No. ____

IN THE

Supreme Court of the United States

JOSE FERNANDO LOPEZ-ANCHUNDIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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December 1, 2025

QUESTIONS PRESENTED

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. Does Congress's power "[t]o define and punish . . . Felonies committed on the high Seas," authorize the United States to impose its laws upon foreign nationals for wholly foreign crimes committed in a foreign nation's Exclusive Economic Zone (EEZ)?

2. Is the United States' prosecution of foreign nationals under the Maritime Drug Law Enforcement Act ("MDLEA") unconstitutional where neither the individual nor his offense bears any nexus to the United States?

RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States v. Lopez-Anchundia, et al.,* No. 24-11838, (No. 24-11747 Consolidated) (11th Cir. Sep. 3, 2025);
- *United States v. Lopez-Anchundia, et al.*, No. 23-cr-20299-BB (S.D. Fla.);

INTERESTED PARTIES AND RELATED CASES

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

Mr. Lopez-Anchundia's codefendants in the district court were Lauro Aguilar-Gomez, Arturo Yonhatan Gil-Zarco, Juan Manuel Torres-Hernandez, Jhon Yandry Quijije-Mero and Jhon Henry Alvarado-Valencia.

Mr. Lopez-Anchundia's appeal was consolidated in the Eleventh Circuit with his above-named codefendants as *United States v. Quijiji-Mero et al.,* No. 24-11747 (11th Cir. Sep. 3, 2025). The related cases in the Court of Appeals were:

- *United States v. Arturo Yonhatan Gil-Zarco*, No. 24-11792;
- *United States v. Lauro Aguilar-Gomez*, No. 24-11837;
- *United States v. Jhon Henry Alvarado-Valencia*, No. 24-11856;
- *United States v. Juan Manuel Torres-Hernandez*, No. 24-12305.

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Petitioner Jose Fernando Lopez-Anchundia respectfully seeks a writ of certiorari to review a judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The opinion of the court of appeals is available at 2025 WL 2528701.

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 September 3, 2025, making this petition due on or before December 2, 2025. This petition is therefore timely filed.

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 ("MDLEA")**, **46 U.S.C. §§ 70501–70508**.

INTRODUCTION

Two hundred years ago, this Court presumed 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). Since then, the courts of appeals have ignored this guidance, allowing Congress to legislate in this area without meaningful limits. Petitioner Jose Fernando Lopez-Anchundia asks this Court to revisit this important and enduring question of constitutional law, and to definitively hold that Congress's Article I, Section 8, Clause 10 power to prosecute "Felonies committed on the high Seas" is not without limits.

STATEMENT OF THE CASE

On July 9, 2023, Mr. Lopez-Anchundia —a citizen of Ecuador with no ties to the United States—and his five codefendants were arrested for trafficking cocaine aboard a vessel off the coast of Mexico, in its Exclusive Economic Zone ("EEZ"). The vessel was initially stopped by the U.S. Coast Guard when it was less than two miles from Mexican territorial waters, and the Coast Guard in fact towed the vessel to prevent it from entering Mexican territorial waters. Neither the individuals nor the drugs on the vessel had any connection to the United States, but Mr. Lopez-Anchundia and his codefendants were nonetheless taken into United States custody and prosecuted under the Maritime Drug Law Enforcement Act ("MDLEA").

Mr. Lopez-Anchundia was formally charged by indictment in the Southern District of Florida with conspiracy to possess with the intent to distribute a controlled

substance while on board a vessel subject to the jurisdiction of the United States, in violation of Title 46 U.S.C. § 70506, and possession with intent to distribute a controlled substance while on board a vessel subject to the jurisdiction of the United States, in violation of Title 46 U.S.C. § 70503.

Mr. Lopez-Anchundia moved to dismiss the indictment for lack of subject matter jurisdiction on two bases: (1) the unconstitutional application of the MDLEA to individuals arrested on board a vessel within Mexico's EEZ; and (2) that the prosecution violates due process and goes beyond Congress's Felonies Clause authority because of the complete lack of ties or nexus between the United States and Mr. Lopez-Anchundia and his offense. The district court ultimately denied the motion. Mr. Lopez-Anchundia then pleaded guilty to the indictment and was thereafter sentenced to 75 months imprisonment followed by three years of supervised release.[1]

Mr. Lopez-Anchundia reasserted his constitutional challenges on appeal to the Eleventh Circuit. While the appeal was pending, the Eleventh Circuit decided *United States v. Alfonso*, 104 F.4th 815 (11th Cir. 2024), *cert. denied*, No. 24-6177 (U.S. May 19, 2025), which held that a foreign nation's EEZ is part of the "high seas" within the meaning of the Felonies Clause. The Eleventh Circuit then issued its opinion in *United States v. Canario-Vilomar*, definitively holding that "[t]he Framers did not

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[1] Mr. remains incarcerated, with a projected release date of August 1, 2028. http://www.bop.gov/inmateloc/ (last accessed Nov. 25, 2025).

curtail Congress's authority under the Felonies Clause by incorporating any limitations under international law" and "Congress, therefore did not act beyond the grant of authority in the Felonies Clause when defining . . . the 'high seas.'" 128 F.4th 1374, 1376–77 (11th Cir. 2025). On September 3, 2025, the Eleventh Circuit rejected Mr. Lopez-Anchundia's appeal, finding his arguments foreclosed by circuit precedent.

REASONS FOR GRANTING THE PETITION

I.

Congress's power "[t]o define and punish . . . Felonies committed on the high Seas," does not authorize the United States to impose its laws upon foreign nationals for wholly foreign crimes committed in a foreign nation's Exclusive Economic Zone (EEZ).

The MDLEA criminalizes, among other things, the commission of certain drug trafficking offenses committed while 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. *Id.*

The courts of appeals agree that Congress's authority to enact the MDLEA—and to prosecute foreign nationals for wholly foreign drug offenses under the MDLEA—rests exclusively on Congress's power "[t]o define and punish . . . Felonies committed on the high Seas." U.S. CONST. art. I, § 8, cl. 10 (the "Felonies Clause"). *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). "[N]o other Article I powers save the MDLEA." *United States v. Angulo-Hernandez*, 576 F.3d 59, 63 (1st Cir. 2009) (Torruella, J., dissenting from denial of en banc review). As the plain text makes clear, Congress's power to act under the Felonies Clause is limited to offenses "committed on the high Seas." U.S. CONST. art. I, § 8, cl. 10.

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, structure, and persuasive historical evidence, reveal that Congress's Felonies Clause power is subject to the jurisdictional limits of international law. The term "high Seas," within the Felonies Clause, must be similarly construed. And under current, customary international law, Mexico's EEZ, where the offense occurred, is not the high Seas. Thus, because the offense did not occur on the "high Seas," its prosecution falls outside of Congress's Felonies Clause authority.

A. The Felonies Clause, including the term "high Seas," is limited and defined by customary international law.

The Define and Punish Clause[2] authorizes Congress "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of

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[2] In this petition, Mr. Lopez-Anchundia 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. Lopez-Anchundia uses the term "Felonies Clause."

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?

At the Founding, "[p]iracy was jurisdictionally unique." 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." Eugene Kontorovich, *Beyond the Article I Horizon: Congress's Enumerated Powers and Universal Jurisdiction Over Drug Crimes*, 93 MINN. L. REV. 1191, 1208–09 (April 2009). The composition of the Clause from "concepts taken directly from international law,"—*i.e.*, "'Offences against the Law of Nations,' 'Piracies,' and 'Felonies'"—provides "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) *vacated on reh'g on other grounds*, 84 F.4th 400 (1st Cir. 2023) (en banc); *see also*

Kontorovich, *The "Define and Punish" Clause*, *supra*, at 157 (The Define and Punish Clause "explicitly uses terms of art from . . . the law of nations, partially incorporating them by reference"). The terms "Piracies" and "Law of Nations" obviously fall into this category. But so, too, does the term "high Seas." Lawyers of the Framers' generation were well-versed in maritime law. *See id.* at 166. The Framers would have understood term "high seas" to have the meaning accorded to it by the international maritime sources of the day.

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 is 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.

In this regard, it is notable that the Piracies and Felonies powers share a common geographic scope within the text. The first phrase of the Define and Punish Clause grants Congress the power to "define and punish Piracies and Felonies committed on the high Seas," in a single phrase, followed by a comma. U.S. CONST. art. I, § 8, cl. 10. The placement of the comma after the "high Seas" indicates that the Framers intended the "high Seas" to mean the same thing for the Felonies power as it does for the Piracies power. It is clear that the terms of the Piracies Clause are defined by international law. *Smith*, 18 U.S. at 162. There is no basis to believe that the "high Seas" means anything different when interpreting Congress's powers to punish other felonies.

The Eleventh Circuit rejected this argument in *Alfonso*, 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." 104 F.4th at 824 n.11. 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.

This 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). Though *Furlong* was technically a statutory construction case, the Court first sought to determine the scope of Congress's powers under the Define and Punish Clause, in order to determine the reach of the statute under review. Justice Johnson explained:

> To me it appears . . . that in construing [the statute] 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 case within their natural meaning. As far as those powers extended, it is reasonable to conclude, that Congress intended to legislate, unless their express language shall preclude that conclusion.

Id. at 196. Hence, before analyzing the reach of the statute, the Court first had to determine the extent of Congress's power to regulate crimes committed on the high seas.

There was no question the United States could exercise universal jurisdiction over piracies. It was well-established that "when embarked on a piratical cruise, every individual becomes equally punishable under the law . . . whatever may be his national character, or whatever may have been that of the vessel in which he sailed, or of the vessel attacked." *Id.* at 193. But the same could not be said with respect to other felonies committed on the high seas. Rather, the Court found Congress's "legitimate powers" did not include the prosecution of a murder "committed by a foreigner upon a foreigner on a foreign ship." *Id.* at 197. The sole basis for inferring this distinction in the reach of Congress's powers under the Define and Punish Clause was the application of international law. *See id.* ("Robbery on the seas is considered as an offence within the criminal jurisdiction of all nations. It is against all, and punished by all . . . Not so with the crime of murder. . . . And hence, punishing it when committed within the jurisdiction, or, (what is the same thing,) in the vessel of another nation, has not been acknowledged as a right, much less an obligation.").

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 1211–1212. 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. The Define and Punish Clause thus provides an exception to the general rule that Congress may expressly legislate in

violation of international law. *See Murray v. The Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). The Constitution's framers, by intentional design, incorporated the jurisdictional limitations and definitions provided by international law into the three grants of power in the Define and Punish Clause. Congress cannot override those limitations statutory fiat. *See* 46 U.S.C. § 70505.

For all of these reasons, the term "high seas," within the Felonies Clause, must be given the meaning ascribed to it by international law. And, as discussed below, under current international law, the EEZs are not the high seas.

B. Waters in the Exclusive Economic Zones (EEZs) are not part of the high seas under customary international law.

The exclusive economic zone is a relatively new regime in the law of the seas. *See* 1982 United Nations Convention on the Law of the Seas, 1833 U.N.T.S. 397, 21 ILM 1261 (1982) ("UNCLOS") art. 55.[3] It consists of "the waters seaward of and adjacent to the territorial seas, not extending beyond 200 nautical miles from the territorial sea baselines." 33 C.F.R. § 2.30; *see also* UNCLOS art. 57. Coastal states have sovereign rights regarding the conservation, management, and exploitation of natural resources within their EEZ. *See* UNCLOS arts. 56, 73.

The EEZs are expressly excluded from the provisions of UNCLOS that define the "high seas." *See* UNCLOS art. 86 ("The provisions of this Part [entitled "HIGH

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[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).

SEAS"] apply to all parts of the sea that are *not included in the exclusive economic zone*, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.") (emphasis added); *see also* 33 C.F.R. § 2.32(d) ("Under customary international law as reflected in [UNCLOS] . . . and unless the context clearly requires otherwise . . . *high seas means all waters that are not the exclusive economic zone* (as defined in § 2.30), territorial sea (as defined in § 2.22), or internal waters of the United States or any other nation.") (emphasis added).

The EEZs are thus "explicitly no longer treated as part of the high seas regime." Kontorovich, *Beyond the Article I Horizon*, *supra*, at 1233 & n.278 (citation omitted). Rather, "[a]rticles 55 and 86 of [UNCLOS] establish that the exclusive economic zone is unique, neither part of the territorial sea nor part of the high seas." George V. Galdorisi & Alan G. Kaufman, *Military Activities in the Exclusive Economic Zone: Preventing Uncertainty and Defusing Conflict*, 32 CAL W. INT'L L.J. 253, 278 (2002). Consistent with this distinction between the EEZs and the high seas, UNCLOS repeatedly refers to them as distinct and mutually exclusive zones. *See* UNCLOS art. 7, ¶ 6 ("from the high seas or an exclusive economic zone"); UNCLOS art. 36 ("through the high seas or through an exclusive economic zone"); UNCLOS art. 38 ¶ 1 (same); UNCLOS art. 37 ("between one part of the high seas or an exclusive economic zone and another part of the high seas or an exclusive economic zone"); UNCLOS art. 38 ¶ 2 (same); UNCLOS art. 53 ¶ (same); UNCLOS art. 45 ¶ 1(b) ("between a part of the high seas or an exclusive economic zone and the territorial

sea of a foreign State"); UNCLOS art. 47 ¶ 5 ("from the high seas or the exclusive economic zone").

UNCLOS "unambiguously establishes" that the exclusive economic zone is not considered the high seas under international law. Galdorisi & Kaufman, *Military Activities*, *supra*, at 272–73; *see also*, *e.g.*, Horace B. Robertson, *Naval War College International Law Studies* 64-385 at 6 (2014) (defining the "high seas" to "include all parts of the ocean seaward of the exclusive economic zone"); Katrina M. Wyman, *Unilateral Steps to End High Seas Fishing*, 6 TEX. A&M L. REV. 259, 260 (Fall 2018) (noting that "[t]he high seas [are] defined as the waters beyond these EEZs"). And because the EEZs are not part of the "high seas," the application of the MDLEA to Mr. Lopez-Anchundia's drug trafficking offense in Mexico's EEZ exceeded Congress's powers under the Felonies Clause.

Furthermore, the scope of the "high seas" must be determined by reference to *current* international law. In *Alfonso*, the Eleventh Circuit held that the Felonies Clause is "informed by the meaning of 'high seas' when the Framers ratified and adopted the Constitution." 104 F.4th at 821 (citing *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 25-26 (2022)). This Court has since clarified, however, that *Bruen* was "not meant to suggest a law trapped in amber." *United States v. Rahimi*, 144 S. Ct. 1889, 1897 (2024). The relevant question is whether the challenged regulation is consistent with the "principles that underpin our regulatory tradition." *Id.* Thus, the relevant question here is whether the principles that defined the "high seas" at the

Founding apply to the EEZs—not whether the geographical coordinates where Mr. Lopez-Anchundia's vessel was apprehended were part of the high seas in 1789.

The principle that defined the high seas at the Founding, and that continues to define the high seas today, is that they are "international waters not subject to the dominion of any single nation." *United States v. Louisiana*, 394 U.S. 11, 23 (1969) (footnote omitted); *see also United States v. Scotland*, 105 U.S. 24, 29 (1881) (defining "high seas" as "where the law of no particular State has exclusive force, but all are equal"). Article 89 of UNCLOS unambiguously provides that "[n]o State may validly purport to subject any part of the high seas to its sovereignty." By granting coastal states sovereignty over the resources in the EEZs, UNCLOS arts. 56, 73, the international community has removed the EEZs from the definition of the high seas under international law.

Indeed, because international law depends on the consensus and practices of nations, it is inherently subject to change. *See Smith*, 18 U.S. at 160–61 (identifying sources of international law, including "the general usage and practice of nations"). "[C]ourts must interpret international law not as it was in 1789 but as it has evolved and exists among the nations of the world today." *Filartiga v. Pena-Irala*, 630 F.2d 876, 881 (2d Cir. 1980) (discussing *The Paquete Habana*, 175 U.S. 677 (1900), which held that a standard which began as one of comity had developed over time into "a settled rule of international law"); *see also Sosa v. Alvarez-Machain*, 542 U.S. 692, 732–33 (2004) (holding that, when applying the Alien Tort Statute, federal courts may recognize torts under the Law of Nations that did not exist at the Founding).

The text of the Define and Punish Clause confirms the Framers' expectation that the Law of Nations would evolve. At the Founding, there were only three international law crimes: "violation of safe conducts, infringements on the rights of ambassadors, and piracy." *Id.* at 715. Piracy is separately enumerated in the Clause. There would have been no need for a broad, indeterminate category of "Offences against the Law of Nations" if only two other, specific crimes would ever meet that designation. The Eleventh Circuit was thus wrong to hold that changes in international law, and specifically the advent of the EEZs, had no bearing on the meaning of the Felonies Clause.

The Fourth Circuit reached a similarly erroneous conclusion, although for different reasons, in *United States v. Beyle*, 782 F.3d 159 (4th Cir. 2015). In *Beyle*, the court of appeals affirmed the defendant's convictions for murder within the special maritime and territorial jurisdiction of the United States and firearm offenses committed within the EEZ of Somalia. Beyle had argued that the EEZ was actually part of Somalia's territorial waters. *Id.* at 167. The Fourth Circuit rejected that argument, finding that the "allocation of economic rights" granted to coastal nations in their EEZs was "a far cry from conferring on a nation exclusive authority endemic to sovereignty to define and punish criminal violations." *Id.* The court concluded that "[t]he EEZ bordering a particular nation's territorial sea is merely a part of the high seas where that nation has special economic rights and jurisdiction." *Id.*

The Fourth Circuit, however, engaged in no constitutional analysis. Instead, it applied a dichotomy rendered false by the adoption of the EEZs, reasoning that "[i]f

Beyle was beyond the bounds of Somalia's territorial sea, . . . he was on the high seas and within the reach of the U.S. criminal statutes under which he was convicted." *Id.* The decision was unabashedly purposivist, moreover, and expressly based on the court's fear of impeding law enforcement efforts against the very real threat of the Somali pirates who were before the court. *See id.* at 169 ("In short, the structure of domestic and international law that Beyle seeks to topple protects commercial peace against piratical disruption, and we reject his challenge to his murder and firearms convictions").[4]

To the extent the issue was considered by the Second Circuit in *United States v. Alarcon Sanchez*, 972 F.3d 156 (2d Cir. 2020), it appears that court made the same mistake. There, an appellant argued in a single, perfunctory paragraph, that a vessel 132 nautical miles off the coast of Coast Rica was not on the high seas. *See Brief for Defendant-Appellant Carlos Alberto Salinas Diaz*, *United States v. Aragon, et. al.,* 2018 WL 4863430, *9 (2d Cir. Oct. 5, 2018). The Second Circuit rejected the argument just as summarily, concluding the vessel was "comfortably beyond Costa Rica's territorial waters as the framers would have understood the term and under current international law." *Alarcon Sanchez*, 972 F.3d at 170. The words "exclusive economic

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[4] Ironically, Beyle did not even challenge his conviction for "piracy under the law of nations" on appeal. *See id*. at 165. Nor was the court's holding necessary to safeguard the United States' ability to combat piracy. UNCLOS defines piracy to include acts that occur not just on the high seas, but also "outside the jurisdiction of any State." *See* UNCLOS art. 101(a)(ii). Under this definition, piracy in an EEZ is still punishable as piracy under international law, and by the United States as an Offence against the Law of Nations.

zone" or "EEZ" do not even appear in the decision. Thus, while there are now arguably three circuits that have considered the issue, none has meaningfully parsed the constitutional text, or, for that matter, considered whether there are any limits on what the United States could deem the "high seas" for purposes of its own enforcement power.

Just last year, this Court recognized that the boundaries of the high seas changed with the adoption of the EEZs. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2255 (2024). This case thus presents an exceedingly important question regarding the extent of Congress's regulatory power over the "high seas." No one would claim today that the Felonies Clause authorizes the Congress to regulate conduct committed between three and twelve miles from another nation's shore—despite the fact that those waters would have been the "high seas" at the Founding. There is no constitutional justification for a different result with respect to the EEZs.

II.

The United States' prosecution of Mr. Lopez-Anchundia in also unconstitutional because neither Mr. Lopez-Anchundia nor his offense bore any nexus to the United States.

As detailed above, the MDLEA represents one of the most expansive grants of extraterritorial criminal jurisdiction in the United States Code. It authorizes the prosecution of foreign nationals who have never stepped foot in, and have no connection to, the United States for criminal conduct that takes place entirely outside of, and has no effect on, the United States. This is unconstitutional for at least two reasons: it goes beyond Congress's authority under the Felonies Clause, and it violates the Due Process Clause of the Fifth Amendment.

A. Prosecuting a foreign national with no ties to the United States for committing a drug trafficking offense outside of, and with no connection to, the United States exceeds Congress's authority under the Felonies Clause.

The MDLEA exceeds Congress's Art. I, § 8, cl. 10 power to define and punish felonies on the high seas because Congress's power under the Felonies Clause does not extend to drug trafficking offenses bearing no connection to the United States. *See United States v. Angulo-Hernández*, 576 F.3d 59, 60 (1st Cir. 2009) (Torruella, J., dissenting from the 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 Furlong*, 18 U.S. at 189); *see also* Eugene Kontorovich, *The "Define and Punish" Clause and the Limits of Universal Jurisdiction*, 103 Nw. U. L.

Rev. 149, 163–64 (Winter 2009) (discussing the history of Art. I, § 8, cl. 10, and arguing that the Felonies Clause is limited to felonies with a nexus to the United States).

Both this Court's precedent—namely *Furlong*, discussed in Part I, *supra*, and the constitutional text suggest that the Felonies Clause does not grant Congress unlimited power to proscribe felonies committed on the high seas that have no nexus to the United States. And "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). "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." *Id.* at 62–63 (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." *United States v. Cardales-Luna*, 632 F.3d 731, 739 (1st Cir. 2011) (Torruella, J., dissenting).

The Eleventh Circuit, and the other circuit courts that have considered this argument, have rejected it, ignoring *Furlong's* teachings. *See, e.g., United States v. Campbell*, 734 F.3d 802, 806 (11th Cir. 2014). It is therefore necessary for this Court to intervene.

B. The MDLEA and this prosecution also violate the Due Process Clause of the Fifth Amendment because neither Mr. Lopez-Anchundia nor his offense bore any nexus to the United States.

This MDLEA prosecution also offends due process. Mr. Lopez-Anchundia was neither present in the United States nor any United States territory at the time of the offense. He is not a U.S. national, nor was he domiciled in the country prior to his arrest. He carried on no business or activity in the United States, and there is no evidence that the drugs were destined for the United States, or that the offense would have a direct and foreseeable effect within the United States. Rather, the entire offense occurred within miles of the Mexican coast. In other words, there is no connection between the United States and Mr. Lopez-Anchundia and his offense. This runs afoul of the Fifth Amendment's Due Process Clause, which requires such a nexus. *See United States v. Zakharov*, 468 F.3d 1171, 1177 (9th Cir. 2006) (internal quotation omitted) (in cases involving registered vessels, due process requires a "nexus between the United States and the defendant's activities").

The Eleventh Circuit has rejected this challenge, holding—unlike the Ninth Circuit—that there is no nexus requirement at all. *See United States v. Cabezas-Montano*, 949 F.3d 567, 587 (11th Cir. 2020). This Court has yet to rule on this issue, but has recognized in other contexts the danger and absurdity of allowing Congress to transform the United States into the world's police force:

> "[T]he Foreign Commerce Clause would permit Congress to regulate any activity anywhere in the world so long as Congress had a rational basis to conclude that the activity has a substantial effect on commerce between this Nation and any other. Congress would be able not only to criminalize prostitution in Australia, but also regulate working

> conditions in factories in China, pollution from power plants in India, or agricultural methods on farms in France. I am confident that whatever the correct interpretation of the foreign commerce power may be, it does not confer upon Congress a virtually plenary power over global economic activity."

Baston v. United States, 580 U.S. 1182 (2017) (Thomas, J., dissenting from denial of certiorari).

As recently as last term, this Court grappled with what limitations the Fifth Amendment's Due Process Clause imposes upon on the "Federal Government's power . . . to hale foreign defendants into U.S. courts." *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 18 (2025). In *Fuld*, this Court declined to "delineate the outer bounds" of that power because the anti-terrorism statute at issue tied jurisdiction to specific and narrow conduct closely related to the United States and involving terrorism—"an urgent objective of the highest order"—and therefore "comports with the Due Process Clause of the Fifth Amendment." *Id.* at 18–21, 25. The MDLEA, by contrast, does no such thing; rather, it permits the United States to arrest foreign nationals from anywhere in the world, with no connection to the United States, outside of the United States, for allegedly committing extraterritorial crimes that have zero nexus to the United States. Mr. Lopez-Anchundia's case presents a perfect vehicle for the Court to address this important and unanswered question.

III.

This case presents unusually important questions of constitutional law, warranting review even without a circuit split.

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. 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 Nov. 23, 2025). And a more recent study "generated a dataset of more than 2,770 defendants" who were "brought into the United States for prosecution under 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. Lopez-Anchundia's.

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. "At the very least," the Court "should 'pause to consider the implication of the

Government's arguments' when confronted with such new conceptions of federal power." *National Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2591 (2012) (quotation omitted).

The fact that there is no split of authority as to Issue I 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 EEZ—including those unrelated to the MDLEA—by controlling where the defendant "is first brought" into the United States. *See* 18 U.S.C. § 3238 ("The trial of all offenses begun or committed upon the high seas, or elsewhere out of the jurisdiction of any particular State or district, shall be in the district in which the offender . . . is arrested or is first brought.")

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 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").

Finally, this case presents a perfect vehicle for this Court to resolve these issues. The circuit that decides the lion's share of MDLEA cases has now definitively ruled on each question presented herein in a published and binding decision. This case presents the ideal vehicle for review and the petition should be granted.

CONCLUSION

Based on the foregoing, the petition should be granted.

Respectfully submitted,

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