
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CESAR PAOLO UBALDO, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

Petitioner, through counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis. Counsel was appointed in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b). This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

November 22, 2017

/s/ DAVID S. McLANE
DAVID S. McLANE
Attorney at Law

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CESAR PAOLO UBALDO, PETITIONER,
vs.
UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A. Whether 22 U.S.C. § 2778(b) and 18 U.S.C. § 922(l), which prohibit the knowing importation of firearms without an appropriate license (22 U.S.C. § 2778(b)) or the knowing importation into the United States without the authorization of the Attorney General (18 U.S.C. § 922(l)), and contain no express provision for extraterritorial application, apply extraterritorially.

PETITION FOR A WRIT OF CERTIORARI**TO THE UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

Cesar Paolo Ubaldo petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit in his case.

I.**OPINIONS BELOW**

The published opinion of the United States Court of Appeals for the Ninth Circuit is attached as Appendix 1 and reported at 859 F.3d 690. The order denying a petition for rehearing is attached as Appendix 2. The district court's

order denying Petitioner's motion to dismiss is attached as part of Appendix 3.

II.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on June 9, 2017, App. A001, and a timely petition for rehearing en banc was denied on August 24, 2017, App. A016. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 371 provides in pertinent part:

Two or more persons conspire either to commit any offense against the United States ... in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both . . .

22 U.S.C. § 2778(b)(2) provides in pertinent part:

(2) Except as otherwise specifically provided in regulations issued under subsection (a)(1) of this section, no defense articles or defense services designated by the President under subsection (a)(1) of this section may be exported or imported without a license for such export or import, issued in

accordance with this chapter and regulations issued under this chapter, except that no license shall be required for exports or imports made by or for an agency of the United States Government . . .

18 U.S.C. § 922(l) provides in pertinent part:

[I]t shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States thereof in violation of the provisions of this chapter . . . [which requires authorization from the Attorney General pursuant to 18 U.S.C. § 925(d)].

IV.

STATEMENT OF THE CASE

A. JURISDICTION IN THE COURTS BELOW.

The district court had jurisdiction under 18 U.S.C. § 3231. The court of appeals had jurisdiction under 28 U.S.C. § 1291.

B. FACTS MATERIAL TO CONSIDERATION OF THE QUESTION PRESENTED.¹

The indictment, (A073-093), alleged a conspiracy by three Philippine nationals, Sergio Syjuco, Cesar (“Arvi”) Ubaldo, and Arjyl Revereza, to unlawfully import weapons into the United States. Counts Two through Five of the indictment required that the government prove that the defendants knowingly imported weapons into the United States. *See* 22 U.S.C. §§ 2778(b)(2) & (c); 18 U.S.C. §§ 922(l) and 924(a)(1)(C). Count One required that the government prove that the defendant agreed to knowingly and unlawfully import weapons in the United States. 18 U.S.C. § 371; 22 U.S.C. § 2778(b)(2) & (c); 18 U.S.C. §§ 922(l) & 924(a)(1)(C).

Opening statements and the presentation of evidence commenced on February 5, 2013. CR 248; RT (2/5/2013) 84. After eleven days of evidence, closing arguments were delivered on February 25 and 26, 2013. CR 179, 280. The court held a jury instruction conference on February 22, 2013, CR 278, where the parties disagreed on the use of the “aiding and abetting” wording. Deliberations commenced on February 26, 2012 and lasted for four days, with

¹ The facts are taken from Mr. Ubaldo’s opening brief (A035-062), and the reply brief (A063-72), which cite to the clerk’s record (CR) and the excerpts of record (ER) filed in the Ninth Circuit, and the indictment, (A073-93).

jury returning a verdict of guilty as to all counts and defendants on March 4, 2013. CR 294. The government, post-trial, dismissed Counts 2 and 3, which did not involve Mr. Ubaldo.

The facts relevant to this petition evidence that the three defendants, Syjuco, Ubaldo and Revereza, did not leave the country until after the conspiracy was complete and they arrived in the United States after being lured by the undercover agent to come to the United States so that they could be arrested and additional evidence gathered. The weapons, which included serious weapons, a safety harbor .50 caliber rifle, a H & Arms Co. M14 assault rifle, a single shot grenade launcher, a 60 millimeter mortar launcher, a rocket propelled grenade launcher, and an automatic AK-47 rifle, were procured after the undercover agent, Ro, had first targeted another individual, Roland Dacias, who provided 12 bushmaster rifles but refused to deal with the undercover. The undercover was then introduced to Mr. Ubaldo, who introduced the undercover to Syjuco, who sold the weapons, and to Revereza, the Philippine customs agent, who took money from the agent and supposedly was helping with the shipment of the weapons. This case involved a sting operation conducted by FBI agents in the Philippines against 3 Philippine nationals.

The FBI targeted these defendants, and wine and dined them. According

to Agent Ro's testimony, he paid for everything, including alcohol and female companionship at the KTV clubs. RT (2/8/2013) 181-183; RT (2/11/2013) 80-82. Ubaldo testified he could not afford these clubs, and all three testified that the undercover paid for prostitutes for them. RT (2/15/2013) 56-69 (Syjuco testimony, including that the undercover sent him a text, "how is the girl?"); RT (2/19/2013) 138-141 (Ubaldo testimony); RT (2/21/2013) 149-150 (Revereza testimony, including that the undercover texted Revereza about sex with the KTV girls.

There was no evidence produced at trial that prior to this incident, the defendants ever illegally shipped weapons to the United States, or ever illegally shipped out of the Philippines, or into the Philippines, weapons. Defendants Syjuco and Ubaldo presented entrapment defenses, and all three defendants presented evidence that they could not be guilty since they did not knowingly, and willfully, cause the weapons to be shipped to the United States under 18 U.S.C § 2(b).

Despite their convictions, the evidence at trial established the following concerning the shipment of the weapons, relevant to the issue of extraterritorial jurisdiction presented in this petition:

- Undercover agent Ro had Syjuco pack the weapons to create evidence.

RT (2/8/2013)17;

- Syjuco did not procure the container, the agents got the container. RT (2/8/2013) 29-30; RT (2/12/2013) 191-92.
- When asked at trial why not have Syjuco to arrange the shipment of the container, the agent responded, “he did not have the ability.” RT (2/8/2013) 31-32;
- Exhibits 1263 (the customs form) and 1264 (the packing list) were filled out by the undercover, not the defendants, RT (2/8/2013) 34-35; (2/11/2013) 90-91; Ex. 1401;
- All the shipping documents were prepared by Agent Ro, the undercover, or Agent Lao, the case agent, not the defendants, including the documents necessary for the shipment: the export declaration, the packing list saying personal items so it would avoid detection at the Manila port, the bill of lading, the export declaration, and the import declaration. Agent Lao admitted the FBI prepared every single piece of paperwork necessary for the shipment. RT (2/12/2013) 191-92, 216-18; RT (2/13/2013) 14-15;
- Ubaldo never got the bill of lading; he was not involved in the logistics of the shipment. RT (2/8/2013) 176-177;

- Syjuco was directed by the undercover to pack the weapons in the hotel in order to gather evidence against him, RT (2/12/2013) 206-07;
- The FBI agents unpacked the container, and repacked the container with the weapons, RT (2/12/2013) 207;
- Agent Lao took precautions to ensure the shipment was not seized in transit to the United States, RT (2/12/2013) 212-213; even calling the FBI Legat in China when he found out the route had changed and the weapons were in China, to ensure their transport into the United States, RT (2/12/2013) 213, 223;
- The government alleged that defendant Revereza, the customs official who worked at the airport, not the ports, facilitated the shipment. Besides definitively proving he took bribes, there was no evidence presented that he did anything to further the shipment. The items were declared “personal items”, and the government had prepared the packing slip, invoice and export declaration. According to Jemina Sy-Flores, the government’s own witness and an official with the Philippine customs office, one only need the packing slip, invoice and export declaration to ship. RT (2/8/2013) 72-74, 89-92. She testified that the shipper was Richard Han, the alias of undercover

Ro, and because the shipment was declared personal items, there was no need for x-ray or quarantine to inspect the items. Ms. Sy-Flores determined in her own investigation that defendant Revereza was not involved at all in processing the shipment. RT (2/8/13) 93.

At trial, during a jury instruction conference, defendants objected to the instruction given by the Court that the defendants could be guilty of the offenses if they aided and abetted the importation of weapons. *See* Jury Instruction Conference, RT (2/22/2013) 1-194. During closing arguments, the government argued that the defendants could be found guilty if they aided and abetted the transportation the weapons. On August 13, 2013, the defense brought post-trial motions that the case should be dismissed due to the instructions on aiding and abetting, that the defendants could not aid and abet an agent under 18 U.S.C. 2(a), so the jury had to be instructed that they willfully caused the transport, which constituted error. RT (8/13/2013). The motion was denied by the Court. CR 408.

The Court also denied the motion that the defendants could not be convicted of the substantive crimes of willful importation into the United States because there was no extraterritorial jurisdiction. CR 407.

Petitioner thereafter took an appeal in which he raised several claims.

One of those claims was the claim that 22 U.S.C. § 2778(b) and 18 U.S.C. § 922(l) do not apply extraterritorially. Petitioner noted the presumption against extraterritorial application of American statutes, *see* Appellant's Opening Brief, (A048-049)(citing, *inter alia*, *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255 (2010)), and argued the presumption was not rebutted in the case of 22 U.S.C. § 2778(b) and 18 U.S.C. § 922(l).

The United States Court of Appeals for the Ninth Circuit rejected this claim and found the presumption against extraterritoriality was rebutted for two reasons. First, the court reasoned:

Analogous to the substantive RICO statutes at issue in *RJR [Nabisco, Inc. v. European Community]*, 136 S. Ct. 2090 (2016)], illegally importing weapons into the United States by its very nature targets conduct that almost always originates outside the United States. *See id.* at 2101-02. As we noted some time ago, “smuggling by its very nature involves foreign countries, and . . . always requires some action in a foreign country.” *Brulay v. United States*, 383 F.2d 345, 350 (9th Cir. 1967). The fact that illegally importing weapons into the United States almost always requires some conduct in a foreign country distinguishes it from most other crimes, such as murder. *See Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 133 S. Ct. 1659, 1665, 185 L. Ed. 2d 671 (2013).

App. A010 (*United States v. Ubaldo*, 859 F.3d 690, 700-01 (9th Cir. 2017)).

The Court of Appeals then asserted that the legislative history corroborated this conclusion:

In addition, the legislative history of the statutes reflects an intent to capture conduct occurring outside the United States. *See* H.R. Rep. No. 94-1144 at 23 (1976), *reprinted in* 1976 U.S.C.C.A.N. 1378, 1399 (declaring “that

it shall be the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict and the burdens of armaments, U.S. Programs for or procedures governing the export, sale, and grant of arms and munitions to foreign countries and international organizations shall be administered in a manner which will carry out this policy”); H.R. Rep. No. 90-1577 at 6 (1968), *reprinted in* 1968 U.S.C.C.A.N. 4410, 4411 (expressing a purpose “to strengthen Federal controls over interstate and foreign commerce arms”).

App. A010 (*Ubaldo*, 859 F.3d at 701).

After the court of appeals filed its opinion, Petitioner filed a timely petition for rehearing. The court of appeals denied the petition without comment. App. A016.

V.

REASONS FOR GRANTING THE WRIT

The court of appeals misapplied this Court’s precedent regarding the presumption against extraterritorial application of American statutes. The writ should be granted to correct this misapplication of this Court’s precedent; because the court of appeals’ decision raises important questions of statutory construction; and because this Court should reign in courts from stretching the reach of domestic criminal statutes beyond what Congress intended.

A. THE PRESUMPTION AGAINST EXTRATERRITORIAL APPLICATION OF AMERICAN STATUTES AND THIS COURT'S PRECEDENT.

Two recent opinions of this Court recognize the presumption against extraterritorial application and illustrate its application. The first of the cases is *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010), which began by summarizing the well-established presumption.

It is a “long-standing principle of American law ‘that legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.’” *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248, 111 S. Ct. 1227, 113 L. Ed. 2d 274 (1991) (*Aramco*) (quoting *Foley Bros., Inc. v. Filardo*, 336 U.S. 281, 285, 69 S. Ct. 575, 93 L. Ed. 680 (1949)). This principle represents a canon of construction, or a presumption about a statute’s meaning, rather than a limit upon Congress’s power to legislate (citation omitted). It rests on the perception that Congress ordinarily legislates with respect to domestic, not foreign matters. (Citation omitted.) Thus, “unless there is the affirmative intention of the Congress clearly expressed” to give a statute extraterritorial effect, “we must presume it is primarily concerned with domestic conditions.” *Aramco, supra*, at 248, 111 S. Ct. 1227 (internal quotation marks omitted). The canon or presumption applies regardless of whether there is a risk of conflict between the American statute and a foreign law (citation omitted.). When a statute gives no clear indication of an extraterritorial application, it has none.

Morrison, 561 U.S. at 255.

Morrison then applied these principles to the statute before it in that case – § 10(b) of the Securities and Exchange Act. It first noted the absence of any clear language suggesting a congressional intent that the statute apply

extraterritorially. *Id.* at 262. In so doing, it rejected an argument that the statute’s reference to “interstate commerce” and a definition of that term that included commerce “between any foreign country and any state” was sufficient. *See id.* (quoting 15 U.S.C. § 78c(a)). It explained that “we have repeatedly held that even statutes that contain broad language in their definitions of ‘commerce’ that expressly refer to ‘foreign commerce’ do not apply abroad.” *Morrison*, 561 U.S. at 262-63 (quoting *Aramco*, 499 U.S. at 251 (emphasis in original)).

The Court then applied a version of the venerable principle of construction that “where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” *Russello v. United States*, 464 U.S. 16, 23 (1983) (quoting *United States v. Wong Kim Bo*, 472 F.2d 720, 722 (5th Cir. 1972)). It noted that another section of the Securities and Exchange Act – § 30(a) – contrasted with § 10(b).

Subsection 30(a) contains what § 10(b) lacks: a clear statement of extraterritorial effect. Its explicit provision for a specific extraterritorial application would be quite superfluous if the rest of the Exchange Act already applied to transactions on foreign exchanges – and its limitation of that application to securities of domestic issuers would be inoperative. Even if that were not true, when the statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.

Morrison, 561 U.S. at 265.

The Court’s more recent opinion in *RJR Nabisco, Inc. v. European Community*, 136 S. Ct. 2090 (2016) – which is the only opinion the court of

appeals in the present case acknowledged – reiterated the presumption against extraterritoriality and then illustrated how the presumption may be rebutted.

Regarding the general principle, *RJR Nabisco* stated:

It is a basic premise of our legal system that, in general, “United States law governs domestically but does not rule the world.” *Microsoft Corp. v. AT & T Corp.*, 550 U.S. 437, 454, 127 S. Ct. 1746, 167 L. Ed. 2d 737 (2007). This principle finds expression in a canon of statutory construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application. *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247, 255, 130 S. Ct. 2869, 177 L. Ed. 2d 535 (2010). The question is not whether we think “Congress would have wanted” a statute to apply to foreign conduct “if it had thought of the situation before the court,” but whether Congress has affirmatively and unmistakably instructed that the statute will do so. *Id.*, at 261, 130 S. Ct. 2869. “When a statute gives no clear indication of an extraterritorial application, it has none.” *Id.*, at 255, 130 S. Ct. 2869.

RJR Nabisco, 136 S. Ct. at 2100.

The Court then turned to the statute before it in that case – the Racketeer Influenced and Corrupt Organizations Act (“RICO”), codified at 18 U.S.C. §§ 1961-1968. It found the presumption *was* rebutted by that statute’s language, because RICO “defines racketeering activity to include a number of predicates that plainly apply to at least some foreign conduct.” *RJR Nabisco*, 136 S. Ct. at 2101.

These predicates include the prohibition against engaging in monetary transactions and criminally derived property, which expressly applies, when “the defendant is a United States person,” to offenses that “tak[e] place outside the United States.” 18 U.S.C. § 1957(d)(2). Other examples include the prohibitions against the assassination of government officials, § 351(i) (“There is extraterritorial

jurisdiction over the conduct prohibited by this section”); § 1751(k) (same), and the prohibition against hostage taking, which applies to conduct that “occurred outside the United States” if either the hostage or the offender is a U.S. National, if the offender is found in the United States, or the hostage taking is done to compel action by the U.S. Government, § 1203(b). At least one predicate – the prohibition against “kill[ing] a national of the United States, while such national is outside the United States” – applies *only* to conduct occurring outside the United States. § 2332(a).

RJR Nabisco, 136 S. Ct. at 2101-02.

At the same time, the Court, through a caveat to its holding, made clear how critical such statutory language is. It held RICO was applicable extraterritorially “only to the extent that the predicates alleged in a particular case themselves apply extraterritorially.” *Id.* at 2102. It “emphasize[d] the important limitation that foreign conduct must violate ‘a predicate statute that manifests an unmistakable congressional intent to apply extraterritorially.’” *Id.* (quoting 764 F.3d 129, 136 (case below)). In sum, there must be either express language such as that in the provisions the court had just quoted, or some other “*unmistakable* congressional intent.” (Emphasis added.) And “it is the rare statute that clearly evidences extraterritorial effect despite lacking an express statement of extraterritoriality.” *Id.* at 2103.

**B. THE INCONSISTENCY OF THE COURT OF APPEALS
OPINION IN THE PRESENT CASE WITH THIS COURT'S
PRECEDENT.**

What the court of appeals relied upon in the present case is not like what this Court found sufficient in *RJR Nabisco* but is like what this Court found insufficient in *Morrison*. The statutes at issue here are not the “rare statute[s]” with “unique structure,” *RJR Nabisco*, 136 S. Ct. at 2103, like the RICO statute before the Court in *RJR Nabisco*.

To begin, there is no express statement of extraterritoriality in the statutes here like there was in the underlying incorporated statutes in *RJR Nabisco*. Nowhere does either statute say *anything* about extraterritorial application.

The statutory language to which the Court of Appeals could and did point – “import,” *supra* A010 – is like the references to “foreign commerce” found insufficient in *Morrison* and the earlier cases it cited. Just as “the general reference to foreign commerce in the definition of ‘interstate commerce’ d[id] not defeat the presumption against extraterritoriality” in *Morrison*, *id.* at 263, the general reference to “import” should not defeat the presumption here.

The court of appeals also overstated the significance of the word “import” in suggesting it “expressly references conduct that occurs outside the United States,” like the language in *RJR Nabisco*.” *Ubaldo*, 859 F.3d at 700, A010. It is true that importing is conduct which “originates” outside the United States and “almost always requires *some* conduct in a foreign country,” *Ubaldo*, 859 F.3d at 700-01 (emphasis added), A010. But importing also requires conduct within

the United States. When the crime of unlawful importation is committed, *some* person has to cross the border with the goods or cause the goods to cross the border. This is important because it means the criminal activity can and will be reached without extraterritorial application of the statute. There may be individual tangential participants who cannot be reached in the absence of extraterritorial application. But it will never be the case – except in a completely fabricated sting operation like this one – that *no* participant can be reached without extraterritorial application. There will always be some participants who can be reached without extraterritorial application; indeed, it will probably be most. And the participants reached will usually include the most culpable participants, for it is the ultimate act of importation which is the fundamental wrong.²

² Even participants who do not physically enter the country may be reached, because a person may be charged for intentionally causing acts in this country even if he or she does not personally perform acts here. See, e.g., *United States v. Moncini*, 882 F.2d 401, 404 (9th Cir. 1989) (describing conduct that was not extraterritorial as including “Moncini’s deposit of mail in Italy, intended for delivery to the United States, [which] resulted in acts within the territory of the United States when the mail entered and traveled within the United States”).

The legislative history the court of appeals pointed to, *see supra* A010, is no more persuasive. The references to “interstate and foreign commerce” in the second House of Representatives report quoted by the court of appeals, *see supra* A010, is just like the insufficient statutory references to interstate and foreign commerce in the statutory provisions considered in *Morrison* and the cases it cited. And the reference in the first report quoted by the court of appeals – to “the policy of the United States to exert leadership in the world community to bring about arrangements for reducing the international trade in implements of war and to lessen the danger of outbreak of regional conflict” – is not about importation of arms into the United States, but about “the export, sale, and grant of arms and munitions to foreign countries and international organizations.” *Supra* A010.

The court of appeals ignored more persuasive legislative history which cuts against its holding and makes this case more like *Morrison* in a second way. Section 2778 includes what is known as the “Brokering Amendment,” which “expanded the scope of [§ 2778’s] registration and licensing requirements to cover ‘every person . . . who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of’ the articles and services on the [United States] Munitions List.” *United States v. Yakou*, 428 F.3d 241, 243 (D.C. Cir. 2005).³ The legislative history of this amendment and

³ “Brokering activities” are broadly defined to include “the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service.” 22 U.S.C. § 2778(b)(1)(A)(ii)(II).

the regulations implementing it expressly address the question of extraterritorial jurisdiction. The committee report on the bill states it was intended to apply only to “U.S. persons (and foreign persons located in the U.S.).” H.R. Rep. No. 104-519, at 11 (1996), *reprinted in* 1996 U.S.C.C.A.N. 1118, 1128. Consistent with this, the implementing regulations make the licensing and registration requirements for brokering activities applicable to “any U.S. person, *wherever located*, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States.” 22 C.F.R. § 129.3(a) (emphasis added). There is thus a contrasting § 2778 provision – one of the regulations implementing it – which expressly provides for extraterritorial application, albeit for just “U.S. person[s].” *Cf. RJR Nabisco*, 136 S. Ct. at 2101-02 (including within list of statutes that “plainly apply at least some foreign conduct” several statutes whose extraterritorial application requires either victim or offender to be United States person or national).

The significance of such express consideration of extraterritorial jurisdiction in one part of a statute is made clear by the Supreme Court’s analysis of the similar situation in *Morrison*. The presumption about § 10(a) there, as noted *supra* p.p. 12-13, was reinforced by the fact that another provision – § 30(a) – was not silent. Just as that supported the presumption and affirmatively cut against extraterritorial application in *Morrison*, the legislative history and contrasting regulation here supports and affirmatively cuts against extraterritorial application. What *Morrison* said about the Securities and

Exchange Act is true here: “when a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms.” *Id.* at 265.

VI.

CONCLUSION

The court of appeals opinion is inconsistent with and misapplies this Court's precedent on the presumption against extraterritoriality, expands the reach of the statutes to apply extraterritorially when Congress did not so intend; and engages in rewrite of statutes to achieve a supposed desired result. This petition should be granted to ensure that federal criminal statutes are not applied in an expansive manner beyond Congressional intent.

Respectfully submitted,

DATED: November _22, 2017

/s/ David S. McLane
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