No. _____

IN THE
Supreme Court of the United States

JOSE DAVID PAYBA LACAYO,
***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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QUESTIONS PRESENTED

Petitioner, a foreign national found on a boat within 200 miles of Colombia, was prosecuted for two marijuana offenses under the Maritime Drug Law Enforcement Act ("MDLEA"). The questions presented are:

1. Are Congress's powers under Article I, Section 8, Clause 10 of the United States Constitution, which authorizes Congress "[t]o define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations," limited by international law?

2. Does 46 U.S.C. § 70502(d)(1)(C) of the MDLEA 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?

3. Does Congress's power "[t]o define and punish . . . Felonies committed on the high Seas," authorize the United States to enforce its criminal laws upon foreign nationals for offenses committed inside a foreign nation's Exclusive Economic Zone?

RELATED PROCEEDINGS

This case arises from the following proceedings:

United States v. Jose David Payba Lacayo, No. 24-10384 (11th Cir. Nov. 17, 2025); and

United States v. Jose David Payba Lacayo, No. 8:23-cr-10-KKM-JSS (M.D. Fla. Jan. 22, 2024).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

TABLE OF AUTHORITIES – cont'd

Statutes **Page(s)**

Constitutional Provisions

Other Authorities

TABLE OF AUTHORITIES – cont'd

Other Authorities **Page(s)**

PETITION FOR A WRIT OF CERTIORARI

Petitioner Jose Payba Lacayo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's opinion is unpublished, 2025 WL 3205504, and is provided in the Petition Appendix (Pet. App.). *See* Pet. App. A.

JURISDICTION

The Eleventh Circuit issued its opinion on November 17, 2025. *See* Pet. App. A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Article I, Section 8, Clause 10 of the United States Constitution provides:

> 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" or "Act"), 46 U.S.C. §§ 70501-70508, is contained in Petition Appendix B.

STATEMENT OF THE CASE

1. On or about December 25, 2022, a go-fast vessel ("vessel") was found approximately 135 nautical miles northwest of Isla de Malpelo, Colombia. Doc. 99-1 at 1; *see* Doc. 32-1.[1] A U.S. Coast Guard Cutter, which was patrolling nearby, deployed a helicopter and a small boat to intercept the vessel. Doc. 99-1 at 1. When

[1] Mr. Lacayo cites the docket entries in Case No. 8:23-cr-10-KKM-JSS (M.D. Fla.) as "Doc."

the helicopter arrived, the individuals on the vessel began to jettison what appeared to be bales. *Id*. at 1-2. Upon conducting a right of visit boarding, the Coast Guard found Mr. Lacayo and his two co-defendants onboard the vessel. *Id*. at 2. Mr. Lacayo made a claim that the vessel was of Costa Rican nationality. *Id*. The Coast Guard requested that the Costa Rican government confirm or deny the claimed nationality for the vessel. *Id*.; Doc. 32-1 at 1.

On or about December 26, 2022, the Costa Rican government replied that it could neither confirm nor deny the vessel's registry or nationality. Doc. 99-1 at 2; Doc. 32-1 at 3. The Coast Guard determined the vessel to be "without nationality" under 46 U.S.C. § 70502(d)(1)(C) and thus a "vessel subject to the jurisdiction of the United States" under the MDLEA. Doc. 99-1 at 2. The Coast Guard recovered 1,823 kilograms of marijuana (its at-sea weight). *Id*. at 3.

Mr. Lacayo and his two co-defendants were charged by indictment in the U.S. District Court for the Middle District of Florida, Tampa Division, with conspiracy to possess with the intent to distribute 1,000 kilograms or more of marijuana (Count One) and possession with intent to distribute 1,000 kilograms or more of marijuana (Count Two), both counts in violation of the MDLEA. Doc. 1. Mr. Lacayo's co-defendants entered guilty pleas pursuant to plea agreements. *See* Docs. 36, 54.[2]

Mr. Lacayo moved to dismiss both counts before the district court on the grounds that (i) his alleged offenses occurred within the exclusive economic zone ("EEZ") of Colombia and therefore fell outside of Congress's Article I authority to

[2] Neither co-defendant appealed to the Eleventh Circuit.

define and punish felonies committed on the "high Seas," and (ii) Congress exceeded its Article I authority in defining a "vessel without nationality" to include, in 46 U.S.C. § 70502(d)(1)(C), "a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality." Doc. 47. The government responded in opposition. Doc. 50. The district court denied Mr. Lacayo's motion to dismiss. Doc. 88. Thereafter, on the government's motion, the district court determined that the vessel was "subject to the jurisdiction of the United States." Docs. 94, 96.

To preserve the challenges he presented in his motion to dismiss for purposes of appeal, Mr. Lacayo proceeded to a bench trial on a stipulated set of facts. *See* Doc. 132 at 10; Doc. 99-1. The district court found Mr. Lacayo guilty of both counts and sentenced him to 46 months in prison. Docs. 100, 123; Doc. 132 at 17-18.

2. On appeal, Mr. Lacayo renewed his constitutional challenges to his MDLEA convictions. The Eleventh Circuit affirmed, citing its published decisions in *United States v. Alfonso*, 104 F.4th 815 (11th Cir. 2024), *cert. denied*, 145 S. Ct. 2706 (2025), and *United States v. Canario-Vilomar*, 128 F.4th 1374 (11th Cir. 2025), *cert. denied*, 146 S. Ct. 269 (2025). Pet. App. A.

REASONS FOR GRANTING THE PETITION

I.

The Court should grant review to answer an enduring question regarding the scope of Congress's power to criminalize conduct under the Felonies Clause

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. The threshold question presented by prosecutions of foreign nationals under the MDLEA, including the prosecution of Petitioner for marijuana offenses on a vessel within 200 miles of Colombia, is whether the Act falls within Congress's power to "define and punish . . . Felonies committed on the high Seas."[3] It does not.

While the Define and Punish Clause has received far less attention than other Congressional powers, *see* 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 precedents, and historical evidence all reveal that Congress' powers under all three prongs of the Define and Punish Clause (the power to define and punish (i) piracies committed on the high seas, (ii) felonies committed on the high seas, and (iii) offenses against the law of nations)) are limited by international law.

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[3] Mr. Lacayo uses "Define and Punish Clause" or "Clause Ten" to refer to the clause as a whole and "Felonies Clause" to refer specifically to the power to "define and punish . . . Felonies committed on the high Seas."

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). Piracy, a particular crime, is a felony that occurs on the high seas and is an offense against the Law of Nations. *Id.* But it carries a jurisdictional distinction. *Id.* at 165-66. "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 United States v. Smith*, 18 U.S. (5 Wheat.) 153, 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 defense and safety of all.").

By contrast, "[o]ther 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 composition of the Define and Punish 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).

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." *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." *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1250 (11th Cir. 2012). 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 power under the Piracies Clause is 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), *cert. denied*, 145 S. Ct. 2706 (2025). 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 *United States v. Furlong*, 18 U.S. (5 Wheat.) 184, 196-98 (1820). As relevant here, the Court explained that Congress could not declare murder to be "piracy" in order to bring it within the reach of its powers: "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.* at 198. The Court thus construed the statute at issue 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. By affirming Petitioner's convictions, 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. Pet. App. A. This Court's review is therefore needed to limit the reach of Congress's authority under the Constitution.

II.

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

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). As such, "international law generally prohibits any country from asserting jurisdiction over foreign vessels on the high seas." *Id.*; *see* 1982 United Nations Convention on the Law of the Seas ("UNCLOS"), Art. 92, 1833 U.N.T.S. 397 (1982) ("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.").

The MDLEA prohibits drug offenses on board "a vessel subject to the jurisdiction of the United States," which is defined to include a "vessel without nationality." 46 U.S.C. §§ 70502(c)(1)(A), 70503(a)(1), (e). 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." 46 U.S.C. § 70502(d)(1)(C).[4] 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 "without nationality" or stateless as a matter of international law.

[4] 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).

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 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.[5]

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). Costa Rica'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 Costa Rica's lack of an immediate confirmation. International law required Costa Rica—and not the United States—to determine whether the vessel was of its nationality. The Eleventh Circuit's affirmance of Petitioner's convictions resting on § 70502(d)(1)(C) is accordingly wrong and worthy of this Court's review.

III.

Congress's power "[t]o define and punish . . . Felonies committed on the high Seas," does not authorize the United States to criminalize conduct by foreign nationals in a foreign nation's Exclusive Economic Zone

The application of the MDLEA to Mr. Lacayo additionally exceeded Congress's powers under the Felonies Clause because his conduct was not committed on the

[5] *See also United States v. Trinidad*, 839 F.3d 112, 124 (1st Cir. 2016) (Torruella, J., dissenting) ("Colombia could not confirm or deny this [verbal] assertion [of Colombian nationality for the vessel] within the short time provided. . . .[S]o the United States unilaterally decided that, pursuant to its laws, the vessel was stateless and therefore subject to U.S. criminal laws. I cannot read the MDLEA as permitting such a brazen expansion of U.S. jurisdiction at the expense of international law.").

"high Seas." That term, like the other phrases in the Define and Punish Clause, is limited by international law. *See* Argument I, *supra*. Under current international law, another country's EEZ is not part of the "high Seas."

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 term "high seas" therefore must be given the meaning ascribed to it by international law.

Under current international law, the EEZs are not the high seas. 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 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).[6] And as scholars have recognized, the EEZ is "explicitly no longer treated as part of the high seas regime." Kontorovich, *Beyond the Article I Horizon*, *supra* at 1233 & n.278; *see* Horace B. Robertson, *Naval War*

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[6] *See also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 380 (2024) (recognizing that "[b]efore 1976 . . . international waters . . . began just 12 nautical miles offshore" and Congress thereafter codified the United States's EEZ).

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").

Mr. Lacayo's conduct occurred within Colombia's EEZ. *See Alfonso*, 104 F.4th at 818-27 (recognizing that the EEZ consists of the waters within 200 nautical miles of a country's territorial seas baseline); *Canario-Vilomar*, 128 F.4th at 1381-82 (same). The application of the MDLEA to Mr. Lacayo's conduct accordingly exceeded Congress's powers under the Felonies Clause. This Court's review is needed to cabin Congress's authority to criminalize conduct consistent with its limited powers under the Constitution.

CONCLUSION

For the foregoing reasons, the petition should be granted.

Respectfully submitted,

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