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June 15, 2021

Hon. Beverly B. Martin
Hon. Robin S. Rosenbaum
Hon. Robert J. Luck
United States Court of Appeals
for the Eleventh Circuit
Room 1212
James Lawrence King Federal Justice Building
99 N.E. 4th Street
Miami, Florida 33132
By CM/ECF

Re: **United States v. Weir et al., Case No. 20-11188-X**

*Letter Notice of Supplemental Authority Pursuant to Fed. R. App. P. 28(j) and
Eleventh Circuit I.O.P.—6*

Dear Judge Martin, Judge Rosenbaum, and Judge Luck:

Since briefing was completed in this case, scheduled for argument in Miami on June 30, this Court vacated the Maritime Drug Law Enforcement Act (“MDLEA”) convictions of foreign nationals for “acts committed in the territorial waters of foreign nations.” *United States v. Davila-Mendoza et al.*, 972 F.3d 1264 (11th Cir. 2020). *Davila-Mendoza* emphasized that “the crimes [there] were not committed on the high seas,” *id.* at 1268, and could not fall within Congress’s enumerated High Seas Clause powers at issue here (Br. at 3-4). It expressly recognized the body of law affirming Congress’s powers over “conduct that occurred on the high seas” and noted that “no nexus is necessary where the MDLEA is an exercise of

Congress’s express authority to define and punish conduct occurring on the high seas pursuant to the Felonies Clause.” *Id.* at 1268 n.2, 1275 n.6.

Petitioners’ convictions for obstructing a lawful Coast Guard boarding on the high seas thus remain supported by *Davila-Mendoza*’s analysis as well as by additional facts and legal bases *Davila-Mendoza* did not reach.

As Congress’s High Seas Clause powers were not in play, *Davila-Mendoza* examined whether the MDLEA’s application there could “pass muster” under the Foreign Commerce Clause, but only “under the third category of regulated commerce: those activities that have a ‘substantial effect’” on foreign commerce. *Id.* at 1271. It did not address Congress’s authority to regulate the channels and instrumentalities of foreign commerce, which also supports 18 U.S.C. § 2237’s criminalizing of various forms of interference with Coast Guard enforcement of criminal and commercial laws (Br. at 9-11, 19-24).

Davila-Mendoza rejected the application of Congress’s enumerated treaty powers to the MDLEA’s enactment prior to the relevant agreements. *Id.* at 1277. Section 2237, by contrast, was enacted after the relevant treaties. *See* Pub. L. 109–177, § 303 (March 9, 2006).

Finally, *Davila-Mendoza* did not reach the effect of compliance with international agreements, such as those here authorizing Coast Guard boardings and the application of United States law, on satisfying the Due Process Clause’s separate requirement that government action be neither arbitrary or without fair notice (Br. 33-42).

Respectfully submitted,

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cc: Petitioners’ Counsel (by CM/ECF)