No. ____

In The Supreme Court of The United States

Virgilio Valencia Gamboa,

***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

A. FITZGERALD HALL, ESQ.
Acting Federal Defender
Middle District of Florida

DANIELLE MUSSELMAN, ESQ.
Research and Writing Attorney
Counsel of Record
Virginia Bar No. 98321
Office of the Federal Defender
400 North Tampa St., Suite 2700
Tampa, Florida 33602
Telephone: (813) 228 2715
Email:Danielle_Musselman@fd.org

QUESTIONS PRESENTED[1]

Article I, Section 8, Clause 10 of the United States Constitution empowers Congress "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations." The Questions Presented are:

1. Are Congress's powers under the Define and Punish Clause inherently limited by international law?

2. Does 46 U.S.C. § 70502(d)(1)(C) of the Maritime Drug Law Enforcement Act exceed Congress's powers by authorizing the United States to assert jurisdiction over foreign nationals for wholly foreign, extraterritorial crimes, in violation of international law?

[1] This petition presents two of the three issues presented in *Canario-Vilomar v. United States*, No. 25-5506.

PARTIES TO THE PROCEEDING

Pursuant to SUP. CT. R. 14.1(b)(i), Mr. Valencia Gamboa certifies that there are no parties to the proceeding other than those named in the caption of the case.

Mr. Valencia Gamboa's co-defendants in the district court were Cristian Viera-Gongora and Pablo David Zamora-Miranda.

RELATED PROCEEDINGS

The following proceedings relate directly to the case before the Court:

United States v. Viera-Gongora, et al., No. 22-11338, 2025 WL 883975 (11th Cir. Mar. 21, 2025), *reh'g denied*, (11th Cir. June 11, 2025).

United States v. Viera-Gongora, et. al., No. 8:21-cr-00121-CEH-JSS (M.D. Fla.).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered in case number 22-11338, in that court on March 21, 2025. *United States v. Viera-Gongora*, No. 22-11338, 2025 WL 883975 (11th Cir. Mar. 21, 2025), *reh'g denied,* (11th Cir. June 11, 2025).

OPINION BELOW

The decision under review is unreported and is reproduced in the Appendix.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The court of appeals had jurisdiction under 28 U.S.C. § 1291. The decision of the court of appeals was entered on March 21, 2025. Mr. Valencia Gamboa timely filed a petition for rehearing, which was denied on June 11, 2025. This petition is timely filed pursuant to SUP. CT. R. 13.1 and 13.3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. art. I, § 8, cl. 10

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

The **Maritime Drug Law Enforcement Act**, **46 U.S.C. §§ 70501-70508**, is contained in the Appendix.

INTRODUCTION

More than two hundred years ago, this Court presumed, for purposes of statutory interpretation, that international law supplied the outer limit to Congress's "legitimate powers" to prosecute foreign nationals for crimes committed aboard vessels on the high seas. *United States v. Furlong*, 18 U.S. (5 Wheat.) 184, 197 (1820). Petitioner Virgilio Valencia Gamboa asks this Court to revisit this enduring question of constitutional law, and to definitively hold that Congress's power to prosecute "Felonies committed on the high Seas" is limited by international law.

Mr. Valencia Gamboa, a citizen of another country with no ties to the United States, was arrested for transporting cocaine aboard a vessel on the high seas. Despite claiming that the vessel had Colombian nationality and there being no indication that the vessel had any ties to the U.S., he was nonetheless taken into U.S. custody and prosecuted under the Maritime Drug Law Enforcement Act ("MDLEA")—a far-reaching statute criminalizing drug trafficking on board vessels broadly defined to be "subject to the jurisdiction of the United States." 46 U.S.C. §§ 70503(a), (e)(1). The statute applies "outside the territorial jurisdiction of the United States," is not limited to United States citizens or residents, and requires no proof that the drugs were intended, or even likely, to reach the United States. *See* 46 U.S.C. §§ 70503(b), (e).

Congress's authority to enact the MDLEA rests on its power to "define and punish ... Felonies committed on the high Seas"—one of three powers granted to

Congress in Article I, Section 8, Clause 10 of the United States Constitution.[2] This Court has rarely addressed the Felonies Clause, possibly because it was rarely invoked by Congress prior to the MDLEA. But the Court's few precedents—along with the constitutional text and compelling historical evidence—reveal that Congress's powers enumerated in that Clause are subject to the jurisdictional limitations of international law.

Mr. Valencia Gamboa's conviction violates international law, and thus exceeds Congress's power under the Felonies Clause. This is so because the definition of "vessel without nationality" in 46 U.S.C. § 70502(d)(1)(C) allowed the United States to assert jurisdiction over Mr. Valencia Gamboa's offense based on a finding of "statelessness" that contradicts international law governing the exercise of jurisdiction over vessels.

The MDLEA flouts any expectation that the United States will abide by international law when prosecuting foreign nationals at sea—expressly providing that "[a] failure to comply with international law ... is not a defense." *See* 46 U.S.C. § 70505. The statute represents a marked break from centuries of Congressional action respecting international legal norms when legislating extraterritorially, and authorizes an unprecedent assertion of federal power. This case thus presents exceptionally important questions of constitutional law that this Court should answer.

[2] In this petition, Mr. Valencia Gamboa uses either "Define and Punish Clause" or "Clause Ten" to refer to Article I, § 8, cl. 10 as a whole. When referring specifically to Congress' power to "define and punish ... Felonies committed on the high Seas," Mr. Valencia Gamboa uses the term "Felonies Clause."

STATEMENT OF THE CASE

Mr. Valencia Gamboa and his codefendants were indicted for one count of conspiring to possess with intent to distribute five kilograms or more of cocaine while onboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a), 70506(a) and (b), and punishable under 21 U.S.C. § 960(b)(1)(B)(ii), and one count of aiding and abetting possession with intent to distribute five kilograms or more of cocaine while onboard a vessel subject to the jurisdiction of the United States, in violation of 46 U.S.C. §§ 70503(a) and 70506(a), 18 U.S.C. § 2, and punishable by 21 U.S.C. § 960(b)(1)(B)(ii). (Dist. Ct. Doc. 1 at 1-2).

The parties stipulated that when the vessel was intercepted by United States Coast Guard officials, one of the vessel's crew members claimed Colombian nationality for the vessel. (Dist. Ct. Doc. 125 1 at 2). Under the United States Colombia Bilateral Agreement, the Coast Guard asked Colombia to confirm the registry of the go-fast vessel ("GFV"). (*Id.*). But the Colombian government could neither confirm nor deny the nationality of the GFV. (*Id.*). The Coast Guard thus determined the GFV to be a stateless vessel in international waters. (*Id.* at 2-3).

Mr. Valencia Gamboa proceeded to a stipulated bench trial and was found guilty of both counts. (Dist. Ct. Doc. 133 at 1).

He, along with his codefendants, then challenged the threshold question of the district court's jurisdiction under the Maritime Drug Law Enforcement Act ("MDLEA"). (Dist. Ct. Doc. 170 at 1). They argued that Congress exceeded its authority under the Felonies Clause by defining a "vessel without nationality" in 46

U.S.C. § 70502(d)(1)(C) to include vessels that are not recognized as stateless under international law. (*Id.* at 5-17).

They explained that the district court asserted jurisdiction under § 70502(d)(1)(C), which defines a stateless vessel as one where a flag nation can neither confirm nor deny registry upon an oral claim of nationality. (*See id.* at 1-3). But, the defendants argued, Congress exceeded its authority under the Felonies Clause when it defined "vessel without nationality" under § 70502(d)(1)(C), because a verbal claim of nationality that is neither confirmed nor denied is a valid prima facie showing of registry, in accordance with international law. (*Id.* at 5-17). Thus, the defendants contended that Congress unconstitutionally extended the criminal jurisdiction of the United States to foreigners on foreign vessels under § 70502(d)(1)(C), contrary to Congress's authority limited in the Constitution by the core precept of international law. (*Id.*).

The district court denied the defendants' motion, concluding that the MDLEA is a proper exercise of Congress' authority under the Felonies clause, including for § 70502(d)(1)(C). (*See* Dist. Ct. Doc. 194).

Mr. Valencia Gamboa reasserted his challenge to § 70502(d)(1)(C) on appeal to the Eleventh Circuit.

While the appeal was pending, the Eleventh Circuit decided *United States v. Canario-Vilomar*, 128 F.4th 1374 (11th Cir. 2025), *cert. filed*, No. 25-5506 (U.S. Aug. 26, 2025), which held that the Felonies Clause is not limited by international law and rejected the very claim presented here. The court concluded "Congress, therefore did

not act beyond the grant of authority in the Felonies Clause when defining either a 'vessel without nationality' or the 'high seas.'" *Id*. at 1376-77.

Subsequently, the panel for Mr. Valencia Gamboa's appeal held that the argument that Congress exceeded its authority by defining stateless vessels more broadly than international law was foreclosed by *Canario-Vilomar*. *United States v. Viera-Gongora*, No. 22-11338, 2025 WL 883975 at *1 (11th Cir. Mar. 21, 2025).

Mr. Valencia Gamboa then filed a rehearing petition arguing that *Canario-Vilomar* was incorrectly decided, but that petition was denied. This petition follows.

REASONS FOR GRANTING THE PETITION

I.

The Court should grant review to answer an enduring question regarding the scope of Congress's power to prosecute foreign nationals, for wholly foreign crimes, under the Felonies Clause

The MDLEA criminalizes the commission of certain drug trafficking offenses committed by any individual "[w]hile on board a covered vessel." 46 U.S.C. § 70503(a)(1). The statute expressly applies "outside the territorial jurisdiction of the United States," 46 U.S.C. § 70506(b), is not limited to United States citizens or residents, and requires no proof of any connection between the offense and the United States. The circuits agree that Congress's authority to enact the MDLEA rests on its power, under the Felonies Clause, to "[t]o define and punish ... Felonies committed on the high Seas." U.S. CONST. art. I, § 8, cl. 10. *See, e.g., United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1258 (11th Cir. 2012); *United States v. Perlaza*, 439 F.3d 1149, 1159 (9th Cir. 2006).

While the Define and Punish Clause has received far less attention than other Congressional powers, Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction Over Drug Crimes*, 93 MINN. L. REV. 1191, 1193 (April 2009), a review of the text, the Court's few precedents, and historical evidence all reveal that Congress' powers under all three prongs of the Define and Punish Clause are limited by international law.

The Define and Punish Clause authorizes Congress "[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. Beginning with the text, three features reveal that the Felonies Clause is limited by principles of international law.

First, when read without consideration of international law, the Define and Punish Clause contains a "striking double redundancy." Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 NW. U. L. REV. 149, 163 (Winter 2009). This Court "has interpreted that Clause to contain three distinct grants of power: 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 offences against the law of nations." *Bellaizac-Hurtado*, 700 F.3d at 1248 (citing *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 158-159 (1820)). However, piracy has always been both a felony that occurs on the high seas and an offense against the Law of Nations.

Why, then, did the Framers enumerate Congress's power to punish piracies separately from Congress's powers to punish the other subjects of the Clause? The answer to that question lies in the jurisdictionally unique aspect to piracy. Kontorovich, *The 'Define and Punish' Clause, supra*, at 166. "For as long as sovereignty-based jurisdictional principles have existed (that is, at least since the early seventeenth century) piracy was the only universal jurisdiction offense." *Id.*; *see also Smith,* 18 U.S. at 154 ("[P]irates being *hostes humani generis*, are punishable in the tribunals of all nations. All nations are engaged in a league against them for the mutual defense and safety of all."). "Other crimes that occurred on the high seas were dealt with under traditional jurisdictional principles." Kontorovich, *The 'Define*

and Punish' Clause, *supra*, at 166. "Piracy's unique status as a universal jurisdiction offense suggests its separate enumeration in Clause Ten specifically allows Congress to exercise universal jurisdiction over that offense—but not over other high seas crimes or international law offenses." *Id.* at 159.

> When read against the backdrop of the Framing, the enumeration of 'Piracies' implies that Congress can punish it the way nations generally could—without regard to the nationality of the vessel or offender. ... However, if "Felonies" can be punished without regard to a U.S. nexus, then all distinction between it and "Piracies" falls away. The Constitution may as well have just said "crimes." By separating the powers in Clause Ten, the Constitution keeps their consequences separate.

Id. at 167. Hence, by separating Congress's power to punish Piracies from its power to punish other (non-universal jurisdiction) offenses, the Framers incorporated the jurisdictional principles of international law into the Define and Punish Clause.

Second, "[t]he Define and Punish Clause, by using various terms of art drawn from customary international law, requires an interpreter to consult that body of law to define those terms." Kontorovich, *Beyond the Article I Horizon, supra*, at 1208-09. The three grants of power in the Clause come from international law concepts, thus providing "strong evidence that the Framers intended the Define and Punish Clause to align with the international law understanding of those terms." *United States v. Dávila-Reyes*, 23 F.4th 153, 176 (1st Cir. 2022), *withdrawn*, 38 F.4th 288, *vacated on reh'g on other grounds*, 84 F.4th 400 (1st Cir. 2023) (en banc).

Finally, the enumeration of powers—together with the canon of *noscitur a sociis*—confirms that the Felonies power is inherently restrained by international law. It is a foundational principle that the Federal Government is one of limited

powers. *United States v. Lopez*, 514 U.S. 549, 552 (1995). The enumeration of specific extraterritorial powers in the Define and Punish Clause "presupposes something not enumerated." *See Gibbons v. Ogden*, 22 U.S. 1, 195 (1824). After all, "[i]f Congress could define any conduct as a 'piracy' or a 'felony' or an 'offence against the law of nations,' its power would be limitless and contrary to our constitutional structure." *Bellaizac-Hurtado*, 700 F.3d at 1250. There must be some limit to Congress's power to regulate felonies committed on the high seas.

That limit may be ascertained by simply looking at the surrounding powers in Clause Ten. The canon of *noscitur a sociis* states: "[w]hen several nouns or verbs or adjectives or adverbs—any words—are associated in a context suggesting that the words have something in common, they should be assigned a permissible meaning that makes them similar." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text*s 195 (Thompson/West 2012). It is settled that Congress's powers under the Piracies Clause are defined by international law. *See Smith*, 18 U.S. at 162 (concluding that piracy "is supposed to depend ... upon the law of nations, both for its definition and punishment"). It seems equally clear that "the power of Congress to define and punish conduct under the Offences Clause is limited by customary international law." *Bellaizac-Hurtado*, 700 F.3d at 1249. It follows that the Felonies Clause—which lies in between them—shares the same limitation.

The Eleventh Circuit rejected this argument, reasoning that because each grant in Clause Ten "has its own unique and distinct meaning," the canon of *noscitur a sociis* was "a poor fit." *United States v. Alfonso*, 104 F.4th 815, 824 n.11 (11th Cir.

2024). But distinct as they are, the inclusion of all three grants in Clause Ten indicates that they share some common feature. That commonality is that all three powers are limited by international law.

The Court's precedents confirm this limitation. In *Smith*, the Court rejected the defendant's claim that Congress failed to fulfill its constitutional duty to "define" piracy in a statute that criminalized "piracy, as defined by the law of nations." 18 U.S at 157. The Court reasoned that "the general practice of all nations in punishing all persons, whether natives or foreigners, who have committed this offence against any persons whatsoever ... is a conclusive proof that the offense is supposed to depend ... upon the law of nations, both for its definition and punishment." *Id*. at 162. The Court had "no hesitation in declaring that piracy, by the law of nations, is robbery upon the sea, and that it [was] sufficiently and constitutionally defined" by the statute's reference to international law. *Id*. *Smith* thus established that both the definition and reach of the Piracy Clause depend on international law.

International law played a similar role in determining the breadth of the Felonies Clause in *United States v. Furlong*, 18 U.S. (5 Wheat.) 184 (1820). Although it is a statutory construction case, it sets out three relevant propositions. First, Congress's power to punish piracy is broader than its power to prosecute other felonies on the high seas. *See id*. at 197. Second, there are felonies on the high seas with which Congress has "no right to interfere." *Id*. at 198. And third, the determination of which felonies Congress has "no right to interfere" with depends on international law. *Id*. at 197.

As an application of those propositions (specifically propositions two and three), the Court further explained that Congress could not simply declare murder to be "piracy" in order to bring it within the reach of the Define and Punish Clause, because doing so would unlawfully expand its own power: "Had Congress, in this instance, declared piracy to be murder, the absurdity would have been felt and acknowledged; yet, with a view to the exercise of jurisdiction, it would have been more defensible than the reverse, for, in one case it would restrict the acknowledged scope of its legitimate powers, in the other extend it." *Id.* The Court thus construed the statute to exclude the murder of a foreigner, by a foreigner, on a foreign ship, "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.*

These decisions are consistent with the "contemporary understanding that the law of nations, as part of the fundamental law of nature, implicitly limited the foreign affairs powers granted by the new constitution." Jules Lobel, *The Limits of Constitutional Power: Conflicts Between Foreign Policy and International Law*, 71 Va. L. Rev. 1071, 1084 (1985). The Constitution "reflected a fundamental transformation in American political thought from a view of a constitution as a compact between rulers and ruled to a view that sovereignty was located in the people, not the legislature." *Id.* at 1090 (footnote omitted). "The Constitution merely delegated a portion of the people's authority to a representative government. As a corollary to this principle, the American people could not delegate to the federal government the

authority to breach natural law or the law of nations, which were not of the people's making." *Id.*

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

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

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

Adams, *Jubilee* at 71.

Even the government took the position in 1818 that "[a] felony, which ... was not [piracy] by the law of nations, cannot be tried by the courts of the United States,

if committed by a foreigner on board a foreign vessel, on the high seas." *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 620 (1818) (argument for the United States).

These sources show that the Framers (and their near-contemporaries) believed that when acting pursuant to its extraterritorial power under the Felonies Clause, Congress was bound by international law. Despite that belief, the Eleventh Circuit has improperly expanded Congress's authority and the reach of the MDLEA in ways that do not correspond with longstanding international principles.

II.

This Court's review is warranted because the decision below is wrong: the MDLEA exceeds Congress's powers under the Felonies Clause by authorizing the United States to assert jurisdiction over foreign nationals for wholly foreign crimes in violation of international law.

Section 70502(d)(1)(C) of the MDLEA exceeds Congress's powers under the Felonies Clause by allowing United States to assert jurisdiction over foreign nationals in violation of the jurisdictional principles of international law.

"Under international law, all nations have an equal and untrammeled right to navigate on the high seas." *United States v. Marino-Garcia*, 679 F.2d 1373, 1380 (11th Cir. 1982). "To insure the principle of freedom of the seas, international law generally prohibits any country from asserting jurisdiction over foreign vessels on the high seas." *Id.*; *see also* 1982 United Nations Convention on the Law of the Seas, U.N.T.S. 397, 21 ILM 1261 (1982) ("UNCLOS") art. 92 ("Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas.").[3]

A nation may assert jurisdiction over a foreigner on a foreign vessel if a recognized basis for prescriptive jurisdiction exists. *See Marino-Garcia*, 679 F.2d at 1381 (referring to this as an "exception" to the principle that "vessels are normally considered within the exclusive jurisdiction of the country whose flag they fly").

[3] Although the United States is not a signatory to UNCLOS, the government recognizes that its provisions reflect customary international law. *See United States v. Alaska*, 503 U.S. 569, 588 n.10 (1992).

"Customary international law recognizes five theories of jurisdiction: territorial, protective, national, passive personality, and universality." *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1259 (2012) (Barkett, J., specially concurring). "The first four theories permit nations to exercise jurisdiction over offenses that implicate domestic interests—that is, offenses that occur within a nation's territory and those that occur outside the territory but have effects within it. In contrast, the universality theory authorizes any nation to exercise jurisdiction over certain offenses, even when no domestic interests are directly implicated." *Id.*

While there is some academic disagreement on the matter,[4] courts generally agree "[t]hese restrictions on the right to assert jurisdiction over foreign vessels on the high seas and the concomitant exceptions have no applicability with stateless vessels." *Marino-Garcia*, 679 F.2d at 1382. Under this theory, the United States may impose its laws on any person, irrespective of nationality and without a traditional basis for jurisdiction, if they are found aboard a stateless vessel. *See id.*; *see also Dubner & Arias, supra,* n.5 at 122 ("[I]t is commonly considered that either ships having no nationality or falsely assuming a nationality are almost completely without protection.").

Section 70502(d)(1)(C), however, allows the United States to declare vessels "without nationality"—and treat them as if they are stateless— under circumstances that conflict with international law. And, because no basis of prescriptive jurisdiction

[4] *See* Barry Hart Dubner & Mary Carmen Arias, *Under International Law*, *Must a Ship on the High Seas Fly the Flag of a State in Order to Avoid Being a Stateless Vessel?,* 29 U.S.F. MAR. L.J. 99, 122 (2016-2017) ("Scholars disagree as to whether or not customary international law and conventional law allows any country to exercise jurisdiction over stateless ships.").

authorizes the prosecution of wholly foreign, extraterritorial drug offenses, *see Bellaizac-Hurtado*, 700 F.3d at 1260 n.4 (Barkett, J., specially concurring), § 70502(d)(1)(C) allows the United States to assert jurisdiction over vessels in violation of international law.

The MDLEA prohibits the knowing possession of controlled substances with intent to distribute, by any individual on board a "covered vessel." 46 U.S.C. § 70503(a)(1). The statute defines a "covered vessel" to include "a vessel subject to the jurisdiction of the United States." 46 U.S.C. § 70503(e). And a "vessel subject to the jurisdiction of the United States" includes "a vessel without nationality." 46 U.S.C. § 70502(c)(1)(A).

Section 70502(d)(1)(C), at issue herein, defines the term "vessel without nationality" to include "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."[5] 46 U.S.C. § 70502(d)(1)(C). However, where the master or individual in charge of a vessel asserts a verbal claim of registry, the flag state's inability to "affirmatively and unequivocally" confirm that claim does not mean the vessel is stateless as a matter of international law. *Id.*

This was demonstrated by the Eleventh Circuit's decision in *United States v. Hernandez*, 864 F.3d 1292 (11th Cir. 2017). There, the master of the vessel claimed

[5] Under the MDLEA, a claim of nationality or registry may be asserted through possession of documents, by flying a flag, or via "a verbal claim of nationality or registry by the master or individual in charge of the vessel." 46 U.S.C. § 70502(e)(1)- (3).

the ship was registered in Guatemala, "and claimed so truthfully, as it later turned out." *Id.* at 1296. However, when contacted, "the Guatemalan government responded that it 'could neither confirm nor deny that the go-vast vessel was registered in Guatemala.'" *Id.* at 1298-99. The vessel was therefore considered "without nationality" under § 70502(d)(1)(C). On appeal, the Eleventh Circuit rejected the appellants' claim that the Coast Guard failed to confirm the claim of registry in bad faith, explaining that statutory jurisdiction under § 70502(d)(1)(C) does not depend on actual statelessness, but instead on the foreign government's response. *Id.* at 1299. *Hernandez* thus shows how § 70502(d)(1)(C) allows the United States to assert jurisdiction over offenses committed on foreign vessels without the foreign nation's consent, in violation of international law.

Section 70502(d)(1)(C) additionally usurps the flag state's right to determine the circumstances under which a vessel may be recognized as having its nationality. International law grants each nation the right to "fix conditions for the grant of its nationality to ships." UNCLOS art. 91(1). "Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority for it." *Lauritzen v. Larsen,* 345 U.S. 571, 584 (1954). "The United States has firmly and successfully maintained that the regularity and validity of a registration can be questioned only by the registering state." *Id.* Section 70502(d)(1)(C) violates this principle by declaring a vessel stateless whenever the flag state does not immediately and unequivocally confirm the vessel's nationality, irrespective of what questions are

asked, or how much time is (or is not) allowed for the inquiry.

In this case, a verbal claim of nationality was asserted for the vessel. The validity of such a claim is recognized both by international law and the statute itself. *See* 46 U.S.C. § 70502(e)(3). Colombia's failure to "affirmatively and unequivocally" confirm that claim did not render the vessel stateless as a matter of international law. Nor did international law allow the United States to simply declare the vessel stateless based on Colombia's lack of an immediate confirmation. International law required Colombia—and not the United States—to determine whether the vessel was of its nationality.

The Ninth Circuit overlooked this clear rule of international law in *United States v. Marin*, 90 F.4th 1235, 1240 (9th Cir. 2024), *cert. denied*, No. 24-5159 (U.S. Oct. 7, 2024). "International law and practice recognize three situations when a vessel is, or becomes, a stateless vessel." *Id.* at 1242 (citation omitted).

> First, a ship that sails under the flags of two or more nations using them as a matter of convenience may be treated stateless…Second, a vessel may be stateless where the nation of the vessel is not recognized by the questioning state…Third, a vessel is stateless 'if it has been deprived of the use of a flag' by the country the vessel claims as its flag or if "the vessel's claimed State of nationality denies that such is the case."

Id. (citations omitted). The *Marin* defendants argued that § 70502(d)(1)(C) violates international law by creating an additional scenario where a vessel may be treated as stateless. The Ninth Circuit rejected that argument, holding that under the "*Lotus* principle," a nation is free to assert jurisdiction so long as it does not go beyond its own jurisdictional limits placed by international law. *Id.* at 1242. The Ninth Circuit determined that there was "no rule of international law"

addressing a vessel's nationality and jurisdiction specifically in the circumstances set out in § 70502(d)(1)(C). *Id.*

But the *Marin* Court overlooked the venerable principle, discussed above, that each state has the sole authority to decide for itself whether a vessel is of its nationality. *See* UNCLOS art. 91. International law does not allow the United States to curtail the inquiry into the status of the vessel in the manner provided by § 70502(d)(1)(C).

III.

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

Despite there being no circuit split, the question of the MDLEA's reach to vessels not considered stateless under international law is of critical importance and is one the Eleventh Circuit has faced over and over again. *See Canario-Vilomar*, 128 F.4th at 1376; *see also United States v. Medina-Quijije*, No. 23-10534, 2025 WL 927072 at *1(11th Cir. Mar. 26, 2025), *cert. filed* No. 24-7511 (U.S. June 26, 2025). As explained above, the Eleventh Circuit's reading of § 70502(d)(1)(C) is not consistent with the historical view of the Define and Punish Clause and improperly extends the United States's reach to vessels that are not considered stateless under international law.

Further, over the past several decades, thousands of foreign nationals have been arrested in the middle of the oceans and prosecuted in the United States under the MDLEA. In 2009, the Eleventh Circuit noted that "more than 1,200 convictions" had been obtained by an intergovernmental task force called "Panama Express," in "its first seven years." *United States v. Valencia-Trujillo*, 573 F.3d 1171, 1173 (11th Cir. 2009). A 2017 New York Times article reflected "more than 2,700" arrests in the preceding six years.[6] And a more recent study "generated a dataset of more than 2,770 defendants" who were "brought into the United States for prosecution under

[6] Seth Freed Wessler, The Coast Guard's 'Floating Guantánamos', N.Y. TIMES, Nov. 20, 2017 *available at* https://www.nytimes.com/2017/11/20/magazine/the-coast-guards-floating-guantanamos.html (accessed Sep. 2, 2025)

the [MDLEA] between FY 2014 and FY 2020." Michael Lissner, *Sentencing Research Without USSC Data: Strategies and Lessons Learned*, 37 FED. SENT. REP. 123 (2025). These numbers are almost certainly under-inclusive and suggest that the United States may have prosecuted as many as 10,000 foreign nationals for crimes bearing no greater connection to the United States than Mr. Valencia Gamboa.

The United States has now extended its already breathtaking jurisdictional grasp into areas not that are even recognized as the "high seas" under international law.

The fact that there is no split of authority should not dissuade the Court from granting review. The MDLEA contains a special venue provision allowing cases to be tried in "any district" of the government's choosing. 46 U.S.C. § 70504(b)(2). For decades, the majority of MDLEA prosecutions have taken place within the Eleventh Circuit, despite the lack of any connection between the offenses and that jurisdiction. *See* Kontorovich, *Beyond the Article I Horizon, supra*, at 1205. A recent study found that 80 percent of MDLEA prosecutions brought between 2014 and 2020 involving powder cocaine were prosecuted in the Eleventh Circuit. Kendra McSweeney, Mat Coleman and Douglas A. Berman, *The Challenge of Just Federal Sentencing for "Boat Defendants*," 37 FED. SENT. REP. 103, 106 (2025).

Additionally, the general extraterritorial venue statute, 18 U.S.C. § 3238, allows the government to select the forum of prosecution for *any* offenses arising in an Exclusive Economic Zone—including those unrelated to the MDLEA—by

controlling where the defendant "is first brought" into the United States. *See* 18 U.S.C. § 3238.

These venue provisions undermine—and even allow the government to avoid—the usual development of circuit splits. It is clear, furthermore, that the government makes strategic use of these provisions. One Coast Guard officer testified that the Department of Justice typically takes "five to seven days" to decide where to prosecute an MDLEA offense after an arrest at sea. *United States v. Santana et. al.*, 22-cr- 20220-KMM Dkt. # 64 at 25 (S.D. Fla. Nov. 6, 2022). And a Coast Guard lawyer candidly confessed to the New York Times that they "try not to bring these cases to the Ninth Circuit." Wessler, Floating Guantánamos, *supra*, at n.6. Thus, the Court cannot expect that these issues will continue to make their way throughout the circuits, as is typical in other criminal cases.

Perhaps most importantly, the foundational question of whether the Define and Punish Clause implicitly incorporates principles of international law presents an unanswered question of constitutional law that has broad implications for an untold number of federal statutes and prosecutions. Thus, notwithstanding the absence of a circuit conflict, the "unusual importance" of this constitutional issue should persuade the Court to grant review. *See Massachusetts v. Environmental Protection Agency*, 549 U.S. 497, 505-06 (2007) ("Notwithstanding the serious character of that jurisdictional argument and the absence of any conflicting decisions ... the unusual importance of the underlying issue persuaded us to grant the writ."). *See also*, *e.g.,* Petition for a Writ of Certiorari, *Vidal v. Elster*, No. 22-

704, 2023 WL 1392051 at *10 (U.S. Jan. 27, 2023) ("The Court has repeatedly granted review of decisions holding federal statutes invalid on First Amendment grounds, even in the absence of a circuit conflict.") (collecting cases); Respondent's Brief in Opposition, *Apprendi v. New Jersey*, No. 99-478, 1999 WL 33611431 at*9 n.4 (U.S. Oct. 20, 1999) (noting the absence of a conflict "with any decision of any other state court of last resort or of a United States court of appeals").

CONCLUSION

Based on the foregoing, the petition should be granted. Alternatively, the Court should hold the petition pending its consideration of *Canario-Vilomar*, No. 25-5506, and then dispose of it as appropriate.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Acting Federal Defender
Middle District of Florida

Danielle Musselman, Esq.
Virginia Bar No. 98321
Research and Writing Attorney
Office of the Federal Defender
400 North Tampa St., Suite 2700
Tampa, Florida 33602
Telephone: (813) 228 2715
Email:Danielle_Musselman@fd.org
Counsel for Appellant