

NO:
IN THE
SUPREME COURT OF THE UNITED STATES

DESMOND ALEXANDER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the prosecution of Mr. Alexander – a Dominican national with no ties to the United States – for trafficking marijuana in international waters between Jamaica and Antigua, exceeds Congress’ enumerated powers.

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

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**On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Desmond Alexander respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number No. 16-16921 in that court on November 14, 2017, *United States v. Alexander*, --- F. App'x ---, 2017 WL 5438869 (11th Cir. Nov. 14, 2017), which affirmed the judgment of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment of the United States District Court for the Southern District of Florida, is contained in the appendix (A-1).

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 decision of the court of appeals was entered on November 14, 2017. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction of all final decisions and sentences of United States district courts.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

U.S. CONST. art. I, § 8, cl. 10

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

46 U.S.C. § 70501 - 46 U.S.C. § 70507

reprinted in the Appendix (A-14-25)

STATEMENT OF THE CASE

Statement of Facts

Petitioner Desmond Alexander, a Dominican national, was arrested by the United States Coast Guard in connection with a marijuana trafficking offense committed in international waters between the island of Jamaica and Antigua. The offense was not alleged to have any connection, at all, to the United States: No United States citizen or resident was involved; the offense was not committed on a U.S. vessel; the marijuana was not *en route* to the United States; nor did the government allege that the marijuana was destined, at any point, for entry into the U.S.

The evidence showed that on September 19, 2015, a radar operator with a United States Coast Guard crew stationed in Puerto Rico observed a suspicious vessel traveling eastbound in international waters, “[a]pproximately 70 nautical miles south of the Dominican Republic.” (DE 151:134,136). Coast Guard officers put an over-the horizon vessel in the water, and gave chase. (*See* DE 151:138). The suspect vessel did not respond to commands to stop, and instead began maneuvering erratically and evasively. (DE 151:139). Coast Guard Boatswain’s Mate Travis Mills testified that he saw three individuals on the vessel as it attempted to flee. (DE 153:11). A man, later identified as Petitioner Alexander, fell overboard. (DE 153:11, 139). Alexander was pulled from the water, handcuffed, and detained. (DE 153:13).

Meanwhile, the two men who remained on the suspect vessel began “throwing packages over the side.” (DE 151:140).

Mills conducted “a right of approach question” to determine the nationality of the boat and its master. The vessel had the name “ELIZABETH 192 WI” written on the side. The captain of the vessel stated that it was his boat, that they had come from Jamaica, and that his next port of call was Antigua. (DE 153:18). Mills relayed that information to the Coast Guard cutter in order to obtain a statement of no objection in order to conduct a full boarding. (DE 153:19). Approximately 49 bales of marijuana, weighing approximately 2,450 pounds (1,111 kilograms), were recovered from the vessel and the surrounding waters.

On September 20, 2015, the Government of Jamaica was contacted in order to verify the claim of registry of the vessel. The Government of Jamaica initially responded that it could not confirm nor deny the claim of registry; the following day, the Government of Jamaica responded that the vessel was not registered in Jamaica.

Course of Proceedings and Disposition in the District Court

On October 13, 2015, a federal grand jury sitting in the Southern District of Florida returned an indictment charging Mr. Alexander with conspiring to possess, and possessing with intent to distribute, 1,000 or more kilograms of marijuana, while on board a vessel subject to the jurisdiction of the United States, in violation of the MDLEA, 46 U.S.C. § 70506. (DE 12:1-2).

Mr. Alexander moved to dismiss the indictment on the grounds that the MDLEA is unconstitutional on its face and as applied. (DE 24). He argued, *inter*

alia, that Congress' Article I powers do not extend to drug trafficking offenses lacking a nexus to the United States. (DE 24). That same day, the government filed a motion for a pre-trial determination of jurisdiction by the district court. (DE 25). The government attached to the motion a certification attesting that the Government of Jamaica had been contacted and had responded that the vessel was not registered in Jamaica; "Accordingly, the Government of the United States determined that the vessel was without nationality in accordance with 46 U.S.C. § 70502(d)(1)(A), rendering the vessel subject to the jurisdiction of the United States Pursuant to 46 U.S.C. § 70502(c)(1)(A)." (DE 25-1).

The magistrate issued a report and recommendation ("R&R"), recommending that the motion be denied. (DE 41). Mr. Alexander filed objections to the R&R, which were tacitly overruled when the district court entered an Order accepting the recommendation of the magistrate judge, and adopting the R&R. (DE 43). Mr. Alexander was convicted after a jury trial (DE 110), and sentenced to 120 months' incarceration, the applicable mandatory minimum sentence.¹ (DE 137).

¹ The Eleventh Circuit has held that defendants convicted under the MDLEA are ineligible for relief from mandatory minimum sentences provided by the "safety valve statute," 18 U.S.C. § 3553(f). *See United States v. Pertuz-Pertuz*, 679 F.3d 1327 (11th Cir. 2012).

Mr. Alexander appealed his conviction and sentence to the United States Court of Appeals for the Eleventh Circuit, arguing, *inter alia*, that the statute exceeds Congress' enumerated powers as applied to conduct lacking any nexus to the United States. Relying on binding circuit precedent, the United States Court of Appeals for the Eleventh Circuit issued an unpublished opinion affirming Mr. Alexander's conviction and sentence on November 14, 2017. *United States v. Alexander*, --- F. App'x ---, 2017 WL 5438869 (11th Cir. Nov. 14, 2017). This petition follows.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to review whether the prosecution of a foreign national for trafficking marijuana in international waters exceeds Congress' powers, where there is no connection between the offense and the United States.

A. This case presents a question of exceptional importance which has never been, but should be, decided by the Court.

Petitioner Desmond Alexander, a Dominican citizen who never set foot in the United States prior to his arrest, asks this Court to review what is arguably the most expansive grant of extraterritorial criminal jurisdiction in the United States Code. The Maritime Drug Law Enforcement Act, 46 U.S.C. § 70503 (the “MDLEA”), makes it a crime to “knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board . . . a vessel subject to the jurisdiction of the United States.” The statute applies to any individual found aboard a vessel that is broadly defined to be subject to United States law, and is not limited to United States citizens or residents. 46 U.S.C. § 70503(a)(1). The statute expressly extends its reach beyond the territorial jurisdiction of the United States, and requires no proof whatsoever of a connection between the United States and the offense. *See* 46 U.S.C. § 70503(b). As this case exemplifies, the statute is used to prosecute drug trafficking offenses by foreign actors in international waters, for trafficking drugs that were never intended to reach the United States.

In drafting the MDLEA, Congress omitted any requirement that the prosecution prove a connection between the offense and the United States, removed

jurisdictional questions from the jury's consideration, and precluded defendants from asserting violations of international law as a defense. *See* 46 U.S.C. §§ 70504(a); 70505. The novelty of Congress' jurisdictional grasp alone presents a compelling reason for review. *See National Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2591 (2012) ("At the very least, we should 'pause to consider the implication of the Government's arguments' when confronted with such new conceptions of federal power.") (quotation omitted). Perhaps even more compelling is the fact that the presumed constitutional foundation of the MDLEA – Congress' power to "define and punish . . . Felonies committed on the high Seas" under Article I, Section 8, Clause 10 of the Constitution – has not been addressed by this Court in almost 200 years.

Mr. Alexander's conviction raises substantial questions about the extent of Congress' power under the Felonies Clause, and the limits of the United States' ability to enforce its law on foreign actors abroad. Hence, this petition presents an important question of federal law which has never been, but should be, decided by this Court. *See* SUP. CT. R. 10(c).

B. The Court’s most recent authoritative pronouncement on the Felonies Clause is nearly 200 years old and has been overlooked by the courts of appeals.

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.” U.S. CONST. art. I, § 8, cl. 10. It has generally been agreed, by the Courts of Appeals that have reviewed the MDLEA, that the statute is an exercise of Congress’ power to define and punish Felonies under this clause (“the Felonies Clause”). *See United States v. Moreno-Morillo*, 334 F.3d 819, 824-25 (9th Cir. 2003); *United States v. Estupinan*, 453 F.3d 1336, 1338 (11th Cir. 2006).

These court have assumed that the Felonies Clause knows no limit beyond the geography described in the text. Thus, in *United States v. Davis*, 905 F.2d 245 (9th Cir. 1990), the Ninth Circuit resolved the question with the following syllogism:

The Constitution gives Congress the power to ‘define and punish piracies and felonies on the high seas. . .’ U.S. Const. Art. I, sec. 8, cl. 10. The high seas lie seaward of the territorial sea, defined as the three mile belt of sea measured from the low water mark. . . . We therefore find that the Constitution authorized Congress to give extraterritorial effect to the Act.

905 F.2d at 248 (internal citation omitted).

If there is any limit on this power, the Ninth Circuit posited, it resides in the Due Process Clause – not in Article I. *See Davis*, 945 F.2d at 249 (“In this case, Congress explicitly stated that it intended the [MDLEA] to apply extraterritorially.

Therefore, the only issue we must consider is whether the application of the [MDLEA] to Davis' conduct would violate due process.”).

The Eleventh Circuit similarly merged the Article I inquiry with notions of due process, in *United States v. Estupinan*, 453 F.3d 1336 (11th Cir. 2006), when it disposed of the defendant's Article I challenge as follows:

The MDLEA was specifically enacted to punish drug trafficking on the high seas, “because drug trafficking aboard vessels (1) ‘is a serious international problem and is universally condemned,’ and (2) ‘presents a specific threat to the security and societal well-being of the United States.’” *United States v. Rendon*, 354 F.3d 1320, 1325 n. 2 (11th Cir. 2003) (citation omitted). Moreover, “this circuit and other circuits have not embellished the MDLEA with [the requirement of] a nexus [between a defendant's criminal conduct and the United States].” *Rendon*, 354 F.3d at 1325 . . . Indeed, as the Third Circuit has recognized, “[i]nasmuch as the trafficking of narcotics is condemned universally by law-abiding nations, we see no reason to conclude that it is ‘fundamentally unfair’ for Congress to provide for the punishment of persons apprehended with narcotics on the high seas.” *United States v. Martinez-Hidalgo*, 993 F.2d 1052, 1056 (3d Cir. 1993). *Estupinan* directs us to no case in which any court has held that the MDLEA was an unconstitutional exercise of Congressional power. Thus, we readily hold that the district court committed no error in failing to *sua sponte* rule that Congress exceeded its authority under the Piracies and Felonies Clause in enacting the MDLEA.²

453 F.3d at 1338-1339 (citations omitted).

Thus, the courts of appeals have held, either explicitly or implicitly, that the only limitation on the Felonies power – beyond the geographical limitation in the text itself – is the requirement that prosecutions comport with due process. *See id.*;

² The appellant in *Estupinan* had raised the constitutional challenge for the first time on appeal. The court of appeals did not resolve whether the plain error or *de novo* standard of review should apply, because it concluded that the district court did not err even under the more lenient *de novo* standard. *Id.* at 1338.

See also, e.g., United States v. Martinez-Hidalgo, 993 F.2d 1052, 1056 (3d Cir. 1993) (rejecting argument that nexus was required as a matter of due process); *United States v. Suerte*, 291 F.3d 366, 375 (5th Cir. 2002) (same).

Only a dissenting judge from the First Circuit, Judge Torruella, has delved further, recognizing that this Court’s interpretation of the Felonies Clause provides a contrary view. *See United States v. Angulo-Hernandez*, 576 F.3d 59, 63 (1st Cir. 2009) (Torruella, J., dissenting from denial of *en banc* review) (“The term ‘Felonies’ has not been read to include all felonies, but rather only felonies with an adequate jurisdictional nexus to the United States.”) (citing *United States v. Furlong*, 18 U.S. 184, 197 (1820)). *See also United States v. Cardales-Luna*, 632 F.3d 731, 738-751 (1st Cir. 2011) (Torruella, J., dissenting).

In *Furlong*, the Court addressed the distinctions between the treatment of Piracy and other “Felonies committed on the high Seas” under Article I, Section 8, Clause 10. After determining that the petitioner had properly been convicted of Piracy, the Court turned to “[t]he question whether ***murder*** committed at sea on board a foreign vessel be punishable by the laws of the United States, if committed by a foreigner upon a foreigner.” 18 U.S. at 194 (emphasis in original). Although presented as a matter of statutory construction, the Court determined first that it should construe the extent of Congress’ powers under Clause 10. *See id.* at 195-96 (“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 cases within their natural meaning.”).

The Court concluded that the murder of a foreigner, by a foreigner, on a foreign ship, could not be prosecuted under a statute declaring murder to be piracy. *Id.* at 196. “[T]here exist well-known distinctions between the crimes of piracy and murder.” *Id.* Piracy – the prototypical universal jurisdiction crime – “is considered as an offence within the criminal jurisdiction of all nations. It is against all, and punished by all.” *Id.* at 197. The same is not true for murder. *Id.* And, the Court noted, that if Congress had attempted to punish murder under its Piracies power, it would have -- indefensibly -- extended its own jurisdiction:

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 198.

The Court concluded by finding that there are offenses on the high seas in which Congress has “no right to interfere”:

If by calling murder piracy, it might assert a jurisdiction over that offence committed by a foreigner in a foreign vessel, what offence might not be brought within their power by the same device? The most offensive interference with the governments of other nations might be defended on the precedent. Upon the whole, I am 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. (emphasis omitted and supplied).

Hence, *Furlong* establishes that Congress' power to prosecute Felonies on the high seas is more circumscribed than its to prosecute Piracy. *See also United States v. Smith*, 18 U.S. 153 (1820) (recognizing distinctions between Piracies and Felonies under the Clause). This reading comports with the Constitutional text, which includes three "distinct grants of power" in Article I, Section 8, Clause 10: "the power to define and punish piracies, the power to define and punish felonies committed on the high seas, and the power to define and punish offenses against the law of nations." *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1248 (11th Cir. 2012) (citing *Smith*, 18 U.S. at 158-59). If Congress has plenary authority to define and punish *any* offense as a felony on the high seas, then the correlative power to define and punish "Piracies" and "Offences against the Law of Nations" would be superfluous. This is because every Piracy and every offense against the law of nations can be defined as a felony as well. There must be some distinction among them.

When examined by references to the other powers in Clause 10, at least one such distinction becomes clear: Of the three grants of power in Article I, Section 8, Clause 10, the Piracies Clause is the only one that eliminates concerns of prescriptive jurisdiction over the offense. At the time the Constitution was written, Piracy was *sui generis*. *See Smith*, 18 U.S. at 154 (1820) ("[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 defence and safety of all."). Piracy was thus separated from the rest of Clause 10, because it was unique in its

jurisdictional aspect. It was the only universal jurisdiction crime. See Eugene Kontorovich, *The Piracy Analogy: Modern Universal Jurisdiction's Hollow Foundation*, 45 HARV. INT'L L.J. 183, 190-205 (2004) (discussing piracy's status as the prototypical universal jurisdiction crime). However, unlike the Piracies Clause, there is no indication that the Framers intended either the Felonies Clause or the Offences Clause to act without traditional jurisdictional restraints. See *Bellaizac-Hurtado*, 700 F.3d at 1258 (Barkett, J., specially concurring) (“[W]hen conduct has no connection to the United States, such as the conduct at issue here, it can only be punished as an ‘Offence[] against the Law of Nations’ if it is subject to universal jurisdiction”).

Both the Court’s precedents and the constitutional text thus suggest that the Felonies Clause does **not** grant Congress unlimited power to prosecute felonies on the high seas without any nexus to the United States. “Further,” as Judge Torruella noted, “no other Article I power saves the MDLEA.” *Angulo-Hernandez*, 576 F.3d at 63 (Torruella, J., dissenting from the denial of *en banc* review) (citing Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction over Drug Crimes*, 93 MINN. L .REV. 1191, 1237-51 (April 2009) (explaining inapplicability of treaty power and foreign commerce clause to MDLEA offenses)). See also *Bellaizac-Hurtado*, 700 F.3d 1245 (holding that drug trafficking is not an Offence against the Law of Nations). “Thus, the exercise of Congressional power in enacting the MDLEA is not consistent with the Constitution, which limits Congress's power to proscribe crimes on the high sea to crimes of

universal jurisdiction and crimes with a U.S. nexus.” *Angulo-Hernandez*, 576 F.3d at 62-63 (Torreulla, J., dissenting from the denial of *en banc* review) (internal footnotes omitted). “By the enactment of 46 U.S.C. §§ 70503(a)(1) and 70502(c)(1)(C) of the MDLEA, allowing the enforcement of the criminal laws of the United States against persons and/or activities in non-U.S. territory in which there is a lack of any nexus or impact in, or on, the United States, Congress has exceeded its powers under Article I of the Constitution.” *Cardales-Luna*, 632 F.3d at 739 (Torruella, J., dissenting).

C. Changing attitudes toward marijuana have undermined the justification for Congress’ expansive exercise of jurisdiction.

The fact that this offense involved marijuana provides an additional reason for review. It cannot be overlooked that the United States has prosecuted a foreign national for trafficking marijuana abroad, at a time when marijuana is being decriminalized by State governments and foreign nations.

In drafting the MDLEA, Congress invoked the ‘universal condemnation’ of drug trafficking in order to justify its unprecedented jurisdictional reach. *See, e.g., United States v. Ballestas*, 795 F.3d 138, 145 (D.C. Cir. 2015) (“Recognizing 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, Congress enacted the MDLEA to enhance the government's ability to prosecute members of drug trafficking organizations.”), *cert. denied*, 2016 WL 193820 (U.S. Feb. 29, 2016);

United States v. Estupinan, 453 F.3d 1336 (11th Cir. 2006) (“The MDLEA was specifically enacted to punish drug trafficking on the high seas, because drug trafficking aboard vessels (1) ‘is a serious international problem and is universally condemned,’ and (2) ‘presents a specific threat to the security and societal well-being of the United States.’”) (internal quotation marks and citation).

Marijuana, however, is no longer “universally condemned,” nor even universally prohibited. See Summer Meza, *Where is Marijuana Legal? Peru the Latest Country to Legalize*, Newsweek U.S. Edition, Nov. 18, 2017, <http://www.newsweek.com/medical-marijuana-recreational-legalization-peru-716156> (noting that “Peru’s legalization made the country one of more than 20 nations where laws have been expanded”); *Uruguay to sell cannabis in pharmacies from July*, BBC News, April 7, 2016, <http://www.bbc.com/news/world-latin-america-39522345> (“The South American country will be the first in the world to legally sell the drug over the counter for recreational use. The move was set in motion in 2013 with a law that fully legalized the cannabis trade.”); Ian Austin, *Trudeau Unveils Bill Legalizing Recreational Marijuana in Canada*, N.Y. Times, April 13, 2017, http://www.nytimes.com/2017/04/13/world/canada/trudeau-marijuana.html?_r=0 (“Many nations have either decriminalized marijuana, allowed it to be prescribed medically or effectively stopped enforcing laws against it. But when Mr. Trudeau’s bill passes as expected, Canada will become only the second nation, after Uruguay, to completely legalize marijuana as a consumer product.”). See also *Gonzales v. Raich*, 125 S. Ct. 2195, 2215 (2005) (discussing therapeutic uses for marijuana and

suggesting that “voters allied with these respondents may one day be heard in the halls of Congress.”); Jeremy Burke, *A powerful Republican Senator hints that Congress may discuss nationwide marijuana legalization this year*, Business Insider Feb. 5, 2018, <http://www.businessinsider.com/sen-tillis-says-judiciary-committee-likely-to-discuss-marijuana-2018-2> (“Sen. Thom Tillis, a powerful Republican from North Carolina, suggested in a letter shared with Business Insider that the Senate Judiciary Committee is ‘likely’ to discuss marijuana legalization this year.”) (accessed Feb. 5, 2018). Hence, the rationale that both Congress and the courts have used to counterweigh the striking constitutional questions presented by the MDLEA has been undermined.

D. This case presents a recurring question of law which is ripe for review.

Mr. Alexander is one of thousands of foreign nationals who have been arrested in international waters and prosecuted in the United States for crimes bearing no connection to this country.

Over the past six years, more than 2,700 men ... have been taken from boats suspected of smuggling Colombian cocaine to Central America, to be carried around the ocean for weeks or months as the American ships continue their patrols. These fishermen-turned-smugglers are caught in international waters, or in foreign seas, and often have little or no understanding of where the drugs aboard their boats are ultimately bound. Yet nearly all of these boatmen are now carted from the Pacific and delivered to the United States to face criminal charges here, in what amounts to a vast extraterritorial exertion of American legal might.

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>.

Furthermore, although there is no actual circuit split on the question presented herein, further development among the circuit courts is unlikely because the MDLEA provides an express forum selection clause. At the time of Mr. Alexander's offense, 46 U.S.C. § 70504(b) directed that defendants could be tried in the district in which they were first brought into the United States, or in the District of Colombia. The statute has recently been amended to allow for prosecution in any district. National Defense Authorization Act for Fiscal Year 2018, PL 115-91. The government's ability to control the venue of prosecution makes it unlikely that many additional circuits will be asked to review the statute in the future.

The government's ability to select its forum provides another compelling reason to exercise review. Most MDLEA prosecutions have taken place within the Eleventh Circuit, despite the lack of any obvious nexus between the offense and that jurisdiction. *See Kontorovich, Beyond the Article I Horizon*, 93 Minn. L.Rev. at 1205. In this case, for example, Mr. Alexander was arrested by a crew stationed in Puerto Rico. The record does not disclose why Mr. Alexander was brought all the way to Miami for trial. Additionally, many MDLEA cases that have reached the Eleventh Circuit emanated from the Eastern Pacific Ocean, far closer to the Ninth Circuit than the Eleventh. *See, e.g., United States v. Macias*, 654 F. App'x 458, 460 (11th Cir. 2016); *United States v. De La Garza*, 516 F.3d 1266 (11th Cir. 2008); *United*

States v. Rendon, 354 F.3d 1320 (11th Cir. 2003); *United States v. Tinoco*, 304 F.3d 1088 (11th Cir. 2002). The two circuits have generated conflicts over specific applications of the statute. Specifically, the Ninth Circuit has held that Due Process requires a connection between the United States and the offense in cases involving registered vessels, and that disputes over jurisdiction must constitutionally be resolved by the jury. *See United States v. Perlaza*, 439 F.3d 1149, 1160 (9th Cir. 2006). The Eleventh Circuit has rejected both propositions. *See United States v. Wilchcombe*, 838 F.3d 1179 (11th Cir. 2016); *Tinoco*, 304 F.3d at 1107-08 (11th Cir. 2002); *Rendon*, 354 F.3d at 1325 (11th Cir. 2003). As one Coast Guard lawyer bluntly told the New York Times: “We try not to bring these cases to the Ninth Circuit.” Wessler, *The Coast Guard’s ‘Floating Guantánamos’*.

Finally, this case presents an ideal vehicle for certiorari. The issue was properly preserved in the district court and passed on by the court of appeals. There are no issues of waiver or harmlessness which might otherwise preclude a ruling on the merits.

In sum, this petition raises a significant and far-reaching question of constitutional law on which this Court has not spoken in nearly two hundred years. Whether the United States government had authority to prosecute Mr. Alexander is at best an open question under the law of this Court, and is arguably precluded by the Court’s most recent, 198-year old, pronouncement on the issue. Mr. Alexander submits that his offense was one in which Congress had “no right to interfere” *Furlong*, 18 U.S. at 198, and he respectfully asks this Court to grant review.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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