitutional Basis for this MDLEA Prosecution

1. Some Provisions of the Constitution are Broadly Worded and Subject to Exception

Some provisions of the Constitution are broadly worded. Rahimi, 602 U.S. at 716 (Kavanaugh, B., concurring). The First and Second Amendments, for example, appear to grant absolute protection to speech and the right to bear arms, but American law has long recognized that there are exceptions to these broadly worded amendments. Id.

For example, "the First Amendment has permitted restrictions upon the content of speech in a few limited areas"—including obscenity, defamation, fraud, and incitement. Id., citing United States v. Stevens, 559 U. S. 460, 468 (2010). The Second Amendment also has exceptions, with one of those exceptions being that an individual found by a court to pose a credible threat to the physical safety of another

may be temporarily disarmed consistent with the Second Amendment. Rahimi, 602 U.S. at 684.

History, both pre-ratification and post-ratification, as well as legal precedent, guide judges on how to interpret broadly worded constitutional text. Id. at 717 – 718.

2. History and Precedent Illustrate That the Felonies Clause is Broadly Worded and Subject to Exception

a. Pre-Ratification History of the Felonies Clause

(1) James Madison's Records of the Constitutional Convention and Federalist No. 42

At the constitutional convention, on August 17, 1787, the Framers debated the text of Article I, § 8, cl. 10. 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (MAX FARRAND ed., 1911) (Madison's notes, August 17, 1787).

The Framers first discussed an initial draft of the clause which would have empowered Congress to "declare the law and punishment of piracies and felonies on the high seas." Upon a motion by Mr. Madison, the convention voted to remove the phrase "and punishment." Id. Then, upon a motion by Gouverneur Morris of Pennsylvania, the convention voted to strike "declare the law" and insert "punish" before "piracies". Id.

Mr. Madison and Edmund Randolph of Virginia then moved to insert, "define and" before "punish." Id. Debate ensued. James Wilson of Pennsylvania and John Dickenson of Delaware saw no need for the "define and" language to be included, as they thought the term "felonies" was sufficiently defined by common law. Id. However, Mr. Madison argued that the term "felonies" at common law was vague;

Madison also opined that since common law was foreign law, [i.e., the law of England] it should not be the standard to define what is and what is not a felony. Id.

In support of his position that Congress should have the power to define "felonies" for the purposes of Article I, § 8, cl. 10, Madison argued that if the laws of the various states were used to define felonies [as had been the case under the Articles of Confederation], then *"the citizens of different states would be subject to different punishments for the same offence at sea"* resulting in a lack of uniformity and instability in the law. Id. (emphasis added). *See also*, THE FEDERALIST No. 42 (JAMES MADISON). Therefore, Madison presumed that any defendant charged under the jurisdiction of the "Felonies committed on the high Seas" clause would be a citizen of one of the United States, or at the very least, that the felony in question would have some connection to one of the states.

Notably, neither Madison's August 17, 1787, records of the constitutional convention, nor his essay in Federalist No. 42 concerning Article I, § 8, cl. 10, make any reference to granting the United States Congress universal jurisdiction over "Felonies committed on the high Seas."

These omissions are compelling evidence that the Framers never intended to empower Congress with universal jurisdiction over "Felonies committed on the high Seas.". *See* Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 Nw. U. L. Rev. 149, 168 (2009) (concluding that because the Framers at the constitutional convention questioned whether it was impudent to allow Congress to define piracies and offenses against the law of nations [as these

definitions were already fixed by international standards], it would have been incongruous for the Framers to then say nothing about allowing Congress to legislate felonies for the rest of the world).

(2) Piracy's Separate Enumeration in Art. I, § 8, cl. 10

When the Framers included "piracies…committed on the high Seas" in Article I of the Constitution, they were empowering Congress to punish piracy pursuant to the international law doctrine of universal jurisdiction, and therefore without regard to the nationality of the vessel or offender. See Smith, 18 U.S. (5 Wheat.) at 161.

However, the Framers considered piracy to be a felony offense. See Campbell, 743 F.3d at 811 (citing 2 Timothy Cunningham, *A New and Complete Law Dictionary* (3d ed. 1783) (explaining that, "by the law at this day," felonies include robbery); see also Smith, 18 U.S. at 161-62 (robbery on the high seas is piracy).

Significantly, if "felonies on the high Seas" could be punished without regard to a nexus to the United States, there would have been no reason to include any mention of piracy in the constitution, as that crime would have been subsumed in the broader rubric of "felonies on the high Seas." See Marbury v. Madison, 5 U.S. 137, 174 (1803) (Marshall, C.J.) (rejecting an interpretation that would make part of the Constitution "mere surplusage," because "[i]t cannot be presumed that any clause in the constitution is intended to be without effect").

Therefore, the Framers understood the phrase "Felonies committed on the high Seas" to mean Felonies committed on the high Seas with a nexus to the United States.

b. Post-Ratification History of the Felonies Clause

(1) Thomas Nash and the Mutiny Aboard the British Frigate HMS *Hermione*

Founding fathers John Adams and John Marshall both believed that Congress could not criminalize behavior on the high seas absent a nexus to the United States. Both men espoused this view during a political crisis near the end of Adams' presidency.

Specifically, in the summer of 1799, Great Britain requested that the United States Government extradite a seaman located in South Carolina. A. ROGER EKIRCH, AMERICAN SANCTUARY – MUTINY, MARTYRDOM, AND NATIONAL IDENTITY IN THE AGE OF REVOLUTION, 92 (2017). The British Government claimed that the seaman's name was Jonathan Robbins, that he was an Irishman, and that in 1797 he had led a murderous mutiny aboard the British frigate HMS *Hermione* in the Caribbean Sea. Id. at 32 – 36, 90 – 105. The seamen claimed that his name was Thomas Nash, that he was a U.S. citizen from Danbury, Connecticut that had been impressed on the high seas by the British Navy, and that he had not participated in the bloodletting during the mutiny of the *Hermione*. Id. at 101

On June 3, 1799, at the behest of President Adams, Secretary of State Timothy Pickering sent a letter to the federal district court judge in Charleston, South Carolina, who was to rule on Great Britain's extradition request. Pickering wrote that President Adams had instructed him to communicate to the district court that the seaman should be delivered to the British – "provided such evidence of his

criminality be produced as by the laws of the U. States [United States] or of S. Carolina [South Carolina] would justify his apprehension and commitment for trial, *as if the offence had been committed within the jurisdiction of the U. States [United States]*." Id. at 97-98. (emphasis added).

Hence, it was President Adam's opinion that although a felony (i.e., murder) had been committed on the high seas, the United States federal courts did not have legal jurisdiction, as there was no connection between the crime and the United States.[1]

On the morning of July 25, 1799, the district court judge held a hearing regarding Great Britain's extradition request; that same afternoon, the Court ordered U.S. marshals to turn the seaman, Mr. Robbins, over to the British Consul. EKIRCH, 100 – 104.

Mr. Robbins did not survive long. By Thursday, August 15, 1799, he was in Jamaica and his trial had begun. Ruth Wedgwood, *The Revolutionary Martyrdom of Johnathan Robbins*, 100 Yale L.J. 229, 304 (1990). Two days later, the British Navy hung him from a ship's yardarm. EKIRCH,109.

President Adams' decision to authorize the extradition of the seaman ignited a political firestorm, inciting Democratic Republicans to move to censure him in the House of Representatives. Id. at 155. Democratic-Republicans claimed that the Federalist president had abused the executive power by interfering with a criminal

[1] President Adams certainly understood the legal concept of jurisdiction. When Adams wrote the letter to Secretary Pickering in 1799, Adams had been a lawyer for nearly 40 years. *See* DAVID MCCULLOUGH, *John Adams* 44 (2001) (noting that President Adams was admitted to the Massachusetts Bar on November 6, 1759.

matter before a federal court, and that Adams' actions constituted a threat to "the independence of the judicial power." Id. at 154.

During the debate in the House of Representatives on whether the chamber should censure President Adams, the future Chief Justice John Marshall, who was at that time a member of the House, rose in defense of the President. Id. at 162 – 164. Marshall argued that since the *Hermione* mutiny had no connection to the United States, the case was not justiciable in a United States court, and therefore Adams had not interfered with a federal criminal matter. Hon. John Marshall, Speech Delivered in the House of Representatives, *in* 4 THE PAPERS OF JOHN MARSHALL 86–87 (Charles T. Cullen & Leslie Tobias eds., 1984).

To support this argument, Marshall proposed several scenarios to illustrate the absurdity of the idea that the Felonies Clause granted universal jurisdiction to felonies committed on the high seas:

> Suppose a duel attended with death, in the fleet of a foreign nation, or in any vessel which returned safe to port, could it be pretended that any government on earth, other than that to which the fleet or vessel belonged, had jurisdiction in the case; or that the offender could be tried by the laws, or tribunals, of any other nation whatever.
>
> Suppose a private theft by one mariner from another and the vessel to perform its voyage and return in safety, would it be contended that all nations have equal cognizance of the crime; and are equally authorized to punish it?
>
> If there be this common jurisdiction at sea, why not punish desertion from one belligerent power to another, or correspondence with the enemy, or any other crime which may be perpetrated? A common jurisdiction over all offences at sea, in whatever vessel committed, would involve the power of punishing the offences which have

> been stated. Yet all gentlemen will disclaim this power. It follows then that no such common jurisdiction exists.
>
> In truth the right of every nation to punish, is limited, in its nature, to offences against the nation inflicting the punishment. This principle is believed to be universally true.

Id.

Therefore, like President Adams, Marshall believed that although a felony (i.e., murder) had been committed on the high seas, the United States federal courts did not have legal jurisdiction, as there was no connection between the crime and the United States.

(c) Precedent Concerning the Felonies Clause

(1) United States v. Furlong

In United States v. Furlong, 18 U.S. (5 Wheat.) 184, 196-197 (1820) the Supreme Court reviewed the constitutionality of the 1790 statute in which Congress had defined both murder and robbery on the high seas as piracy, ostensibly to give Congress universal jurisdiction over murder on the high seas.[2] See Furlong, 18 U.S.

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[2] "An Act for the Punishment of certain Crimes against the United States," Ch. 9, § 8, 1 Stat. 112 (1790).

N.B. While this statute was under consideration by Congress, Justice James Wilson, a member of the first Supreme Court and a member of the Constitutional Convention in Philadelphia, argued that if it was Congress's intention to apply the murder provision in the statute to foreigners on a foreign vessel, it would be an unconstitutional exercise of power by Congress. See United States v. Cardales-Luna, 632 F.3d 731, 744 (2010) (Torruella, J., dissenting) citing Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction over Drug Crimes*, 93 Minn. L. Rev. 1191, 1211 (2009), citing 2 THE WORKS OF JAMES WILSON 803, 813 (Robert Green McCloskey ed., 1967).

at 184. The case involved a British subject who had been convicted of murder in a United States District Court for killing another British subject aboard a British ship located on the high seas. Id. at 195. The Supreme Court noted that while robbery on the seas [i.e., piracy] was a crime of universal jurisdiction over which Congress had constitutional power to legislate, murder was not, and that Congress had therefore legislated over an area in which they had no constitutional power. Id. at 197.

Certainly, the Framers considered murder a felony offense. See Campbell, 743 F.3d at 811 (citing Cunningham, supra) (explaining that, "by the law at this day," felonies include murder). Though the killing in Furlong took place on the high seas, the Supreme Court refused to find the statute constitutional pursuant to the Felonies Clause, as the facts of the case did not provide a jurisdictional nexus to the United States. See Furlong, 18 U.S. at 197 ("...punishing [a felony on the high seas], when committed…in the vessel of another nation, has not been acknowledged as a right, much less an obligation. It is punishable under the laws of each state."

3. The Felonies Clause Does Not Enable the MDLEA to Punish the Petitioner as There was no Nexus Between the Crimes Charged in the Indictment and the United States

The U.S. Coast Guard located the go-fast vessel 140 nautical miles east of Isla San Cristóbal, the Galapagos Islands, Ecuador. Consequently, the go-fast vessel was in the exclusive economic zone of Ecuador. See United States v. Rioseco, 845 F.2d 299, 303 n.1. (11th Cir. 1988) (citing James E. Bailey III, *Comment, The Exclusive Economic Zone: Its Development and Future in International and Domestic Law,* 45 La.L.Rev. 1269, 1270 (1985) (noting that the exclusive economic zone is a 200 nautical

mile zone extending from a coastal State's baseline in which the coastal State has priority of access to living resources and exclusive right of access to non-living resources).

There is no evidence that the go-fast vessel in this matter departed from the United States, and there is no evidence that it, nor the cocaine seized aboard it, were destined for the United States. The three Ecuadorian mariners aboard the go-fast vessel did not commit any offense against a vessel or citizen of the United States.

The Ecuadorian Coast Guard was present as the U.S. Coast Guard boarded the go-fast vessel. The Ecuadorian Coast Guard requested that the United States Coast Guard permit it to board the go-fast vessel. However, the United States Coast Guard denied that request.

Given the lack of nexus between the offense conduct and the United States, the Felonies Clause does not empower Congress to criminalize the conduct charged in the indictment.

F. Congress Exceeded Its Authority Under the Felonies Clause by Defining A "Vessel Without Nationality" to Include Vessels That Are Not Stateless Under International Law

At issue is whether the statute upon which the United States relies for jurisdiction, i.e., 46 U.S.C. §70502(d)(1)(C), is constitutional as applied to the case at bar. More specifically, at issue is whether the Constitution empowers Congress to grant jurisdiction to United States courts in cases where the master of a vessel on the high seas makes a claim of national registry, and then that claimed nation fails to affirmatively and unequivocally assert that the vessel is of that nationality.

The Define and Punish Clause, of which the felonies clause is a part, is made up of phrases borrowed from international law. "Offences against the Law of Nations," "Piracies," and "Felonies" are "all concepts taken directly from international law." United States v. Dávila-Reyes, 23 F. 4th 153, 176 (1st Cir.), *withdrawn*, 38 F.4th 288, *and vacated on reh'g on other grounds*, 84 F.4th 400 (1st Cir. 2023) (*en banc*).

International law recognizes that an oral claim of nationality by the master of the vessel constitutes prima facie proof of the vessel's nationality. Id at 186.

§ 46 U.S.C. §70502(d)(1)(C) allows the United States to deem vessels stateless (i.e., without nationality) when they would not be deemed stateless under international law, namely, when the master or individual in charge makes a claim of nationality, which is neither confirmed nor denied by the identified nation. In other words, "§ 70502(d)(1)(C) displaces the prima facie showing of nationality that arises from an oral assertion of nationality or registry"—a method recognized by international law—"without any affirmative evidence to the contrary." Id. at 187.

Congress's authority under the Felonies Clause is constrained by international law. See Id. at 157 – 158 (holding that Congress exceeded its authority under Article I of the Constitution in enacting § 70502(d)(1)(C) of the MDLEA, as that provision expands the definition of a "vessel without nationality" beyond the bounds of international law and thus unconstitutionally extends U.S. jurisdiction to foreigners on foreign vessels).

In the case at bar, when the master of the go-fast vessel, Mr. Medina-Quijije, made a verbal claim of Ecuadorian nationality for the vessel, under international law,

that claim created prima facie showing of nationality. After the government of Ecuador reported that it could neither confirm nor deny the registration of the go-fast vessel, 46 U.S.C. §70502(d)(1)(C) authorized the Coast Guard to treat the go-fast vessel as one without nationality.

However, because Congress's authority to define and punish felonies committed on the high seas goes only as far as international law permits, and because §70502(d)(1)(C) displaced the prima facie showing of nationality that arose under international law from Mr. Medina-Quijije's oral assertion of nationality, the Coast Guard's assimilation of the go-fast vessel, and the ensuing prosecution of the mariners aboard it, are unconstitutional.

II. The Due Process Clause of the Fifth Amendment Requires a Nexus Between the Offense Conduct and the United States for Prosecutions under the MDLEA

Pursuant to the Fifth Amendment of the United States Constitution, "[n]o person shall be… deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

The requirement of … a nexus between a defendant's conduct and the United States [in an MDLEA prosecution] would serve to protect the defendant's interest in that he could reasonably anticipate where he could be haled into court. *See* Stephanie M. Chaissan, "*Minimum Contacts" Abroad: Using the International Shoe Test to Restrict the Extraterritorial Exercise of United States Jurisdiction Under the Maritime Drug Law Enforcement Act*, 38 U. Miami Inter-Am. L. Rev. 641, 648 (2007).

A nexus requirement would also immunize [MDLEA defendants] from distant and inconvenient litigation. See Id. at 655 (arguing that just as due process requires a defendant in a civil lawsuit to have some minimum contacts with the forum state, due process requires a defendant in an MDLEA prosecution to have some nexus with the United States).

Both the Ninth Circuit Court of Appeals and the Second Circuit Court of Appeals have held that due process requires the Government to prove a nexus between the alleged criminal acts and the United States. See United States v. Perlaza, 439 F.3d 1149, 1168 (9th Cir. 2006) (characterizing the nexus requirement as a judicial gloss applied to ensure that a defendant is not improperly haled before a court for trial); see also United States v. Yousef, 327 F.3d 56, 111 (2d Cir. 2003) (stating that in order to apply extraterritorially a federal criminal statute to a defendant consistently with due process, there must be a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair).

In the case at bar, the MDLEA violates the Mr. Medina-Quijije's rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, because as noted above, there is no nexus between the Mr. Medina-Quijije's conduct on board the go-fast vessel and the United States.

CONCLUSION

For the foregoing reasons, the petition should be granted.

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